

THE STATE OF TEXASE §

COUNTY OF KENDALL §

CHAPTER 43 & SECTION 212.172 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and effective this 22nd day of September, 2015, by and between the City of Boerne, Texas, a home rule municipal corporation of the State of Texas located within Kendall County, Texas (hereinafter referred to as "City") and JCH 1670 River RD Investment LLC. (hereinafter referred to as "Owner") (collectively referred to as "Parties") and is as follows:

WHEREAS, the Owner owns a parcel of real property located on Highway 46 in Kendall County, Texas, (hereinafter referred to as the "Property"), more particularly and separately described in the attached Exhibit "A", which is within the Mixed Use zone as delineated in the City's Comprehensive Master Plan; and

WHEREAS, the Property is located within the extraterritorial jurisdiction of the City and is subject to municipal annexation; and

WHEREAS, the Property is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Texas Tax Code, or as timber land under Subchapter E of that chapter; and

WHEREAS, the Texas Local Government Code§ 43.035 provides that the City may not annex property appraised for such purposes unless it first offers to enter into a development agreement with the Owner pursuant to such section; and

WHEREAS, the Texas Local Government Code § 212.172 allows for the City to enter into a Development Agreement with the Owner to guaranteeing the continuation of the extraterritorial status of the Property and it limited immunity from annexation by the City; and

WHEREAS, the City has notified the Owner of its intent to annex the Property and has offered to enter into this Agreement guaranteeing the continued extraterritorial status of the Property upon the terms and conditions hereinafter provided; and

WHEREAS, the City desires that any development of the property be in conformance with the City's Comprehensive Master Plan which currently zones the Property as Mixed Use district; and

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Development Agreement is to be recorded in the Real Property Records of Kendall County.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the recitals above, which are incorporated herein for all purposes, the parties hereto agree as follows:

Section 1. Identification of the Property. The Property is described as the property owned by the Owner within the boundaries of the area described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. Continuation of Extraterritorial Status. The City guarantees the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, and its immunity from City property taxes, as long as:

- (1) this Agreement is in effect,
- (2) the Property is not subdivided during the term of this Agreement,
- (3) at the execution of this Agreement, the Property is appraised for ad valorem tax purposes as land for agriculture or wildlife management use under Subchapter C or D, Chapter 23, Texas Tax Code, or as timber land under Subchapter E of that Chapter and continues to be so appraised during the term of this Agreement,
- (4) the Owner does not file any type of subdivision plat or related development document for any portion of the Property with a governmental entity with jurisdiction during the term of this Agreement; and
- (5) the Owner is not in violation of this Agreement.

Except as provided in the Agreement, the City agrees:

- (1) not to annex the Property without the consent of the Owner,
- (2) not to involuntarily institute proceedings to annex the Property, and
- (3) not to include the Property in a statutory annexation plan for the Term of this Agreement without the consent of the Owner.

Section 3. Application of Municipal Regulations. All ordinances, regulations and planning authority of the City not interfering with the use of the land for agriculture, wildlife management or timber, will be enforced with respect to the Property. Such regulations and planning authority may be enforced as they now exists or may hereafter be established or amended, and this Agreement shall not be deemed a permit for the purposes of Texas Local Government Code Chapter 245.

The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for existing single-family residential use of the Property, without the prior written consent of the City.

The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property with Kendall County or the City until the Property has been annexed into, and zoned by, the City. Owner agrees that any filing that is not in conformance with the City's Comprehensive Master Plan will not be deemed a permit for the purposes of the Texas Local Government Code Chapter 245.

The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the City limits, until the Property has been annexed into, and zoned by, the City. However, the Owner may construct an accessory structure to an existing single family dwelling in compliance with all applicable City ordinances and codes.

Section 4. Indemnification. THE OWNER ACKNOWLEDGES THAT EACH AND EVERY OWNER OF THE PROPERTY MUST SIGN THIS AGREEMENT IN ORDER FOR THE AGREEMENT TO TAKE FULL EFFECT, AND THE OWNER WHO SIGNS THIS AGREEMENT COVENANTS AND AGREES, JOINTLY AND SEVERABLY, TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AGAINST ANY AND ALL LEGAL CLAIMS, BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THE AGREEMENT, ARISING IN ANY WAY FROM THE CITY'S RELIANCE ON THIS AGREEMENT.

Section 5. Voluntary Annexation Upon Subdivision or Change of Use. The Owner acknowledges that this Agreement is void if: (1) Owner fails to continue to use the Property solely for agricultural, wildlife management or timber use, (2) subdivides or develops the Property in any manner that would require a plat or related development document, and/or (3) Owner commences development of the Property in violation of this Agreement in anyway. If the Property ceases to be appraised for agricultural, wildlife management or timber use or if the Owner subdivides or develops the Property as described in this section, then, in addition to the City's other remedies, Owner shall be deemed to have agreed to voluntary annexation of the Property, either in whole or in part. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

If annexation proceedings begin pursuant to this Section, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan. Furthermore, the Owner hereby waives any and all vested rights and claims that they may have under Section

43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of this Agreement.

Section 6. Reservation of Eminent Domain Authority. The City states and specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

Section 7. Term. The term of this Agreement is five (5) years from the date that the City Manager's signature to this Agreement is acknowledged by a public notary and may be extended successive five (5) year terms, upon written agreement by the Parties prior to the expiration of the original term. This Agreement may not extend past forty five (45) years cumulatively.

The Owner, and all of the Owner's heirs, successors and assigns shall be deemed to have filed a petition for voluntary annexation before the end of the Term, or successive terms, for annexation of the Property to be completed on or after the end of the Term or successive terms. Prior to the end of the Term, or successive terms, the City may commence the voluntary annexation of the Property. In connection with annexation pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

Section 8. Notice of Sale of Property. Any person who sells or conveys the Property, in whole or part, shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within fourteen (14) days of any change in the exemption status of the Property.

Section 9. Form and Delivery of Notice. Any notice required or permitted under this Agreement shall be in writing and shall be delivered in hand or by registered or certified US mail. Notice to the Owner may be addressed to Owner at the address indicated on the most recent applicable county property tax roll for the Property. If more than one entity is named in this Agreement, service of any notice on any one of the entities shall be deemed service on all entities. Any notice so given shall be deemed to have been received when deposited in the United States mail so addressed with postage prepaid:

City of Boerne,
Texas Attn: City
Manager Post
Office Box 1677
Boerne, Texas
78006

Section 10. Agreement a Covenant Running With the Land. This Agreement shall be recorded in the Real Property Records of Kendall County and, for the Term or successive terms of this Agreement, shall be a covenant running with the land binding upon all parties having any right, title or interest in the Property or any part thereof, including their heirs, successors and assigns, and shall inure to the benefit of the owners of the Property and to the City. This Agreement may not be revised or amended without the written consent of both parties.

Section 11. Provisions Severable. If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, then the remainder of this Agreement shall remain in full force and effect.

Section 12. Enforcement. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 13. Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

Section 14. Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

Section 15. Modification of Agreement. This Agreement cannot be modified or amended without the written consent of all the parties hereto and attached and made a part of this Agreement.

Section 16. Governing Law and Venue. Venue shall be in the state courts located in Kendall County, Texas or the United States District Court for the Western District of Texas, San Antonio Division and construed in conformity with the provisions of Texas Local Government Code §43.035.

Entered into this 22nd day of September, 2015.

By Sharon Stanford
Sharon Stanford, Sharon's Business
Enterprise, Owner, Manager of JCH 1670
River Rd. Investment, LLC
Name Printed: Sharon Stanford

CITY OF BOERNE, TEXAS

Ron Bowman
City Manager, City of Boerne, Texas

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 22nd day of September, 2015 A.D.
by Sharon Stanford on behalf of JCH 1670 River Rd. Investment, LLC.



A handwritten signature in blue ink, appearing to read "Connye Cashion", written over a horizontal line.

Notary Public In and For The State of Texas