

STATE OF TEXAS)
)
COUNTY OF KENDALL)

Property Owner: ACA INVESTMENTS LLC

**Property Description: A10441 – SURVEY 183 J SMALL 1.034 ACRES &
A10441 – SURVEY 183 J SMALL 10.941 ACRES**

CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT

This Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code by and between the City of Boerne, Texas (the “City”) and the undersigned property owner(s) (the “Owner”) (collectively, the “Parties”). The term “Owner” includes all owners of the Property.

WHEREAS, the Owner owns a parcel of real property (the “Property”) in Kendall County, Texas, which is more particularly and separately described in the attached Exhibit “A”; and

WHEREAS, the Property is designated as “Auto-Oriented Commercial” in the City’s Master Plan; and

WHEREAS, the Property is currently utilized for agricultural purposes with associated existing structures and infrastructure; and

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of Owner’s Property and will hold public hearings on Tuesday, May 28th, 2019 at 6:00 p.m. and on Tuesday, June 11, 2019 at 6:00 p.m.; 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 Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

WHEREAS, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the term (defined below) of 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, the parties hereto agree as follows:

Section 1. 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, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the

Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

Section 2. 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 that is inconsistent with its current use (or single family dwelling) with Kendall County or the City until the Property has been annexed into, and zoned by, the City, or unless prior written consent of the City has been given.

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 accessory structures to an existing single-family dwelling, or supplementary structures for the Property's use as agricultural land, such as a barn or similar storage structure, in compliance with all applicable City ordinances and codes.

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 3. The Owner acknowledges that if any plat or related development document, that is inconsistent with the current use (or single family dwelling) is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. However, should annexation be triggered by Owner filing a plat or related development document, except as allowed herein, only that portion of the Property included in such plat or related development document shall be subject to annexation. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Owner hereby waives any requirement in Chapter 43 related to procedures or service provision.; however, the City shall provide written notice to Owner within ten (10) business days of City's perceived violation of this Agreement stating such violation(s) and intent to annex the Property with a corresponding timeline for such. Services will be provided to Owner's Property as soon as possible in accordance with existing city policy on the date of annexation, and as amended thereafter.

Section 4. Pursuant to Sections 43.016(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce all of the City's regulations and planning authority applicable to properties in the ETJ that do not materially interfere with the current use of the Property for residential, agriculture, wildlife management, or timber, in the same

manner the regulations are enforced within the City's boundaries. 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 5. The term of this Agreement (the "Term") is 10 years from the date that the City Manager's signature to this Agreement is acknowledged by a public notary. The Term of this Agreement shall be automatically extended for successive ten (10) year terms unless otherwise terminated by mutual agreement of the Parties or pursuant to the terms of this Agreement. However, 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, for annexation of the Property to be completed on or after the end of the Term. Prior to the end of the Term, the City may commence the voluntary annexation of the Property, so long as annexation is not completed prior to the end of the Term. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Owner hereby waives any requirement in Chapter 43 related to procedures or service provision. Services will be provided to Owner's Property in accordance with existing city policy on the date of annexation, and as amended thereafter.

Section 6. Property annexed pursuant to this Agreement will initially be zoned in accordance with the Future Land Use designation for the Property in the City's Master Plan as of the Effective Date of this Agreement, pursuant to the City's Code of Ordinances and applicable state law. Should the Future Land Use categories and corresponding compatible zoning districts in the City's Master Plan change during the Term of this Agreement, a Future Land Use category of equal or more-intense use shall be used to determine zoning.

Section 7. Any person who sells or conveys any portion of the Property shall, within thirty (30) days of such sale or conveyance, give written notice of the sale or conveyance to the City. Upon such conveyance, the owner of such conveyed property shall be independently responsible for compliance with this Agreement and any defaults by the owner of the conveyed property shall not in any way affect the validity or continuation of this Agreement as to other portions of the Property. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within thirty (30) days of any change in the agricultural exemption status of the Property, beginning from the date Kendall County Appraisal District notified the Owner in writing of such change in agricultural exemption status. A copy of either notice required by this section shall be forwarded to the City at the following address:

City of Boerne, Texas
Attn: City Manager
P.O. Box 1677 Boerne, Texas 78006

Section 8. This Agreement shall run with the Property and be recorded in the real property records of Kendall County, Texas within thirty (30) days of the Effective Date.

Section 9. If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding involuntary annexation, then the remainder of this Agreement shall remain in full force and effect.

Section 10. 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 11. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 12. Venue for this Agreement shall be in Kendall County, Texas.

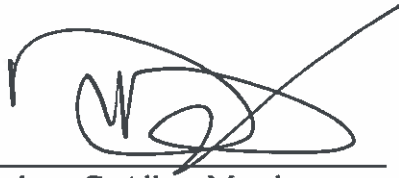
Section 13. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 14. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4, and 5 herein.

Section 15. This Agreement shall be effective as of the date it is executed by the City Manager ("Effective Date").

Entered into this 4th day of June, 2019.

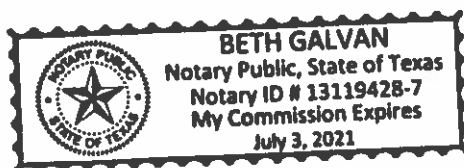
ACA INVESTMENTS, LLC

By: 
Andrew C. Allen, Member

THE STATE OF TEXAS }

COUNTY OF Kendall }

This instrument was acknowledged before me on the 4th day of June, 2019, by Andrew C. Allen, Member of ACA Investments, LLC, Owner.




Notary Public, State of Texas

Ronald C. Bowman,
City Manager, City of Boerne, Texas

THE STATE OF TEXAS }

COUNTY OF KENDALL }

 This instrument was acknowledged before me on the _____ day of June, 2019, by
Ronald C. Bowman, City Manager, City of Boerne, Texas.

Notary Public, State of Texas