

STATE OF TEXAS)
)
COUNTY OF KENDALL)

Property Owner: **HARRIS JERRY WAYNE SHEILA**

Property Description: **A10441 - SURVEY 183 J SMALL 45.405 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"). 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 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. Provided, however, Owner can continue to use the Property for lease, operation and maintenance of the existing cell phone tower and billboard structure as same presently exist, including any renewals, extensions, transfers and/or assignments of said existing leases.

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. Provided, however, Owner may seek to have the Property voluntarily annexed prior to the expiration of the Term of this Agreement at which time Owner may request the mutual termination of this Agreement with the City.

The Owner covenants and agrees not to construct, or allow to be constructed, any new or additional buildings or structures on the Property that would require a building permit if the Property were in the city limits, unless and until Owner notifies the City and provided such new or additional buildings or structures comply with all then-existing building codes and zoning ordinances which would control construction of similar buildings or structures within the City. ~~the Property has been annexed into, and zoned by, the City.~~ The Owner also covenants and agrees that the City's most restrictive zoning, Residential-Agricultural zoning requirements apply to the Property, and that the Property shall be used only for Residential-Agricultural zoning uses, or other uses, that exist on the Property at the time of the execution of this Agreement, unless otherwise provided in this Agreement. However, the Owner may construct an accessory structure or structures to an existing single family dwelling or any other existing building or structure in compliance with all applicable City ordinances and codes and/or Owner may maintain, repair, renovate or remove any existing buildings or structures on the Property without violating the terms of this Agreement.

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 is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then in addition to the City's other remedies, 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. 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.

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 Section 2 herein, other than any rights Owner may have and which may arise under any eminent domain laws or condemnation proceedings.

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 that do not materially interfere with the current use of the Property for residential, agricultural, 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 the Property that is subject to a Chapter 43 and/or Chapter 212 development agreement subject, however, to compensating Owner the fair market value of the Property, or any portion thereof, sought to be taken in any eminent domain proceedings.

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. Upon written request by Owner no later than one month prior to the Agreement's expiration and written concurrence by the city, which shall not be unreasonably withheld, the term of this Agreement may be extended for successive ten (10) year terms. 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.~~ 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, or as may otherwise be required by law.

~~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 Section 2 herein. (this provision is duplicative of the last paragraph of Section 3)~~

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 6. Property annexed pursuant to this Agreement will initially be zoned most restrictive, Residential-Agricultural, pursuant to the City's Code of Ordinances, pending determination of the property's permanent zoning in accordance with the provisions of applicable law and the City's Code of Ordinances.

Section 7. Any person who sells or conveys any portion of the Property 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 14 days of any change in the agricultural exemption status, if any, of the Property. 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.

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. Except as otherwise provided herein, nothing herein shall affect Owner's current use or occupancy of the Property or any building or other structure on the Property which exist on the Property or as of the date of execution of this Agreement.

Entered into this 24 day of May, 2019.


Owner
Printed Name: Sheila Harris

Owner
Printed Name: _____

Owner
Printed Name: _____

Owner
Printed Name: _____

THE STATE OF TEXAS }

COUNTY OF Kendall }



This instrument was acknowledged before me on the 24th day of May, 2019, by Sheila Ann Harris, Owner.

Stephanie Kranich
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the _____ day of _____, 2019, by _____, Owner.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the _____ day of _____, 2019, by _____, Owner.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

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

Notary Public, State of Texas

Letters Testamentary

No. 18-115-PR

THE STATE OF TEXAS
COUNTY OF KENDALL

IN THE COUNTY COURT

I, Darlene Herrin, Clerk of the County Court of Kendall County, Texas, do hereby certify that on the 4th day of October, 2018, **SHEILA ANN HARRIS** was duly granted by said Court Letters Testamentary of the Estate of **JERRY WAYNE HARRIS**, Deceased, and qualified as Independent Executrix of said Estate on the 4th day of October, 2018, as the law requires, and that said appointment is still in full force and effect.

Given under my hand and seal of office at Boerne, Texas, the 4th day of October, 2018.



Darlene Herrin
DARLENE HERRIN, County Clerk
Kendall County, Texas