

STATE OF TEXAS §
COUNTY OF HAYS §
CITY OF KYLE, TEXAS §

CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE

DEVELOPMENT AGREEMENT

This Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code by and between the City of Kyle, 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 Hays County, Texas, which is more particularly and separately described in the attached "Exhibit A"; and

WHEREAS, the Property is currently located in the extraterritorial jurisdiction ("ETJ") of the City; 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 43.035 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and 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 heirs, 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 Hays County, Texas at the expense of the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. Continuance of Extraterritorial Jurisdiction Status.

1.1 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.

1.2 Except as provided in this Agreement, the City agrees not to involuntarily annex

the Property, agrees not to institute proceedings to involuntary annex the Property, and further agrees not to include the Property in a statutory annexation plan or attempt to annex 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. Continuance of Current Use; Prohibition Against Other Uses

- 2.1 The Owner covenants and agrees not to use the Property for any use other than single-family residential, keeping livestock and/or agriculture, wildlife management, and/or timberland consistent with Chapter 23 of the Texas Tax Code, without the prior written consent of the City.
- 2.2 The Owner covenants and agrees that the Owner will not file any type of application for a subdivision plat or other development-related approval for the Property with Hays County or the City, including any connection to on- or off-site City public water and/or waste water utilities, until the Property has been annexed into, and zoned by, the City. However, the property may be divided up into not more than two (2) tracts for the purpose of transfer to a non-profit foundation, family member(s), or other private individual(s), so long as each tract is greater than four (4) acres, thus not requiring subdivision plat approval through the City of Kyle, and so long as no other development permit is requested. In the event that the property is partitioned into up to two (2) tracts as envisioned by the landowner, all successors will be bound by the terms of this agreement and any act of development on any piece of the property, except for the structures allowed in Section 2.3, will trigger annexation of the entire parent tract.
- 2.3 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 (a) accessory structure(s) to a single-family dwelling; and/or (b) accessory structure(s), including residential accessory dwelling units, used in conjunction with a single-family dwelling; and/or (c) accessory structure(s) used in conjunction with keeping domestic livestock; and /or (d) accessory structure(s) used in conjunction with an agriculture, wildlife management, and/or timberland use on the property, and/or (e) a replacement single-family dwelling, in compliance with all applicable jurisdictional ordinances and codes, without triggering the requirement to annex into the city. City acknowledges and agrees that no part of this agreement, either stated or implied, requires Owner to obtain building, repair, plumbing or electrical permits or submit to code compliance inspections for any building authorized in this section
- 2.4 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 SEVERALLY, 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. Effect of Certain Filings or Actions.

- 3.1 The Owner acknowledges that if any application for a plat or other development-related approval 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(s) 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 to such annexation as though the Owner had tendered a petition for such annexation.
- 3.2 If annexation proceedings begin pursuant to this Section or Section 2.2, 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 either under an annexation plan or in accordance with Chapter 43 of the Local Government Code. 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.

Section 4. Enforcement of City Regulations

- 4.1 The City states and specifically reserves its authority pursuant to Chapter 251.001 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 212 development agreement.
- 4.2 Pursuant to Sections 43.035(b)(1)(B) and 212.003 of the Texas Local Government Code, the City states and specifically reserves its authority to enforce all of the City's extraterritorial jurisdiction regulations and planning authority that do not materially interfere with the use of the Property for single family residential, agriculture, wildlife management, or timber uses, in the same manner such regulations are enforced elsewhere within the City's jurisdictional boundaries.
- 4.3 City acknowledges and agrees that no part of this agreement, either stated or implied, affords the City right of entry onto the Owner's property for the purpose of planning, installation, maintenance, repair, demolition, or removal of any City infrastructure that may be located on the Owner's property.
- 4.4 City acknowledges and agrees that this Agreement does not state nor imply the

creation of any easement, right of way, dedication, or other right of entry related to the Owner's property, and further that neither the City nor the City's assigns are permitted access in, onto, or across Owner's property without prior expressed written and/or oral consent of the Owner or Owner's assign(s).

Section 5. Term

The term of this Agreement (the "Term") is fifteen (15) years from the date that the Mayor's signature to this Agreement is acknowledged by a public notary, unless sooner terminated as provided for in Section 3, above. On the date not more than 180 days before the expiration of this Agreement, until the expiration of this Agreement, and at the request of the Owner and/or the City, and upon written consent of both parties, this Agreement may be extended for an additional term of up to fifteen (15) years from the date of expiration of the previous Agreement. Two such extensions may be enacted beyond the original term of this Agreement. This Agreement and extensions may not exceed forty-five (45) years.

Section 6. Notice

- 6.1 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 to the City of the sale or conveyance.
- 6.2 Owner and the Owner's heirs, successors, and assigns shall give the City written notice within thirty (30) days of any change in the single family land use, and/or agricultural, wildlife management, or timberland tax exemption status of the Property.
- 6.3 No Party shall be deemed to be in default hereunder until i) receipt from another party of a written notice of breach that specifies the nature of the breach, including the provision of the Agreement that has been breached ("**Notice of Breach**"); and ii) the passage of thirty (30) days after receipt of the Notice of Breach without cure of the breach. If the cure of the breach requires more than thirty (30) days and the breaching Party has begun to cure the breach, then the breaching party shall be deemed to have cured the breach so long as the breaching party diligently, continuously and timely cures said breach. Upon the passage of thirty (30) days without cure of the breach, such Party shall be deemed to have defaulted for purposes of this Agreement and the non-defaulting Party may pursue the remedies in accordance with Section 9 below.
- 6.4 A copy of any notice required by this Agreement shall be in writing and sent to the City via certified mail, return receipt requested, to the following address:

City of Kyle
Attn: Director of Planning

100 W. Center Street
Kyle, Texas 78640

Section 7. This Agreement shall run with the Property and be recorded in the real property records of Hays County, Texas.

Section 8. 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 9. Any Owner or the City may enforce this Agreement 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 10. No subsequent change in 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 11. This Agreement shall be governed, enforced and construed in accordance with the laws of the State of Texas. Venue for this Agreement shall be in Hays County, Texas.

Section 12. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

Section 13. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, and 4 herein.

Entered into this _____ day of _____, 2017.

OWNER(S):

Printed Name: _____

Printed Name: _____

Printed Name: _____

THE CITY OF KYLE, TEXAS

Attest:

R. Todd Webster
Mayor

(NOTARIES FOLLOW ON SEPARATE PAGES)

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared _____, Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____, 2017.

Notary Public – State of Texas

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BEFORE ME the undersigned authority on this day personally appeared _____, Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

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Notary Public – State of Texas