

150

14-DA-22  
STATE OF TEXAS §  
COUNTY OF JOHNSON §

### **DEVELOPMENT AGREEMENT**

This agreement is entered into pursuant to Sections 212.072 and 43.035 of the Texas Local Government Code (the "Code") between the City of Burleson, Texas (the "City") acting by and through its City Manager (or his designee), and **William & Penny Whitener** (the "Owner"). The term "Owner" includes all owners of the Property.

**WHEREAS**, the Owner owns real property (the "Property") in Johnson County, Texas, more particularly and separately described in the attached Exhibit "A", which is located in the extraterritorial jurisdiction of the City; and

**WHEREAS**, the Owner desires to continue the current use of the Property and to remain outside of the City Limits, in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, it is the City's desire to permit the Owner to continue current use of the Owner's Property according to the terms of this Agreement without being annexed into the City; and

**WHEREAS**, the Property is eligible to be the subject of a development agreement under Sections 212.72 and 43.035 of the Texas Local Government Code; and

**WHEREAS**, this Agreement is entered into in lieu of involuntary annexation and in compliance with Sections 212.172 and 43.035 of the 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 heirs, successors and assigns for the Term (defined below) of this Agreement; and

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

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

#### **SECTION 1.**

to the provisions of this Agreement. If the Property is annexed pursuant to the terms of this Agreement, the City will provide services to the Property in accordance with a service plan in compliance with Chapter 43 of the Texas Local Government Code and consistent with the services provided to similarly situated properties existing in the city's limits.

- B. This guarantee not to annex the Property will end should any of the events listed in Section 3 occur or if the Owner requests annexation to be completed prior to expiration of the Term of this Agreement.

## **SECTION 2. REGULATION OF PROPERTY**

- A. Until such time the Property is annexed, the City will enforce all the City's regulations and planning authority approved by the City Council for the ETJ. The parties agree that, as of the effective date of this agreement, said enforcement and planning authority consists of:
1. the Subdivision and Development Ordinance; and
  2. Ordinances prohibiting:
    - (i) construction of a billboard(s); and
    - (ii) possession, manufacture, storage, sale, handling and use of fireworks.
- B. In no case will the City's enforcement of any regulations and planning authority materially interfere with the use of the Property for Agriculture, Wildlife Management or Timber Uses as such are defined by Chapter 23 of the Texas Property Code.
- C. For purposes of this agreement, the following uses shall be consistent with the uses in paragraph B of this Section:
1. A "residential homestead" as such is defined by Chapter 11 of the Tax Code; and
  2. Land used for single family residential purposes as defined by Section 23.25(a) of the Tax Code. For purposes of this agreement, a legal entity that is affiliated with the Owner (as cited in Paragraph (a)(2)(B)(iv) of 23.25) shall mean a family trust only.
- D. The Owner may construct any building(s) consistent with the uses described in this section. Prior to initiation of construction, Owner shall obtain the City's written consent. The City's consent shall be limited to the question of whether or not the construction is or is not consistent with the uses described in this section.

## **SECTION 3. EVENTS THAT TERMINATE IMMUNITY FROM ANNEXATION**

The occurrence of any of the following events shall constitute a petition for voluntary annexation by the Owner and shall terminate the guarantee of immunity from annexation:

- A. If the Owner files (with the City or any other governmental unit) any type of subdivision plat, development plat, or related development documents for the Property save and except for a plat or documents submitted in relation to the uses listed in Section 2, Paragraph C. above;
- B. If the Owner commences or allows development and/or use of the Property in violation of this Agreement.

#### **SECTION 4. TERM**

- A. Subject to Section 3 of this Agreement, the term of this Agreement (the "Term") is twenty five (25) years from the date that the City Manager's (or designee's) signature to this Agreement is acknowledged by a public notary.
- B. Upon expiration of the Term:
  - 1. Owner, Owner's heirs, successors and assigns shall be deemed to have filed a petition for voluntary annexation; and
  - 2. The City will institute and complete annexation proceedings for the Property; and
  - 3. Said annexation shall be a voluntary annexation under any applicable law now or then existing.
- C. The Term may be extended for an additional period or periods of time (subject to the limitations of State law) by the City or by written agreement of the Parties.
- D. Owner may, at any time, petition the City to voluntarily annex all or a portion of the Property prior to expiration of the Term.

#### **SECTION 5. GENERAL PROVISIONS**

- A. Notice. Prior to the sale or conveyance of any portion of the Property, the Owner shall 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.

A copy of the notice required by this section shall be forwarded to the City at the following address:

City of Burleson, Texas  
Attn: City Manager  
Burleson City Hall  
141 West Renfro  
Burleson, Texas 76028-4261



- B. **Runs with Property.** This Agreement shall run with the Property, shall be recorded in the real property records of Johnson County, Texas, and shall be binding on the Owner and the Owner's successors in title.
- C. **Severability.** If a court of competent jurisdiction determines that any covenant or requirement 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.
- D. **Enforcement; No Waiver.** This Agreement may be enforced by the 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.
- E. **Applicable Law.** 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.
- F. **Venue.** Venue for this Agreement shall be in Johnson County, Texas.
- G. **No Vested Rights.** This Agreement shall not be construed as a permit for purposes of Chapter 245, Texas Local Government Code. Should annexation occur, 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.
- H. **Execution.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.
- I. **This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 2 and 3 herein.**
- J. **"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 persons 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."**

Executed this 29<sup>th</sup> day of August, 2014 by Owner.

Owner's Signature(s): William M. Whitener Penny R. Whitener

Owner's Printed Name(s): William M. Whitener Penny R. Whitener

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by City.

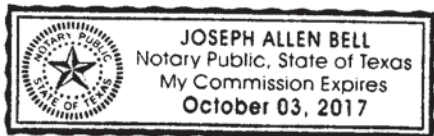
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
City of Burleson, Texas

STATE OF TEXAS §

COUNTY OF JOHNSON §

Before me, Joseph Bell, on this day personally appeared William and Penny Whitener, known to me, or through examination of a valid Texas Driver's License proven to be, the person(s) whose name(s) is/are subscribed to the foregoing instrument as Owner(s) and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29<sup>th</sup> day of August, 2014.



(Notary Seal)

Joseph Bell  
Notary Public's Signature

Executed this 29 day of October, 20 14 by City.

City Representative Signature(s): \_\_\_\_\_

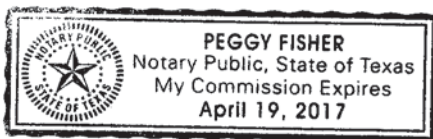
City Representative Printed Name: Paul Cain

City Representative Title: Deputy City Manager

STATE OF TEXAS §

COUNTY OF JOHNSON §

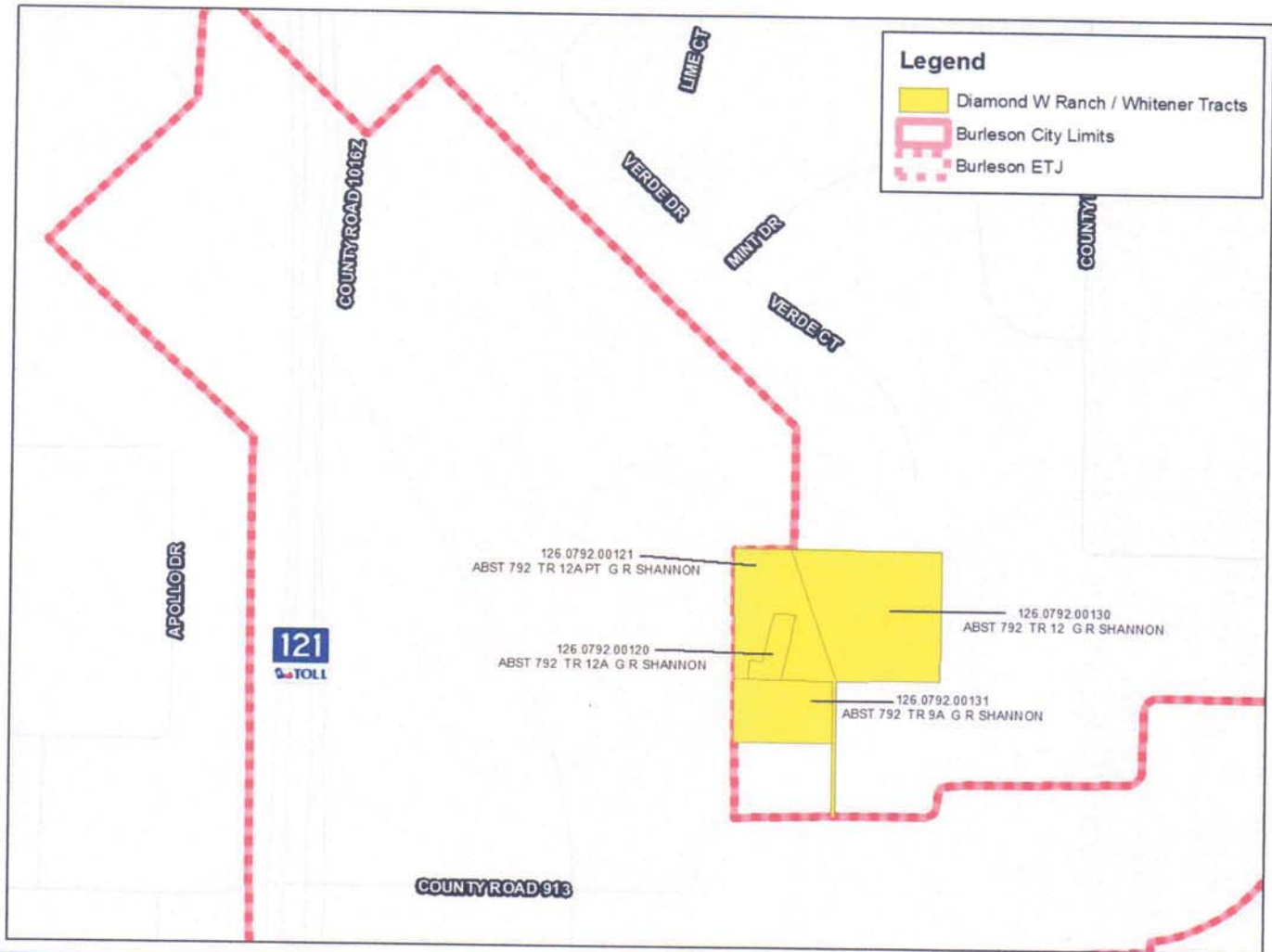
This instrument was acknowledged before me on the 29 day of October, 2014,  
by Paul Cain, Deputy City Manager of the City of Burleson,  
(name) (title)  
Texas.



(Notary Seal)

Peggy Fisher  
Notary Public's Signature

# **EXHIBIT A PROPERTY DESCRIPTION**



| Geo Reference  | Area | Case Manager | Legal Description                     | JCCAD Acres | Owner                    |
|----------------|------|--------------|---------------------------------------|-------------|--------------------------|
| 126.0792.00130 | 2    | Cain         | Abstract 792 Tract 12 G R Shannon     | 13.62       | Diamond W Ranch LLC      |
| 126.0792.00131 | 2    | Cain         | Abstract 792 Tract 9A G R Shannon     | 5.00        | Diamond W Ranch LLC      |
| 126.0792.00121 | 2    | Cain         | Abstract 792 Tract 12A PT G R Shannon | 7.31        | Whitener William & Penny |
| 126.0792.00120 | 2    | Cain         | Abstract 792 Tract 12A G R Shannon    | 2.00        | Whitener William & Penny |

Johnson County  
Becky Williams  
County Clerk  
Cleburne 76033



70 2014 00024174

Instrument Number: 2014-24174

As

Agreement

Recorded On: November 07, 2014

Parties:

To

Billable Pages: 7

Number of Pages: 8

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

|                  |       |
|------------------|-------|
| Agreement        | 50.00 |
| Total Recording: | 50.00 |

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2014-24174

Receipt Number: 15580

Recorded Date/Time: November 07, 2014 12:25:55P

User / Station: M Davis - CCL42

**Record and Return To:**

CITY OF BURLESON

CUSTOMER PICKUP

BURLESON TX 76028



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly  
recorded in the Volume and Page of the named records in Johnson County, Texas.

Any provision herein which restricts the sale, rental or use of the described Real Estate because of  
color race is invalid and unenforceable under Federal law.

*Becky Williams*

BECKY WILLIAMS, COUNTY CLERK  
JOHNSON COUNTY, TEXAS