

STATE OF TEXAS

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COUNTY OF JOHNSON

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this ____ day of _____, 2022, by and between the City of Joshua, Texas ("City"), and **Marcel Buerkler and Paola De La Torre** ("Landowner," whether singularly or collectively). Landowner and the City are sometimes referred herein together as the "Parties" and individually as a "Party."

1. This Agreement is made pursuant to Section 43.016 and/or Subchapter G of Chapter 212 of the Texas Local Government Code, both as amended, to facilitate the continuation of the extraterritorial status of certain property ("Property") owned by Landowner, which Property consists of **2.8643** acres, more or less, and which is shown and/or described in Exhibit A, attached hereto and incorporated by reference.

2. The City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes for the Term (as hereinafter defined) 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 any annexation plan for the Term of this Agreement; however, in the event that the City annexes the Property for any reason authorized by this Agreement, the City shall provide those services to the Property required by Chapter 43 of the Texas Local Government Code, as amended.

3. For those properties subject to Chapter 23 of the Texas Tax Code, as amended, Landowner hereby covenants and agrees not to use the Property for any use other than for agriculture, wildlife management and/or timber land consistent with said Chapter 23. In the event Landowner develops, subdivides or plats the Property during the Term of this Agreement, Landowner agrees that the use and development of the Property pursuant to this Agreement shall conform to the uses, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to masonry requirements, parking standards and landscaping standards) set forth in the code of ordinances of the City (including but not limited to the City's zoning ordinance and subdivision regulations), as they exist or may be amended. For those properties subject to Section 212.172 of the Texas Local Government Code, as amended, Landowner hereby covenants and agrees not to use the Property for any use except the currently existing use of the Property. Landowner further agrees that any future development of the Property pursuant to this Agreement shall conform to the uses, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to masonry requirements, parking standards and landscaping standards) set forth in the code of ordinances of the City (including but not limited to the City's zoning ordinance and subdivision regulations), as they exist or may be amended. For purposes of building materials and masonry requirements, with respect to any and all structures to be constructed on the Property pursuant

to this any City requirements, Landowner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

4. All structures on the Property as of the date of execution of this Agreement ("Pre-Existing Structures") are found to be conforming structures, and the City shall take no action during the Term of this Agreement that, as a result, would make any Pre-Existing Structures nonconforming or illegal. Landowner shall have the right to rebuild or reconstruct any Pre-Existing Structures to its previous configuration; however, Landowner shall rebuild or reconstruct in accordance with the City's then-existing building and construction codes.

5. Nothing in this Agreement prohibits the use of the Property as it currently is used as of the date of execution of this Agreement. Further, Landowner may construct any accessory structure(s) in compliance with applicable City ordinances and codes.

6. This Agreement shall be effective as of the date of execution of this Agreement for a period of twenty (20) years, with a termination date of July 1, 2042, unless agreed to otherwise by the Parties in writing ("Term"). On or before the expiration of the Term, the Parties may meet to agree on any mutually agreeable extension of this Agreement for an additional Term. In the event that there is no extension of this Agreement for an additional Term, after the termination date of this Agreement, the City may annex the Property during the five (5) year period following the date of termination of this Agreement. During a five (5) year period following the date of termination of this Agreement, the Property shall be subject to annexation at the sole discretion of the City and Landowner agrees that such annexation is and shall be deemed voluntary and Landowner hereby requests and irrevocably consents to such annexation.

7. The Parties agree that the City, in its sole discretion, shall determine whether Landowner is in compliance with this Agreement. The City and Landowner agree that the City, in its sole discretion, may initiate annexation proceedings for the Property if there is a violation of the terms of this Agreement or if Landowner requests annexation. In such event, Landowner agrees that such annexation is and shall be deemed voluntary and Landowner hereby requests and irrevocably consents to such annexation.

8. During the Term of this Agreement, in the event the Property is subdivided or Landowner files any development-related document for the Property with Johnson County or the City (except for the rebuilding or reconstruction of any Pre-Existing Structure, in accordance with Paragraph 4, above), this Agreement shall be rendered null and void and of no further effect, and the Property may be annexed by the City. Landowner agrees and acknowledges that if any plat or development-related document is filed in violation of this Agreement, or if Landowner 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 Landowner, and the Property will be subject to annexation at the discretion of the City. Landowner agrees that such annexation shall be voluntary and Landowner hereby requests and irrevocably consents to such annexation.

9. This Agreement is assignable. If all or any portion of the Property is sold, transferred or otherwise conveyed, Landowner shall give written notice to the City within five (5) business days thereof, and provide the City with the name, address, telephone number and contact person of the person or entity acquiring an interest in the Property. This Agreement shall run with the land, shall be filed in the property records of Johnson County, Texas, and shall be binding on and inure to the benefit of Landowner's successors and assigns. In conjunction with the City's approval of this Agreement, Landowner shall pay to the City applicable filing, administrative and recording fees in the amount of \$75.00.

10. Except as provided for in this Agreement, the Parties agree that Landowner shall be bound and subject to all development and subdivision ordinances of the City. Any construction on the Property shall be in accordance with applicable ordinances and regulations of the City, now existing or in the future arising, including any and all uniform building and construction codes, as adopted by the City.

11. **LANDOWNER HEREBY RELEASES THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST, AND WAIVES ANY AND ALL RIGHTS TO ANY AND ALL CLAIMS AND/OR OBJECTIONS, IT MAY HAVE WITH REGARD TO THE ANNEXATION AS DESCRIBED IN THIS AGREEMENT.**

12. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law rules. In the event of any dispute or action under this Agreement, venue for any and all disputes or actions shall be instituted and maintained in Johnson County, Texas.

13. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions.

14. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law statute, ordinance, or otherwise. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise set forth herein.

15. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

16. The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto. In the event there are more landowners than those who are signatories to this Agreement, the Landowner(s) who execute this Agreement acknowledge that he/she/they are executing this Agreement with the consent and full authority of any other landowner(s).

17. This Agreement may be only amended or altered by written instrument signed by the Parties.

18. Any controversy or claim arising from or relating to this Agreement, or a breach thereof (excluding any claim by Landowner in any way related to Paragraph 7 herein) shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The parties shall endeavor to resolve their claims by mediation. Landowner and the City shall share the costs of mediation equally. The mediation shall be held in Joshua, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

19. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

20. Each party represents this Agreement has been read by such party and that such party has had an opportunity to confer with its counsel.

21. The parties agree that City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

22. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.

23. This Agreement is the entire agreement between the Parties with respect to the subject matters covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referenced in this Agreement.

EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

CITY OF JOSHUA, TEXAS

By: _____
Mike Peacock, City Manager

Date: _____

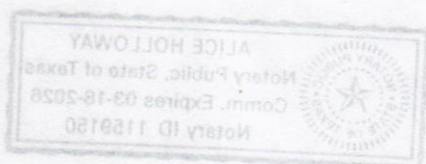
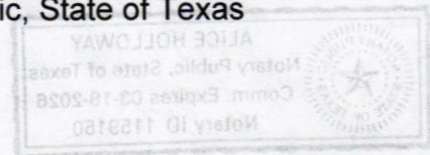
STATE OF TEXAS)

COUNTY OF JOHNSON)

This instrument was acknowledged before me on the ____ day of _____, 2022, by Mike Peacock, City Manager of the City of Joshua, Texas, on behalf of the City of Joshua.

Notary Public, State of Texas

My Commission Expires:



LANDOWNER

By: _____

Date: _____

7-21-2022

STATE OF TEXAS)

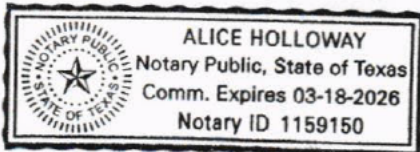
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 21 day of July, 2022, by Marcel Buerkle

Notary Public, State of Texas

My Commission Expires:

3-18-26



LANDOWNER

By: _____

Date: _____

7-21-2022

STATE OF TEXAS)

COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 21 day of July, 2022, by Phola De La Torre

Notary Public, State of Texas

My Commission Expires:

3-18-26

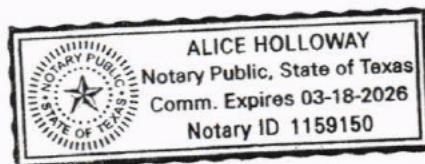


EXHIBIT A

Description of the Property

JCAD #: 126.3357.01085

Tract- Lot 8 PT of Block 1 in the Scarlet Oaks Addition PH II

Being 2.8643 acres