



LT1-81-20100229967-1

SCANNED

**DEVELOPMENT AGREEMENT
(I-10 Area)**

This Development Agreement (this "Agreement") dated November 9, 2010 (the "Effective Date") is between the **City of Schertz**, a political subdivision of the State of Texas (the "City"), and **Michael Z. Kalinowski and Janet E. Kalinowski** (whether one or more, the "Landowner").

RECITALS:

WHEREAS, the real property located in Bexar County, Texas and described on Exhibit A (the "Land") is owned by the Landowner and is currently within the City's extraterritorial jurisdiction;

WHEREAS, the City has expressed its interest in annexing the Land into the City's corporate boundaries;

WHEREAS, the Landowner desires to have the Land remain in the City's extraterritorial jurisdiction, in consideration for which the Landowner agrees to enter into this Agreement;

WHEREAS, the Land is eligible to be the subject of a development agreement under Subchapter G, Chapter 212, of the Texas Local Government Code, as amended (the "Local Government Code");

WHEREAS, all or a portion of the Land is currently appraised for ad valorem tax purposes as land for agricultural or wildlife management use or as timber land under Subchapter C, D, or E, Chapter 23, of the Texas Tax Code, as amended;

WHEREAS, this Agreement is entered into pursuant to Sections 43.035(b)(1) and 212.172 of the Local Government Code in order to (i) guarantee the continuation of the extraterritorial status of the Land for the Term (defined below) of this Agreement and (ii) authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the Land for agriculture or wildlife management, or as timber land;

WHEREAS, the Landowner and the City agree that this Agreement satisfies the requirements of Sections 43.035 and 212.172 of the Texas Local Government Code, as amended, and acknowledge that this Agreement is binding upon the City and the Landowner and their respective successors and assigns for the Term of this Agreement;

WHEREAS, the City Council of the City has duly authorized the City Manager or an Assistant City Manager to execute this Agreement and to deliver it to the Landowner; and

WHEREAS, this Development Agreement is to be recorded in the Real Property Records of Bexar County, Texas.

AFTER RECORDING RETURN TO:

Michael L. Spain
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205



LT2-14784-1516-12

For and in consideration of the mutual promises, covenants, benefits, and obligations hereafter set forth, the City and the Landowner agree and contract as follows:

Section 1. City Covenants. The City guarantees the continuation of the extraterritorial status of the Land, its immunity from annexation by the City, and its immunity from City property taxes, for the Term (as defined in Section 5) of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to institute proceedings to annex the Land unless requested in writing to do so by the Landowner or its successors and assigns, and further agrees not to include the Land in a statutory annexation plan for the Term of this Agreement. However, if the Land is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Land pursuant to Chapter 43 of the Local Government Code; otherwise, the City shall not be obligated to provide the Landowner with any municipal services (including by way of example only police protection, fire protection, drainage or street construction or maintenance) with respect to the Land during the Term of this Agreement.

Section 2. Landowner Covenants. The Landowner covenants and agrees as follows:

(a) The Landowner will not use the Land 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 Land, without the prior written consent of the City.

(b) The Landowner will not file or cause to be filed any type of subdivision plat or related development document for the Land with Bexar County, Texas or the City without the prior written consent of the City.

(c) The Landowner will not construct, or allow to be constructed, any buildings on the Land that would require a building permit if the Land were in the City limits, without securing such a building permit. The Landowner also covenants and agrees that the City's R-A—Single-Family Residential/Agricultural District zoning requirements apply to the Land, and that the Land shall be used only for R-A—Single-Family Residential/Agricultural District zoning uses that exist on that Land on the Effective Date of this Agreement, as if the Land were in the City limits, without the prior written consent of the City. However, the Landowner may construct an accessory structure to an existing single family dwelling in compliance with all City ordinances and codes that would be applicable if the Land were in the City limits, including but not limited to the first sentence of this subsection (c).

(d) In addition to the foregoing, pursuant to Section 43.035(b)(1)(B) of the Local Government Code, the Landowner agrees that the Landowner will comply with, and that the City is authorized to enforce, all of the City's regulations and planning authority that do not materially interfere with the use of the Land for agriculture, wildlife management, or as timber land, as applicable, in the same manner such regulations and authority are enforced within the City's municipal boundaries, including but not limited to the regulations and planning authority found in the following:

- (i) the City's Code of Ordinances, including but not limited to specifically Chapter 50, Article IV, relating to the regulation of guns, BB guns, and pellet guns by the City;
- (ii) the City's Unified Development Code;
- (iii) all City Ordinances and Resolutions; and
- (iv) applicable state or federal law.

(e) The Landowner (i) covenants that all persons or entities having any ownership interest in the Land on the Effective Date have executed this Agreement and (ii) acknowledges that each and every owner of the Land must sign this Agreement in order for this Agreement to take full effect, and all persons who sign this Agreement as the Landowner covenant and agree, 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 Land who has not signed this Agreement, arising in any way from the City's reliance on this Agreement.

Section 3. Remedies; No Vested Rights. The Landowner acknowledges that, if the Landowner takes any action in violation of any provision in Section 2 of this Agreement, then in addition to the City's other remedies, such act will, at the discretion of the City, cause the termination of this Agreement and constitute a petition by the Landowner for voluntary annexation, and the Land will then be subject to annexation at the discretion of the City Council. The Landowner agrees that such annexation shall be voluntary and the Landowner hereby consents to such annexation as though a petition for such annexation had been tendered to the City by the Landowner. If annexation proceedings begin pursuant to this Section, the Landowner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures under an annexation plan, and agrees that the City will not be required to offer to enter into a further development agreement pursuant to Section 43.035(b) of the Local Government Code.

Furthermore, the Landowner hereby waives any and all vested rights and claims that the Landowner may have under Section 43.002(a)(2) and Chapter 245 of the Local Government Code that would otherwise exist by virtue of any actions Landowner has taken in violation of Section 2 herein.

Section 4. Eminent Domain. The City specifically reserves its authority pursuant to Chapter 251 of the Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

Section 5. Term; Annexation at End of Term.

(a) The term of this Agreement (the "Term") is the earliest to occur of (i) ten (10) years after the Effective Date of this Agreement, (ii) loss or expiration of appraisal of the Land under Chapter 23 for agricultural, wildlife, or timber land purposes, (iii) termination of this Agreement pursuant to Section 3 hereof, or (iv) if it is determined by the City that any of the persons who have executed this Agreement as the Landowner

failed to inform the City of any person or entity having an ownership interest in the Land on the Effective Date who has not executed this Agreement.

(b) The Landowner, and all of the Landowner'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 Land to be completed on or after the end of the Term. Prior to the end of the Term, the City may commence (but not conclude) the Landowner's voluntary or deemed voluntary request for annexation of the Land by the City. In connection with annexation pursuant to this Section, the Landowner hereby waives any vested rights it may have under Section 43.002(a)(2) and Chapter 245 of the Local Government Code that would otherwise exist by virtue of any plat or construction the Landowner may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

Section 6. Initial Zoning Upon Annexation. Except as provided below, when the Land is annexed as agreed pursuant to this Agreement, it will initially be zoned Predevelopment (PRE) pursuant to the City's Unified Development Code, pending determination of the Land's permanent zoning in accordance with the provisions of then applicable law and the City's Unified Development Code. Alternatively, the City may, pursuant to its Comprehensive Land Plan, designate a different zoning category that will be effective as to the Land when it is annexed.

Section 7. Sale of Land; Change in Exemption Status.

(a) Any person who sells or conveys any portion of the Land shall, prior to such sale or conveyance, give prior written notice of this Agreement to the prospective purchaser or grantee, and shall give prior written notice of the sale or conveyance to the City. Furthermore, the Landowner and the Landowner's heirs, successor, and assigns shall give the City written notice within 14 days after any change in the appraisal status of the Land under Subchapter C, D, or E, as applicable, of Chapter 23 of the Texas Tax Code. A copy of any notice required by this Section shall be delivered to the City at the address provided in Section 14.

(b) If the Landowner is in full compliance with this Agreement and the Land is conveyed in whole or in part by the Landowner to another person or persons (the "New Landowner") who notifies the City in writing of such conveyance (fully identifying the portion of the Land so conveyed) and who agrees to continue to fully comply with all provisions of this Agreement, the City will enter into a Development Agreement with the New Landowner with respect to the portion of the Land so conveyed but only for the then-remaining term of this Agreement. If the Landowner conveys all of the Land, this Agreement will terminate. If the Landowner conveys a portion of the Land but is otherwise in compliance with the provisions of this Agreement, Exhibit A will be amended to delete the Land that has been conveyed.

Section 8. Recordation. This Agreement shall run with the Land and be recorded in the real property records of Bexar County, Texas.

Section 9. Subsequent Change in Law. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the Land covered herein pursuant to the terms of this Agreement.

Section 10. Survival. This Agreement shall survive its termination to the extent necessary for the City to implement the provisions of Sections 3, 4, and 5 herein.

Section 11. No Implied Waiver. The failure of either party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect unless agreed to otherwise by all parties.

Section 12. Successors and Assigns. This Agreement is binding on the City and the Landowner and on their respective successors and assigns for the term of this Agreement.

Section 13. Approvals or Consents. Execution, delivery, and performance of this Agreement have been approved by the City Council of The City. Whenever this Agreement requires or permits approvals or consents to be hereafter given by any party hereto, the parties agree that such approval or consent shall not be unreasonably withheld. Such approval or consent shall be given in writing and shall be effective without regard to whether given before the time required herein.

Section 14. Addresses and Notices. Unless otherwise provided in this Agreement, any notice, communication, or request (herein severally and collectively for convenience called "notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served in person or by depositing the same in the United States Mail, postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner herein above described shall conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until change as hereinafter provided, be as shown below. The parties shall have the right to specify as its address any other address in the State of Texas by giving at least fifteen (15) days written notice to the other party.

If to the City:	City of Schertz, Texas 1400 Schertz Parkway Schertz, Texas 78154 Attn: City Manager
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If to the Landowner: Michael Z. Kalinowski and Janet E. Kalinowski
7720 Trainer Hale Road
Schertz, TX 78154-4531

Section 15. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other persons or circumstances shall not be affected thereby.

Section 16. Merger. This Agreement, together with such descriptions, terms and conditions as may be included in the Exhibit attached hereto, constitute the entire agreement between the parties relative to the subject matter hereof. There have been and are no agreements, covenants, representations, or warranties between or among the parties as to the subject matter hereof other than those expressly stated or provided for herein.

Section 17. Cooperation. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

Section 18. Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue is agreed to be in Guadalupe County, Texas.


Section 19. Counterparts. This Agreement may be signed in one or more counterparts, and all of such counterparts together shall be deemed to be a single document.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Landowner have executed this Agreement by duly authorized representatives, all as of the Effective Date first above written.

THE CITY:

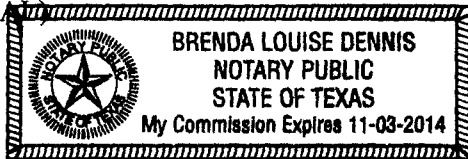
City of Schertz, Texas

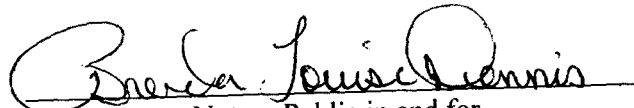
By: 
Don E. Taylor, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the 21st day of November, 2010 by Don E. Taylor, as City Manager of the City of Schertz, Texas, on behalf of such City.

(SE)




Notary Public in and for
The State of Texas

My Commission Expires: 11-3-2014

THE LANDOWNER:

[Handwritten Signature]
Michael Z. Kalinowski

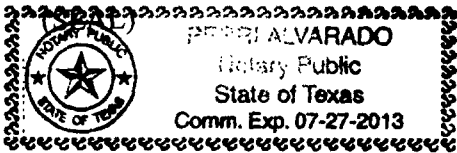
[Handwritten Signature]
Janet E. Kalinowski

THE STATE OF TEXAS

§
§

COUNTY OF Guadalupe §

This instrument was acknowledged before me on the 15 day of November, 2010 by Michael Z. Kalinowski and Janet E. Kalinowski.



[Handwritten Signature]
Notary Public in and for
The State of Texas

My Commission Expires: 7/27/13

Exhibit A
Legal Description of the Land

See attached

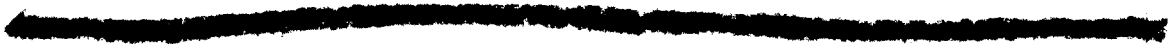


Exhibit A
Legal Description of the Land

Being a 69.106 acre tract of land out of E. Gortari Survey No. 2, Abstract No. 5, County Block 5193, Bexar County, Texas, said 69.106 acre tract being comprised of those certain 34.4 acre tracts recorded in Volume 3441, Pages 417-418, Deed Records, Bexar County, Texas, Save and Except a 0.535 acre tract recorded in Volume 1584, Pages 357-360, Real Property Records, Bexar County, Texas, said 69.106 acre tract of land more particularly described on Exhibit "A" attached hereto and made a part hereof by reference, together with all and singular, the rights and appurtenances pertaining to the Property, including any right, title and interest of Grantor in and to adjacent streets, alleys, or rights of way, together with any improvements and fixtures located thereon.

Exhibit A

Beginning at a 1/2" iron rod set in the northeast right-of-way line of Trainer Hale Road for the west corner of the herein described tract, said point being in a southeast line of a 80 acre tract recorded in Volume 5824, Pages 1313-1315, Real Property Records, Bexar County, Texas, and also being the northeast corner of the above referenced 0.535 acre tract;

Thence, departing the northeast right-of-way line of Trainer Hale Road, with a southeast line of said 80 acre tract, N. 59°30'00" E., 593.61 feet to a 1" iron pipe found for corner;

Thence, with a southwest line of said 80 acre tract, S. 45°23'59" E., 348.05 feet to a 1" iron pipe found for corner;

Thence, with a southeast line of said 80 acre tract, N. 60°35'00" E., 933.11 feet to a 1" iron pipe found for the east corner of said 80 acre tract, the south corner of a 78.49 acre tract recorded in Volume 4119, Pages 421-424, Deed Records, Bexar County, Texas;

Thence, with a southeast line of said 78.49 acre tract, N. 60°37'53" E., at 1910.10 feet a 1/2" iron rod set on line, a total distance of 1994.48 feet to the center of Cibolo Creek for the north corner of the herein described tract, the east corner of said 78.49 acre tract;

Thence, with the meanders of Cibolo Creek the following courses and distances;

S. 22°51'33" E., 299.84 feet.

S. 44°04'40" E., 33.64 feet.

and, S. 18°26'53" E., 481.20 feet to a point for the east corner of the herein described tract;

Thence, departing the center of Cibolo Creek, S. 59°32'35" W., at 150.87 feet a 1/2" iron rod set on line, a total distance of 3241.67 feet to a 1/2" iron rod found in the northeast right-of-way line of Trainer Hale Road for the south corner of the herein described tract, and being the southeast corner of said 0.535 acre tract;

Thence, with the northeast right-of-way line of Trainer Hale Road, the northeast line of said 0.535 acre tract, the following courses and distances;

N. 37°37'29" W., 134.91 feet to a 1/2" iron rod set for an angle,

N. 38°40'19" W., 652.84 feet to a 1/2" iron rod set for an angle,

and, N. 48°32'06" W., 332.53 feet to a 1/2" iron rod set for the point of curvature of an arc to the right whose central angle is 08°16'08", whose radius is 679.64 feet, and whose chord bears, N. 44°24'02" W., 98.00 feet;

Thence, continuing with the northeast right-of-way line of Trainer Hale Road, the northeast line of said 0.535 acre tract, along the arc of said curve to the right a distance of 98.09 feet to the Point of Beginning and containing 69.106 acres of land.

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Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

DEC 27 2010



Gerard Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20100229967 Fees: \$60.00
12/27/2010 11:27AM # Pages 12
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK