

## CITY OF PFLUGERVILLE NON ANNEXATION DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter called "AGREEMENT"), dated \_\_\_\_\_, 201\_\_ (hereinafter called "EFFECTIVE DATE"), made by and between the CITY OF PFLUGERVILLE, TEXAS, a home rule municipality located in Travis County, Texas (hereinafter called "CITY"), and \_\_\_\_\_ (hereinafter called "LANDOWNER").

WHEREAS, LANDOWNER owns certain real property located in Travis County, Texas that is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code, or as timber land under Subchapter E of that chapter of the Tax Code and such real property being more particularly depicted in **Exhibit A** (Travis County Appraisal District Property Identification) attached hereto and incorporated into this agreement (hereinafter called "PROPERTY");

WHEREAS, Texas Local Government Code Section 43.035 requires that before unilateral annexation of a property which is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code, or as timber land under Subchapter E of that chapter that a municipality must offer a development agreement to said property owner pursuant to Texas Local Government Code Section 212.172 that guarantees the continuation of the extraterritorial status of the area for a certain time and authorizes the enforcement of all regulations and planning authority of the municipality that do not interfere with the use of the area for agriculture, wildlife management, or timber; and

WHEREAS, CITY and LANDOWNER agree that this AGREEMENT satisfies the requirements of Texas Local Government Code Sections 43.035 and 212.172; and

WHEREAS, CITY and LANDOWNER agree that this AGREEMENT may be recorded in the public records of Travis County; and

WHEREAS, in recognition of the mutual benefits to be derived from the controlled development of the PROPERTY and its guaranteed continued extra territorial status for a certain time, LANDOWNER and CITY desire to enter into this AGREEMENT, pursuant to §§212.172 and 43.035 of the Local Government Code of the State of Texas, to evidence their agreements with respect to guaranteeing the continuation of the extraterritorial status of the land and its immunity from annexation by the CITY for a period years, extending the municipality's regulatory authority over the land by providing for all regulations and planning authority of the CITY that do not interfere with the use of the area for its currently appraised purpose, authorizing enforcement by the CITY of certain regulations in the same manner the regulations are enforced within the CITY's boundaries and authorizing enforcement by the CITY of certain agreed upon land use and development regulations; and

WHEREAS, the City of Pflugerville City Council authorized and approved this AGREEMENT at a regularly scheduled council meeting subject to the Open Meetings Act in compliance with

the laws of the State of Texas and the ordinances and Charter of the City of Pflugerville on \_\_\_\_\_, \_\_. 201\_\_, as evidenced by the adoption of Resolution No. \_\_\_\_\_

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained or referred to herein, the receipt and sufficiency of which is hereby acknowledged by the CITY and the LANDOWNER, the PARTIES hereto agree as follows:

1. The LANDOWNER covenants and agrees not to file a development document, master plan or for plat approval or a permit, (hereinafter sometimes referred to as "PERMIT"), not to include permits for uses existing on the date of this AGREEMENT (hereinafter called "EXISTING USES"), on their respective property until such property has been annexed into the CITY and zoned pursuant to all applicable laws of the State of Texas and ordinances of the City of Pflugerville, said zoning to be at the sole discretion of the CITY.
2. Land Use. The LANDOWNER further covenants and agrees to not use the PROPERTY for any use other than the EXISTING USES, without the prior written consent of the CITY, said EXISTING USES specifically being uses that allow the LANDLORD to retain its current PROPERTY appraisal for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code, or as timber land under Subchapter E of that chapter as applicable to the PROPERTY on the EFFECTIVE DATE of this AGREEMENT or those other EXISTING USES as listed in **Exhibit B** attached hereto.
3. Municipal Regulations. Pursuant to Sections 43.035(b)(J)(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 use of the PROPERTY for agriculture, wildlife management or timber, and, the PARTIES covenant and agree that all such regulations and planning authority is hereby extended to the PROPERTY. The LANDOWNER further covenants, agrees and authorizes enforcement by the CITY of these regulations in the same manner the regulations are enforced within the CITY's boundaries. Pursuant to Sections 43.035(b)(J)(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 use of the PROPERTY for agriculture, 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 property that is subject to a Chapter 43 and/or Chapter 212 development agreement.
4. Permits and Vested Rights. Pursuant to Texas Local Government Code Section 43.035 this AGREEMENT is not a permit for purposes of Chapter 245 of the Texas Government Code. The LANDOWNER and all LANDOWNER's heirs, successors and assigns hereby waive any and all vested rights including rights and claims that they may have under common law, federal case law or Section 43.002 of the Texas Local Government Code related to uses, anticipated uses or potential uses of the PROPERTY, other than the EXISTING USES.

5. Municipal Services. The CITY shall not be obligated to provide the LANDOWNER with any municipal services (such as police protection, fire protection, drainage and street construction, or maintenance), with respect to the PROPERTY for the duration of this AGREEMENT.
6. Extraterritorial Status. The CITY hereby guarantees the extraterritorial status of the PROPERTY and that it shall not annex the PROPERTY for the duration of this AGREEMENT.
7. Voluntary Annexation. Should the LANDOWNER, heirs, successors or assigns file for any type of development document, master plan, plat approval or permit for the area with a governmental entity that has jurisdiction over the area, or otherwise attempt to change or change the existing use to a use not allowed hereunder then this provision of the AGREEMENT, then in addition to the CITY's other remedies, the PARTIES covenant and agree that such act or acts shall:
  - a. constitute a condition precedent causing this AGREEMENT to be immediately construed as a petition for voluntary annexation by the LANDOWNER;
  - b. allow the PROPERTY to be subject to annexation at the discretion of the City Council;
  - c. serve to waive and except the annexation from any requirement under Local Government Code Section 43.052, to use certain statutory procedures under an annexation plan; and
  - d. cause the voluntary waiver of any and all vested rights and claims that the LANDOWNER may have obtained under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code, or would otherwise exist, by virtue of any actions that the LANDOWNER took in violation of this AGREEMENT.
8. Amendments. Neither this AGREEMENT nor any term hereof may be changed, waived, discharged or terminated except by an agreement in writing signed by all PARTIES hereto.
9. Notice. 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 LANDLORD and the LANDLORD's heirs, successors, and assigns shall give the CITY written notice within fourteen (14) days of any change in the agricultural exemption status of the Property. A copy of either notice required by this section shall be forwarded to the CITY at the following address:

City of Pflugerville  
c/o City Manager  
100 East Main Street  
Pflugerville, Texas 78660

9. Law Governing. This AGREEMENT shall be deemed to be a contract under the laws of the State of Texas which is performable in Travis, County, Texas, and for all purposes shall be construed and enforced in accordance with and governed by the laws of the State of Texas.
10. Assignment; Binding Effect. The PARTIES may not assign this AGREEMENT to any other person or entity without the prior written consent of the other; provided, however, that no such assignment shall operate to release the assigning party from its obligations hereunder. This AGREEMENT and all of its terms and provisions shall be binding upon and inure to the benefit of the CITY and the LANDOWNER and their respective successors and assigns, including all future owners of the PROPERTY.
11. Duration; Expiration. The initial term for this AGREEMENT shall be in effect for 15 years from the date of execution by the PARTIES. The AGREEMENT shall extend for two (2) successive and automatic 15-year terms; however, in no event may the total duration of the AGREEMENT exceed 45 years. Upon the expiration of this AGREEMENT, the LANDOWNER and LANDOWNER's successors, heirs or assigns agree to the voluntary annexation of the PROPERTY with this AGREEMENT serving as a petition for voluntary annexation.
12. Counterparts. To facilitate execution, this AGREEMENT may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all PARTIES hereto be contained on any one counterpart hereof. A facsimile transmission shall be deemed to be an original signature.

Signature page to follow:

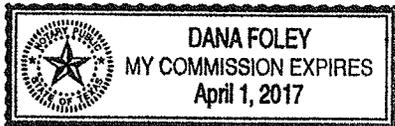
EXECUTED by the PARTIES hereto to be effective as of the date first set forth above.

<p>CITY: CITY OF PFLUGERVILLE, a home rule municipality in Travis County, Texas</p> <p>By: _____ BRANDON WADE, City Manager</p> <p>ATTEST:</p> <p>By: _____ KAREN THOMPSON, City Secretary</p> <p>Date: _____</p>	<p>LANDOWNER:</p> <p><u>Dwain Selman</u></p> <p>By: _____</p> <p>Address: _____</p> <p>City: _____</p> <p>State/Zip: _____</p> <p>Date: <u>8-2-13</u></p>
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THE STATE OF TEXAS           §  
COUNTY OF TRAVIS           §

BEFORE ME, the undersigned authority, on this day personally appeared Dwain Selman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2<sup>nd</sup> day of Aug., 2013



Dana Foley  
Notary Public, State of Texas  
Typed or Printed Name of Notary: Dana Foley  
Commission Expires: 4-01-2017

# EXHIBIT A

## (Legal Description of Property)

### Property Details

#### Account

Property ID: 263753

Geo ID: 0259410201

Type: Real

Legal Description: ABS 791 SUR 67 WALTERS A ACR 223.3400 (1-D-1)

#### Location

Situs Address: KILLINGSWORTH LN TX 78660

Neighborhood: Land Region 315

Mapsco: 468T

Jurisdictions: 0A, 03, 19, 2J, 9B

#### Owner

Owner Name: LISSO CARL ESTATE

Mailing Address: % DWAIN SELMAN, 1012 RAMBLE CREEK DR, , PFLUGERVILLE, TX 78660-2154

#### Property

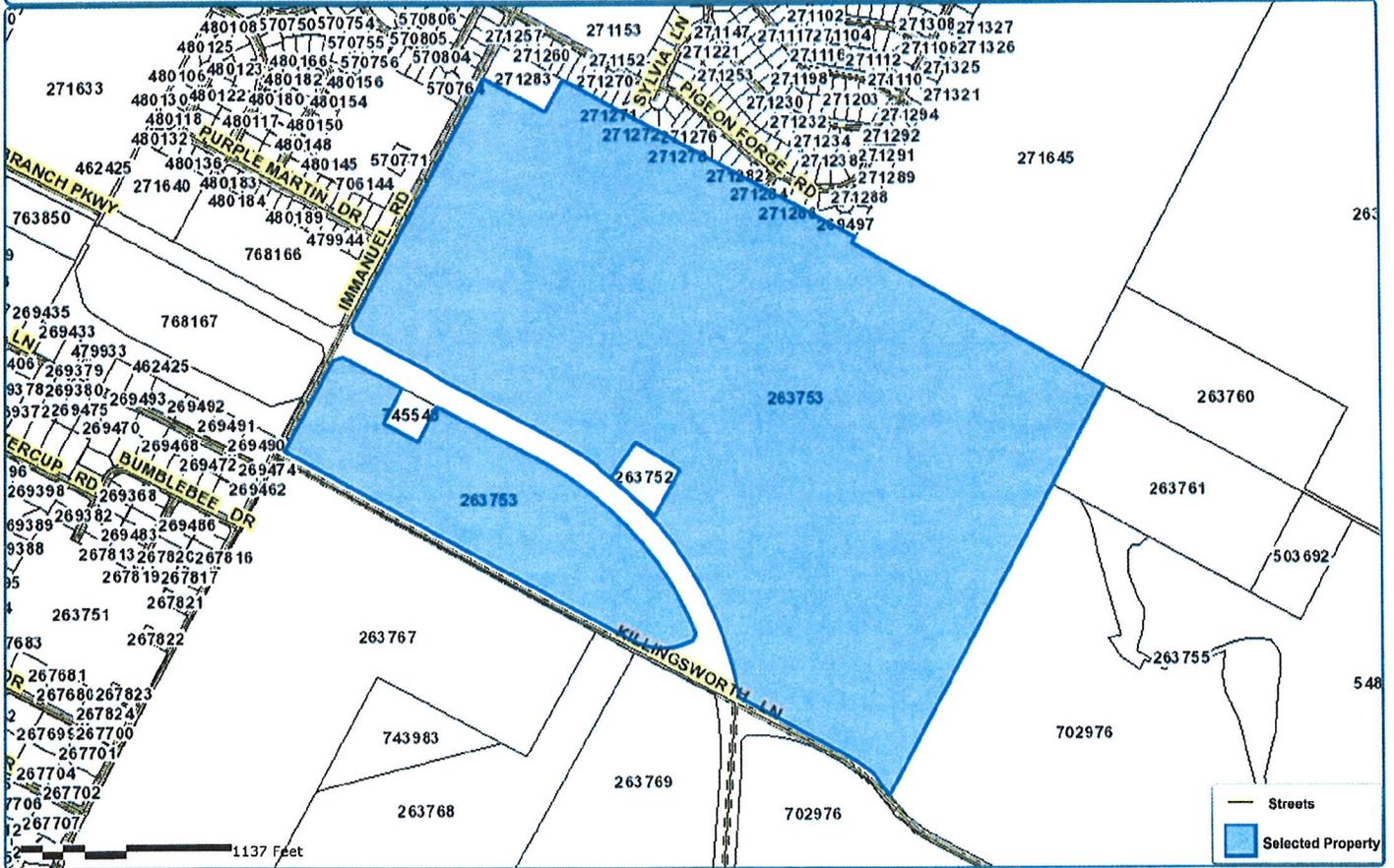
Appraised Value: \$93,150.00

<http://propaccess.traviscad.org/Map/View/Map/1/263753/2013>

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## Travis CAD - Map of Property ID 263753 for Year 2013



### Property Details

#### Account

Property ID: 263753  
 Geo ID: 0259410201  
 Type: Real  
 Legal Description: ABS 791 SUR 67 WALTERS A ACR 223.3400 (1-D-1)

#### Location

Situs Address: KILLINGSWORTH LN TX 78660  
 Neighborhood: Land Region 315  
 Mapsco: 468T  
 Jurisdictions: 0A, 03, 19, 2J, 9B

#### Owner

Owner Name: LISSO CARL ESTATE  
 Mailing Address: % DWAIN SELMAN, 1012 RAMBLE CREEK DR, , PFLUGERVILLE, TX 78660-2154

#### Property

Appraised Value: \$93,150.00

<http://propaccess.traviscad.org/Map/View/Map/1/263753/2013>

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## **EXHIBIT B**

### **(Description of Existing Uses)**

Land leased in the existing cell tower operation located 909 Immanuel Rd.

Land currently used for storage and agricultural operation by farm tenant.

Land currently used as hunting areas as legal under Texas Parks and Wildlife regulations.

Land used in existing residence and adjacent work shop addressed as 1111 Immanuel Rd.

Land used and leased to American Equipment Services in their ongoing business activities and addressed as 909 Immanuel Rd.

Land used for recreational vehicle use and storage with address 2210 Killingsworth Ln.

Land used by Dwain Selman and George Milhim for equipment and vehicle storage with entrance at 2516 wells branch Parkway.