

**EXTRATERRITORIAL JURISDICTION CONTINUATION ASSURANCE  
AGREEMENT**

This Extraterritorial Jurisdiction Continuation Assurance Agreement, dated \_\_\_\_\_, 2018 (the “Effective Date”) is entered into by and between CITY OF PFLUGERVILLE, TEXAS, a home rule municipality located in Travis County, Texas (hereinafter called "CITY") and 7B FARM, LLC, a Texas limited liability company (hereinafter called “LANDOWNER”). The CITY and the LANDOWNER may hereinafter be referred to collectively as the “Parties,” or individually as a “Party.”

**Recitals**

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 and described in **Exhibit “A,”** which is attached hereto and incorporated herein by reference for all purposes (“Property”);

WHEREAS, on or about March 31, 2016, the CITY and the LANDOWNER entered into that one certain *City of Pflugerville Non-Annexation Development Agreement* (the “Non-Annexation Agreement”), pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, which Non-Annexation Agreement is recorded in Document No. 2016048801, Official Public Records, Travis County, Texas. A copy of the foregoing Non-Annexation Agreement is attached hereto as **Exhibit “B,”** and incorporated herein by reference for all purposes;

WHEREAS, pursuant to the Non-Annexation Agreement, in consideration of extending the duration of the Property’s extraterritorial jurisdictional status the LANDOWNER agreed not to file any type of development document, master plan, plat approval or a permit related to the Property or otherwise attempt to change or change the existing use of the Property to a use not allowed pursuant to the Non-Annexation Agreement (collectively the “Development Activities”) until the Property has been annexed into the CITY and zoned pursuant to all applicable laws of the State of Texas and ordinances of the CITY;

WHEREAS, a proposed developer (the “Proposed Developer”) has approached the LANDOWNER regarding the purchase and development of the Property as a single-family residential development (the “Future Project”);

WHEREAS, LANDOWNER and/or Proposed Developer may have to engage in certain activities to determine the viability of the Future Project, which may be considered Development Activities under the terms of the Non-Annexation Agreement, and may possibly violate the terms of the Non-Annexation Agreement;

WHEREAS, at the time of this Agreement, the CITY has not planned for the annexation of the Property, which would require the CITY to provide certain municipal services (such as police protection, fire protection, drainage, street construction, or maintenance);

WHEREAS, the CITY believes that there may be benefits to the CITY to allow the Proposed Developer and LANDOWNER to pursue the Future Project, including contributing to the economic growth of the CITY, increasing future sales tax revenues to the CITY, and promoting other public purposes and benefits; and

WHEREAS, LANDOWNER and the Proposed Developer desire to comply with the terms of the Non-Annexation Agreement to ensure the continued extraterritorial jurisdictional status of the Property and will not pursue determining the viability of the Future Project unless the CITY consents and provides the assurances established by this Agreement;

WHEREAS, the Non-Annexation Agreement provides that neither the Non-Annexation Agreement nor any term of the Non-Annexation Agreement may be changed, waived, discharged or terminated except by an agreement in writing signed by the CITY and LANDOWNER;

WHEREAS, the City of Pflugerville City Council has authorized and approved this Agreement at a regularly scheduled 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 the \_\_\_\_\_ day of \_\_\_\_\_, 2018, as evidenced by the adoption of Resolution No. \_\_\_\_\_;

WHEREAS, the LANDOWNER and the CITY desire to set forth in this Agreement certain agreements relative to the negotiations regarding future use or development of the Property, while still maintaining the status quo of the Non-Annexation Agreement; and

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LANDOWNER and CITY agree as follows:

1. **Term.** The term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue until 11:59 p.m. on \_\_\_\_\_, unless extended or terminated under this Agreement or otherwise. Nothing in this Agreement shall limit the ability of the Parties to enter into future amendments to this Agreement that have the effect of extending the Term of this Agreement.

2. **Agreements and Assurances:**

(a) The CITY agrees to maintain the current extraterritorial jurisdiction status quo of the Property during the term of this Agreement to allow LANDOWNER and Proposed Developer to pursue the Preliminary Development Activities (defined below), including the following:

i. The LANDOWNER will not be in breach of the Non-Annexation Agreement if LANDOWNER enters into a contract for the sale of the Property (the “RE Contract”) with the Proposed Developer, which RE Contract will contain certain feasibility and/or option periods for the Proposed Developer to obtain certain approvals for the Property, including but not limited to petitioning for annexation of the Property into an existing Municipal Utility District or the creation of a new Municipal Utility District that includes the Property, wastewater service for the Property from the CITY and preliminary plat approval (herein the “Preliminary Development Activities”); and

ii. The LANDOWNER will not be in breach of the Non-Annexation Agreement if LANDOWNER and/or Proposed Developer engage in such Preliminary Development Activities and the CITY will not invoke the voluntary annexation provisions of the Non-Annexation Agreement during the Term of this Agreement.

(b) If the Proposed Developer and the CITY come to terms regarding the annexation of the Property into an existing Municipal Utility District or the creation of a new Municipal Utility District that includes the Property, wastewater service for the Property from the CITY, and the Proposed Developer obtains preliminary plat approval related to the Property, the CITY agrees to amend and/or terminate the Non-Annexation Agreement and/or release the Property from the Non-Annexation Agreement simultaneously with the CITY’s approval of any agreement consenting to the inclusion of the Property into a Municipal Utility District. However, in the event that a subsequent claim is brought against the CITY in a court of competent jurisdiction seeking to determine that this termination and/or release invalidates prior or subsequent annexations of other property annexed by the City based on lack of contiguity or any other allegation of statutory non-compliance, LANDOWNER, its successors, heirs or assigns, agrees to voluntarily request the annexation of a statutorily sufficient portion of the Property by the CITY and to take any other actions necessary to ensure the successful annexation of the portion of the Property, and upon City annexation, to ensure that said claim is rendered moot.

(c) After the expiration of the Term and any authorized extensions or amendments, this Agreement shall be deemed terminated without further action of the Parties and of no further force and effect, unless this Agreement and/or the Non-Annexation Agreement is sooner changed, waived, discharged or terminated by mutual agreement of the Parties. Further, as it is the express intent of the Parties hereto to maintain the status quo of the Non-Annexation Agreement in accordance with the terms of this Agreement, in the event that the Non-Annexation Agreement is not terminated, amended and/or the Property released in accordance with Section 2(b) above, LANDOWNER hereby expressly waives: (a) any statutory or common law vested property rights established prior to such termination, including without limitation those arising under Chapter 245 of the Texas Local Government Code; and (b) any right arising from CITY permits, approvals or other entitlements for the Property which are granted or approved concurrently with or subsequent to the Effective Date this Agreement. Accordingly, the Parties acknowledge and agree that any approvals issued by the CITY for Preliminary Development Activities as contemplated

above shall be considered null and void and/or revoked upon the expiration of the Term of this Agreement, as extended and/or amended.

3. **Miscellaneous**

(a) Any notice given hereunder by any Party to another shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper Party, at the following addresses:

CITY: City of Pflugerville,  
c/o City Manager

w/copy to: Charles E. Zech  
Denton Navarro Rocha Bernal & Zech, P.C.  
2500 W. William Cannon, Suite 609  
Austin, Texas 78745-5320

LANDOWNER: Joy Arnhamn, President  
7B Farm, LLC  
14401 Manda Road  
Manor, Texas 78653

w/copy to:

Calley D. Callahan  
Knolle, Holcomb, Callahan & Taylor  
13625 Ronald Reagan Blvd.  
Building One, Suite 100  
Cedar Park, Texas 78613

(b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

(c) This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties respecting the Non-Annexation Agreement as it pertains to the Property. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the Parties hereto. However, any consent, waiver, approval or authorization shall be effective, if signed by the party granting or making such consent, waiver, approval, or authorization.

(d) No official, representative, agent, or employee of the CITY has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the City of Pflugerville City Council.

(e) The Parties shall execute other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the CITY under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then the respective party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereto.

(g) Before attempting to terminate this Agreement for default, the Party alleging the default shall notify the other Parties in writing of the nature of and the means of curing the default. No Party may terminate this Agreement without providing the defaulting Party a reasonable amount of time to cure the default, which reasonable amount of time shall be no less than ten (10) days. The Parties acknowledge that in the event of default on any obligation under this Agreement that remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, they shall be entitled to specific performance of this Agreement.

(h) This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Travis County, Texas. Any suits pursued relating to this Agreement will be filed in a court of Travis County, Texas.

(i) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(j) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns and constitutes a covenant running with the Property. Any Party may record in the Official Public Records of Travis County a memorandum of this Agreement.

(k) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.

(l) This Agreement is effective upon execution by all the Parties. This Agreement may be executed simultaneously in one or several counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. The terms of this Agreement shall become binding upon each party from and after the time that it executes a copy hereof. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of the Agreement, such consent or other document shall be binding upon such party.

(m) The following exhibits are attached to and incorporated in this Agreement.

Exhibit A      Legal Description of the Property  
Exhibit B      Non-Annexation Agreement

EXECUTED AND AGREED TO BY THE PARTIES hereto to be effective as of Effective Date set forth above.

CITY: CITY OF PFLUGERVILLE, TEXAS,  
a home rule municipality in Travis County,  
Texas

By: \_\_\_\_\_  
Brandon Wade, City Manager

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Secretary

Date: \_\_\_\_\_

LANDOWNER: 7B Farm, LLC

By: \_\_\_\_\_  
Joy Arnhamn, President

Date: \_\_\_\_\_