

RESOLUTION NO. 2016-63

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROVIDENCE VILLAGE, TEXAS, APPROVING A CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF PROVIDENCE VILLAGE, TEXAS AND ROGER SMITH AND KARLENE SMITH, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about November 23, 2016, Roger Smith and Karlene Smith, the owners of an area of land described herein below (the "Property") executed a Chapter 43 Texas Local Government Code Development Agreement (the "Agreement") with the Town of Providence Village, Texas (the "Town"); and

WHEREAS, the Town Council of the Town of Providence Village ("Town Council") has found and determined that the Agreement is appropriate and that it is in the best interest of the Town, to grant the Agreement.

THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PROVIDENCE VILLAGE, TEXAS, THAT:

SECTION 1. The recitals and findings set forth above are true and correct and are incorporated into the body of this resolution as if fully set forth herein.

SECTION 2. The Agreement generally provides, among other things, that as long as no development occurs, the following described the property will remain in the Town's extraterritorial jurisdiction and will not be annexed into the town limits:

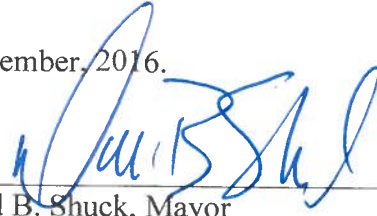
Denton CAD Property ID 255718, generally located south of Liberty Road, east of Dr. Sanders Road and west of FM 2931 and being an approximate 2.23 acre tract of land described as being Lot 8, Block 1, Pittsinger Addition, of Denton County, Texas as recorded in Cabinet U, Page 957 of the Plat Records of Denton County Texas; and the proposed annexation of the portion of Liberty Road adjacent to said territory; and being more particularly described in Exhibit "A" and depicted in Exhibits "B" and "C" to Resolution No. 2016-49 of the Town of Providence Village, Texas, and is available for inspection at Town Hall of the Town of Providence Village.

SECTION 3. The Town Manager is authorized to execute the Agreement attached hereto as **Exhibit A**.

SECTION 4. The Town Council hereby finds, determines and declares that the meeting, at which this resolution is passed, approved and adopted, was open to the public, and that the public notice of time, place and subject matter to be considered was posted as required by law.

SECTION 5. That this Resolution shall be effective from and after the date of passage as provided by law.

PASSED AND APPROVED this 28th day of November, 2016.

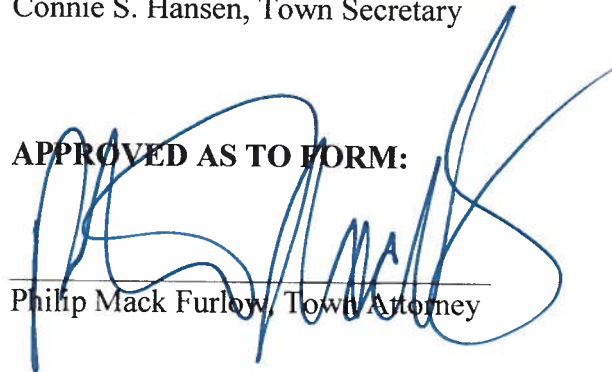


David B. Shuck, Mayor

ATTEST:


Connie S. Hansen, Town Secretary

APPROVED AS TO FORM:


Philip Mack Furloy, Town Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS)
)
COUNTY OF DENTON)

**CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT**

This Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code by and between the Town of Providence Village, Texas (the "Town") and the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property.

WHEREAS, the Owner owns a parcel of real property (the "Property") in Denton County, Texas, identified as DCAD ID 255718, legally described as Pittsinger Addition, Block 1, Lot 8, containing 2.23 acres, more or less, Denton County, Texas and more particularly described in Exhibit "A" and depicted in Exhibit "B" attached hereto; and

WHEREAS, the Town intends to begin the process to institute annexation proceedings on all or portions of Owner's Property in the near future; and

WHEREAS, the Owner desires to have the Property remain in the Town's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the Town; and

WHEREAS, the Owner and the Town acknowledge that this Agreement is binding upon the Town and the Owner and their respective successors and assigns for the term (defined below) of this Agreement; and

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

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. The Town guarantees the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the Town, and its immunity from Town property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the Town 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 a statutory annexation plan for the Term of this Agreement. However, if the Property is annexed pursuant to the terms of this

Agreement, then the Town shall provide services to the Property pursuant to Chapter 43 of Texas Local Government Code.

Section 2. The Owner covenants and agrees not to use the Property for any use other than for their current home-based business known as Aubrey Horse Blanket Cleaning and Repair, agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, without the prior written authority of the Town Council.

The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property, which includes but is not limited to seeking to create any special district (including but not limited to a Municipal Utility District, Fresh Water Supply District, Water Control and Improvement District, Municipal Management District, Public Improvement District, or any similar special district) within any part of the Property within the Town's extraterritorial jurisdiction ("ETJ") including by seeking to file, or filing, any legislation or any application with the Texas Commission on Environmental Quality ("TCEQ") to create any such special district (a "Development Document"), until the Property has been annexed into, and zoned by, the Town.

The Owner covenants and agrees not to construct, or allow to be constructed, any improvements or buildings on the Property that would require a permit or building permit if the Property were in the city limits, until the Property has been annexed into, and zoned by, the Town; provided, however, the Owner may make improvements to the Property with the prior written consent of the Town. The Owner also covenants and agrees that the Town's AG—Agricultural District zoning requirements apply to the Property, and that the Property shall be used only for AG—Agricultural District zoning uses that exist on that Property at the time of the execution of this Agreement, unless otherwise provided in this Agreement.

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 severably, to indemnify, hold harmless, and defend the Town against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the Town's reliance on this Agreement.

Section 3. The Owner acknowledges and stipulates that if any plat or Development Document is filed in violation of this Agreement, or if the Owner commences construction on or development of the Property in violation of this Agreement, then in addition to the Town's other remedies, such act will constitute an irrevocable petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the Town Council. The Owner agrees and stipulates that such annexation shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner to the Town. If annexation proceedings begin pursuant to this Section, the Owner 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. Furthermore, the Owner hereby waives any and all vested rights and claims that 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 actions Owner has taken in violation of Section 2 herein. Owner acknowledges and

stipulates that this Development Agreement is not a permit, as defined in Texas Local Government Code, Section 245.001(1), required by the Town.

Section 4. Pursuant to Sections 43.035(b)(1)(B) of the Texas Local Government Code, Owner agrees that the Town is authorized to enforce all of the Town's regulations, permit requirements and planning authority applicable in its city limits to future improvements on the Property 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 Town's boundaries. The Town 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. Town regulations that apply in its extraterritorial jurisdiction will continue to apply to the Property.

Section 5. The term of this Agreement (the "Term") is thirty (30) years from the date that the Town Manager's signature to this Agreement is acknowledged by a public notary. The Owner, and all of the Owner'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 Property to be completed on or after the end of the Term. Prior to the end of the Term, the Town may commence the voluntary annexation of the Property. In connection with annexation pursuant to this section, the Owners hereby waives 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 Town.

Section 6. Property annexed pursuant to this Agreement will initially be zoned AG – Agricultural pursuant to the Town's Code of Ordinances, pending determination of the property's permanent zoning in accordance with the provisions of applicable law and the Town's Code of Ordinances.

Section 7. Any person who sells or conveys any portion of the Property (excluding a sale or conveyance to Owner's heirs and/or immediate family members) shall, no later than 14 days 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 Town. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the Town written notice within 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 Town at the following address:

Town of Providence Village
Attn: Town Manager
1745 FM 2931
Providence Village, Texas 76227

Section 8. A certified copy of this Agreement shall be recorded in the real property records of Denton County, Texas, and this Agreement shall constitute a covenant that runs with the Property.

Section 9. If a court of competent jurisdiction determines that any covenant 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.

Section 10. This Agreement may be enforced by any Owner or the Town 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. Notwithstanding the preceding terms of this section, the Town does not waive immunity from suit or liability.

Section 11. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the Town's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 12. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be only in Denton County, Texas.

Section 13. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 14. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 2, 3, and 4 herein.

Section 15. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties and relating to the matters in this Agreement and except as otherwise provided herein, cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

Section 16. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

Section 17. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Entered into this ____ day of _____, 2016.

SIGNATURES ON NEXT PAGE

TOWN OF PROVIDENCE VILLAGE

By: _____
Name: Brian D. Roberson
Title: Town Manager
Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on _____, 2016, by Brian D. Roberson, Town Manager of the Town of Providence Village, Texas on behalf of said Town.

Notary Public in and for the State of TEXAS

OWNER 1: ROGER SMITH

By: *[Signature]*
Name: Roger Smith
Title: Owner
Date: 11/23/16

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on November 23 2016, by Roger Smith, owner of said Property.

Connie S. Hansen
Notary Public in and for the State of TEXAS



OWNER 2: KARLENE SMITH

By: Karlene Smith

Name: Karlene Smith

Title: Owner

Date: 11/23/16

THE STATE OF TEXAS §

COUNTY OF DENTON §
§

This instrument was acknowledged before me on November 23, 2016, by Karlene Smith, owner of said Property.

Connie S. Hansen

Notary Public in and for the State of TEXAS

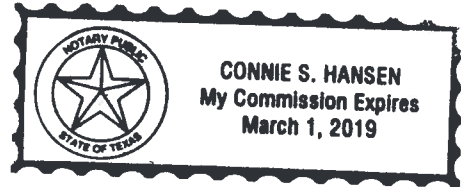
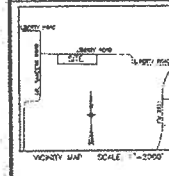
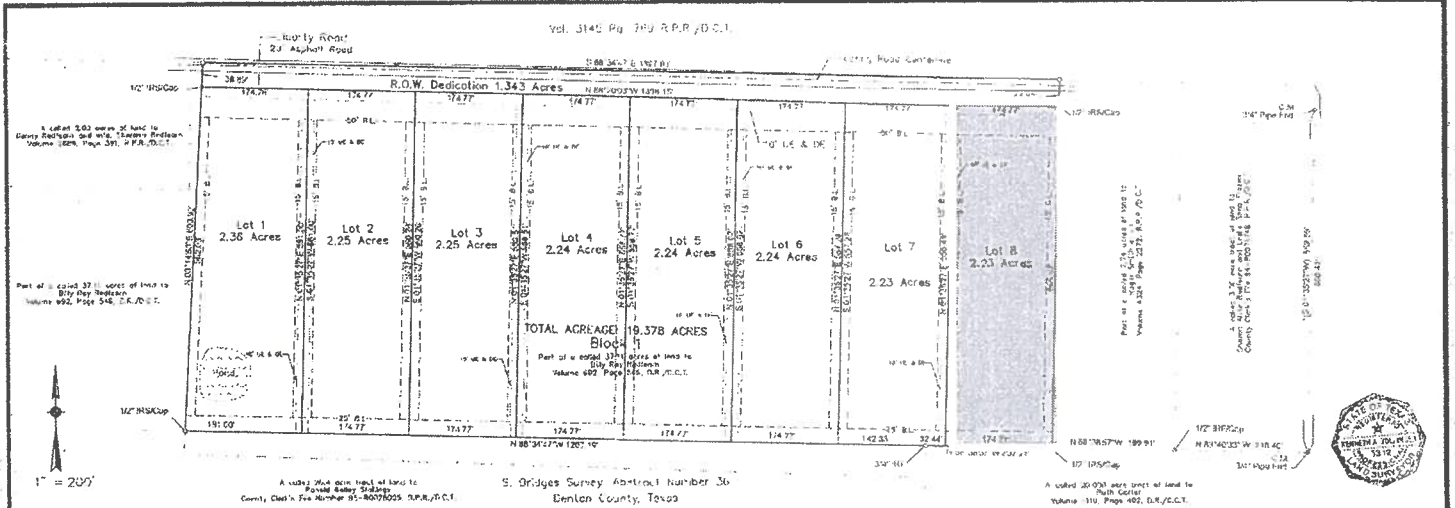


EXHIBIT "A"

CAB U PAGE 957



OWNER
 William S. Byrd, Plaintiff vs. The State of Texas, Defendant
 Abstract Number 36 Denton County, Texas, and being a part of the 37.11 acre tract of land described in a deed to Bill Byrd, recorded in Volume 482, Page 547, Deed Records of Denton County, Texas, and being more particularly described as follows:

Commencing at a 70' pipe stand for the S.E. corner of said 37.11 acre tract and at the Southeast corner of a certain 3.00 acre tract in a deed to Sharon Anne Beckler and Linda Shea Fagan as recorded in County Clerk's File Number 04-40071748, Deed Property Records of Denton County, Texas.

Thence North 88 Degrees 36 Minutes 57 Seconds West with the South line of said 3.00 acre and 27.11' tract, a distance of 212.93 feet to a 1/2" capped iron nail found at the Southwest corner of said 3.00 acre tract same being the Southwest corner of a certain 2.74 acre tract recorded in deed to Roger Schaefer as recorded in Volume 4324, Page 2277, Deed Property Records of Denton County, Texas.

Thence North 88 Degrees 36 Minutes 57 Seconds West with the South line of said 37.11 acre tract, a distance of 207.21 feet to a 1/2" iron nail found for the Northeast corner of a certain 28.4 acre tract of land described in a deed to Ronald Elmer Elmer as recorded in County Clerk's File Number 05-08000605, Deed Property Records of Denton County, Texas.

Thence North 88 Degrees 34 Minutes 47 Seconds West with the said North line and with the said South line of said 37.11 acre tract, a distance of 192.21 feet to a 1/2" capped iron nail at the Southwest corner of the herein described tract.

Thence North 88 Degrees 14 Minutes 50 Seconds East, passing a 1/2" capped iron nail for a reference monument at 562.03 feet and continuing along the same line a distance of 600.70 feet to a point for the Northeast corner of the herein described tract in Liberty Block, at the North line of said 27.11 acres.

Thence South 88 Degrees 34 Minutes 47 Seconds East with said North line and with Liberty Road, a distance of 1797.03 feet to a point for the Northeast corner of the herein described tract.

Thence South 81 Degrees 14 Minutes 77 Seconds West, passing a 70' capped iron nail for a reference monument at 44.81 feet and continuing along said course with the West line of said 37.11 acre tract to a total distance of 600.37 feet to the POINT OF BEGINNING and containing 17.38 acres of land, more or less.

COPIES
 2522248 AUSTIN J. BRIDGES, JR. 1987
 SAC 198A

William S. Byrd
 Plaintiff

Sharon Anne Beckler
 Defendant

DEED RECORDS
 DEED RECORDS OF DENTON COUNTY, TEXAS

DEED RECORDS
 DEED RECORDS OF DENTON COUNTY, TEXAS

DEED RECORDS
 DEED RECORDS OF DENTON COUNTY, TEXAS

RECEIVED
 APR 14 2003
 DEED RECORDS OF DENTON COUNTY, TEXAS

FINAL PLAT
 PITTSINGER ADDITION
 LOTS 1 THRU 8, BLOCK 1
 BEING 19.578 ACRES IN THE S. BRIDGES SURVEY, ABSTRACT 36 OF THE TOWN OF CROSS ROADS, DENTON COUNTY, TEXAS

LEGEND

1. ALL RIGHTS RESERVED BY THE SURVEYOR.
 2. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 3. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 4. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 5. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 6. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 7. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 8. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 9. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.
 10. THIS SURVEY IS SUBJECT TO ALL RIGHTS RESERVED BY THE SURVEYOR.

ALLIANCE AREA SURVEYING

P.O. BOX 507
 KRMU, TX 76249
 (940)482-6723

JOB NUMBER 008511P
 DRAWN BY LAB
 CHECKED BY KAS
 DATE 3-27-03
 R.P.S. KENNY A. VOLZINGER

REV 1: 3/20/03 SHL/PLT
 REV 2: 3/20/03 SHL/PLT
 REV 3: 3/20/03 SHL/PLT

EXHIBIT "B"

