

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

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 City of Kyle, Texas ("the **City**") and the undersigned property owners ("the **Owners**"). The term "Owners" includes all owners of the Property.

WHEREAS, the Owners own a parcel of real property ("the **Property**") in Hays County, Texas, which is more particularly and separately described in the attached and incorporated *Exhibit A*; and

WHEREAS, the Property is currently located in the extraterritorial jurisdiction of the City and has been appraised for ad valorem tax purpose as land for agricultural use under Subchapter C or D, Chapter 23, Texas Tax Code; and

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of the Property and held a public hearing on March 1, 2016, and its second public hearing on March 15, 2016; and

WHEREAS, the City has notified the Owners of its intent to annex the Property and has offered to enter into an development agreement guaranteeing the continued extraterritorial status of the Property; and

WHEREAS, the Owners desire to have the Property remain outside of the City's corporate limits, in consideration for which the Owners agree 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 to exercise the Owners legal rights under these provisions; and

WHEREAS, the Owners and the City acknowledge that this Agreement is binding upon the City and the Owners and their respective heirs, successors, and assigns for the term, as defined below, of this Agreement; and

WHEREAS, this Development Agreement is to be recorded in the Official Public Records of Hays County, Texas at the expense of the City.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties agree as follows:

Section 1. Continuance of Extraterritorial Jurisdiction Status.

1.1 Pursuant to Sections 43.035(b)(1)(A) and 212.172(b)(1) of the Texas Local Government Code, the City guarantees the continuation of the extraterritorial status of the Owners' Property, the Property's immunity from annexation by the City, and the Property's immunity from City ad valorem/property taxes for the Term of this Agreement, subject to the provisions of this Agreement.

1.2 Except as provided in this Agreement, the City agrees not to involuntarily annex the Property, agrees not to institute proceedings to involuntarily annex the Property, and further agrees not to include the Property in a statutory annexation plan or to attempt to annex the Property for the Term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

Section 2. Continuance of Agriculture, Wildlife Management, or Timberland Use; Prohibition Against Other Uses.

2.1 The Owners covenant and agree not to use the Property for any use other than for agriculture, wildlife management, and/or timberland purposes consistent with Chapter 23 of the Texas Tax Code, except for any existing single-family residential uses of the Property, without the prior written consent of the City.

2.2 The Owners covenant and agree that if the Owners file any type of application for a subdivision plat or other development-related approval for the Property with Hays County or the City, this Agreement is void and the City may begin the involuntary annexation of the Property into the City. However, the Property may be divided into separate tracts of land, but not more than five (5) separate tracts, for the purpose of the transfer of those tracts of land to family members or to a nonprofit foundation or nonprofit corporation, so long as each tract of land is greater than five (5) acres in area, thus not requiring subdivision plat approval through the City of Kyle, and so long as no other development permit is requested. If the Property is so divided into separate tracts of land under this provision, then (a) all successors in interest to the Property and these tracts of land will be bound by the terms of this Agreement, and (b) any act of development on any of these separate tracts of land, except for the structures allowed in Subsection 2.3, will void this Agreement as to the separate tract of land on which development is sought.

2.3 The Owners covenant and agree not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the city limits, until the Property has been annexed into and zoned by the City. However, the Owners may construct (a) any structures for their farming operations (*e.g.*, barn, greenhouse, rainwater collection system); and (b) an accessory structure used in conjunction with the existing single-family dwelling.

2.4 The Owners acknowledge that each and every owner of the Property must sign this Agreement for this Agreement to take full effect.

Section 3. Effect of Certain Filings or Actions.

3.1 The Owners acknowledge that if any application for a plat or other development-related approval is filed for the Property in contravention of Subsection 2.2 of this Agreement, or if the Owners commence development of the Property in contravention of this Agreement, then in addition to the City's other remedies, such act(s) will void this Agreement, and the City may involuntarily annex the Property at the discretion of the City Council.

3.2 If annexation proceedings begin pursuant to this Section, the Owners acknowledge that this Agreement serves as an abatement of the time periods in Section 43.052 of the Texas Local Government Code, which require a municipality to use certain statutory procedures either under an annexation plan or in accordance with Chapter 43 of the Texas Local Government Code, and that the abatement of those time periods cease upon the Owners' application for a plat or other development-related approvals or development of the Property. Furthermore, the City acknowledges that upon the cessation of the abatement of these time periods, that the City is obligated to amend its annexation plan for the Property under Section 43.052 to conform that plan to the City's current policies and plan, if needed.

Section 4. Enforcement of City Regulations.

4.1 Pursuant to Sections 43.035(b)(1)(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 interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner that the City enforces such regulations within the City's boundaries.

4.2 Pursuant to Section 212.712(b) of the Texas Local Government Code, the City covenants and agrees not to take any actions that would limit or restrict the right or ability of the Owners to continue to use the Property for its current agricultural purposes, including for "farm-to-table" dinners, certified organic farming, farm workshops, events, classes, tours, etc., and to preserve the Owners' agriculture tax status under Chapter 23 of the Texas Tax Code.

Section 5. Term; Annexation On or After the End of the Term.

5.1 The initial term of this Agreement (the "**Term**") is **fifteen (15) years** from the date that the Mayor's signature to this Agreement is acknowledged by a public notary, unless sooner terminated as provided for in Section 3, above, if the Property no longer has an exemption from ad valorem taxes for agricultural, wildlife management, or timber land, or if the Owners file a petition for voluntary annexation. The parties have the option to extend this Agreement for up to but not to exceed two (2) additional fifteen (15) year periods ("**Option Periods**"). The parties may exercise these options to extend this Agreement for an Option Period by signing and recording in the Official Public Records of Hays County, Texas, a mutual consent to the extension of this Agreement for another fifteen (15) year period not earlier than one hundred and twenty days (120) days prior to the expiration of this Agreement. If this Agreement is terminated because the Property no longer has an exemption from ad valorem taxes for agricultural, wildlife management, or timber land, then the effective date of such termination will be the effective date of such change in exemption status for ad valorem tax purposes. If this Agreement is terminated because the

Owners file a petition for voluntary annexation, then the effective date of such termination will be the effective date of final annexation of the Property.

5.2 The Owners, and all of the Owners' heirs, successors, and assigns shall be deemed to have filed a petition for voluntary annexation at the end of the Term, for annexation of the Property to be completed after the end of the Term at the City Council's discretion. In connection with annexation of the Property pursuant to this Subsection, the Owners hereby waive 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 City.

Section 6. Notice.

6.1 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.

6.2 A copy of any notice required by this Agreement shall be in writing and sent to the City via certified mail, return receipt requested, to the following address:

City of Kyle
Attn: Director of Planning
100 W. Center Street
Kyle, Texas 78640

Section 7. This Agreement shall run with the Property and be recorded in the Official Public Records of Hays County, Texas.

Section 8. If a court of competent jurisdiction determines that any covenant or provision of this Agreement is void or unenforceable, including the covenants or provisions regarding involuntary annexation, then the remainder of this Agreement shall remain in full force and effect.

Section 9. Any Owner or the City may enforce this Agreement 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.

Section 10. This Agreement may be amended only by an instrument in writing that the Owners and the City have signed.

Section 11. This Agreement shall be governed, enforced and construed in accordance with the laws of the State of Texas. This Agreement is performable in Hays County, Texas.

Section 12. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

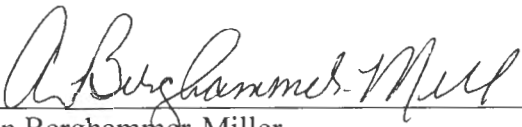
Section 13. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4, and 5 of this Agreement.

Section 14. If either party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs of court.

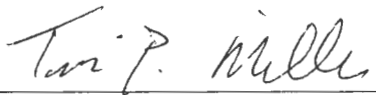
Section 15. This Agreement is not binding on any party until all parties have signed it. Furthermore, this Agreement is not binding on any party unless all parties have signed it on or before April 26, 2016.

Entered into this 1st day of April, 2016.

OWNERS:



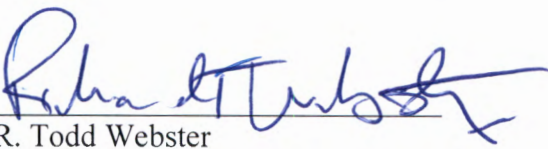
Ann Berghammer-Miller



Tim P. Miller


THE CITY OF KYLE, TEXAS

Attest:



R. Todd Webster
Mayor

(NOTARIES FOLLOW ON SEPARATE PAGES)


MAYOR

STATE OF TEXAS
COUNTY OF HAYS

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BEFORE ME the undersigned authority on this day personally appeared Ann Berghammer-Miller, an Owner of the Property, and acknowledged that she is fully authorized to execute the foregoing document and that she executed this document for the purposes and consideration expressed in this document and in her individual capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1 day of April, 2016.



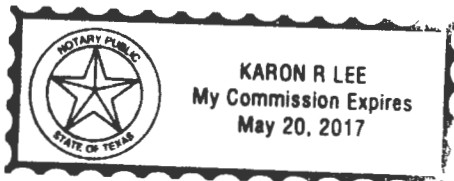
Karon R. Lee
Notary Public - State of Texas

STATE OF TEXAS
COUNTY OF HAYS

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BEFORE ME the undersigned authority on this day personally appeared Tim P. Miller, an Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed this document for the purposes and consideration expressed in this document and in his individual capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1 day of April, 2016.



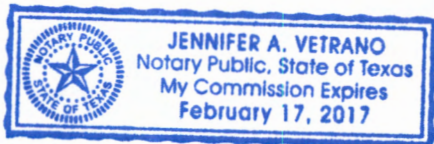
Karon R. Lee
Notary Public - State of Texas

STATE OF TEXAS
COUNTY OF HAYS

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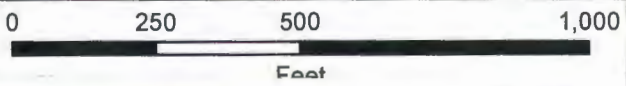
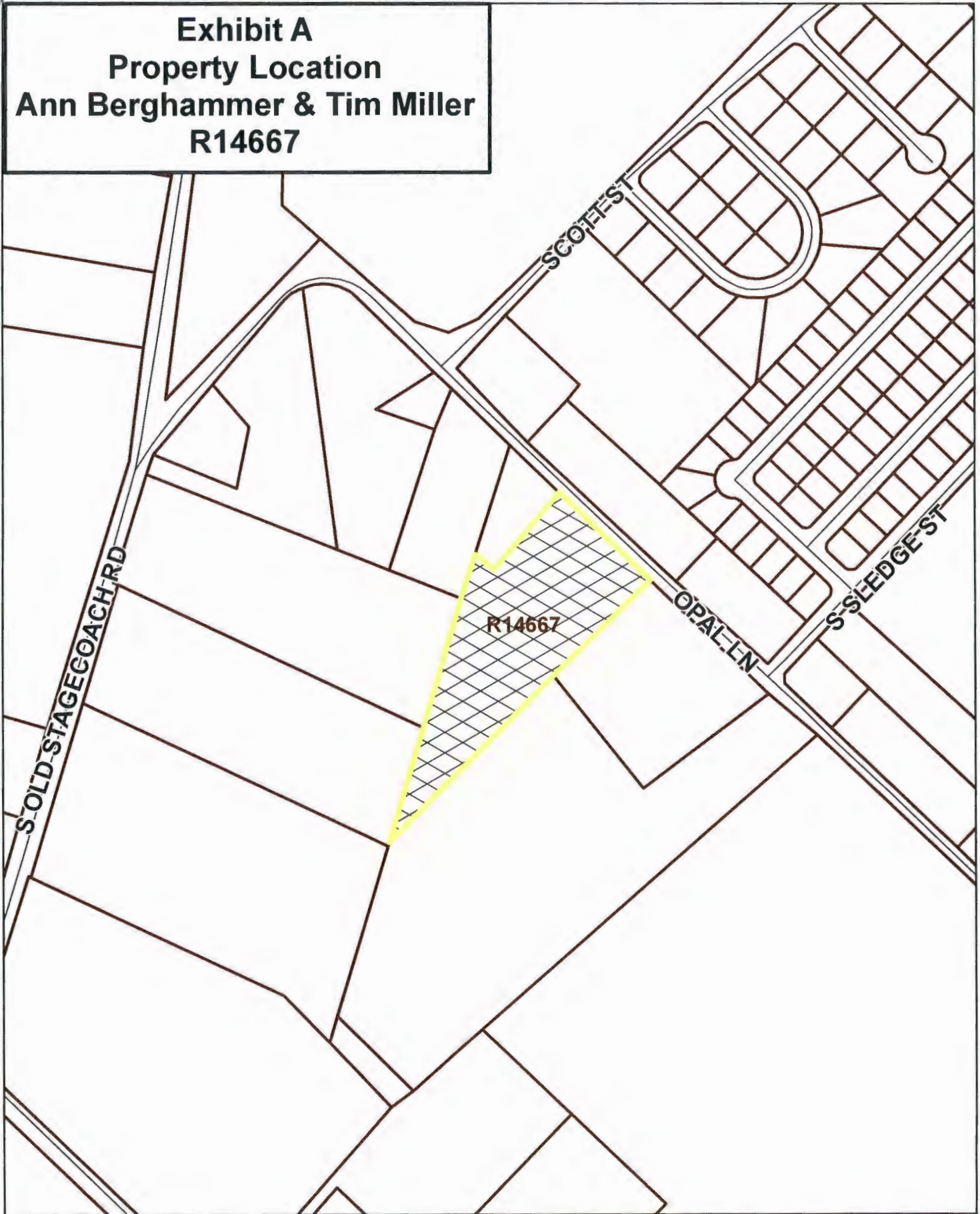
BEFORE ME the undersigned authority on this day personally appeared R. Todd Webster, Mayor, City of Kyle, and acknowledged that he is fully authorized to execute the foregoing document and that he executed this document for the purposes and consideration expressed in this document and in his capacity as the Mayor of the City of Kyle, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1st day of June, 2016.



Jennifer A. Vetrano
Notary Public - State of Texas

Exhibit A
Property Location
Ann Berghammer & Tim Miller
R14667



Property
Boundary



Parcel Lines