

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, NUNC PRO TUNC, CORRECTING AN INADVERTENT MISTAKE IN ORDINANCE NO. 2015-067, RELATING TO THE ACCEPTANCE OF ELIGIBLE NON-ANNEXATION AGREEMENTS FOR AGRICULTURAL, WILDLIFE MANAGEMENT OR TIMBERLAND USE PROPERTIES WITHIN AN AREA OF LAND ADJACENT TO AND ABUTTING THE EXISTING CITY LIMITS OF THE CITY OF DENTON, TEXAS, GENERALLY IDENTIFIED AS PAA1, GENERALLY LOCATED SOUTH OF JIM CRISTAL ROAD; NORTH OF TOM COLE ROAD; WEST OF MASCH BRANCH ROAD, AND MORE SPECIFICALLY IDENTIFIED IN EXHIBITS "A" AND "B" ATTACHED HERETO; SPECIFICALLY BY INCLUDING FOUR PARCELS OF LAND THAT WERE INADVERTENTLY EXCLUDED FROM ORDINANCE NO. 2015-067 EVEN THOUGH THE PARCELS WERE ELIGIBLE TO RECEIVE AND SIGN NON-ANNEXATION AGREEMENTS; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 3, 2015, the City Council adopted Ordinance No. 2015-067, which ordinance accepted non-annexation agreements signed by eligible property owners within an area of approximately 1,171 acres of land generally identified as "PAA1", as legally described and depicted in the attached Exhibits "A" and "B" to Ordinance No. 2015-067 and attached herein, which a portion of said 1,171 acres, specifically 164.10 acres consisting of properties no longer eligible to receive non-annexation agreements, were separately annexed into the City of Denton, Texas via Ordinance No. 2015-186 on June 16, 2015; and

WHEREAS, per Section 43.035, Subchapter B, Local Government Code, a Texas city is required to make offers of non-annexation development agreements to the owners of all properties which have been appraised for ad valorem tax purposes as land for agricultural, wildlife management or timberland within the area to be annexed; and

WHEREAS, under a non-annexation agreement between an eligible property owner and the City, the land subject to the agreement retains its extraterritorial status and the owners of such land must abide by the City's development regulations as if such land were within the City limits, as provided further in such agreement; and

WHEREAS, the City has recently discovered that four (4) eligible parcels, as legally described in Exhibit "C" as attached herein, were omitted from approval of non-annexation agreements by Ordinance No. 2015-067, due to an inadvertent clerical error; and

WHEREAS, as a result of the clerical error, the property owners were never offered non-annexation agreements even though they were eligible to receive them and thus their properties were inadvertently annexed; and

WHEREAS, in the interest of fairness, and for the purpose of carrying out the original intent of Ordinances Nos. 2015-067 and 2015-186, the City and the affected owner(s) wish to correct that inadvertent error via this ordinance, *nunc pro tunc*, by approving a non-annexation agreement for the eligible parcel, to commence immediately and to expire on August 1, 2020, the same expiration date as current non-annexation agreements approved by Ordinance No. 2016-117, and to thereafter correct annexation Ordinance 2015-186 via separate ordinance, *nunc pro tunc*, to

remove the omitted eligible parcel from the City limits and tax rolls, and to reimburse the property owners for the City portion of ad valorem taxes paid as a result of being annexed via Ordinance No. 2015-186; and

WHEREAS, the Denton City Council deems it to be in the best interests of the citizens of the City of Denton to enter into such non-annexation agreements with eligible property owners who timely submitted non-annexation agreements and have now corrected any legal defects therein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. A certain area of land was previously denominated in Ordinance No. 2015-067 as "PAA1", which was legally described and depicted in attached Exhibits "A" and "B" to that ordinance, and incorporated therein by reference. For the purposes of this Ordinance, the term "PAA1" shall have the same meaning, and such prior legal description and depiction are incorporated herein by reference.

SECTION 3. A certain offered non-annexation agreement relating to eligible properties contained within the previously defined PAA1 area, which has been properly executed by the owners of those properties, and which legally described by prior recorded instruments referenced therein, is hereby approved and accepted by the City of Denton, Texas. Said agreements are attached hereto and incorporated into Exhibit "C" to Ordinance No. 2016-117, which Ordinance adopted the most recent non-annexation agreements for eligible properties in PAA1.

SECTION 4. The City Manager is authorized and directed to sign the non-annexation agreements contained within Exhibit "C", for and on behalf of the City of Denton as a ministerial act, but with an effective date of this Council's action on same. The City Manager shall further arrange forthwith for the recordation of non-annexation agreements in the real property records of Denton County, Texas.

SECTION 5. The City Manager shall ensure that the parcels described in Exhibit "C" are removed from the City tax rolls and is further directed to undertake the necessary steps to reimburse the property owners the City portion of ad valorem taxes they have personally paid for the parcels for the tax years subsequent to the adoption of Ordinance No. 2015-186.

SECTION 6. All other provisions of Ordinance Nos. 2015-067 and 2016-117 not specifically amended herein shall continue in force and effect; however, the provisions of this ordinance shall govern and control over any conflicting provisions of Ordinance Nos. 2015-067 and 2016-117, to the extent of any such conflict.

SECTION 7. This Ordinance shall take effect immediately on its passage and approval.

AND IT IS SO ORDERED.

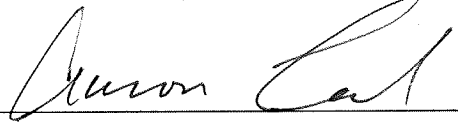
PASSED AND APPROVED by the City Council reading this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY:  \_\_\_\_\_

## **Exhibit “A”**

### **Annexation Tract PAA1 (Page 1 of 2)**

BEGINNING at point at the northwest corner of tract described in Ordinance 2006-205, and further described in said Ordinance as a 1/2 inch pin in the Center of Tom Cole Road (east-west road) and C. Wolfe Road from the south;

THENCE South 88° 55' 44" East, along the present Denton city limit line as established by Ordinance 2006-205 and being the northerly line of the tract described in Ordinance 2006-205, a distance of 4,685.36 feet, generally with center of said Tom Cole Road to an "x" cut in a concrete bridge;

THENCE continuing along the northerly line of the property described in Ordinance 2006-205, and further described in said Ordinance as North 89° 43' 13" East, a distance of 2,591.29 feet, generally with the center of said Tom Cole Road, to a point described in Ordinance 2006-205 as a 3/4 inch iron pin set at the northeast corner of the property described in Ordinance 2006-205, said point also being described in Ordinance 69-40 (Tract I) as the southeast corner of the David Davis Survey, Abstract 356;

THENCE northerly along the easterly line of the said David Davis Survey, said line also being the westerly line of the Wm. Wilburn Survey, Abstract 1419, along the present Denton city limit line as established by Ordinance 1969-40 (Tract I) a distance as described in Ordinance 69-40 as 2,642 feet to a point being the northeast corner of the said David Davis Survey;

THENCE westerly, along the present Denton city limit line as established by Ordinance 1969-40 (Tract I) along the northerly line of the said David Davis Survey and described in Ordinance 69-40 as a distance of 341 feet to a point for corner, said point described in Ordinance 69-40 (Tract I) as the southwest corner of the said Wm. Wilburn Survey;

THENCE northerly along the present Denton city limit line as established by Ordinance 1969-40 (Tract I) and along the westerly line of the said Wm. Wilburn Survey a distance of 1,853 feet to a point described in Ordinance 69-40 as the southeast corner of the M.H. Davis Survey, Abstract Number 377, and also described as the northeast corner of a tract of land conveyed to Malcolm M. Long by deed recorded in Volume 389, Page 389 of the Deed Records of Denton County, Texas, said point also being the southeast corner of an City of Denton annexation tract established and described by Ordinance 1983-90;

THENCE South 89° 28' 15" West, along the present Denton city limit line as established by Ordinance 1983-90 a distance of 2,359.92 feet (as described in Ordinance 83-90) to a point for a corner;

THENCE North 00° 05' 54" West, along the present Denton city limit line as established by Ordinance 1983-90, a distance of 600.48 feet (as described in Ordinance 83-90) to a point for a corner;

**Annexation Tract PAA1 (Page 2 of 2)**

THENCE West, along the present Denton city limit line as established by Ordinance 1983-90, a distance of 675.60 feet (as described in Ordinance 83-90) to a point for a corner lying in the middle of Hickory Creek;

THENCE North, along the present Denton city limit line as established by Ordinance 1983-90, and along the middle of Hickory Creek with its meanders to the center of Jim Christal Road (as described in Ordinance 83-90) to a point for a corner, said point also lying on the south line of a City of Denton annexation tract established and described by Ordinance 1986-48;

THENCE North  $89^{\circ} 55' 00''$  West with said Jim Christal Road, along the present Denton city limit line as established by Ordinance 1886-48, also being the southerly line of the E.A. Orr Survey, Abstract Number 983, a distance of 3,435 feet to a point for a corner, said point being the southwest corner of said Ordinance 1986-48 annexation tract;

THENCE South a distance of 30 feet to a point in the south right-of-way line of Jim Christal Road;

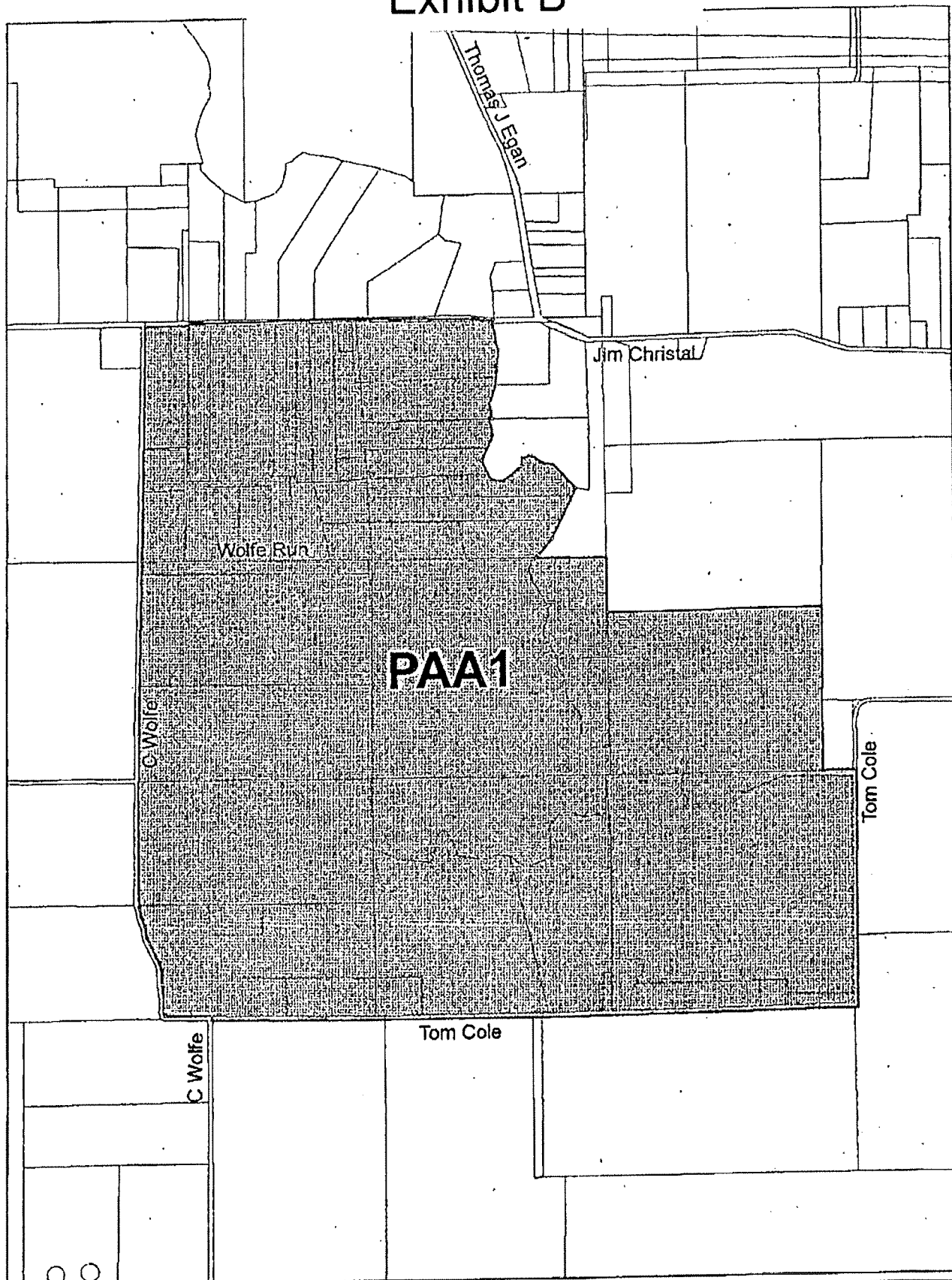
THENCE West, along the south right-of-way line of Jim Christal Road a distance of 475 feet to a point for corner, said point being the intersection of the south right-of-way of Jim Christal Road and the east right-of-way line of C. Wolfe Road;

THENCE in a southerly direction, along courses and distances of the easterly implied right-of-way line of C. Wolfe Road, a total distance of 7,875 to a point for corner, said point being the intersection of the east right-of-way line of C. Wolfe Road and the north right-of-way line of Tom Cole Road;

THENCE East, along the north right-of-way line of Tom Cole Road a distance of 500 feet to a point for corner;

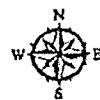
THENCE South, crossing Tom Cole Road midway, a distance of 25 feet to the POINT OF BEGINNING and containing 1,152 acres of land.

# EXHIBIT D



City of Denton, Texas  
**PAA1 - 1,158 Acres**

**FREESE  
& NICHOLS**



0 500 1,000 2,000 3,000 Feet

## **Exhibit “C”**



## **CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE 2016 NON-ANNEXATION AGREEMENT**

This Agreement is entered into pursuant to Sections 43.035 and 212.172 Tex. Local Gov't Code by and between the City of Denton, Texas (the "City") and John & Sandy Noles ("Owners"), the property owners of the hereinafter described property (the "Property") in Denton County, Texas, sometimes individually or collectively referred to as "Party" or "Parties":

Being 10.008 acres of land situated in the A. Miller Survey, Abstract 887, Denton County, Texas and being all of that certain called 10.00 acre tract as described in a deed from Lamar M. Lex, et ux to Brian Zimmerman, et ux dated September 3, 1997 and as recorded in Clerk's File Number 97-R-0062116, Real Property Records of Denton County, and being commonly known as *DCAD Property ID No. 173432 and 173433*.

### **RECITALS**

WHEREAS, pursuant to Tex. Loc. Gov't Code ch. 43, the City had previously given notice of its intent to institute annexation proceedings in 2010 and again in 2016 for an "Annexation Area" that includes the above-described Property which was and is subject to the provisions of §43.035, Tex. Loc. Gov't Code; and

WHEREAS, in accordance with State law, the City offered, and Owners accepted, a non-annexation development agreement contemplated by §§ 43.035 and 212.172, Tex. Loc. Gov't Code ("NAA"), in lieu of the City's annexation in 2010, as well as an extension of said NAA in lieu of the City's annexation in 2015 ("Extended NAA"), of all land in the Annexation Area not otherwise excluded by operation of State law; and

WHEREAS, Tex. Loc. Gov't Code §43.035 authorizes a property owner and a municipality to enter into an agreement pursuant to Tex. Loc. Gov't Code §212.172 for purposes of retaining land in the municipality's ETJ in exchange for the property owner's covenant not to develop the property and to authorize the municipality to apply development regulations not inconsistent with agricultural use; and

WHEREAS, the Denton County Appraisal District records show that the Property currently is appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or timber land pursuant to Tex. Tax Code chapter 23.C, D, or E; and

WHEREAS, based upon Owners' representations and City's investigation, it appears that the Property still meets the eligibility criteria of §43.035, Tex. Loc. Gov't Code, and the Tex. Tax Code; and

WHEREAS, the Extended NAA executed by City and Owners expired on March 1, 2016; and

WHEREAS, the City desires to allow the Property to remain in the City's extraterritorial jurisdiction ("ETJ") for the term of this 2016 non-annexation agreement (hereinafter, the "2016 NAA" or "Agreement"), which supersedes and replaces the NAA or Extended NAA previously executed by the Parties for all purposes, until such time as stated herein; and

WHEREAS, the Owners acknowledge and agree that if the 2016 NAA is not executed with the City within the time allotted, then the Owners have already received notice of the City's intent to annex the Property and the Property may be annexed upon the City's institution of annexation in April 2016; and

WHEREAS, Owners hereby accept this offer and agree to the terms of this 2016 NAA, as set forth herein, and Owners represent that it is their intention not to develop the Property during the term of this Agreement; and

WHEREAS, Owners and the City acknowledge that this Agreement between them is binding upon the City and the Owners and their respective successors and assigns for the term of the Agreement;

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

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

Section 1. Continuation of ETJ Status. The City guarantees the continuation of the extraterritorial status of the Property and agrees not to annex the Property for the term of this Agreement, as hereinafter defined, and any subsequent renewals as may be agreed upon by the Parties, subject, however, to the provisions of this Agreement.

Section 2. Development Plan. The Owners covenant and agree that use of the Property for the term of this Agreement and any extensions agreed to by the Parties shall be limited to farm-related and ranch-related uses and customary accessory uses, and single-family detached farm or ranch dwellings, provided that no single-family dwelling may be located or constructed on a lot smaller than five (5) acres unless the lot was created prior to the date of this Agreement. The property owner may apply to the City for division of the land subject to this Agreement into parcels, each of which is at least five (5) acres in size, for the purposes set forth in this section without being in violation of this Agreement. Such uses and activities constitute the development plan for the Property in satisfaction of Tex. Loc. Gov't Code section 212.172(b).

Section 3. Governing Regulations. The following City regulations shall apply to any development of the Property, as may hereafter be amended from time to time during the term of this Agreement, provided that the application of such regulations does not result in interference with the use of the land for agricultural, wildlife management or forestry purposes and does not prevent the continuation of a use established prior to the effective date of this Agreement and which remains lawful at the time the Agreement is executed:

- (1) Zoning standards contained in the Denton Development Code (“DDC”), as amended pursuant to the current Denton Plan, as amended, including but not limited to the (RD-5) Zoning District regulations, and standards incorporated therein;
- (2) The subdivision and development regulations contained within the Denton Development Code, as amended, together with applicable Design Criteria Manuals (including construction, drainage, site design, solid waste, transportation, tree protection standards, and water/wastewater), Denton Mobility Plan and other approved Master Plans of the City of Denton, Texas, and the most recent North Central Texas Council of Governments Standard Specifications for Public Works Construction, North Central Texas (NCTCOG Manual);
- (3) Denton building codes, as adopted by the City and currently contained within Denton Code Chapters 17, 28 and 29, and DDC Subchapter 24, along with local amendments, both as from time to time amended, and more particularly set forth as follows:
  - a. International Building Code, 2012 Edition with local amendments;
  - b. International Residential Code, 2012 Edition with Appendix G and local amendments;
  - c. The International Fire Code, 2012 Edition with local amendments;
  - d. International Plumbing Code, 2012 Edition with local amendments;
  - e. International Fuel Gas Code, 2012 Edition with local amendments;
  - f. International Mechanical Code, 2012 Edition with local amendments;
  - g. Code of Ordinances Chapter 17, Denton Property Maintenance Code, as amended;
  - h. International Energy Conservation Code, 2012 Edition with regional amendments;
  - i. National Electric Code, 2012 Edition with local amendments;
  - j. National Electric Safety Code, 2012 Edition, with regional amendments;
  - k. Minimum housing and building standards, Denton Code §§28-383 – 437 and §§17-141 – 210, as amended and as applicable; and
  - l. Irrigation Standards, Denton Code §§28-441 – 457;
- (4) Sign regulations, as contained within Chapter 33, Denton Code of Ordinances, as amended;
- (5) Applicable water and wastewater connection, construction and on-site operation requirements, contained within Chapter 26 of the Denton Code of Ordinances, as amended, and Subchapters 16 and 21 of the DDC, as amended, the Denton Water and Wastewater Criteria Manual, as amended, and as supplemented by the Texas Water Code, as amended, Texas Natural Resources Code, as amended, Texas Utilities Code, as amended, and applicable administrative standards of the Texas Commission on Environmental Quality, as amended;
- (6) Applicable Flood Protection, Drainage and related standards, as contained within Chapter 30 of the Denton Code, as amended, subchapters 17 through 19 of the DDC,

as amended, the Denton Drainage Criteria Manual, as amended, and as supplemented by requirements of the Texas Water Code, as amended, Texas Natural Resources Code, as amended, applicable administrative standards of the Texas Commission on Environmental Quality, as amended, and applicable administrative standards of the Federal Emergency Management Administration, as amended; and

- (7) Gas Well platting, drilling and production standards, as contained in the most recently amended Gas Well Ordinance and subchapter 22 of the Denton Development Code, as amended and as applicable, and as supplemented by requirements of the Texas Utilities Code, the Texas Natural Resources Code, the Texas Water Code, and applicable administrative standards of the Texas Railroad Commission and Texas Commission on Environmental Quality, as amended.

Section 4. Development Plan to Remain in Effect. Following expiration or termination of this Agreement for any reason, the Development Plan set forth in Section 2 shall remain in effect for a period of 180 calendar days thereafter, or until the effective date of the annexation and permanent zoning of the Property, whichever first occurs. The Parties covenant and agree that the City may deny any development application or plan of development that is submitted to the City for the Property during such period if such application or plan is inconsistent with the Development Plan. The Owners expressly waive any vested rights that might otherwise arise under local or state law, or by common law, from the submittal of such inconsistent development application. The Owners further agree that no use commenced or completed on the Property that is inconsistent with the development plan shall be considered established or in existence prior to the expiration of the 180-day period during which the Development Plan is in effect.

Section 5. Agreement Deemed Void in Part; Voluntary Annexation.

(A) If an Owner files any application or plan of development for or otherwise commences development of any portion of the Property inconsistent with the Development Plan provided in Section 2, sections 1 and 3 of this Agreement shall thereupon become null and void.

(B) Upon expiration, or upon breach or termination of this Agreement for any reason, or at any point thereafter, the City may initiate annexation of the Property pursuant to Tex. Loc. Gov't Code subchapter C-1, or other such other provisions governing voluntary annexation of land as may then exist. Owners expressly and irrevocably consent to annexation of the Property under such circumstances. Owners further agree that such annexation by the City shall be deemed voluntary, and not subject to the requirements and procedures for an annexation plan, as required by Tex. Loc. Gov't Code section 43.052, or successor statute. This section shall survive any termination of this agreement.

Section 6. Notice of Sale. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give 30 days written notice of this Agreement to the prospective purchaser or grantee. A copy of the notice shall be forwarded to the City at the following address:

City of Denton, Texas  
ATTN: Director of Planning and Development  
221 N. Elm Street  
Denton, TX 76201

Section 7. Recording. This Agreement is to run with the Property and be recorded in the real property records, Denton County, Texas.

Section 8. Severability. Invalidity of any provision of this Agreement by judgment or court order shall not invalidate any of the remaining provisions which shall remain in full force and effect.

Section 9. Remedies. This Agreement may be enforced by either Owner or the City 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. Entry into this Agreement by Owner waives no rights as to matters not addressed in this Agreement.

Section 10. 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 properties covered herein pursuant to Section 4.

Section 11. Venue. Venue for this Agreement shall be in Denton County, Texas.

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

Section 13. Term and Extension. Unless extended by mutual agreement of the Parties, this Agreement shall terminate on August 1, 2020. The Effective Date of the Agreement shall be the date the Agreement is executed by the City. The Term may be extended upon mutual agreement of the Parties.

Section 14. Waiver. The City offered this Agreement to the Owners, which Owners have accepted, as a result of the undoing of the 2015 annexation of the Property due to a clerical mistake committed by the City during the annexation procedural process. With regard to the procedures followed by the City relative to the 2015 annexation of the Property and to the rest of the land area included within PAA-1, Owners hereby waive any right to assert any claims or lawsuits against the City based upon such procedures being invalid, improper or unlawful in any manner whatsoever. In consideration of Owners' waiver, the City waives any right to assert any claims or lawsuits against Owners relating to the annexation of the Property.

Section 15. Survival of Covenants. The covenants in Sections 2 and 4, as well as the consent provisions in Section 5B, shall survive termination of this Agreement, together with any other provisions, as may be necessary for the implementation of those sections.

Owners

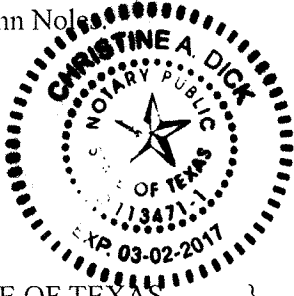
John Noles  
John Noles  
Sandy Noles  
Sandy Noles

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
City Manager, Deputy City Manager, or  
Designated Representative

THE STATE OF TEXAS        }  
  
COUNTY OF DENTON        }

This instrument was acknowledged before me on the 5 day of August, 2016, by John Noles.



Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS        }  
  
COUNTY OF DENTON        }

This instrument was acknowledged before me on the 5 day of August, 2016, by Sandy Noles.



Christine A. Dick  
Notary Public, State of Texas

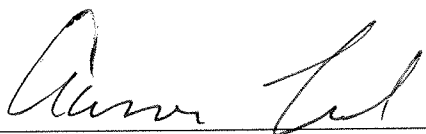
THE STATE OF TEXAS        }

COUNTY OF DENTON        }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, City Manager/Deputy City Manager/Designated Representative, on behalf of the City of Denton, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 

**After recording return to:**  
**Jennifer Walters**  
**City Secretary**  
**215 E. McKinney**  
**Denton, TX 76201**

## CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE 2016 NON-ANNEXATION AGREEMENT

This Agreement is entered into pursuant to Sections 43.035 and 212.172 Tex. Local Gov't Code by and between the City of Denton, Texas (the "City") and Norberto Ruiz, Maria de Jesus Ruiz, Jose Alfredo Pena and Silvia Ruiz Pena ("Owners"), the property owners of the hereinafter described property (the "Property") in Denton County, Texas, sometimes individually or collectively referred to as "Party" or "Parties":

Being 5.136 acres of land, more or less, situated in the A. Miller Survey, Abstract No. 887 and the Gibson Myers Survey, Abstract No. 843, Denton County, Texas, and being more fully described in that certain Warranty Deed with Vendor's Lien dated August 6, 2001 from Delbert H. Wiley and Ruth A. Wiley to Norberto Ruiz, Maria de Jesus Ruiz, Jose Alfredo Pena and Silvia Ruiz Pena, filed for record on August 9, 2001 and recorded in Volume 4897, Page 2123 of the Real Property Records of Denton County, Texas. Said 5.136 acres of land, more or less, is commonly known as *DCAD Property ID 36651 and DCAD Property 301899*.

SAVE AND EXCEPT: A 2.567 acre tract of land, more or less, situated in the Gibson Meyers Survey, Abstract No. 843, Denton County, Texas, and being more fully described in that certain Warranty Deed dated June 15, 2006 from Norberto Ruiz and Maria de Jesus A. Ruiz, husband and wife, to Jose Alfredo Pena and Silvia Ruiz Pena, husband and wife, filed for record on June 16, 2006 and recorded in Instrument No. 2006-72743 of the Real Property Records of Denton County, Texas. Said 2.567 acres of land, more or less, is commonly known as *DCAD Property ID 301899*.

### RECITALS

WHEREAS, pursuant to Tex. Loc. Gov't Code ch. 43, the City had previously given notice of its intent to institute annexation proceedings in 2010 and again in 2016 for an "Annexation Area" that includes the above-described Property which was and is subject to the provisions of §43.035, Tex. Loc. Gov't Code; and

WHEREAS, in accordance with State law, the City offered, and Owners accepted, a non-annexation development agreement contemplated by §§ 43.035 and 212.172, Tex. Loc. Gov't Code ("NAA"), in lieu of the City's annexation in 2010, as well as an extension of said NAA in lieu of the City's annexation in 2015 ("Extended NAA"), of all land in the Annexation Area not otherwise excluded by operation of State law; and

WHEREAS, Tex. Loc. Gov't Code §43.035 authorizes a property owner and a municipality to enter into an agreement pursuant to Tex. Loc. Gov't Code §212.172 for purposes of retaining land in the municipality's ETJ in exchange for the property owner's covenant not to develop the property and to authorize the municipality to apply development regulations not inconsistent with agricultural use; and



WHEREAS, the Denton County Appraisal District records show that the Property currently is appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or timber land pursuant to Tex. Tax Code chapter 23.C, D, or E; and

WHEREAS, based upon Owners' representations and City's investigation, it appears that the Property still meets the eligibility criteria of §43.035, Tex. Loc. Gov't Code, and the Tex. Tax Code; and

WHEREAS, the Extended NAA executed by City and Owners expired on March 1, 2016; and

WHEREAS, the City desires to allow the Property to remain in the City's extraterritorial jurisdiction ("ETJ") for the term of this 2016 non-annexation agreement (hereinafter, the "2016 NAA" or "Agreement"), which supersedes and replaces the NAA or Extended NAA previously executed by the Parties for all purposes, until such time as stated herein; and

WHEREAS, the Owners acknowledge and agree that if the 2016 NAA is not executed with the City within the time allotted, then the Owners have already received notice of the City's intent to annex the Property and the Property may be annexed upon the City's institution of annexation in April 2016; and

WHEREAS, Owners hereby accept this offer and agree to the terms of this 2016 NAA, as set forth herein, and Owners represent that it is their intention not to develop the Property during the term of this Agreement; and

WHEREAS, Owners and the City acknowledge that this Agreement between them is binding upon the City and the Owners and their respective successors and assigns for the term of the Agreement;

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

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

Section 1. Continuation of ETJ Status. The City guarantees the continuation of the extraterritorial status of the Property and agrees not to annex the Property for the term of this Agreement, as hereinafter defined, and any subsequent renewals as may be agreed upon by the Parties, subject, however, to the provisions of this Agreement.

Section 2. Development Plan. The Owners covenant and agree that use of the Property for the term of this Agreement and any extensions agreed to by the Parties shall be limited to farm-related and ranch-related uses and customary accessory uses, and single-family detached farm or ranch dwellings, provided that no single-family dwelling may be located or constructed on a lot smaller than five (5) acres unless the lot was created prior to the date of this Agreement.

The property owner may apply to the City for division of the land subject to this Agreement into parcels, each of which is at least five (5) acres in size, for the purposes set forth in this section without being in violation of this Agreement. Such uses and activities constitute the development plan for the Property in satisfaction of Tex. Loc. Gov't Code section 212.172(b).

Section 3. Governing Regulations. The following City regulations shall apply to any development of the Property, as may hereafter be amended from time to time during the term of this Agreement, provided that the application of such regulations does not result in interference with the use of the land for agricultural, wildlife management or forestry purposes and does not prevent the continuation of a use established prior to the effective date of this Agreement and which remains lawful at the time the Agreement is executed:

- (1) Zoning standards contained in the Denton Development Code (“DDC”), as amended pursuant to the current Denton Plan, as amended, including but not limited to the (RD-5) Zoning District regulations, and standards incorporated therein;
- (2) The subdivision and development regulations contained within the Denton Development Code, as amended, together with applicable Design Criteria Manuals (including construction, drainage, site design, solid waste, transportation, tree protection standards, and water/wastewater), Denton Mobility Plan and other approved Master Plans of the City of Denton, Texas, and the most recent North Central Texas Council of Governments Standard Specifications for Public Works Construction, North Central Texas (NCTCOG Manual);
- (3) Denton building codes, as adopted by the City and currently contained within Denton Code Chapters 17, 28 and 29, and DDC Subchapter 24, along with local amendments, both as from time to time amended, and more particularly set forth as follows:
  - a. International Building Code, 2012 Edition with local amendments;
  - b. International Residential Code, 2012 Edition with Appendix G and local amendments;
  - c. The International Fire Code, 2012 Edition with local amendments;
  - d. International Plumbing Code, 2012 Edition with local amendments;
  - e. International Fuel Gas Code, 2012 Edition with local amendments;
  - f. International Mechanical Code, 2012 Edition with local amendments;
  - g. Code of Ordinances Chapter 17, Denton Property Maintenance Code, as amended;
  - h. International Energy Conservation Code, 2012 Edition with regional amendments;
  - i. National Electric Code, 2012 Edition with local amendments;
  - j. National Electric Safety Code, 2012 Edition, with regional amendments;
  - k. Minimum housing and building standards, Denton Code §§28-383 – 437 and §§17-141 – 210, as amended and as applicable; and
  - l. Irrigation Standards, Denton Code §§28-441 – 457;
- (4) Sign regulations, as contained within Subchapter 15 of the DDC, as amended;

- (5) Applicable water and wastewater connection, construction and on-site operation requirements, contained within Chapter 26 of the Denton Code of Ordinances, as amended, and Subchapters 16 and 21 of the DDC, as amended, the Denton Water and Wastewater Criteria Manual, as amended, and as supplemented by the Texas Water Code, as amended, Texas Natural Resources Code, as amended, Texas Utilities Code, as amended, and applicable administrative standards of the Texas Commission on Environmental Quality, as amended;
- (6) Applicable Flood Protection, Drainage and related standards, as contained within Chapter 30 of the Denton Code, as amended, subchapters 17 through 19 of the DDC, as amended, the Denton Drainage Criteria Manual, as amended, and as supplemented by requirements of the Texas Water Code, as amended, Texas Natural Resources Code, as amended, applicable administrative standards of the Texas Commission on Environmental Quality, as amended, and applicable administrative standards of the Federal Emergency Management Administration, as amended; and
- (7) Gas Well platting, drilling and production standards, as contained in the most recently amended Gas Well Ordinance and subchapter 22 of the Denton Development Code, as amended and as applicable, and as supplemented by requirements of the Texas Utilities Code, the Texas Natural Resources Code, the Texas Water Code, and applicable administrative standards of the Texas Railroad Commission and Texas Commission on Environmental Quality, as amended.

Section 4. Development Plan to Remain in Effect. Following expiration or termination of this Agreement for any reason, the Development Plan set forth in Section 2 shall remain in effect for a period of 180 calendar days thereafter, or until the effective date of the annexation and permanent zoning of the Property, whichever first occurs. The Parties covenant and agree that the City may deny any development application or plan of development that is submitted to the City for the Property during such period if such application or plan is inconsistent with the Development Plan. The Owners expressly waive any vested rights that might otherwise arise under local or state law, or by common law, from the submittal of such inconsistent development application. The Owners further agree that no use commenced or completed on the Property that is inconsistent with the development plan shall be considered established or in existence prior to the expiration of the 180-day period during which the Development Plan is in effect.

Section 5. Agreement Deemed Void in Part; Voluntary Annexation.

(A) If an Owner files any application or plan of development for or otherwise commences development of any portion of the Property inconsistent with the Development Plan provided in Section 2, sections 1 and 3 of this Agreement shall thereupon become null and void.

(B) Upon expiration, or upon breach or termination of this Agreement for any reason, the City may initiate annexation of the Property pursuant to Tex. Loc. Gov't Code subchapter C-1, or other such other provisions governing voluntary annexation of land as may then exist. Owners expressly and irrevocably consent to annexation of the Property under such circumstances. Owners further agree that such annexation by the City shall be deemed

voluntary, and not subject to the requirements and procedures for an annexation plan, as required by Tex. Loc. Gov't Code section 43.052, or successor statute.

Section 6. Notice of Sale. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give 30 days written notice of this Agreement to the prospective purchaser or grantee. A copy of the notice shall be forwarded to the City at the following address:

City of Denton, Texas  
ATTN: Director of Planning and Development  
221 N. Elm Street  
Denton, TX 76201

Section 7. Recording. This Agreement is to run with the Property and be recorded in the real property records, Denton County, Texas.

Section 8. Severability. Invalidation of any provision of this Agreement by judgment or court order shall not invalidate any of the remaining provisions which shall remain in full force and effect.

Section 9. Remedies. This Agreement may be enforced by either Owner or the City 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. Entry into this Agreement by Owner waives no rights as to matters not addressed in this Agreement.

Section 10. 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 properties covered herein pursuant to Section 4.

Section 11. Venue. Venue for this Agreement shall be in Denton County, Texas.

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

Section 13. Term and Extension. Unless extended by mutual agreement of the Parties, this Agreement shall terminate on August 1, 2020. The Effective Date of the Agreement shall be the date the Agreement is executed by the City. The Term may be extended upon mutual agreement of the Parties.

Section 14. Waiver. The City offered this Agreement to the Owners, which Owners have accepted, as a result of the undoing of the 2015 annexation of the Property due to a clerical mistake committed by the City during the annexation procedural process. With regard to the procedures followed by the City relative to the 2015 annexation of the Property and to the rest of the land area included within PAA-1, Owners hereby waive any right to assert any claims or lawsuits against the City based upon such procedures being invalid, improper or unlawful in any

manner whatsoever. In consideration of Owners' waiver, the City waives any right to assert any claims or lawsuits against Owners relating to the annexation of the Property.

Section 15. Survival of Covenants. The covenants in Sections 2 and 4 shall survive termination of this Agreement, together with any other provisions, as may be necessary for the implementation of those sections.

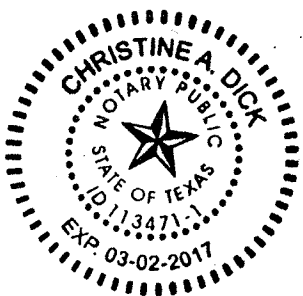
Owners  
Norberto Ruiz  
Norberto Ruiz  
Maria de Jesus A. Ruiz  
Maria de Jesus A. Ruiz  
Jose Alfredo Pena  
Alfredo Pena  
Silvia Pena  
Silvia Pena

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
City Manager, Deputy City Manager, or  
Designated Representative

THE STATE OF TEXAS        }  
  
COUNTY OF DENTON        }

This instrument was acknowledged before me on the 29 day of July, 2016, by Norberto Ruiz.

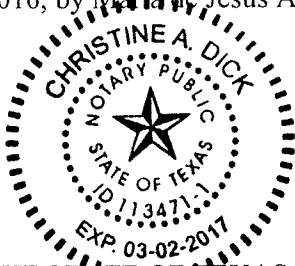


Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 29<sup>th</sup> day of July, 2016, by ~~Maria de Jesus A. Ruiz.~~



Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 29<sup>th</sup> day of July, 2016, by ~~Alfredo Pena.~~

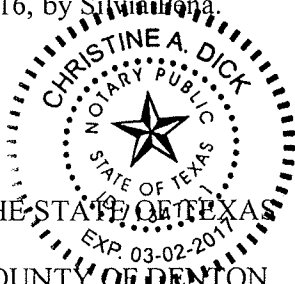


Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 29<sup>th</sup> day of July, 2016, by ~~Silvia Pena.~~



Christine A. Dick  
Notary Public, State of Texas

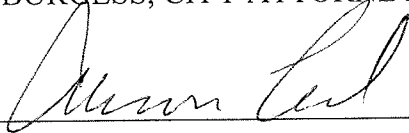
THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, City \_\_\_\_\_ Manager/Deputy City Manager/Designated Representative, on behalf of the City of Denton, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 

After recording return to:

Jennifer Walters  
City Secretary  
215 E. McKinney  
Denton, TX 76201

## CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE 2016 NON-ANNEXATION AGREEMENT

This Agreement is entered into pursuant to Sections 43.035 and 212.172 Tex. Local Gov't Code by and between the City of Denton, Texas (the "City") and Jose Alfredo Pena & Silvia Ruiz Pena ("Owners"), the property owners of the hereinafter described property (the "Property") in Denton County, Texas, sometimes individually or collectively referred to as "Party" or "Parties":

Being 2.567 acres of land, more or less, situated in the Gibson Meyers Survey, Abstract No. 8443, Denton County, Texas, and being more fully described in that certain Warranty Deed dated June 15, 2006 from Norberto Ruiz and Maria De Jesus A. Ruiz, husband and wife to Jose Alfredo Pena and Silvia Ruiz Pena, husband and wife, filed for record on June 16, 2006 and recorded in Instrument No. 2006-72743 of the Real Property Records of Denton County, Texas. Said 2.567 acres of land, more or less, is commonly known as *DCAD Property ID 301899*.

### RECITALS

WHEREAS, pursuant to Tex. Loc. Gov't Code ch. 43, the City had previously given notice of its intent to institute annexation proceedings in 2010 and again in 2016 for an "Annexation Area" that includes the above-described Property which was and is subject to the provisions of §43.035, Tex. Loc. Gov't Code; and

WHEREAS, in accordance with State law, the City offered, and Owners accepted, a non-annexation development agreement contemplated by §§ 43.035 and 212.172, Tex. Loc. Gov't Code ("NAA"), in lieu of the City's annexation in 2010, as well as an extension of said NAA in lieu of the City's annexation in 2015 ("Extended NAA"), of all land in the Annexation Area not otherwise excluded by operation of State law; and

WHEREAS, Tex. Loc. Gov't Code §43.035 authorizes a property owner and a municipality to enter into an agreement pursuant to Tex. Loc. Gov't Code §212.172 for purposes of retaining land in the municipality's ETJ in exchange for the property owner's covenant not to develop the property and to authorize the municipality to apply development regulations not inconsistent with agricultural use; and

WHEREAS, the Denton County Appraisal District records show that the Property currently is appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or timber land pursuant to Tex. Tax Code chapter 23.C, D, or E; and

WHEREAS, based upon Owners' representations and City's investigation, it appears that the Property still meets the eligibility criteria of §43.035, Tex. Loc. Gov't Code, and the Tex. Tax Code; and

WHEREAS, the Extended NAA executed by City and Owners expired on March 1, 2016; and



WHEREAS, the City desires to allow the Property to remain in the City's extraterritorial jurisdiction ("ETJ") for the term of this 2016 non-annexation agreement (hereinafter, the "2016 NAA" or "Agreement"), which supersedes and replaces the NAA or Extended NAA previously executed by the Parties for all purposes, until such time as stated herein; and

WHEREAS, the Owners acknowledge and agree that if the 2016 NAA is not executed with the City within the time allotted, then the Owners have already received notice of the City's intent to annex the Property and the Property may be annexed upon the City's institution of annexation in April 2016; and

WHEREAS, Owners hereby accept this offer and agree to the terms of this 2016 NAA, as set forth herein, and Owners represent that it is their intention not to develop the Property during the term of this Agreement; and

WHEREAS, Owners and the City acknowledge that this Agreement between them is binding upon the City and the Owners and their respective successors and assigns for the term of the Agreement;

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

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

Section 1. Continuation of ETJ Status. The City guarantees the continuation of the extraterritorial status of the Property and agrees not to annex the Property for the term of this Agreement, as hereinafter defined, and any subsequent renewals as may be agreed upon by the Parties, subject, however, to the provisions of this Agreement.

Section 2. Development Plan. The Owners covenant and agree that use of the Property for the term of this Agreement and any extensions agreed to by the Parties shall be limited to farm-related and ranch-related uses and customary accessory uses, and single-family detached farm or ranch dwellings, provided that no single-family dwelling may be located or constructed on a lot smaller than five (5) acres unless the lot was created prior to the date of this Agreement. The property owner may apply to the City for division of the land subject to this Agreement into parcels, each of which is at least five (5) acres in size, for the purposes set forth in this section without being in violation of this Agreement. Such uses and activities constitute the development plan for the Property in satisfaction of Tex. Loc. Gov't Code section 212.172(b).

Section 3. Governing Regulations. The following City regulations shall apply to any development of the Property, as may hereafter be amended from time to time during the term of this Agreement, provided that the application of such regulations does not result in interference with the use of the land for agricultural, wildlife management or forestry purposes and does not

prevent the continuation of a use established prior to the effective date of this Agreement and which remains lawful at the time the Agreement is executed:

- (1) Zoning standards contained in the Denton Development Code (“DDC”), as amended pursuant to the current Denton Plan, as amended, including but not limited to the (RD-5) Zoning District regulations, and standards incorporated therein;
- (2) The subdivision and development regulations contained within the Denton Development Code, as amended, together with applicable Design Criteria Manuals (including construction, drainage, site design, solid waste, transportation, tree protection standards, and water/wastewater), Denton Mobility Plan and other approved Master Plans of the City of Denton, Texas, and the most recent North Central Texas Council of Governments Standard Specifications for Public Works Construction, North Central Texas (NCTCOG Manual);
- (3) Denton building codes, as adopted by the City and currently contained within Denton Code Chapters 17, 28 and 29, and DDC Subchapter 24, along with local amendments, both as from time to time amended, and more particularly set forth as follows:
  - a. International Building Code, 2012 Edition with local amendments;
  - b. International Residential Code, 2012 Edition with Appendix G and local amendments;
  - c. The International Fire Code, 2012 Edition with local amendments;
  - d. International Plumbing Code, 2012 Edition with local amendments;
  - e. International Fuel Gas Code, 2012 Edition with local amendments;
  - f. International Mechanical Code, 2012 Edition with local amendments
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- (4) Sign regulations, as contained within Subchapter 15 of the DDC, as amended;
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- (7) Gas Well platting, drilling and production standards, as contained in the most recently amended Gas Well Ordinance and subchapter 22 of the Denton Development Code, as amended and as applicable, and as supplemented by requirements of the Texas Utilities Code, the Texas Natural Resources Code, the Texas Water Code, and applicable administrative standards of the Texas Railroad Commission and Texas Commission on Environmental Quality, as amended.

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(A) If an Owner files any application or plan of development for or otherwise commences development of any portion of the Property inconsistent with the Development Plan provided in Section 2, sections 1 and 3 of this Agreement shall thereupon become null and void.

(B) Upon expiration, or upon breach or termination of this Agreement for any reason, the City may initiate annexation of the Property pursuant to Tex. Loc. Gov't Code subchapter C-1, or other such other provisions governing voluntary annexation of land as may then exist. Owners expressly and irrevocably consent to annexation of the Property under such circumstances. Owners further agree that such annexation by the City shall be deemed voluntary, and not subject to the requirements and procedures for an annexation plan, as required by Tex. Loc. Gov't Code section 43.052, or successor statute.

Section 6. Notice of Sale. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give 30 days written notice of this Agreement to the prospective purchaser or grantee. A copy of the notice shall be forwarded to the City at the following address:

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ATTN: Director of Planning and Development  
221 N. Elm Street  
Denton, TX 76201

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Section 14. Waiver. The City offered this Agreement to the Owners, which Owners have accepted, as a result of the undoing of the 2015 annexation of the Property due to a clerical mistake committed by the City during the annexation procedural process. With regard to the procedures followed by the City relative to the 2015 annexation of the Property and to the rest of the land area included within PAA-1, Owners hereby waive any right to assert any claims or lawsuits against the City based upon such procedures being invalid, improper or unlawful in any manner whatsoever. In consideration of Owners' waiver, the City waives any right to assert any claims or lawsuits against Owners relating to the annexation of the Property.

Section 15. Survival of Covenants. The covenants in Sections 2 and 4 shall survive termination of this Agreement, together with any other provisions, as may be necessary for the implementation of those sections.

Owners

Jose Alfredo Pena  
Jose Alfredo Pena

Silvia Ruiz Pena  
Silvia Ruiz Pena

THE CITY OF DENTON, TEXAS

By: \_\_\_\_\_  
City Manager, Deputy City Manager, or  
Designated Representative

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 29<sup>th</sup> day of July,  
2016, by Jose Alfredo Pena.



Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 29<sup>th</sup> day of July,  
2016, by Silvia Ruiz Pena.



Christine A. Dick  
Notary Public, State of Texas

THE STATE OF TEXAS        }

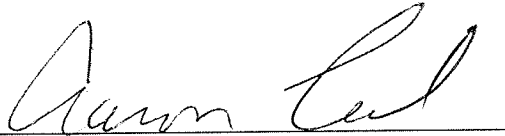
COUNTY OF DENTON        }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_, City Manager/Deputy City  
Manager/Designated Representative, on behalf of the City of Denton, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: \_\_\_\_\_



**After recording return to:**

**Jennifer Walters  
City Secretary  
215 E. McKinney  
Denton, TX 76201**