EF/mb
01/09/2014
Item No. 5B

AN ORDINANCE 2014-01-09-0003

AUTHORIZING THE PLANNING DIRECTOR TO EXECUTE DEVELOPMENT AGREEMENTS GUARANTEEING THE CONTINUED EXTRATERRITORIAL STATUS OF CROSS TIMBERS RENTAL PROPERTIES, LTD. PROPERTY WHICH IS APPRAISED FOR AD VALOREM TAX PURPOSES AS AGRICULTURAL, WILDLIFE MANAGEMENT OR TIMBER USE FOR A PERIOD OF 10 YEARS BETWEEN THE CITY OF SAN ANTONIO AND PROPERTY OWNER WITHIN THE PROPOSED LIMITED PURPOSE ANNEXATION AREA DUE TO EXCEPTIONAL CIRCUMSTANCES.

* * * * *

WHEREAS, on January 9, 2014 the City of San Antonio initiated the limited purpose annexation for the area known as the "South San Antonio Proposed Limited Purpose Annexation Area" for limited purposes; and

WHEREAS, Texas Local Government Code Section 43.035 requires the City of San Antonio to offer a development agreement in lieu of annexation to owners of property appraised for ad valorem tax purposes as land for agriculture or wildlife management use under Subchapter C or D, Chapter 23, Texas Tax Code, or as timber land under Subchapter E of that chapter; and

WHEREAS, notices and agreements were sent to property owners by certified mail and notarized agreements to be returned to the Planning and Community Development Department, postmarked no later than December 30, 2013, or hand delivered to 1400 S. Flores no later than January 2, 2014 (see attached **Exhibit 1 for Agreement)**; and

WHEREAS, the Cross Timbers property has exceptional circumstances, to wit, the necessity to construct at least one home on the subject property that will be used in conjunction with the operation of its business and such circumstances necessitate the consideration and approval of the unique development agreement; and

WHEREAS, the development agreement will guarantee the continued extraterritorial status of the property which is appraised for ad valorem tax purposes as agricultural, wildlife management or timber use for a period of 10 years between the City of San Antonio and property owner within the proposed Limited Purpose Annexation area; and

WHEREAS, Section 43.035 authorizes the development agreements to extend regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management or timber use and if the landowner declines to make the agreement or is non-responsive, the city may annex the property; and

WHEREAS, a public hearing was held on January 8, 2014 by the Planning Commission allowing all interested citizens to be heard; and

WHEREAS, the City Council has considered all salient facts and recommendations of the Planning and Community Development staff and finds that the best interest of the City of San Antonio will be served by approving the Development Agreements in Lieu of Annexation with property owners who have duly executed said Development Agreement; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the Development Agreement In Lieu of Annexation between the City of San Antonio and Cross Timbers Rental Properties, Ltd., a copy of the development agreement is attached hereto and incorporated herein, as **Exhibit "1"**.

SECTION 2. The City Manager and her designees are hereby authorized and directed to execute the Agreement and to take any actions necessary to implement this ordinance, including but not limited to the execution of appropriate documents.

SECTION 3. This Ordinance shall be effective from and after **January 19, 2014**.

PASSED AND APPROVED this 9th day of January, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**5B (in consent vote: 4, 5, 5A, 5B, 5C)**
Date:	01/09/2014
Time:	10:26:08 AM
Vote Type:	Motion to Appr w Cond
Description:	An Ordinance authorizing the Planning Director to execute Development Agreements guaranteeing the continued extraterritorial status of properties with exceptional circumstances which are appraised for ad valorem tax purposes as agricultural, wildlife management or timber use for a period of 10 years between the City of San Antonio and multiple property owners within the proposed Limited Purpose Annexation area.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5			x			
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

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 SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEVELOPMENT AGREEMENT
TEXAS LOCAL GOVERNMENT CODE §§ 43.035 & 212.172

THIS AGREEMENT is made and effective this _____ day of _____, 2013, by and between the CITY OF SAN ANTONIO, TEXAS, a home rule municipal corporation of the State of Texas located within Bexar County, Texas (hereinafter referred to as "City") and CROSS TIMBERS RENTAL PROPERTIES, LTD. hereinafter called "the Owner," whether one or more natural persons or other legal entities, and is as follows:

WHEREAS, the Owner's property, consists of 137.889 acres, more or less and is described on the attached Exhibit "A" and incorporated herein by reference as if set forth in full, hereinafter called "the Property," is located within the extraterritorial jurisdiction of the City and is subject to municipal annexation; and

WHEREAS, the Property is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, TEXAS TAX CODE, or as timber land under Subchapter E of that chapter;

WHEREAS, the TEXAS LOCAL GOVERNMENT CODE §43.035 provides that the City may not annex property appraised for such purposes unless it first offers to make a development agreement with the Owner pursuant to such section; and

WHEREAS, the City has notified the Owner of its intent to annex the Property and has offered to enter into this Development Agreement guaranteeing the continued extraterritorial status of the Property upon the terms and conditions hereinafter provided upon the annexation of the Property; and

WHEREAS, the City desires that any development of the Property be in conformance with the City's Comprehensive plan; and

WHEREAS, the Owner desires to enter into this Development Agreement to secure and guarantee the continued extraterritorial status of the Property:

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

1. **Identification of the Property.** The Property consists of 137.889 acres and is the same property as described in the Special Warranty Deed to Cross Timbers Rental Properties, Ltd. recorded at Volume 7258, Page 1348, Official Real Property Records of Bexar County, Texas and described by metes and bounds on the attached **Exhibit A**,

EXHIBIT 1

incorporated herein by reference as if set forth in full and described as the property owned by the Owner within the boundaries of the area, more particularly described as CB 4126 P-10, P-12A CB 4128 P-1, P-lA, P-1J CB 4130 P-2 CB 5570A LOT 126 which is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber use.

2. Continuation of Extraterritorial Status. The Property shall not be annexed and shall remain in the extraterritorial jurisdiction of the City as long as this Development Agreement is in effect, the Property is not subdivided (meaning that the Property is divided in any manner that would require a plat of the subdivision or a related development document to be filed with any governmental entity having jurisdiction over the Property), the Property continues to be appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, TEXAS TAX CODE, or as timber land under Subchapter E of that chapter and the Owner is not in violation of this Development Agreement. This provision does not prohibit annexation with the written consent of the Owner.

3. Annexation Upon Subdivision or Change of Use. This Development Agreement is void if the Owner fails to continue to use the Property solely for agricultural, wildlife management or timber use and subdivides or develops the Property in any manner that would require a plat of the subdivision or a related development document to be filed with any governmental entity having jurisdiction over the Property.

Existing legal residential uses may continue. No new residential development shall be permitted, except for the addition of living space to an existing legal residence, the addition of accessory residential structures such as garages and carports where the total combined floor area of all accessory structures does not exceed 2,500 feet, and an accessory dwelling (either attached or detached) that does not exceed 1,200 square feet in living area. Notwithstanding the foregoing, the Owner is permitted for its use to construct new buildings such as barns, sheds and auxiliary buildings. Owner shall also be permitted to construct no more than two (2) single-family residential dwellings on the Property without losing the agricultural, wildlife management or timber use.

If the Property ceases to be appraised for agricultural, wildlife management or timber use or if the Owner subdivides the Property as described in this section, then the City may annex the Property, either in whole or in part, and such annexation shall be deemed to be with the consent of the Owner.

TEN (10) RWH DEC 17, 2019

4. Term. This Agreement shall terminate ~~fifteen (15)~~ years after the effective date of this Development Agreement or upon annexation of the Property in conformance with this agreement and/or Section 43.035 of the TEXAS LOCAL GOVERNMENT CODE, or upon the City's decision not to annex the Property in any manner whichever comes first; however, if the City decides not to annex the Property, then this Agreement shall be null and void. Upon termination of the Agreement, the City may attempt to annex the Property, either in whole or in part or for full or limited purposes.

So long as the Property remains either under annex or has been annexed and appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, TEXAS TAX CODE, or as timber land under

Subchapter E of that chapter or no development of the Property has begun or is planned, the Owner may extend the term of this Development Agreement by requesting such extension in writing, and subject to approval by the City Council, as evidenced by passage of an ordinance, which ordinance shall not be unreasonably withheld or delayed.

5. Agreement a Covenant Running With the Land. This Agreement shall be recorded in the Real Property Records of Bexar County, Texas and shall be a covenant running with the land binding upon all parties having any right, title or interest in the Property or any part thereof, including their heirs, successors and assigns, and shall inure to the benefit of the owners of the Property and to the City. This Agreement may not be revised or amended without the written consent of both parties.

6. Notice of Sale of the Property. Prior to the sale or conveyance of any portion of the Property, the Owner shall give written notice and a copy of this Agreement to the prospective purchaser or grantee and shall provide a copy of such disclosure to the City.

7. Form and Delivery of Notice. Any notice required or permitted under this Agreement shall be in writing and shall be delivered by facsimile or by registered or certified US mail. Notice to the Owner may be addressed to Owner at the address indicated on the most recent applicable county property tax roll for the Property. If more than one entity is named in this Agreement, service of any notice on any one of the entities shall be deemed service on all entities. Any notice so given shall be deemed to have been received when deposited in the United States mail so addressed with postage prepaid:

CITY:

John Dugan, Planning Director
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Facsimile Number: (210) 207-5480

OWNER:

CROSS TIMBERS RENTAL PROPERTIES, LTD.
By and through its General Partner
TEXAS BOWIE COMPANY, LLC
P. O. Box 311794
New Braunfels, Texas 78131

8. Enforcement. This Agreement may be enforced by Owner or City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

9. **Provisions Severable.** If any provision contained in this Agreement is held unconstitutional, invalid or unenforceable, then the remaining provisions shall be deemed severable and shall remain in full force and effect.

10. **Governmental Powers.** It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

11. **Captions.** Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

12. **Modification of Agreement.** This Agreement cannot be modified or amended without the written consent of all the parties hereto and attached and made a part of this Agreement.

13. **Governing Law and Venue.** Venue shall be in the state courts located in Bexar County, Texas and construed in conformity with the laws of the State of Texas.

14. **Successors and Assigns.** This Agreement shall inure to the benefit and shall be binding on the successors and assigns of the Property.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement effective as of the date first set forth above.

CITY OF SAN ANTONIO, TEXAS

By: _____
John Dugan, Planning Director

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, 2013, by John Dugan, Planning Director of the City of San Antonio, Texas, and on behalf of the municipality.

_____
NOTARY PUBLIC, STATE OF TEXAS

OWNER:

CROSS TIMBERS RENTAL PROPERTIES, LTD.
by and through its General Partner
TEXAS BOWIE COMPANY, LLC

By: Robert L. Worley, Jr.
Robert L. Worley, Jr. Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 10th day of December, 2013, by Robert L. Worley, Jr., Manager of TEXAS BOWIE COMPANY, LLC the General Partner of CROSS TIMBERS RENTAL PROPERTIES, LTD. on behalf of said entity.

Patricia A Welch
NOTARY PUBLIC, STATE OF TEXAS

PATRICIA A WELCH
Notary Public, State of Texas
My Commission Expires 12-08-17

AFTER RECORDING RETURN TO:

Nina Nixon-Mendez, Planning Manager
CITY OF SAN ANTONIO
Department of Planning and Community Development
PO Box 839966
San Antonio, Texas 78283-3966

EXHIBIT "A"

BEING 109.767 acres consisting of four tracts in Bexar County, Texas, and more particularly described as follows, to-wit:

Tract 1: (6.160 acres)

BEING all of Tract 176 Crestwood Acres Subdivision as recorded in Volume 5580, page 254, Deed and Plat Records of Bexar County, Texas.

TRACT 2: (15.692 acres)

BEING 15.692 acres out of the WILLIAM LEE original 43-acre tract recorded in Volume 5631, Pages 44-45, Deed Records of Bexar County, Texas, and being out of the William Body Survey No. 20 1/2, Abstract No. 921, County Block 4130, and more particularly described as follows, to-wit:
BEGINNING at a point where the Westerly R.O.W. line of I.H. 37 intersects the Northwest line of original 43-acre tract for the Northerly corner of this described tract, said point being South 08 deg. 10 min. 45 sec. West 1451.83 feet from the Southerly cut-off line of Mathis Road;
THENCE along the Westerly R.O.W. line of I.H. 37, South 08 deg. 10 min. 45 sec. West 982.53 feet to its intersection with the Southeast line of said 43-acre tract for the Easterly corner;
THENCE along the Southeast line of 43-acre tract, South 54 deg. 23 min. West 614.10 feet to the Southerly corner, same being the Southerly corner of 43-acre tract;
THENCE along the Southwest line of 43-acre tract, North 37 deg. 20 min. West 708.57 feet to the Westerly corner;
THENCE along the Northwest line of 43-acre tract, North 54 deg. 20 min. 30 sec. East 1315.32 feet to the place of beginning.

TRACT 3: (17.900 acres)

BEING 17.900 acres, consisting of 2.538 acres out of the G. M. Hime Survey, Abstract No. 1203, County Block 4126, and 15.362 acres out of 27.188 acres out of the S. T. Priest Survey No. 4, Abstract No. 1212, County Block 4126, and more particularly described as follows, to-wit:
BEGINNING at the intersection of the Westerly R.O.W. line of I.H. 37 with the Northerly line of the G. M. Hime Survey, Abstract No. 1203, for the Northeasterly corner of this described tract, said point being South 08 deg. 10 min. 45 sec. West 2434.36 feet from the Southerly cut-off line of Mathis Road;
THENCE along the Westerly R.O.W. line of the I.H. 37, South 08 deg. 10 min. 45 sec. West 1368.45 feet to an angle point, and South 00 deg. 12 min. 38 sec. West 1223.98 feet to the Southeast corner;
THENCE South 89 deg. 59 min. 46 sec. West 272.72 feet to the Southwest corner;
THENCE North 00 deg. 23 min. West 2,225.05 feet to the Northwest corner;
THENCE North 54 deg. 23 min. East 601.60 feet to the place of beginning.

EXHIBIT "A".

TRACT 4: (70.015 acres)

BEING 70.015 acres out of 170.816 acres, out of the J. C. Adams Survey No. 7, Abstract No. 949, County Block 4128, and more particularly described as follows, to-wit:
BEGINNING at the most West Northwest corner of said J. C. Adams Survey;
THENCE along a North line of said Survey, South 89 deg. 59 min. 46 sec. East 1004.61 feet;
THENCE North 00 deg. 00 min. 50 sec. West 737.74 feet to the most North Northwest corner of said J. C. Adams Survey;
THENCE along the Northerly line of said J. C. Adams Survey, North 54 deg. 00 min. 56 sec. East 2496.94 feet to its Northeast corner, same being the Northeast corner of this tract;
THENCE along the East line of said J. C. Adams Survey, South 00 deg. 23 min. East 2225.05 feet to the Southeast corner of this tract;
THENCE North 89 deg. 59 min. 46 sec. West 3039.72 feet to a point on the West line of said J. C. Adams Survey for a corner;
THENCE along the West line of said J. C. Adams Survey, North 00 deg. 09 min. 47 sec. West 20.0 feet to the place of beginning.

TOGETHER WITH THE FOLLOWING NON-EXCLUSIVE INGRESS AND EGRESS EASEMENT: (1.635 acres)
BEING out of 63.767 acres as recorded in Volume 7643, Page 61, Deed Records of Bexar County, Texas, and being out of the W. B. Hooker Survey No. 5, Abstract No. 1081, County Block 4142, and more particularly described as follows, to-wit:
BEGINNING at the Northeast corner of said W. B. Hooker Survey No. 5, same being the most West Northwest corner of above described tract of 70.015 acres;
THENCE South 00 deg. 09 min. 47 sec. East 20.0 feet;
THENCE North 89 deg. 07 min. 16 sec. West 1374.92 feet;
THENCE South 01 deg. 13 min. 14 sec. West 1432.64 feet;
THENCE North 89 deg. 32 min. 10 sec. West 770.92 feet to a point on the Easterly line of Campbelton Road for a corner;
THENCE along the Easterly line of Campbelton Road, North 16 deg. 40 min. 03 sec. West 20.93 feet;
THENCE South 89 deg. 32 min. 10 sec. East 757.34 feet;
THENCE North 01 deg. 13 min. 14 sec. East 1432.78 feet;
THENCE South 89 deg. 07 min. 16 sec. East 1394.44 feet to the place of beginning.

EXHIBIT "A"

BEING 10.000 acres out of that 170.814 acre tract recorded in Volume 4901, Page 104, Deed Records of Bexar County, and being out of the J.C. Adams Survey No. 7, Abstract No. 949, County Block 4123, in Bexar County, Texas, and being more particularly described as follows to wit:

Beginning at a point on the south line of a 30 foot access easement for the southeast corner of 170.814 acre tract, same being the southeast corner of J.C. Adams Survey No. 7, and being north 89 deg. 13 min., west, 292.76 feet from where the south line of 30 foot access easement intersects the west R.O.W. line of Interstate Highway 37 South;

THENCE along the south line of 170.814 acre tract, south line of J.C. Adams Survey No. 7, and south line of access easement, north 89 deg. 13 min. west 324.56 feet;

THENCE across access easement north 00 deg. 47 min. east, 30.00 feet to an iron stake on the north line of access easement for the southeast corner and place of beginning of this described 10.000 acre tract;

THENCE along the north line of access easement, north 89 deg. 13 min. west, 305.88 feet to an iron stake for the southwest corner;

THENCE north 00 deg. 47 min. east 1422.58 feet to an iron stake for the northwest corner of this tract;

THENCE south 89 deg. 46 min. 26 sec. east 305.89 feet to an iron stake for the northeast corner;

THENCE south 00 deg. 47 min west, 1425.55 feet to the place of beginning.

EXHIBIT "A"

BEING 8.124 acres out of 170.814 acres as recorded in volume 4901, page 104, Deed Records of Bexar County and being out of the J.C. Adams Survey No. 7, Abstract No. 942, County Block 4128, in Bexar County, Texas and being more particularly described as follows, to-wit:

Beginning at the southwest corner of 170.814 acre tract, same being the southwest corner of J.C. Adams Survey No. 7; thence along the south line of 170.814 acre tract and south line of J.C. Adams Survey No. 7, south 89 deg. 13 min. east, 931.01 feet; thence across a 30 foot access easement, north 00 deg. 47 min. east, 30.00 feet to an iron stake on the north line of access easement for the southwest corner and place of beginning of this described 8.124 acre tract;

THENCE north 00 deg. 47 min. east, 1408.17 feet to an iron stake for the northwest corner of this tract;

THENCE south 89 deg. 46 min. 26 sec. east, 251.11 feet to an iron stake for the northeast corner;

THENCE south 00 deg. 47 min. west, 1410.62 feet to an iron stake on the north line of 30 foot access easement for the southeast corner;

THENCE along the north line of access easement, north 89 deg. 13 min. west, 251.10 feet to the place of beginning.

EXHIBIT "A"

BEING 10.000 acres out of 170.814 acres as recorded in Volume 4901, Page 104, Deed Records of Bexar County, and being out of the J.C. Adams Survey No. 7, Abstract No. 949, County Block 4128, in Bexar County, Texas and being more particularly described as follows, to-wit:

Beginning at the southwest corner of said 170.814 acre tract, same being the southwest corner of J.C. Adams Survey No. 7;

THENCE along the south line of 170.814 acre tract and south line of J.C. Adams Survey No. 7, South 89 deg. 13 min. east 621.34 feet;

THENCE across a 30 foot access easement, north 00 deg. 47 min. east, 30.00 feet to an iron stake for the southwest corner and place of beginning of this described 10.000 acre tract;

THENCE north 00 deg. 47 min. east, 1405.16 feet to an iron stake for the northwest corner of this tract;

THENCE south 89 deg. 46 min. 26 sec. east, 309.68 feet to an iron stake for the northeast corner;

THENCE south 00 deg. 47 min. west 1403.17 feet to an iron stake on the north line of 30 foot access easement for the southeast corner;

THENCE along the north line of 30 foot access easement, north 89 deg. 13 min. west 309.67 feet to the place of beginning.