

ROAD DEVELOPMENT AGREEMENT

This Road Development Agreement (this "Agreement") is executed to be effective on the 25 day of September, 2008, by the CITY OF BRYAN, a home-rule municipal corporation organized under the laws of Texas ("CITY"), and 88 Joint Venture, a Texas joint venture company, hereafter collectively referred to as "DEVELOPER";

RECITALS

The CITY is authorized by Texas law to aid in local economic development and stimulate business and commercial activity within the geographic boundaries of the CITY by offering economic and other incentives under Local Government Code 380. The land is described in Exhibit "A", which is attached hereto and incorporated by reference and referred in this Agreement as the "Property." The DEVELOPER has ownership of the Property. DEVELOPER desires to develop the Property as a master planned, suburban style residential community (the "Development"), and generally as shown in Exhibit "B", which is attached hereto and incorporated by reference herein. CITY desires to attract suburban style residential development rather than rural style residential development on its east side and has extended a sewer line to encourage such development. This Agreement shall promote local economic development and stimulate business and commercial activity in the City of Bryan.

AGREEMENT

For the consideration recited herein and the mutual benefits to parties accruing in connection with the proposed Project, the receipt and sufficiency being acknowledged herein, the parties agree as follows:

1. Right of Way. Within 90 days after execution of this Agreement, Developer will dedicate and convey to CITY a portion of the Property necessary to create a right of way 80 foot wide ("Right of Way") in accordance with the City's thoroughfare plan. The Developer will, at its cost, design and construct a road within the boundaries of the Right of Way (the "Project") in general accordance with the CITY's design guidelines, similar to the roadways in Traditions and Exhibit "B". To the extent necessary to permit construction of the Project under this Agreement, the City grants Developer permission to use the Right of Way described herein solely for construction purposes of the Project until the Project is completed. The failure of the Developer to begin or complete the construction of the Project shall have no effect on this dedication.

2. Design and Construction of the Project.

Design. Developer shall engage and compensate an engineering firm (the "Engineers") to design the Project in accordance with CITY standards applicable to major collectors and in an alignment that utilizes existing natural features. The design must include sleeves sufficient to accommodate the installation of infrastructure and utilities necessary for the Development. CITY must approve the final plans and specifications.

Construction. Developer shall construct the Project at its expense, provided however CITY shall contribute the lesser of (1) actual cost of construction of the road or (2) \$ 511,587. Any costs of construction over this amount shall be borne by Developer. The Developer will publicly bid the construction through sealed bids and will select the lowest responsible bidder. The construction portion will be advertised twice, for 2 consecutive weeks, in a paper of local circulation, advising of the opportunity to bid via a detailed bid that shows individual costs and

other details. The Developer will provide to the City a copy of the contract with the contractor constructing the road and a detailed bid that indicates cost per item of work, as well as detailed invoices showing actual cost of construction of the items. . The Developer will (i) obtain all necessary permits and approvals from the CITY and all other governmental officials and agencies having jurisdiction over the Project, (ii) supervise all phases of construction of the Project, and cause the construction to be performed in accordance with approved plans, with CITY providing construction inspection with respect to compliance with CITY's standards for ultimate acceptance of the Project. The CITY and DEVELOPER agree to collaborate in good faith to accommodate necessary changes in the roadway design and construction that may arise during this Project..

3. Performance and Payment Bonds and Completion Date. The Developer will provide a Performance Bond for the construction of the improvements to ensure completion of the project in accordance with § 212.071 *et seq.* of the Local Government Code and a Payment Bond in the amount of the Project. Both bonds shall name the CITY as the beneficiary of the bonds. Further, all contractors and sub contractors must meet the CITY requirements for insurance and naming the CITY as an additional insured per the attached Exhibit "E". Roadway construction shall begin within 9 months after execution of this Agreement and the Project construction will be completed within 12 months after the construction begins.

4. Landscape. DEVELOPER shall, as it develops the Development, install and maintain landscaping in the Right of Way. Initially landscaping will be similar to that depicted in the pictures attached as Exhibit "C" and incorporated by reference. As phases of the Development are complete, DEVELOPER shall, at its expense, install landscaping and irrigation infrastructure in accordance with Exhibit "B." DEVELOPER shall have a homeowner's association, in addition to its other responsibilities, maintain, at its expense, the landscaping and irrigation infrastructure. The landscaping shall be maintained in a manner that keeps it attractive and alive.

5. Payment by CITY. By the 9th day of each month, the DEVELOPER will make an approximate estimate of the value of the work done during each month under the specifications for construction of the Project, and submit the estimate to the City Engineer for review. The City Engineer will review the payment request and an approved payment will be made by the 25th day of the same month, if City Engineer determines the work to have been completed and is otherwise in conformity with the Agreement. The percent retained by the CITY will be ten percent (10%) on all partial estimates of the total amount of work completed. The DEVELOPER shall furnish the CITY such detailed information as requested to aid in evaluating partial estimates. It is understood that the partial monthly estimates and payments will be subject to review and correction by the CITY of the estimate rendered following discovery of an error in the current and any previous estimate, and no such estimate shall in any respect be taken as an admission of the CITY of the amount of work done or of its quality of sufficiency nor as an acceptance of the work or the release of the DEVELOPER or Contractor of any of their responsibility under the contract. The final payment, including the retainage, will be made within thirty days upon the completion of the project, acceptance of the improvements by CITY, submittal of approved As-built drawings, and submittal of the final invoice by the DEVELOPER.

6. Reimbursement and Liens.

The Parties agree as follows:

TOTAL COST OR AMOUNT OF REIMBURSEMENT: Upon acceptance and completion of the Project, the City will certify the actual cost paid by the City, which will then become the amount of the Reimbursement and total cost of the Project. Upon receipt of a Reimbursement, CITY shall execute and deliver to Developer in recordable form, a release of its rights under this Agreement as to **only a particular portion of the property under the conditions described below** and in a form satisfactory for a title company to remove reference to this Agreement from a commitment for title insurance. Release means an instrument executed by the City in recordable form satisfactory for a title company to remove any reference to this Agreement from a commitment for title insurance

a. RELEASE AND WAIVER OF LIABILITY BY DEVELOPER .

Upon issuance of the certificate of completion or acceptance by the City and the making of a final payment by the City, as part of the consideration for this Agreement, DEVELOPER agrees that the acceptance of the final payment shall constitute a waiver and release of any contractual or other claims against the CITY related in any manner to this Agreement, including any claims for breach of contract, tort, or any other type of claim such as deficient construction, design or other problems of the Project or the roadway, existing or developing in the future, that the DEVELOPER may have or may acquire in the future, regardless of whether the claims be known or unknown at the time of acceptance, existing or developing in the future.

b. Procedure and requirements for reimbursement of the net cost or remaining amount of reimbursement:

- i. **Parcel Reimbursement.** DEVELOPER and its successors and assigns, intend to develop the Property in phases. Each phase or portion thereof will likely require a development loan and the development lender will require a release of this Agreement as an encumbrance to title. At the time that the DEVELOPER undertakes to develop a phase or portion of a phase of the Property as contemplated by this Agreement or to otherwise sell, assign or encumber the property, DEVELOPER will submit to the City a request for Release accompanied by (i) the Parcel Reimbursement, as defined below; and (ii) such other information reasonably requested by the City to allow it to make the determination described below. The City shall execute the requested Release if, in good faith using commercially reasonable development standards, it believes that the minimum house size requirement set forth below will be met in the Project. Parcel Reimbursement means a pro rata portion of the net cost of the Project. The net cost of the Project means the total cost of the Project actually paid by the CITY. The Parcel Reimbursement equals the number of developable acres in a phase or portion of a phase divided by the total number of developable acres in the Development multiplied by the net cost of the Project ($[\text{developable acres in phase or portion of phase} \div \text{total developable acres in the Development}] \times \text{net cost of the Project}$). "Developable acres" means the number of acres that are not in the (i) flood plain; Right of Way dedicated to the CITY for construction of this PROJECT pursuant to this Agreement; or (iii) drainage ways that will not be included within the boundaries of lots available for sale. The parties agree that the total number of developable acres in the Development will be

determined, certified and sealed by the Engineers from time to time, as the Development changes. The parties agree that the number of developable acres in a phase or portion of a phase will be determined, certified and sealed by the registered professional engineer retained and paid for by the DEVELOPER. The DEVELOPER agrees that the Property will contain a certain amount of lots with minimum square house footage for house size as described below in Paragraph 8 (the "minimum house size requirement").

- ii. **Final Reimbursement.** DEVELOPER must complete the reimbursement to the CITY of the total cost of the Project within seven (7) years from the date that the roadway is accepted. If DEVELOPER fails to reimburse the CITY the total cost of the Project within the seven (7) year period, DEVELOPER shall, on the 1st day of January of each subsequent year, pay the CITY as interest for the preceding year on the unpaid balance of the total cost of the Project as of that day multiplied by the then current bond rate for the CITY but never to exceed six percent (6%) per annum. Such payments of interest shall continue regularly and annually until the total cost of the Project is fully reimbursed.
- iii. The DEVELOPER covenant warrant and agree that the Property is and will remain free from other debts and liens until after this Agreement is duly executed by all Parties and recorded.
- iv. **The DEVELOPER grants, covenants, warrants and agrees that the amount of reimbursement for the total cost of the Project constitutes a first, superior and prior lien on the Property, and, until released, is superior to any and all other liens or claims on the Property, now or in the future, and this total cost of the Project is enforceable and collectible with interest as described in this Agreement, along with expenses of collection and reasonable attorney fees, if any, as incurred.**
- v. The DEVELOPER agrees to execute any documents necessary with respect to any specific amounts of the total cost of the Property, to accurately reflect the total costs and/or provide any record notice of the amounts owed under this Agreement for lien or other purposes.

7. Default and No waiver of Governmental or Sovereign Immunity of the CITY. If either party should default (the "Defaulting Party") with respect to any of its obligations under this Agreement and should fail, within sixty (60) days after delivery of written notice of such default from the other party (the "Complaining Party ") to cure such default, the Complaining Party, by action or proceeding at law or in equity, shall be entitled to pursue appropriate remedies, as may be appropriate to cure such default under the Agreement, but this Agreement shall not waive governmental or sovereign immunity nor be considered to be a waiver of governmental or sovereign immunity of the CITY as to Property or as to any of the Parties to this Agreement or as to any other person or entity, **AND THE CITY SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PERSONAL INJURY OR INDIRECT DAMAGES, (including, but not limited to, loss of profits or revenue, downtime costs, loss of use of any property, cost of substitute equipment or facilities, whether arising in tort, contract or otherwise) FOR ANY DEFAULT UNDER THIS AGREEMENT AND ALL SUCH PRESENT OR FUTURE CLAIMS FOR ANY SUCH DAMAGES ARE WAIVED AND EXCLUDED**

8. Representations.

DEVELOPER hereby represents that:

It is duly authorized, created and existing in good standing under the laws of the State and is duly qualified and authorized to carry out its obligations described in this Agreement.

It has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, any lien, charge, encumbrance or security interest upon any assets of the DEVELOPER under any agreement or instrument to which the DEVELOPER is a party or by which the DEVELOPER or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the DEVELOPER and, constitutes a legal, valid and binding obligation of the DEVELOPER, enforceable in accordance with its terms.

The execution, delivery and performance of this Agreement by the DEVELOPER do not require the consent or approval of any person which has not been obtained.

The Developer agrees to impose covenants, conditions and restrictions that will run to the benefit of the City that contain the following:

a. There will be no less than 18 rural estate lots requiring a structure with a minimum heated square footage of 2200 square feet.

These conditions, covenants and restrictions can not be modified without the duly authorized written consent of the City.

CITY hereby represents that:

The CITY is duly authorized, created and existing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The CITY has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the CITY under any agreement or instrument to which the CITY is a party or by which the CITY or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the CITY and, constitutes a legal, valid and binding obligation of the CITY, enforceable in accordance with its terms.

The execution, delivery and performance of this Agreement by the CITY do not require the consent or approval of any person which has not been obtained.

9. CITY Ordinances. The parties agree that the CITY's regulations and ordinances in effect at the time this Agreement is executed by all parties will apply to the Project until the total cost of the Project is fully reimbursed to the CITY. CITY agrees that Section 245.005 of the Texas Local Government Code shall not affect the Project's vested status.

10. Covenant running with the land. The covenants and agreements contained in this Agreement are covenants running with the Property and shall be binding on the owners of the Property and enforceable by the owners of the Property or the CITY, until released as provided above.

11. Third Party Beneficiary. The current owner of the Property or any portion of the Property as of the date of execution of this Agreement, is a third party beneficiary of this Agreement, provided he or his duly authorized agent has signed the Agreement and agreed to be bound by the Agreement..

12. Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

13. Written Notice. All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To DEVELOPER:

88 JOINT VENTURE

Attn: Mark Carrabba
P. O. Box 603
Bryan, Texas 77806

with a copy to:

MICHAEL R. H OELSCHER
Hoelscher, Lipsey & Elmore, P.C.
1021 University Drive East
College Station, Texas 77840
979/846-4726
979/846-4725 (fax)

To CITY:

City of Bryan
Attn: Mark Conlee

P.O. Box 1000
Bryan, Texas 77805

with a copy to :

City of Bryan
Attention: City Attorney
P.O. Box 1000
Bryan, TX 77805

14. Entire Agreement and Assignment. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of CITY, DEVELOPER. This Agreement and the rights and obligations under this Agreement shall be binding on the heirs, successors and assigns of the parties.

15. Texas Law. This Agreement has been made under and shall be governed by the laws of the State of Texas.

16. Place of Performance. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

17. Recording. Upon execution of this Agreement, a copy of the memorandum attached as Exhibit "F" to this Agreement shall be recorded in the Official Records of Brazos County.

18. Authority to Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

19. Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

20. Representation. DEVELOPER represents and warrants that no member of the Bryan City Council has an interest in the Property, and that the same are not owned or leased by any member of the Bryan City Council. DEVELOPER further represents and warrants that no member of the Bryan City Council is under contract either directly or indirectly with DEVELOPER, or their respective agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

21. Construction. This Agreement is not to be construed more or less favorably between the Parties by reason of authorship or origin of language. Time is of the essence.

22. Counterparts and Facsimile Signature. This Agreement may be executed by facsimile signature, which for all purposes shall be deemed an original signature. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

23. Time Essence. Time is of the essence in all matters pertaining to the performance of this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal holiday, then that obligation shall be performable the next following regular business day.

EXECUTED as of the date of the taking of the acknowledgements below, to be effective as of the day, month and year above written.

CITY OF BRYAN:

88Joint Venture



MAYOR

Date: 9-25-08

By **HIGHLAND INTERESTS, INC.**, a Texas corporation, Managing Partner



By **MARK J. CARRABBA**

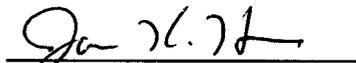
Title: Vice President

ATTEST

Approved as to Form:



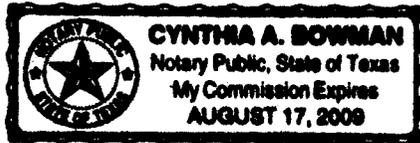
CITY SECRETARY



Janis K. Hampton
City Attorney

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 25 day of September, 2008, by D. Mark Conlee, Mayor of the City of Bryan, a home-rule municipal corporation organized under the laws of Texas, on behalf of said corporation.



Cynthia A. Bowman
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 19th day of September, 2008, by MARK J. CARRABBA, Vice President of HIGHLAND INTERESTS, INC., a Texas corporation, Managing Partner of 88 JOINT VENTURE, a Texas General Partnership, on behalf of said general partnership.

Barbara Ricicar Lott
Notary Public, State of Texas

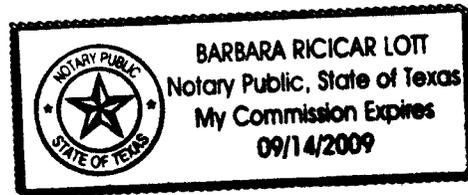
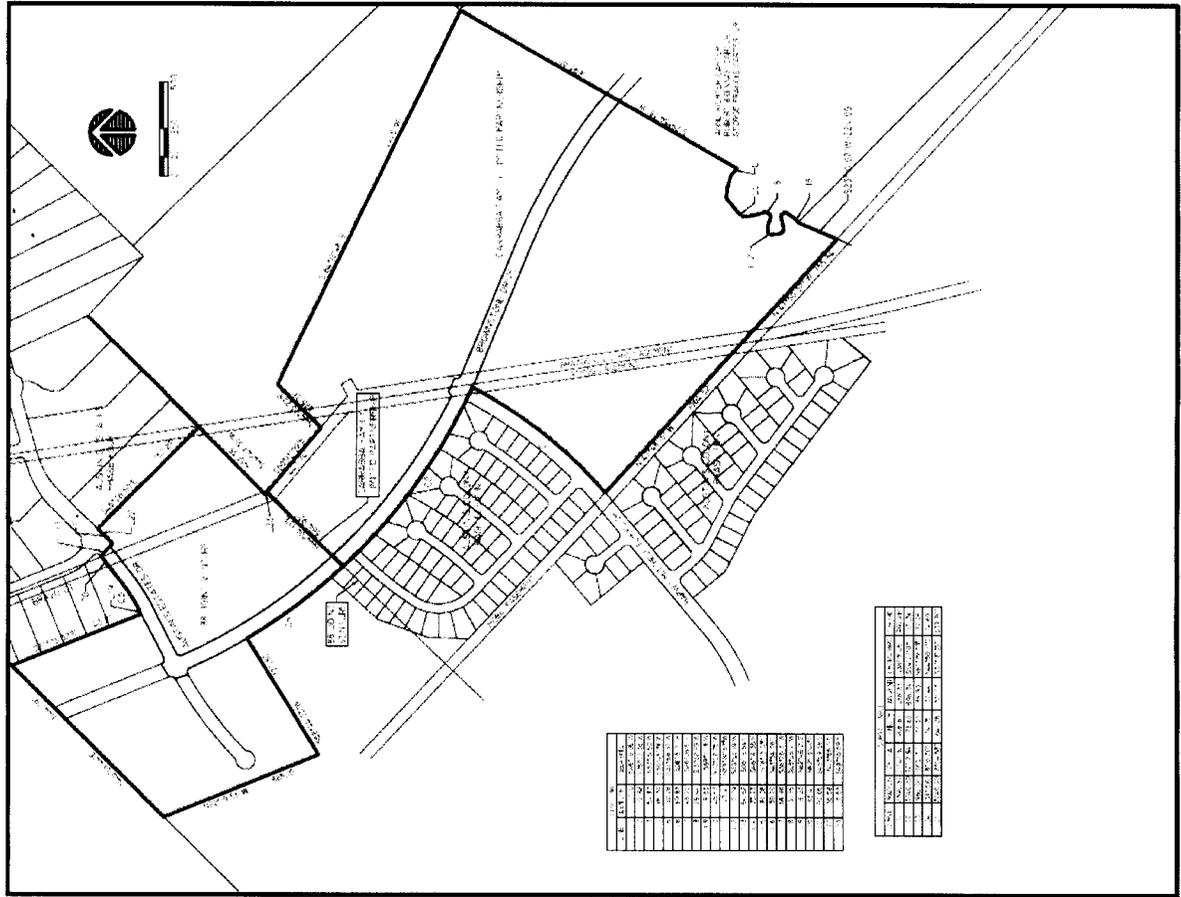


Exhibit "A"

Legal Description



**METES AND BOUNDS DESCRIPTION
OF A
42.18 ACRE TRACT
JOHN AUSTIN LEAGUE, A-2
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE JOHN AUSTIN LEAGUE, ABSTRACT NO. 2, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 405.010 ACRE TRACT AS DESCRIBED BY A DEED TO 88 JOINT VENTURE RECORDED IN VOLUME 1029, PAGE 850 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY NORTH CORNER OF AUSTIN'S ESTATES, PHASE 4B, ACCORDING TO THE PLAT RECORDED IN VOLUME 7912, PAGE 22 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAME BEING THE MOST NORTHERLY CORNER OF SAID REMAINDER OF 405.010 ACRE TRACT;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND AUSTIN'S ESTATES, PHASE 4B, FOR THE FOLLOWING CALLS:

S 22° 03' 32" E FOR A DISTANCE OF 743.27 FEET;

N 62° 45' 21" E FOR A DISTANCE OF 18.33 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 965.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 31' 37" FOR AN ARC DISTANCE OF 177.30 FEET (CHORD BEARS: N 57° 29' 33" E – 177.05 FEET) TO THE ENDING POINT OF SAID CURVE;

N 52° 13' 44" E FOR A DISTANCE OF 183.41 FEET;

S 45° 59' 58" E FOR A DISTANCE OF 90.65 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 517.58 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08° 16' 30" FOR AN ARC DISTANCE OF 74.75 FEET (CHORD BEARS: N 44° 56' 17" E – 74.69 FEET) TO THE ENDING POINT OF SAID CURVE;

N 43° 55' 11" E FOR A DISTANCE OF 36.58 FEET;

S 45° 26' 50" E FOR A DISTANCE OF 757.27 FEET TO THE MOST SOUTHERLY CORNER OF AUSTIN'S ESTATES, PHASE 4B, BEING ON THE NORTHWEST LINE OF A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN C. RABORN AND WIFE, NELWYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 44° 47' 35" W ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 502.04 FEET TO THE MOST WESTERLY CORNER OF SAID 46.8 ACRE TRACT;

THENCE: S 48° 55' 59" E CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 13.63 FEET TO THE MOST WESTERLY NORTH CORNER OF THE REMAINDER OF A CALLED 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL

PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 44° 04' 13" W ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID REMAINDER OF 333.4 ACRE TRACT FOR A DISTANCE OF 564.92 FEET TO THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 3040.00 FEET;

THENCE: THROUGH SAID REMAINDER OF 405.010 ACRE TRACT FOR THE FOLLOWING CALLS:

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 04' 58" FOR AN ARC DISTANCE OF 641.08 FEET (CHORD BEARS: N 37° 18' 05" W – 639.90 FEET) TO THE ENDING POINT OF SAID CURVE;

S 58° 44' 23" W FOR A DISTANCE OF 727.80 FEET;

N 22° 19' 56" W FOR A DISTANCE OF 885.10 FEET TO THE NORTHWEST LINE OF SAID REMAINDER OF 405.010 ACRE TRACT;

THENCE: N 45° 01' 44" E ALONG THE NORTHWEST LINE OF SAID REMAINDER OF 405.010 ACRE TRACT FOR A DISTANCE OF 1144.79 FEET TO THE POINT OF BEGINNING CONTAINING 42.18 ACRES OF LAND, MORE OR LESS. BEARING SYSTEM SHOWN HEREIN IS BASED ON THE PLAT CALL BEARINGS OF AUSTIN'S COLONY, PHASE TEN A&B, ACCORDING TO THE PLAT RECORDED IN VOLUME 7912, PAGE 21 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/08-653A.MAB

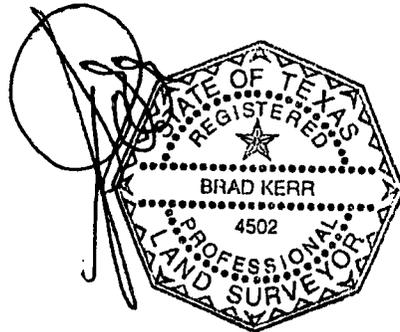
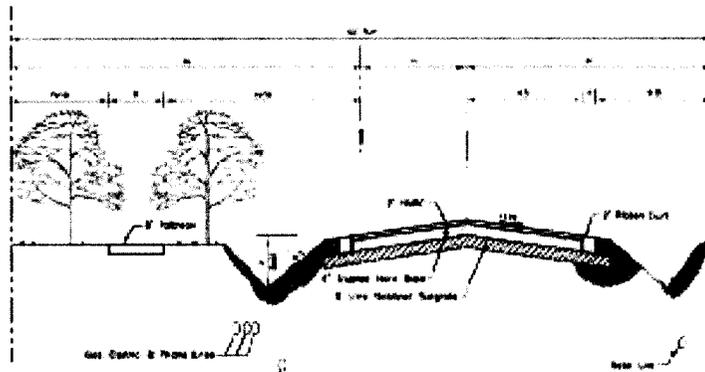


Exhibit "C"

Exhibit "C"



(Exhibit D)



**TYPICAL CROSS SECTION
OF MAJOR COLLECTOR ROADWAY**

EXHIBIT E
INSURANCE REQUIREMENTS
OF THE CITY OF BRYAN

INSURANCE REQUIREMENTS

The contractor agrees to maintain the coverages, endorsements, and limits in accordance with and set forth by the Insurance Coverage & Limit Table below for the duration of this contract. The Contractor agrees to:

- Deliver to the City Certificate(s) of Insurance evidencing that such policies are in full force and effect not later than 5 business days after notification of the City's intent to award a contract, but in any event prior to commencement of work. If policy endorsements are necessary, satisfactory evidence of request to insurance carrier must accompany the Certificate(s) of Insurance. Failure to meet these requirements may cause the bid to be rejected.
- Submit any policy endorsements within 30 days of the City's intent to award contract. No payment will be made and/or the City may stop work or terminate the contract if contractor fails to supply satisfactory evidence of policy endorsements.
- Allow the City the right to obtain complete, certified copies of all required insurance policies at any time.
- Clearly indicate contract name and contract number to which Certificate(s), endorsements, and policies apply.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor.

INSURANCE COVERAGE & LIMIT TABLE

<p><u>WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY INSURANCE – Statutory & \$500,000/\$500,000/\$500,000</u> Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Contractor shall require the subcontractor similarly to provide the same coverage and shall himself acquire</p>
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evidence of such coverage on behalf of the subcontractor. Waiver of subrogation in favor of the City required. This requirement may be waived with satisfactory evidence that the contractor is sole proprietor(s)/has no employees.

COMMERCIAL GENERAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors. Additional insured endorsement required.

BUSINESS AUTOMOBILE LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned, and hired automobiles. Should the Contractor not own any automobiles and furnish satisfactory evidence of this, the business auto liability requirement shall be amended to allow the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

PROFESSIONAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the contractor or any person employed or acting on the contractor's behalf (including but not limited to sub-contractors). For policies written on a "claims-made" basis, contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this contract. The contractor is solely responsible for any additional premium for the supplemental extended reporting period.

UMBRELLA or EXCESS LIABILITY Contractor may satisfy the minimum liability limits required for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. Contractor agrees to endorse City as an additional insured, unless the

Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

CONTRACTOR'S INSURANCE TO BE PRIMARY Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under the contract.

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

SUBCONTRACTOR'S INSURANCE Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified, provided the Contractor's insurance does not afford coverage on behalf of the subcontractor.

CERTIFICATE OF INSURANCE Contractor shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. The certificate(s) shall contain a provision that coverage under such policies shall not be cancelled or non-renewed until at least thirty (30) days prior written notice, or ten (10) days notice for cancellation due to non-payment of premiums, is given the City of Bryan.

If the event the City is notified that a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such

insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated. If the Contractor fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Contractor's expense.

Certificates and notices should be provided to the City at the following address:

City of Bryan

Attn: Purchasing Department

1309 E. MLK Street

Bryan, TX 77808

With a cc to

Kevin Russell, Director of Planning

City Hall

Bryan Texas 77808

Exhibit "F"

AFTER RECORDING, RETURN TO:

City of Bryan Texas
Attention City Secretary

City Hall

Bryan Texas

MEMORANDUM OF ROAD DEVELOPMENT AGREEMENT

STATE OF TEXAS §

§

COUNTY OF BRAZOS §

THIS MEMORANDUM OF ROAD DEVELOPMENT AGREEMENT (this "Memorandum") is made and entered into by and between CITY OF BRYAN, a home-rule municipal corporation organized under the laws of Texas ("City"), and 88 Joint Venture to be effective as of the ____ day of _____, 2008 (the "Effective Date").

RECITALS

88 Joint Venture has entered into a Road Development Agreement (the "Agreement") whereby the City will construct a road on that certain tract or parcel of land located partially in the City of Bryan, County of Brazos, State of Texas, the same being more particularly described by metes and bounds in the Road Development Agreement between the parties, attached hereto and made a part of this memorandum as Exhibit A. 88 Joint Venture has agreed to reimburse City for the cost of the road as parcels of the Land are developed under the terms of the Agreement which is attached as Exhibit B to this memorandum. The covenants contained in the Agreement are covenants running with and appurtenant to the Land. The purpose of this Memorandum is to notify the public of the reimbursement obligation attached to the Land. Unless released by City under the terms of this Agreement, the Land is encumbered by an obligation to reimburse, enforceable by City as a lien, the cost of the road. Further, 88 Joint Venture agrees to impose covenants, conditions and restrictions that will run to the benefit of the City that contain the following:

a. There will be no less than 18 rural estate lots requiring a structure with a minimum heated square footage of 1800 square feet

These conditions, covenants and restrictions can not be modified without the duly authorized written consent of the City.

For purposes of determining whether the obligations set forth in the Agreement have been released, any party reviewing this document may conclusively rely on (i) a release executed by City as to a particular parcel or (ii) an affidavit executed by an authorized officer of 88 Joint Venture and a duly authorized officer of the City, that states, under oath, that the obligation is terminated. Either the affidavit or release must be recorded in the Official Records of Brazos County, Texas.

This Memorandum is not intended to alter or supersede the Agreement, and in the event of any conflict between this Memorandum and the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date of the taking of their acknowledgments to be effective as of the Effective Date.

88 Joint Venture, a Texas general partnership

By Highland Interests, Inc., a Texas corporation, Managing Partner

By _____
Mark J. Carrabba, Vice President

CITY OF BRYAN:

By: _____
MAYOR

Date: _____

ATTEST

CITY SECRETARY

Approved as to Form:

Janis K. Hampton
City Attorney

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the ____ day of _____, 2008, by _____, _____ of the City of Bryan, a home-rule municipal corporation organized under the laws of Texas, on behalf of said corporation.

Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the ____ day of _____, 2008, by MARK J. CARRABBA, Vice President of HIGHLAND INTEREST, INC., a Texas corporation, managing partner of 88 JOINT VENTURE, a Texas general partnership, on behalf of said general partnership.

Notary Public, State of Texas

EXHIBIT A

(Legal Description of Property Attached)

**METES AND BOUNDS DESCRIPTION
OF A
42.18 ACRE TRACT
JOHN AUSTIN LEAGUE, A-2
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE JOHN AUSTIN LEAGUE, ABSTRACT NO. 2, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 405.010 ACRE TRACT AS DESCRIBED BY A DEED TO 88 JOINT VENTURE RECORDED IN VOLUME 1029, PAGE 850 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY NORTH CORNER OF AUSTIN'S ESTATES, PHASE 4B, ACCORDING TO THE PLAT RECORDED IN VOLUME 7912, PAGE 22 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAME BEING THE MOST NORTHERLY CORNER OF SAID REMAINDER OF 405.010 ACRE TRACT;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND AUSTIN'S ESTATES, PHASE 4B, FOR THE FOLLOWING CALLS:

S 22° 03' 32" E FOR A DISTANCE OF 743.27 FEET;

N 62° 45' 21" E FOR A DISTANCE OF 18.33 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 965.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 31' 37" FOR AN ARC DISTANCE OF 177.30 FEET (CHORD BEARS: N 57° 29' 33" E – 177.05 FEET) TO THE ENDING POINT OF SAID CURVE;

N 52° 13' 44" E FOR A DISTANCE OF 183.41 FEET;

S 45° 59' 58" E FOR A DISTANCE OF 90.65 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 517.58 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08° 16' 30" FOR AN ARC DISTANCE OF 74.75 FEET (CHORD BEARS: N 44° 56' 17" E – 74.69 FEET) TO THE ENDING POINT OF SAID CURVE;

N 43° 55' 11" E FOR A DISTANCE OF 36.58 FEET;

S 45° 26' 50" E FOR A DISTANCE OF 757.27 FEET TO THE MOST SOUTHERLY CORNER OF AUSTIN'S ESTATES, PHASE 4B, BEING ON THE NORTHWEST LINE OF A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN C. RABORN AND WIFE, NELWYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 44° 47' 35" W ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 502.04 FEET TO THE MOST WESTERLY CORNER OF SAID 46.8 ACRE TRACT;

THENCE: S 48° 55' 59" E CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 13.63 FEET TO THE MOST WESTERLY NORTH CORNER OF THE REMAINDER OF A CALLED 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL

PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 44° 04' 13" W ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID REMAINDER OF 333.4 ACRE TRACT FOR A DISTANCE OF 564.92 FEET TO THE BEGINNING OF A CLOCK WISE CURVE HAVING A RADIUS OF 3040.00 FEET;

THENCE: THROUGH SAID REMAINDER OF 405.010 ACRE TRACT FOR THE FOLLOWING CALLS:

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 04' 58" FOR AN ARC DISTANCE OF 641.08 FEET (CHORD BEARS: N 37° 18' 05" W – 639.90 FEET) TO THE ENDING POINT OF SAID CURVE;

S 58° 44' 23" W FOR A DISTANCE OF 727.80 FEET;

N 22° 19' 56" W FOR A DISTANCE OF 885.10 FEET TO THE NORTHWEST LINE OF SAID REMAINDER OF 405.010 ACRE TRACT;

THENCE: N 45° 01' 44" E ALONG THE NORTHWEST LINE OF SAID REMAINDER OF 405.010 ACRE TRACT FOR A DISTANCE OF 1144.79 FEET TO THE **POINT OF BEGINNING** CONTAINING 42.18 ACRES OF LAND, MORE OR LESS. BEARING SYSTEM SHOWN HEREIN IS BASED ON THE PLAT CALL BEARINGS OF AUSTIN'S COLONY, PHASE TEN A&B, ACCORDING TO THE PLAT RECORDED IN VOLUME 7912, PAGE 21 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/08-653A.MAB

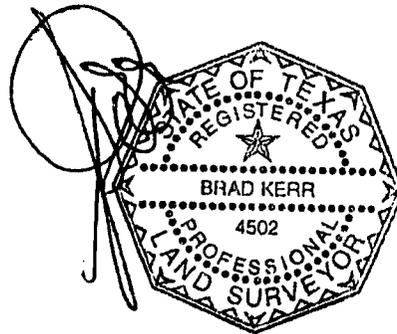


EXHIBIT B
COPY OF ROAD DEVELOPMENT AGREEMENT

AFTER RECORDING, RETURN TO:

City of Bryan Texas
Attention City Secretary
City Hall
Bryan Texas

MEMORANDUM OF ROAD DEVELOPMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

THIS MEMORANDUM OF ROAD DEVELOPMENT AGREEMENT (this "Memorandum") is made and entered into by and between CITY OF BRYAN, a home-rule municipal corporation organized under the laws of Texas ("City"), and 88 Joint Venture to be effective as of the 25 day of Sept., 2008 (the "Effective Date").

RECITALS

88 Joint Venture has entered into a Road Development Agreement (the "Agreement") whereby the City will construct a road on that certain tract or parcel of land located partially in the City of Bryan, County of Brazos, State of Texas, the same being more particularly described by metes and bounds in the Road Development Agreement between the parties, attached hereto and made a part of this memorandum as Exhibit A. 88 Joint Venture has agreed to reimburse City for the cost of the road as parcels of the Land are developed under the terms of the Agreement which is attached as Exhibit B to this memorandum. The covenants contained in the Agreement are covenants running with and appurtenant to the Land. The purpose of this Memorandum is to notify the public of the reimbursement obligation attached to the Land. Unless released by City under the terms of this Agreement, the Land is encumbered by an obligation to reimburse, enforceable by City as a lien, the cost of the road. Further, 88 Joint Venture agrees to impose covenants, conditions and restrictions that will run to the benefit of the City that contain the following:

- a. There will be no less than 18 rural estate lots requiring a structure with a minimum heated square footage of 2200 square feet

These conditions, covenants and restrictions can not be modified without the duly authorized written consent of the City.

For purposes of determining whether the obligations set forth in the Agreement have been released, any party reviewing this document may conclusively rely on (i) a release executed by City as to a particular parcel or (ii) an affidavit executed by an authorized officer of

88 Joint Venture and a duly authorized officer of the City, that states, under oath, that the obligation is terminated. Either the affidavit or release must be recorded in the Official Records of Brazos County, Texas.

This Memorandum is not intended to alter or supersede the Agreement, and in the event of any conflict between this Memorandum and the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date of the taking of their acknowledgments to be effective as of the Effective Date.

88 Joint Venture, a Texas general partnership

By Highland Interests, Inc., a Texas corporation, Managing Partner

By *Mark J. Carrabba*
Mark J. Carrabba, Vice President

CITY OF BRYAN:
D. Mark Coulee
By: *D. Mark Coulee*
Title: *Mayor*

ATTEST

Mary Stroetter
CITY SECRETARY

Approved as to Form:

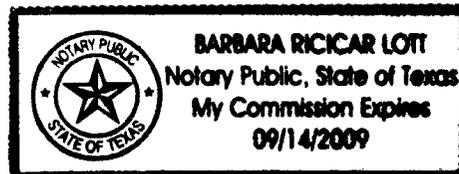
Janis K. Hampton
Janis K. Hampton
City Attorney

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the *19th* day of *September*, 2008, by MARK J. CARRABBA, Vice President of HIGHLAND INTERESTS, INC., a Texas corporation, Managing Partner of 88 JOINT VENTURE, a Texas general partnership, on behalf of said general partnership.

Barbara Ricicar Lott
Notary Public, State of Texas



THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 25 day of September, 2008, by D. Mark Conlee, Mayor of the City of Bryan, a home-rule municipal corporation organized under the laws of Texas, on behalf of said corporation.

Cynthia A. Bowman
Notary Public, State of Texas

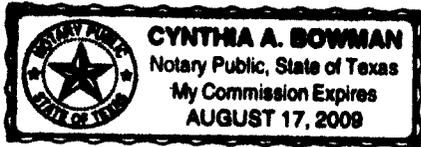


EXHIBIT A

(Legal Description of Property Attached)

**METES AND BOUNDS DESCRIPTION
OF A
42.18 ACRE TRACT
JOHN AUSTIN LEAGUE, A-2
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE JOHN AUSTIN LEAGUE, ABSTRACT NO. 2, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 405.010 ACRE TRACT AS DESCRIBED BY A DEED TO 88 JOINT VENTURE RECORDED IN VOLUME 1029, PAGE 850 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

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N 62° 45' 21" E FOR A DISTANCE OF 18.33 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 965.00 FEET;

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N 52° 13' 44" E FOR A DISTANCE OF 183.41 FEET;

S 45° 59' 58" E FOR A DISTANCE OF 90.65 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 517.58 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08° 16' 30" FOR AN ARC DISTANCE OF 74.75 FEET (CHORD BEARS: N 44° 56' 17" E – 74.69 FEET) TO THE ENDING POINT OF SAID CURVE;

N 43° 55' 11" E FOR A DISTANCE OF 36.58 FEET;

S 45° 26' 50" E FOR A DISTANCE OF 757.27 FEET TO THE MOST SOUTHERLY CORNER OF AUSTIN'S ESTATES, PHASE 4B, BEING ON THE NORTHWEST LINE OF A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN C. RABORN AND WIFE, NELWYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 44° 47' 35" W ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 502.04 FEET TO THE MOST WESTERLY CORNER OF SAID 46.8 ACRE TRACT;

THENCE: S 48° 55' 59" E CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 405.010 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR A DISTANCE OF 13.63 FEET TO THE MOST WESTERLY NORTH CORNER OF THE REMAINDER OF A CALLED 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL