

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 CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas limited partnership, 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 along with a box culvert and other drainage facilities as deemed necessary in the design specifications (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 at its expense. 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 and 50% of the box culvert or (2) \$1,393,224. 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 230 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.

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:

Carrabba Family Limited Partnership

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 "D" 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:



MAYOR

Date: 9-25-08

**CARRABBA FAMILY LIMITED PARTNERSHIP, a
Texas Limited Partnership**

By **HIGHLAND INTERESTS, INC., a Texas
corporation, sole general partner**



By **MARK J. CARRABBA**

Title: **Vice President**

ATTEST

Approved as to Form:



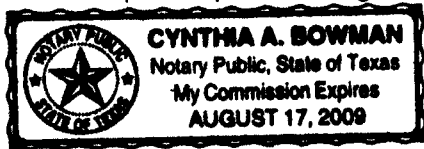
CITY SECRETARY



**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, sole general partner of CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership, on behalf of said limited partnership.

Barbara Ricicar Lott
Notary Public, State of Texas

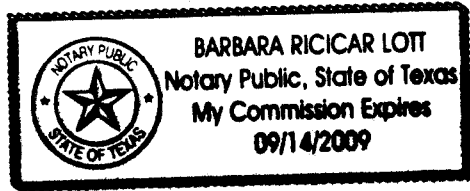
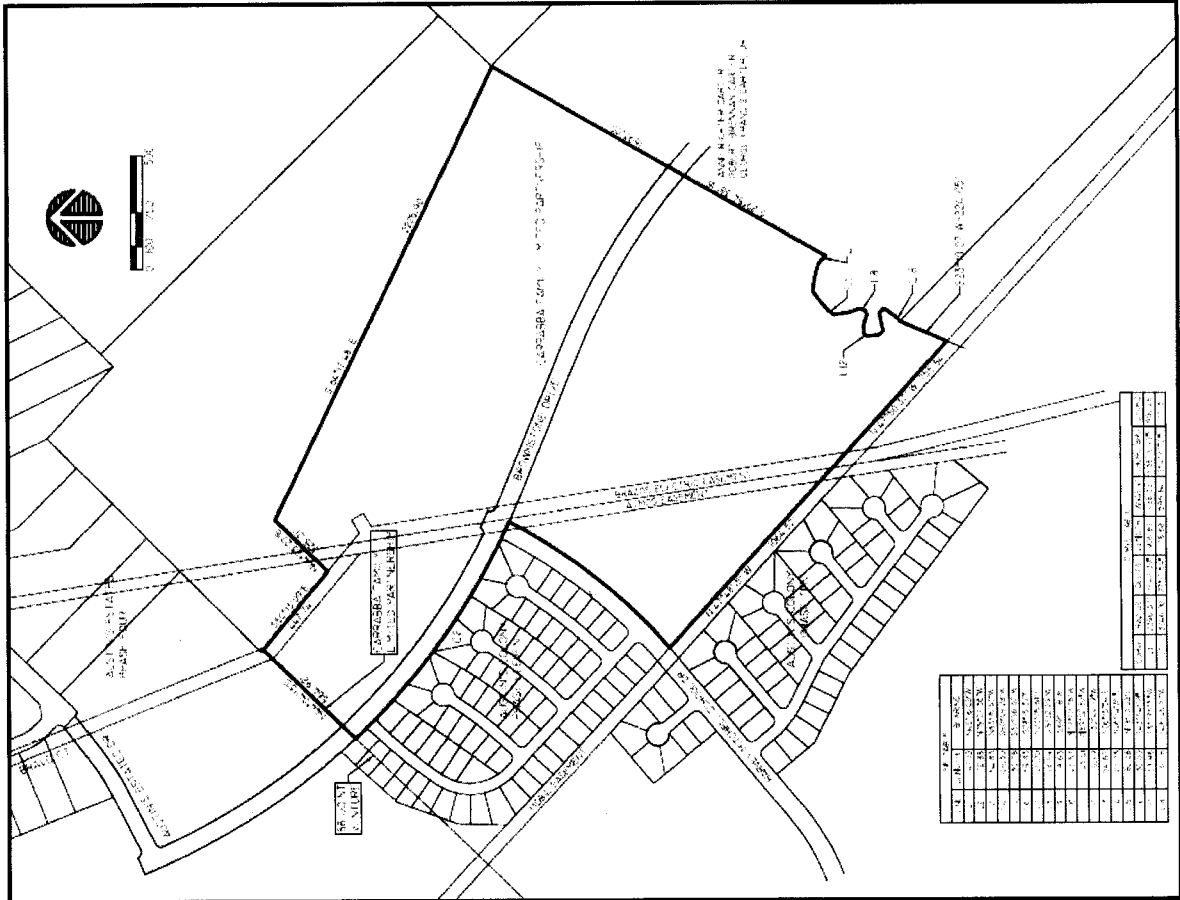


Exhibit "A"

Metes and bounds legal description



**METES AND BOUNDS DESCRIPTION
OF A
100.79 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 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A ½ INCH IRON ROD FOUND ON THE NORTHWEST LINE OF THE REMAINDER OF A CALLED 176.241 ACRE TRACT AS DESCRIBED BY A DEED TO ANNE RICHTER CARTER, ROBERT BRENNAN CARTER AND GEORGE FRANCIS CARTER, JR. RECORDED IN VOLUME 3253, PAGE 207 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND SAID REMAINDER OF 176.241 ACRE TRACT FOR THE FOLLOWING CALLS:

S 29° 54' 38" W FOR A DISTANCE OF 1693.00 FEET;
N 45° 16' 05" W FOR A DISTANCE OF 47.10 FEET;
N 75° 07' 36" W FOR A DISTANCE OF 72.88 FEET;
N 83° 15' 50" W FOR A DISTANCE OF 54.83 FEET;
S 50° 45' 28" W FOR A DISTANCE OF 105.30 FEET;
S 37° 56' 32" W FOR A DISTANCE OF 30.28 FEET;
S 08° 15' 37" E FOR A DISTANCE OF 69.83 FEET;
S 20° 05' 51" E FOR A DISTANCE OF 45.20 FEET;
S 15° 32' 29" W FOR A DISTANCE OF 28.44 FEET;
S 69° 11' 18" W FOR A DISTANCE OF 19.63 FEET;
N 72° 22' 25" W FOR A DISTANCE OF 45.57 FEET;
N 89° 02' 52" W FOR A DISTANCE OF 43.41 FEET;
S 33° 44' 19" W FOR A DISTANCE OF 15.79 FEET;
S 06° 15' 54" E FOR A DISTANCE OF 54.62 FEET;
S 46° 14' 35" E FOR A DISTANCE OF 25.23 FEET;
N 78° 13' 03" E FOR A DISTANCE OF 80.08 FEET;
S 43° 54' 08" E FOR A DISTANCE OF 30.00 FEET;

S 35° 26' 31" W FOR A DISTANCE OF 58.98 FEET;

S 48° 45' 21" W FOR A DISTANCE OF 31.75 FEET TO THE WEST CORNER OF SAID REMAINDER OF 176.241 ACRE TRACT;

THENCE: THROUGH SAID REMAINDER OF 333.4 ACRE TRACT FOR THE FOLLOWING CALLS:

S 23° 10' 07" W FOR A DISTANCE OF 224.05 FEET TO THE NORTHEAST LINE OF AN EXISTING 60.00 FOOT WIDE PIPELINE EASEMENT;

N 47° 50' 37" W ALONG THE NORTHEAST LINE OF SAID EASEMENT FOR A DISTANCE OF 1668.54 FEET;

N 47° 34' 28" W CONTINUING ALONG THE NORTHEAST LINE OF SAID EASEMENT FOR A DISTANCE OF 156.34 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 2390.37 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21° 42' 30" FOR AN ARC DISTANCE OF 905.67 FEET (CHORD BEARS: N 38° 18' 45" E – 900.26 FEET) TO THE ENDING POINT OF SAID CURVE AND THE BEGINNING OF A CLOCK WISE CURVE HAVING A RADIUS OF 3040.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 12' 54" FOR AN ARC DISTANCE OF 1178.68 FEET (CHORD BEARS: N 54° 27' 01" W – 1171.31 FEET) TO THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND 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;

THENCE: N 44° 04' 13" E ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND SAID REMAINDER OF 405.010 ACRE TRACT FOR A DISTANCE OF 564.92 FEET TO A ½ INCH IRON ROD FOUND ON A SOUTHWEST LINE OF A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN C. RABORN AND WIFE, NEWLYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND SAID 46.8 ACRE TRACT FOR THE FOLLOWING CALLS:

S 50° 13' 09" E FOR A DISTANCE OF 447.74 FEET TO A ½ INCH IRON ROD FOUND;

N 44° 23' 27" E FOR A DISTANCE OF 325.21 FEET;

S 64° 12' 48" E FOR A DISTANCE OF 2225.90 FEET TO THE **POINT OF BEGINNING** CONTAINING 100.79 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/08-653B.MAB

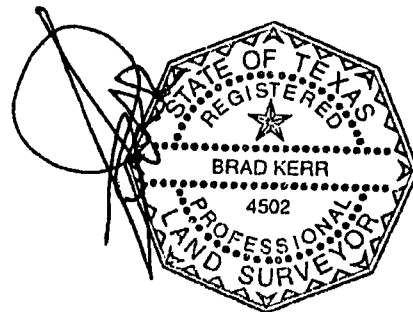


Exhibit "B"

Austin's Colony Subdivision

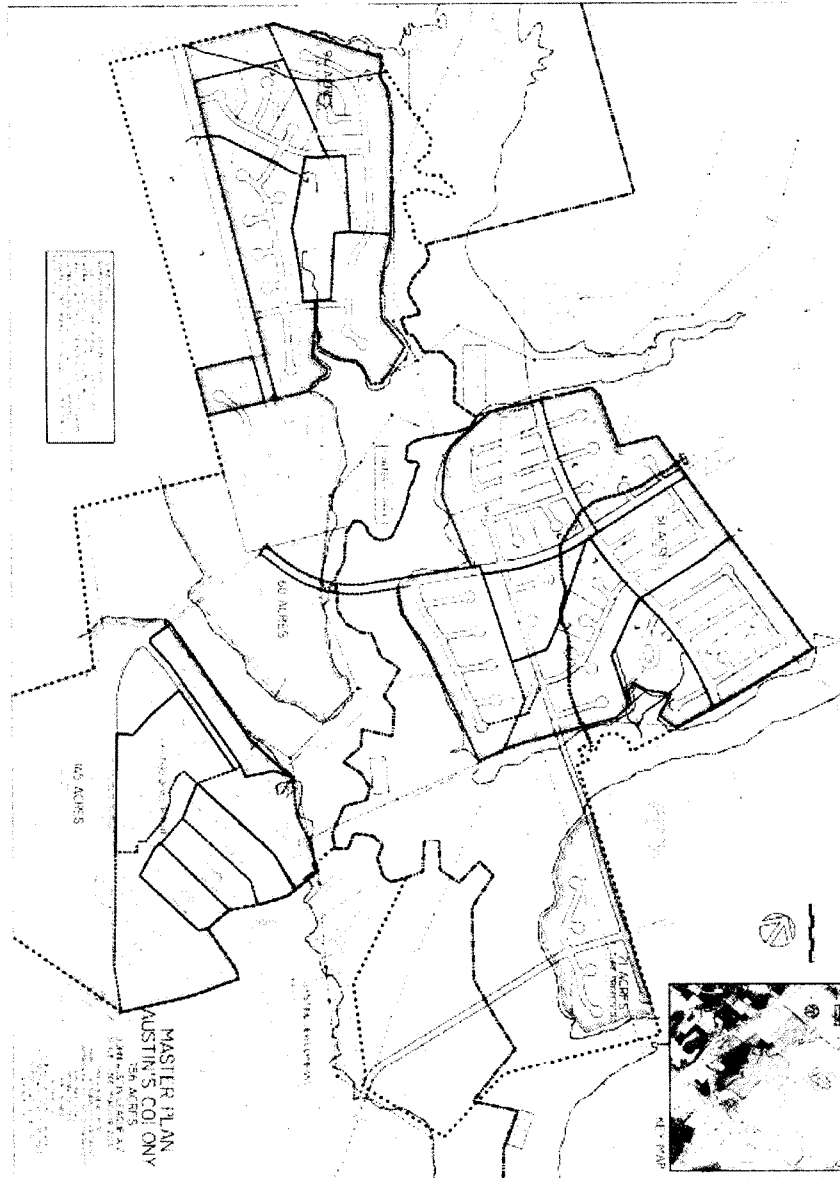
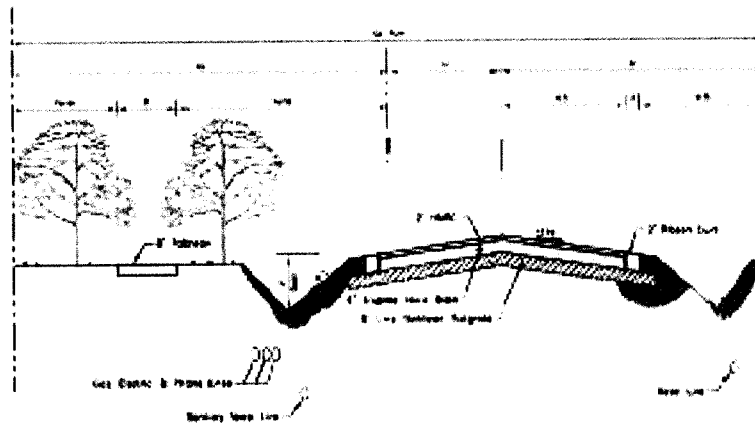


Exhibit "C"

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 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.</p>
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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 Carrabba Family Limited Partnership to be effective as of the ____ day of _____, 2008 (the "Effective Date").

RECITALS

Carrabba Family Limited Partnership 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. Carrabba Family Limited Partnership 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". 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, the cost of the road. Further, Carrabba Family Limited Partnership 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 230 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 Carrabba Family Limited Partnership 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.

CITY OF BRYAN:

**CARRABBA FAMILY LIMITED PARTNERSHIP, a
Texas Limited Partnership
By HIGHLAND INTERESTS, INC., a Texas
corporation, sole general partner**

By: _____
Title: _____

By **MARK J. CARRABBA**
Title: **Vice President**

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 INTERESTS, INC., a Texas corporation, sole general partner of CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership, on behalf of said limited partnership.

Notary Public, State of Texas

EXHIBIT A

(Legal Description of Property Attached)

**METES AND BOUNDS DESCRIPTION
OF A
100.79 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 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A ½ INCH IRON ROD FOUND ON THE NORTHWEST LINE OF THE REMAINDER OF A CALLED 176.241 ACRE TRACT AS DESCRIBED BY A DEED TO ANNE RICHTER CARTER, ROBERT BRENNAN CARTER AND GEORGE FRANCIS CARTER, JR. RECORDED IN VOLUME 3253, PAGE 207 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND SAID REMAINDER OF 176.241 ACRE TRACT FOR THE FOLLOWING CALLS:

S 29° 54' 38" W FOR A DISTANCE OF 1693.00 FEET;
N 45° 16' 05" W FOR A DISTANCE OF 47.10 FEET;
N 75° 07' 36" W FOR A DISTANCE OF 72.88 FEET;
N 83° 15' 50" W FOR A DISTANCE OF 54.83 FEET;
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S 37° 56' 32" W FOR A DISTANCE OF 30.28 FEET;
S 08° 15' 37" E FOR A DISTANCE OF 69.83 FEET;
S 20° 05' 51" E FOR A DISTANCE OF 45.20 FEET;
S 15° 32' 29" W FOR A DISTANCE OF 28.44 FEET;
S 69° 11' 18" W FOR A DISTANCE OF 19.63 FEET;
N 72° 22' 25" W FOR A DISTANCE OF 45.57 FEET;
N 89° 02' 52" W FOR A DISTANCE OF 43.41 FEET;
S 33° 44' 19" W FOR A DISTANCE OF 15.79 FEET;
S 06° 15' 54" E FOR A DISTANCE OF 54.62 FEET;
S 46° 14' 35" E FOR A DISTANCE OF 25.23 FEET;
N 78° 13' 03" E FOR A DISTANCE OF 80.08 FEET;
S 43° 54' 08" E FOR A DISTANCE OF 30.00 FEET;

S 35° 26' 31" W FOR A DISTANCE OF 58.98 FEET;

S 48° 45' 21" W FOR A DISTANCE OF 31.75 FEET TO THE WEST CORNER OF SAID REMAINDER OF 176.241 ACRE TRACT;

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N 47° 50' 37" W ALONG THE NORTHEAST LINE OF SAID EASEMENT FOR A DISTANCE OF 1668.54 FEET;

N 47° 34' 28" W CONTINUING ALONG THE NORTHEAST LINE OF SAID EASEMENT FOR A DISTANCE OF 156.34 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 2390.37 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21° 42' 30" FOR AN ARC DISTANCE OF 905.67 FEET (CHORD BEARS: N 38° 18' 45" E – 900.26 FEET) TO THE ENDING POINT OF SAID CURVE AND THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 3040.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 12' 54" FOR AN ARC DISTANCE OF 1178.68 FEET (CHORD BEARS: N 54° 27' 01" W – 1171.31 FEET) TO THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND 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;

THENCE: N 44° 04' 13" E ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND SAID REMAINDER OF 405.010 ACRE TRACT FOR A DISTANCE OF 564.92 FEET TO A ½ INCH IRON ROD FOUND ON A SOUTHWEST LINE OF A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN C. RABORN AND WIFE, NEWLYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

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N 44° 23' 27" E FOR A DISTANCE OF 325.21 FEET;

S 64° 12' 48" E FOR A DISTANCE OF 2225.90 FEET TO THE **POINT OF BEGINNING** CONTAINING 100.79 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

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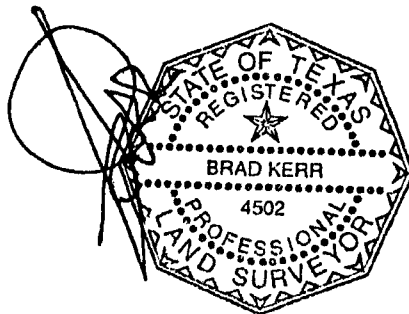


EXHIBIT B
Copy of Road development Agreement

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 Carrabba Family Limited Partnership to be effective as of the 25 day of Sept., 2008 (the "Effective Date").

RECITALS

Carrabba Family Limited Partnership 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. Carrabba Family Limited Partnership 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". 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, the cost of the road. Further, Carrabba Family Limited Partnership 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 230 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 Carrabba Family Limited Partnership 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.

CITY OF BRYAN:

CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership


By: D. Mark Conlee
Title: Mayor

By **HIGHLAND INTERESTS, INC.**, a Texas corporation, its sole general partner

By **MARK J. CARRABBA**
Title: Vice President

ATTEST


CITY SECRETARY

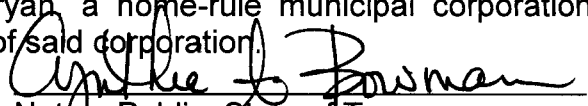
Approved as to Form:

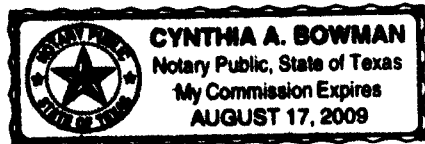

Janis K. Hampton
City Attorney

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 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.


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, sole general partner of CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership, on behalf of said limited partnership.

Barbara Ricicar Lott
Notary Public, State of Texas

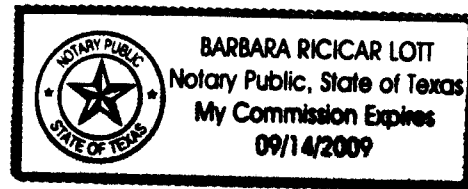


EXHIBIT A

(Legal Description of Property Attached)

**METES AND BOUNDS DESCRIPTION
OF A
100.79 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 333.4 ACRE TRACT AS DESCRIBED BY A DEED TO CARRABBA FAMILY LIMITED PARTNERSHIP RECORDED IN VOLUME 5807, PAGE 259 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

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BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

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

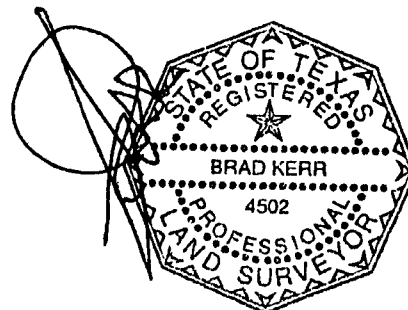


EXHIBIT B
Copy of Road development Agreement

CHANGE ORDER NO. 1
Thornberry "Brownstone" Drive / Austin's Colony & Austin's Estates
CITY JOB NO. DPRDEV

October 13, 2010

Carrabba Family Ltd Partnership
 Mark Carrabba
 Highland Interests, Inc.

We are submitting Change Order No.1 to your contract for City Job No. DPRDEV
 This change order provides for the following changes to the scope of services.

A.	Deduct: This quantity decreased due to the Geotechnical Engineer's determination that 5-percent lime is required instead of 6-percent.				
ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
7	6" Lime (Type A 2 110 LB/CF) for subgrade preparation	TON	66	\$ (141.20)	\$ (9,319.20)
B.	Add: This quantity increased to adjust for an existing electrical transformer pad.				
31	15" HDPE N12 double wall storm sewer	LF	38	\$ 27	\$ 1,007.00
C.	Deduct: This item is no longer needed. The concrete pad was originally needed to protect a sanitary sewer line with only 1-foot of cover. A drainage structure is being built during the construction of Austin's Colony Phase 12, that will no longer make this pad necessary and will serve to protect the sanitary sewer line.				
53	10'x15'x6" thick concrete pad above sewer, Sta. 21+02.24	SF	150	\$ (5.00)	\$ (750.00)
D.	Add: The turf reinforcement mat is needed in the area where the concrete pad is being eliminated.				
30	Turf reinforcement mat (TRM)	SY	135	\$ 5.50	\$ 742.50
CO TOTAL :					\$ (8,319.70)

ORIGINAL CONTRACT PRICE:	\$ 1,393,224.00
INCREASE TO CONTRACT BY CHANGE ORDER NO. 1	\$ (8,319.70)
NEW CONTRACT PRICE:	\$ 1,384,904.30

PERCENT CHANGE BY CHANGE ORDER TO ORIGINAL CONTRACT PRICE	
CHANGE ORDER NO. 1:	-0.60%
TOTAL PERCENT CHANGE:	-0.60%

Your signature below will constitute your acceptance of this Change Order No. 1:

Approved as to Form:



Janis Hampton, City Attorney

Prepared and Recommended:

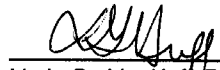


Danielle Singh, Project Manager

Approved for Processing:



W. Paul Kaspar, P.E., City Engineer



Linda Grubbs Huff, P.E.
Director of Public Works

**Party of the First Part
CITY OF BRYAN, TEXAS**

Approved :



Kean Register
Interim City Manager

Attest:



Mary Lynne Stratta, City Secretary


10-26-10
Date of Approval By City of Bryan:

**Party of the Second Part
Highland Interests, Inc.**



Mark Carrabba, Vice-President

Witness:



STATE OF TEXAS §

COUNTY OF BRAZOS §

PARTIAL RELEASE OF LIEN

Recitals

WHEREAS, the City of Bryan, Texas (City) and Carrabba Family Limited Partnership, a Texas limited partnership (Developer) entered into a Road Development Agreement and Memorandum of Road Agreement (Agreement) dated September 25, 2008 and recorded in Volume 8834 Page 59 of the Official Records of Brazos County, Texas; and

WHEREAS, the Agreement required the Developer to reimburse the City for the funds expended by the City for the construction of Thornberry Drive; and

WHEREAS, Paragraph 6.b.i. of the Agreement states that the reimbursement obligation is secured by a first and superior lien on the property described in the Agreement as security to ensure Developer's reimbursement of the City for the cost of Thornberry Drive; and

WHEREAS, the Agreement further provides that the property would be developed in phases and if the development of the parcel met with the requirements in the Agreement, partial reimbursement would be sufficient to justify a partial release of the lien with respect to that parcel; and

WHEREAS, the parcel described herein includes an approximately 12.5 acre portion out of Developer's property, and an approximately 0.6 acre portion out of property owned by 88 Joint Venture, which is subject to a separate agreement with the City; and

WHEREAS, the City has determined that the development of the parcel with is described herein meets with the requirements of the Agreement as well as any other applicable requirements of the City of Bryan; and

WHEREAS, Developer has provided the City with a reimbursement payment which is a percentage of the overall amount to be reimbursed which is proportional in size to the amount of property being released from the lien; and

NOW THEREFORE

Release

The above recitals are incorporated as if fully set forth herein. The parcel described below is a portion of the entire tract which was subject to the Agreement. The City has paid \$711,175.89 for the construction of Thornberry Drive attributable to Developer. The parcel below includes 12.5 developable acres, out of 94.3 developable acres in the entire property. Therefore, in

exchange for Developer's reimbursement of \$94,270.40, (which is a portion of the overall reimbursable cost proportional in size to the number of developable acres being released), the City hereby releases the property described below from the encumbrances and obligations set forth in the Agreement and from all related liens held by the City.

METES AND BOUNDS DESCRIPTION
OF A
12.975 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 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, AND A PORTION OF THE REMAINDER OF A CALLED 405.01 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 A POINT ON THE NORTHEASTERLY LINE OF THORNBERRY DRIVE (80' R.O.W.) MARKING THE ENDING POINT OF A TRANSITIONAL CURVE AT THE INTERSECTION OF SAID LINE WITH THE EXTENSION OF THE NORTHWEST LINE OF HARVEY MITCHELL SCHOOL DRIVE (80' R.O.W.) AS DEPICTED ON THE PLAT OF AUSTIN'S COLONY, PHASE ELEVEN A & C, RECORDED IN VOLUME 8892, PAGE 22 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAID POINT MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 2960.00 FEET;

THENCE: ALONG THE NORTHEASTERLY LINE OF THORNBERRY DRIVE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21° 22' 20" FOR AN ARC DISTANCE OF 1104.12 FEET (CHORD BEARS: N 55° 46' 38" W – 1097.73 FEET) TO A POINT MARKING THE WEST CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: N 41° 11' 14" E THROUGH SAID REMAINDER OF 405.01 ACRE TRACT FOR A DISTANCE OF 477.66 FEET TO THE NORTH CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: S 53° 06' 11" E CONTINUING THROUGH SAID REMAINDER OF 405.01 ACRE TRACT, ALONG THE COMMON LINE OF SAID REMAINDER OF 333.4 ACRE TRACT AND A CALLED 46.8 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN RABORN AND WIFE, NEWLYN MARTIN RABORN RECORDED IN VOLUME 173, PAGE 3 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND THEN THROUGH SAID REMAINDER OF 333.4 ACRE TRACT FOR A DISTANCE OF 586.05 FEET;

THENCE: CONTINUING THROUGH SAID REMAINDER OF 333.4 ACRE TRACT FOR THE FOLLOWING CALLS:

N 78° 19' 31" E FOR A DISTANCE OF 50.00 FEET;

S 11° 40' 29" E FOR A DISTANCE OF 56.66 FEET;

S 53° 06' 12" E FOR A DISTANCE OF 58.99 FEET;


S 23° 05' 54" W FOR A DISTANCE OF 68.44 FEET;
N 78° 19' 31" E FOR A DISTANCE OF 60.00 FEET;
N 57° 36' 29" E FOR A DISTANCE OF 85.23 FEET;
S 67° 05' 47" E FOR A DISTANCE OF 237.71 FEET TO A POINT MARKING THE MOST
EASTERLY CORNER OF THIS HEREIN DESCRIBED TRACT;
S 23° 13' 23" W FOR A DISTANCE OF 503.86 FEET TO THE PLATTED END OF HARVEY
MITCHELL SCHOOL DRIVE (PLAT 8892/22);

THENCE: N 68° 19' 47" W ACROSS THE PLATTED END OF HARVEY MITCHELL SCHOOL DRIVE FOR A
DISTANCE OF 80.03 FEET TO THE BEGINNING OF THE AFOREMENTIONED TRANSITIONAL CURVE
HAVING A RADIUS OF 25.00 FEET;

THENCE: ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 18' 49" FOR AN ARC DISTANCE
OF 39.41 FEET (CHORD BEARS: S 68° 22' 47" W - 35.45 FEET) TO THE POINT OF BEGINNING
CONTAINING 12.975 ACRES OF LAND, MORE OR LESS. BEARING SYSTEM SHOWN HEREIN IS
BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

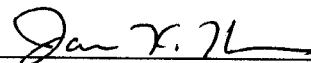
City expressly releases all present and future rights to establish or enforce the Agreement as to
the property described above, however the Agreement continues in full force and effect as to the
remainder of the Property (as that term is defined in the Agreement). This Partial Release of Lien
is effective as of the date signed below.

CITY OF BRYAN



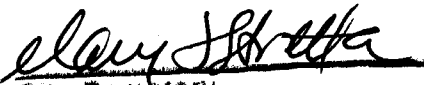
Jason Bienski, Mayor

APPROVED AS TO FORM



Janis K. Hampton, City Attorney

ATTEST:



Clay Shretta
City Secretary

STATE OF TEXAS §

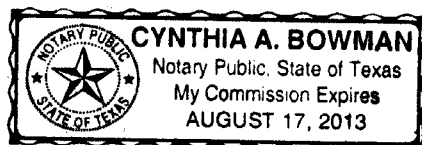
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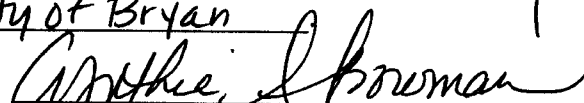
ACKNOWLEDGEMENT

COUNTY OF BRAZOS §

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This instrument was acknowledged before me on the 1st day of February,
2012, by Jason P. Bienski on behalf of City of Bryan





Cynthia A. Bowman
Notary Public in and for
The State of Texas