

ROAD DEVELOPMENT AGREEMENT

This Road Development Agreement (this "Agreement") is executed to be effective on the 11th day of July, 2008, by the CITY OF BRYAN, a home-rule municipal corporation organized under the laws of Texas ("CITY"), and CARTER ARDEN DEVELOPMENT, LLC, a Texas limited liability company (hereinafter referred to as ("CARTER ARDEN")); HOMEWOOD, LLC ("HOMEWOOD") CARTER ARDEN and HOMEWOOD are hereafter collectively referred to as "DEVELOPER"; and NORINE POWERS, by and through her attorney in fact, Kenneth R. Powers ("POWERS").

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. HOMEWOOD and POWERS are owners of adjacent tracts of land lying partially in the CITY and partially in the extra territorial jurisdiction of the CITY. 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 or will acquire the Property. DEVELOPER desire 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. The CITY and DEVELOPER have agreed that all of the Property should be annexed and Developer has agreed to petition CITY for annexation.

AGREEMENT

1. Annexation and Sanitary Sewer. Within 90 days after execution of this Agreement, DEVELOPER, and POWERS, shall petition CITY to annex all of the Property. DEVELOPER shall install the sanitary sewer infrastructure as required by the City's Subdivision Ordinance and in compliance with the City's Comprehensive Plan at its expense, seeking oversize participation in accordance with the City's ordinances and regulations. CITY acknowledges that Developer's installation of the sanitary sewer infrastructure will be phased as necessary for the Development.

2. Right of Way. Within 90 days after execution of this Agreement, HOMEWOOD and POWERS will dedicate and convey to CITY a portion of the Property necessary to create a right of way 100 foot wide and perpendicular to FM 1179 ("Right of Way") in accordance with the City's thoroughfare plan. The CITY 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".

3. Design and Construction of the Project.

Design. CITY shall engage an engineering firm agreed by both parties (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 necessary for the Development and the commercial land between the Property and FM 1179. CITY and DEVELOPER must mutually approve the final plans and specifications.

Construction. CITY shall construct the Project at its expense, provided however the cost of the Project shall not exceed \$1,514,326. If the bid for the Project exceeds \$1,514,326, DEVELOPER and CITY will confer within 5 days and unless they mutually agree to proceed, this Agreement will automatically terminate. The CITY will (i) provide 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, (iii) provide to DEVELOPER upon request periodic reports regarding the status of the construction, and (iv) cause the construction to be performed in general accordance with approved plans. The parties to this Agreement recognize that during construction, certain changes may be necessary to accomplish the construction of the roadway to accomplish the intent of building the roadway. The parties acknowledge and agree that ultimately the cost of the Project will be borne by Developer and must be paid out of land sales. If the cost of the Project increases too much, the sales of land, and thus the reimbursement to the CITY, may be slowed or reduced. The CITY and DEVELOPER agree to collaborate in good faith to accommodate necessary changes in the roadway design and construction.

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 organize and fund a home owners association that will, 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. Reimbursement.

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 of design and construction, which will then become the amount of the Reimbursement and total cost of the Project. Total cost of the Project means all costs of design and construction of the Project less the cost of design and construction of the portion of the Project traversing the creek at the westernmost end of the Property.

a. Initial Reimbursement. Within 60 days following completion of the (i) Project as evidenced by the City's certificate of acceptance; and (ii) City's certification of the actual cost of design and construction of the Project, DEVELOPER shall reimburse CITY an amount equal to 14% of the total cost of the Project (the "Initial Reimbursement"). Upon receipt of the Initial Reimbursement, CITY shall execute and deliver to Developer in recordable form, a release of its rights under this Agreement as to Phase 1 only and in a form satisfactory for a title company to remove reference to this Agreement from a commitment for title insurance on Phase 1 only. 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. **Payment by DEVELOPER shall constitute acceptance of construction of the Project "as is" and shall constitute a waiver and release of any contractual or other claims against the CITY for deficient construction, design or other problems of the Project or the roadway, existing or developing in the future, that the DEVELOPER or Powers may have or may acquire in the future, regardless of whether the claims be known or unknown at the time of payment, 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, 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 (i) the total cost of the Project less (ii) the Initial Reimbursement. 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 ten (10) years from the date the first final plat of the Project is approved. If DEVELOPER fails to reimburse the CITY the total cost of the Project within the ten (10) 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. Such payments of interest shall continue regularly and annually until the total cost of the Project is fully reimbursed.
- iii. The DEVELOPER and POWERS 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 and POWERS, covenant, warrant and agree 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 and POWERS agree 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.

6. 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.**

7. 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 and POWERS agree to impose covenants, conditions and restrictions that will run to the benefit of the City that contain the following:

- a. There will be no more than 115 lots requiring a structure with a minimum heated square footage of 2000 square feet;

b. There will be no more than 120 lots requiring a structure with a minimum heated square footage of 2200 square feet;

c. There will be no less than 125 lots requiring a structure with a minimum heated square footage of 2500 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.

8. 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.

9. 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.

10. 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..

11. 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.

12. 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:

CARTER ARDEN DEVELOPMENT, LLC
Attn: Steve Arden
1101 University Drive East, Suite 108
College Station, Texas 77840

with a copy to:

The Ellison Firm
Attn: Chuck Ellison
P.O. Box 10 103
College Station, TX 77845-0103
(979) 696-9889
(979) 693-8819(fax)

To HOMEWOOD:

Robert Carter
6518 Abbey View Way
Baltimore, MD 21212
(410) 592-6766
(410) 592-3778(fax)

To POWERS:

Norine Powers
2803 Barwick Circle
Bryan, Texas 77802

To CITY:

City of Bryan
Attn:

Bryan, Texas 778

with a copy to :

City of Bryan
Attention: City Attorney

Bryan, TX 778

13. 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, HOMEWOOD, and POWERS. This Agreement and the rights and obligations under this Agreement shall be binding on the heirs, successors and assigns of the parties.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

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.

19. 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.

20. 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.

21. 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.

22. 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: CARTER ARDEN DEVELOPMENT, LLC:

D. Mark Conlee *J. Stephen Arden*
By: D. Mark Conlee By: J. Stephen Arden

Title: Mayor Title: MANAGER

Attest: *J. Stephen Arden*

HOMEWOOD, LLC:
By: *Robert Carter*
Robert Carter, sole manager

NORINE POWERS:

x *Kenneth R. Powers*
By Kenneth R. Powers, her attorney in fact

THE STATE OF TEXAS '
COUNTY OF BRAZOS '

This instrument was acknowledged before me on the 11 day of July, 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.

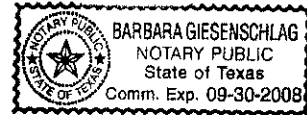
Cynthia A. Bowman
Notary Public, State of Texas



THE STATE OF TEXAS
COUNTY OF BRAZOS

This instrument was acknowledged before me on the 5th day of June, 2008, by J. Stephen Arden Manager of Carter Arden Development, a Texas limited liability company, on behalf of said limited liability company.

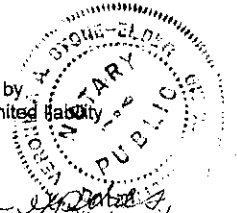
Barbara GieseSchlag
Notary Public, State of Texas



THE STATE OF TEXAS
COUNTY OF BRAZOS

This instrument was acknowledged before me on the 2nd day of June, 2008, by Robert B. Carter of Homewood, a Texas limited liability company, on behalf of said limited liability company.

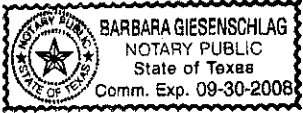
Barbara GieseSchlag
Notary Public, State of Texas
my commission expires 6/26/2011



THE STATE OF TEXAS
COUNTY OF BRAZOS

This instrument was acknowledged before me on the 5th day of June, 2008, by Kenneth R. Powers, attorney in fact for his mother, Norine Powers.

Barbara GieseSchlag
Notary Public, State of Texas

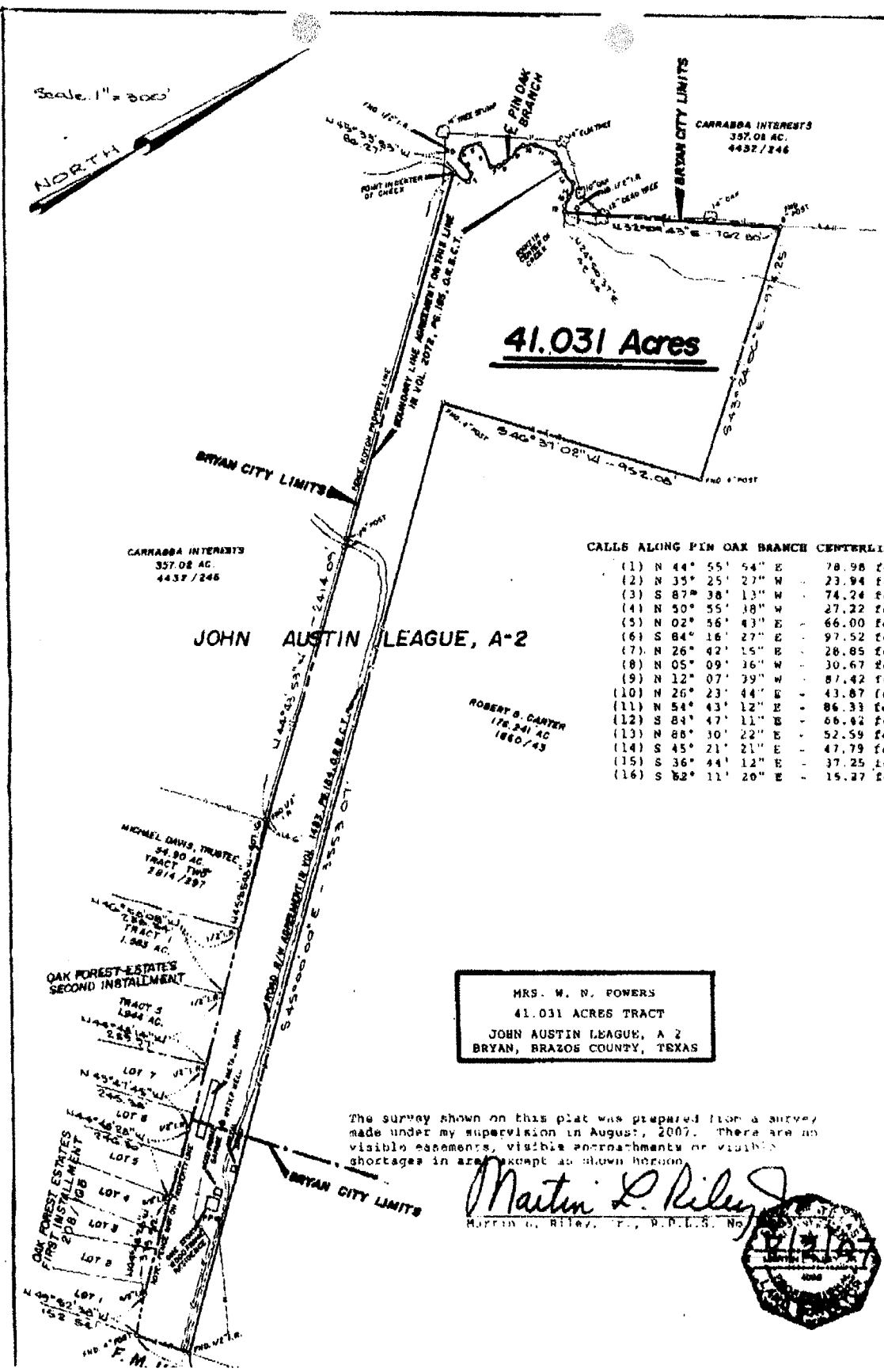
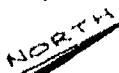


Parcel 1

Being situated in the John Austin League, Abst. No. 2, in Brazos County, Texas and described as follows: BEGINNING at the SE corner of the original tract a fence corner on the NW R/W line of F. M. Road No.1179;

THENCE N 43° 35' W along a fence 1743.3 varas;
THENCE S 32° 33' W along a fence 335.7 varas a fence corner;
THENCE S 42° 36' E 353.9 varas a fence corner;
THENCE S 46° 07' W along a fence 343.5 varas a fence corner;
THENCE S 44° 36' E along a fence 1283.4 varas to the NW R/W line of said FM road;
THENCE along a fence on the NW side of said road N 51° 12' E 221.7 varas; N 47° 54' E 313.5 varas and N 45° 20' E 118.8 varas to the place of beginning, containing 176.241 acres of land and being the same land conveyed to S. R. Buchanan by S. M. Bullock by deed dated April 17, 1964, recorded in Volume 236 Page 183, Deed Records, Brazos County, Texas to which deed reference is hereby made for all purposes;

Scale: 1" = 200'



41.031 Acres

CARRABBA INTERESTS
357.08 AC
4437 / 246

JOHN AUSTIN LEAGUE, A-2

ROBERT S. CARTER
178.241 AC
1860 / 43

CALLS ALONG PIN OAK BRANCH CENTERLINE

(1)	N 44° 55' 54"	E	78.98	ft
(2)	N 35° 25' 27"	W	23.94	ft
(3)	S 87° 38' 13"	W	74.24	ft
(4)	N 50° 55' 38"	W	27.22	ft
(5)	N 02° 56' 43"	E	66.00	ft
(6)	S 84° 16' 27"	E	97.52	ft
(7)	N 26° 42' 15"	E	28.85	ft
(8)	N 05° 09' 36"	W	30.67	ft
(9)	N 12° 07' 39"	W	87.42	ft
(10)	N 26° 23' 44"	E	43.87	ft
(11)	N 54° 43' 12"	E	86.33	ft
(12)	S 84° 47' 11"	E	66.42	ft
(13)	N 88° 30' 22"	E	52.59	ft
(14)	S 45° 21' 21"	E	47.79	ft
(15)	S 36° 44' 12"	E	37.25	ft
(16)	S 62° 11' 20"	E	15.37	ft

MRS. W. N. POWERS
41.031 ACRES TRACT
JOHN AUSTIN LEAGUE, A 2
BRYAN, BRAZOS COUNTY, TEXAS

The survey shown on this plat was prepared from a survey made under my supervision in August, 2007. There are no visible encumbrances, visible encroachments or visible shortages in area, except as shown hereon.

Martin L. Riley
Martin L. Riley, P.L.L.C., P.O. Box 1000

