

RESOLUTION NO. 20070111-011

WHEREAS, the City of Bee Cave and the owner of certain land within Austin's extraterritorial jurisdiction (ETJ) have requested the transfer of that land from Austin's ETJ to Bee Cave's ETJ ; and

WHEREAS, the owner has executed a Declaration of Restrictive Covenants impressing the land with certain restrictions, and Bee Cave has agreed to enforce such restrictions, all as set out in the Interlocal Agreement attached as Exhibit A; and

WHEREAS, the release of this ETJ under these terms will promote reasonable urban planning and regulation; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the Council approves the transfer of approximately 145 acres of land in Austin's ETJ to the City of Bee Cave's ETJ, in accordance with the terms and conditions of the Interlocal Agreement attached as Exhibit A; and the City Manager or her designee is authorized to execute said Agreement.

ADOPTED: January 11, 2007

ATTEST:

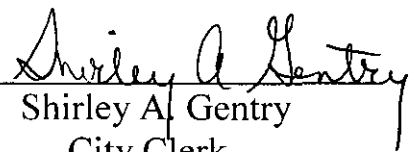

Shirley A. Gentry
City Clerk

EXHIBIT A

INTERLOCAL COOPERATION AGREEMENT

This **Interlocal Cooperation Agreement** ("Agreement") is made and entered into by and between the **City of Austin**, Texas ("Austin"), a Texas home rule municipal corporation, and the **City of Bee Cave**, Texas ("Bee Cave"), a Texas general law municipal corporation, acting by and through their authorized representatives.

Recitals.

Whereas, Austin and Bee Cave (sometimes hereinafter collectively referred to as the "cities" or "parties") recognize that both the public interest and good government are best served by long-term, mutually cooperative relationships between neighboring cities; and

Whereas, agreements that establish boundaries within which specific duties are performed and standards applied in a convenient and cost effective manner to assure quality urban planning and development serve the best interests of all citizens; and

Whereas, agreement regarding areas adjacent to the cities' respective corporate limits or extraterritorial jurisdiction ("ETJ") will assist and enhance the planning and development of capital improvement programs and services, and result in meaningful protection for the environment and valuable natural resources; and

Whereas, this Agreement will accomplish legitimate public purposes of both cities and will permit dependable urban planning that will benefit the environment and the public health, safety and welfare of our respective present and future citizens; and

Whereas, the Owners of a tract of land identified on Exhibit "A" to this Agreement and Bee Cave have requested that Austin release that portion of Austin's ETJ which is approximately 145 acres identified as Tract "A" the Bee Cave Release Area (the "Bee Cave Release Area"), so that the entire 378 acre tract described as the proposed Falconhead West Development will be in Bee Cave's ETJ; and

Whereas, the Owners have agreed to impress the land with Restrictive Covenants which include restrictions on development as set out in Exhibit B to this Agreement, which restrictions may be enforced by Austin or Bee Cave, and based on these restrictions, Austin has agreed to release the ETJ as set out in this Agreement; and

Whereas, after the ETJ release contemplated by this Agreement has been completed, Bee Cave will be responsible for regulation of development and public and private construction improvements within that area;

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized by the governing bodies of Austin and Bee Cave and the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the cities, and subject to each and every term and condition of this Agreement, the parties contract, covenant and agree as follows:

Article One

Findings and Declarations.

Section 1.1. Fact Findings. The recitals above are adopted as findings by the governing bodies of Austin and Bee Cave, and are incorporated herein for all purposes. The governing bodies of Austin and Bee Cave have authorized and approved this Agreement.

Section 1.2. Water Protection Requirements. The application and enforcement of the Development and Water Quality Regulations within the Bee Cave Release Area, as set out in Exhibit B, are reasonable and necessary for the preservation and protection of water quality, the watersheds of both Bee Cave and Austin, and valuable natural resources.

Article Two

Term and Nature of Agreement.

Section 2.1. Term of Agreement. The term of this Agreement shall commence on the last day of the month in which the agreement is authorized and executed by authorized representatives of both cities ("Effective Date"), for an initial term of one year. The term automatically renews on the Effective Date for successive annual terms until terminated by mutual agreement of the parties.

Section 2.2. Intent and Purpose. The intent and purpose of this Agreement is to provide for effective and efficient urban planning, the release of ETJ as set out in this Agreement, and that Bee Cave shall be responsible for regulation of development and public and private construction improvements and application and enforcement of the Development and Water Quality Regulations within the Bee Cave Release Area, as more particularly described in Exhibit B.

Section 2.3. Map. References in this Agreement to any geographic areas refer to the area named and shown on the Map attached hereto as Exhibit A and incorporated herein for all purposes.

Article Three

Release of ETJ

Section 3.1 ETJ Release. Austin will release to Bee Cave the portion of Austin ETJ identified as the Bee Cave Release Area shown on Exhibit A to this Agreement, and as more particularly described in Exhibit A. Such release is subject to conditions that the area will become a part of Bee Cave's ETJ and the application and enforcement of the Development and Water Quality Regulations for the approval of subdivisions and land development, as set forth herein, within the Bee Cave Release Area. The release is effective on the last day of the month in which both parties have executed this Agreement.

Section 3.2 Bee Cave has agreed to the exchange of ETJ areas identified on Exhibit A as Tracts "B" and "C", between Austin and the City of Lakeway, as authorized by Lakeway and Austin under separate Interlocal Agreement.

Article Four

Review and Approval of Subdivision Applications and Construction

Section 4.1. Subdivision and Construction Review and Approval. Upon release of ETJ in accordance with Section 3.1, Bee Cave will provide urban planning and will enforce the requirements set out in Exhibit B within the Bee Cave Release Area, and will review, provide oversight and inspect subdivisions and land development within the Bee Cave Release Area, and will only approve subdivisions and land developments in the Bee Cave Release Area that are in compliance with the requirements of Exhibit B, incorporated herein by reference.

Section 4.2. Enforcement and Compliance. The standards, regulations and conditions set forth in Exhibit B to this Agreement for the review and approval of development within the Bee Cave Release Area shall be applied and enforced by Bee Cave, its officers, employees, agents and representatives, in a manner consistent with the wording and intent of this Agreement. They shall remain development regulations and requirements of Bee Cave within the Bee Cave Release Area. If Bee Cave contracts with Travis County, pursuant to *Chapter 242, Texas Local Government Code*, or otherwise, for Travis County to review and approve land development within Bee Cave's ETJ, it shall be an event of default under this Agreement unless the standards and regulations set forth in this Agreement are applied and enforced in a manner consistent with the intent of this Agreement.

Article Five

General and Miscellaneous.

Section 5.1. Development Approval and Policy Making Authority. Bee Cave shall have exclusive responsibility for urban planning within the Bee Cave Release Area that is consistent with this Agreement, and the approval of land development and subdivisions within the Bee Cave Release Area in compliance with this Agreement. Bee Cave shall further have control, supervision and policy making authority for and with respect to city services and future services within the Bee Cave Release Area, to the fullest extent authorized by State law and not inconsistent with this Agreement.

Section 5.2. Jurisdiction. This Agreement shall not be deemed to extend or increase the jurisdiction or authority of either of the cities except as necessary to implement and give effect to this Agreement. All governmental and proprietary functions and services to be performed and provided by Bee Cave within the Bee Cave Release Area shall, except as provided otherwise by State law and in this Agreement, be and remain in the sole discretion of Bee Cave. Nothing in this Agreement shall be deemed to be applicable to, or an attempt to limit or restrict, the legal rights, authority or jurisdiction of any other governmental entity.

Section 5.3. Standing in Contested Case. Bee Cave agrees not to challenge or object to the standing of the City of Austin, as a party or in any other capacity, to participate in an administrative or adjudicative proceeding relating to use of the Bee Cave Release Area for

effluent irrigation or other wastewater discharge system. Austin will not challenge effluent irrigation if it is in compliance with the terms of the Restrictive Covenant attached as Exhibit B.

Section 5.4. Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the cities to undertake any other action or to provide any service within the Entire Property, except as specifically set forth in this Agreement.

Section 5.5. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the cities nor to create any legal rights or claims on behalf of any third party. Neither Austin nor Bee Cave waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

Section 5.6. Amendments and Modifications. This Agreement may not be amended or modified except in writing executed by both Austin and Bee Cave and authorized by their respective governing bodies.

Section 5.7. Exhibits. The following exhibit is incorporated into this Agreement by reference as if fully set out herein:

Exhibit "A": Tracts A, B, and C

Exhibit "B": Declaration of Restrictive Covenants

Section 5.8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

Section 5.9. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 5.10. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the authorized representatives of the Cities have executed this Agreement.

City of Austin, Texas

City of Bee Cave, Texas

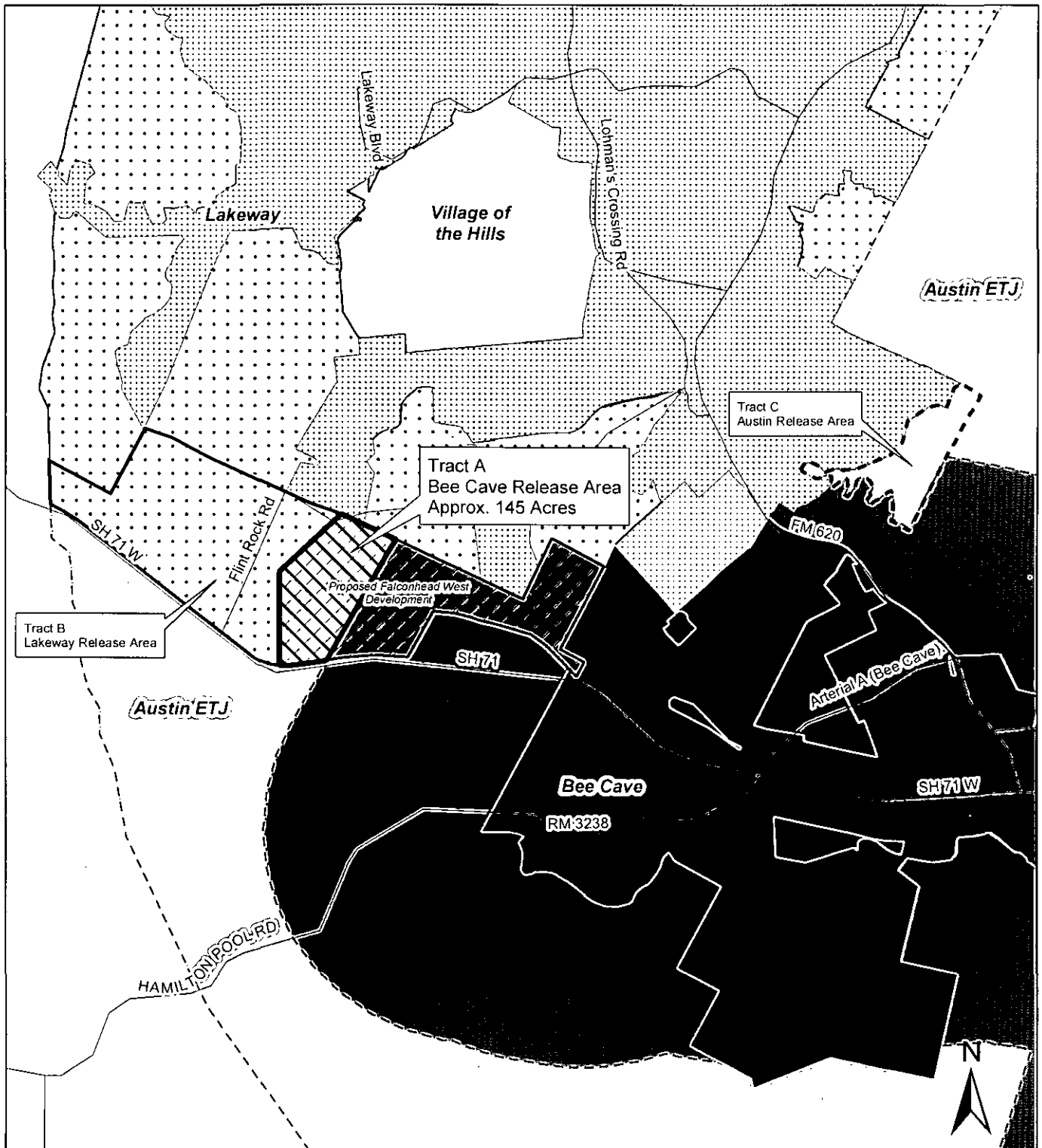
Toby Hammett Futrell, City Manager

Carolyn Murphy, Mayor

Date: _____

Date: _____

Attest: _____
Sherry Mashburn
City Secretary
City of Bee Cave



Austin ETJ Release to the City of Bee Cave

Exhibit A to the Interlocal Agreement

CETJ-05-002



City of Austin NPZD
January 11, 2007
J. Chuter

This map shows the best data available to the City of Austin; however, its accuracy is not guaranteed.

LEGEND



Bee Cave Release Area



Proposed Falconhead West



Austin ETJ



Bee Cave



Bee Cave ETJ



Lakeway



Lakeway ETJ

0 0.25 0.5 Miles

EXHIBIT B to Interlocal Agreement

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS

COUNTY OF TRAVIS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made on this 4th day of January, 2007 by Falconhead West, L.P., a Texas limited partnership, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the fee simple owner of a 378 acre tract of land described as Proposed Falconhead West Development in Exhibit "A", of which approximately 145 acres described as Tract A in Exhibit "A" (the "Bee Cave Release Area") is currently within the City of Austin's ETJ; and

WHEREAS, Declarant has requested that the Bee Cave Release Area be transferred from the extraterritorial jurisdiction of the City of Austin to the extraterritorial jurisdiction of the City of Bee Cave, and has agreed to subject the Bee Cave Release Area to certain covenants, conditions and restrictions as more specifically set forth in this Declaration;

NOW THEREFORE, in consideration of the release of the Bee Cave Release Area from the City of Austin's extraterritorial jurisdiction, and intending to bind itself, its assigns and successors and all other persons hereafter having an interest in the Bee Cave Release Area, the Declarant does hereby declare, impose and subject the Bee Cave Release Area as follows:

1. Development and Water Quality Regulations. In this Declaration, the terms Development, Bluffs, Wetlands, Springs and Impervious Cover are defined as in the Village of Bee Cave's development regulations. The Property shall be developed and/or maintained in accordance with each of the following:

a. Impervious Cover. Impervious cover on the property shall be limited to a maximum of 10% Gross Site Area, or 14.6 acres.

b. Little Barton Creek Watershed. No development shall be allowed in the Little Barton Creek Watershed.

c. Critical Environmental Features ("CEF") Setback. Development shall be set back a minimum of 150 feet from Bluffs, Springs, and Wetlands. The objective is to maintain a natural, undisturbed condition within the CEF setback area. Within the 150 foot setback area:

(i) a hiking trail or open yard is allowed, if located at least 50 feet from the edge of the CEF;

(ii) a natural vegetative cover must be retained to the maximum extent practicable;

- (iii) construction is prohibited, except for hiking trails and open yards; and
- (iv) wastewater disposal or irrigation is prohibited.

d. Creek Buffer. Development shall be set back a minimum of 150 feet from the centerline of waterways with a drainage area of 64 to 320 acres. Development shall be set back a minimum of 25 feet from the centerline of waterways with a drainage area of 5 to 64 acres.

e. Development on Slopes. Driveways may not be constructed on a slope of greater than 15%. Other development may not be constructed on a slope of greater than 25%.

f. Stormwater Water Quality Measures. Development must provide vegetative filter strips or other structures or controls that remove 70% of the increase in total suspended solids and total phosphorus resulting from all development; and shall remove 70% of the increase in total suspended solids, total phosphorus, and oil & grease resulting from non-single family residential development.

g. Open Space Use Restrictions. A minimum of 122 acres will be reserved as open space/greenbelt/preserve and dedicated to the Village of Bee Cave for management and operation. Improvements may consist of the following:

- (i). Oak wilt control;
- (ii) Stream bed erosion protection, if needed;
- (iii) A hiking path network with interpretive signs, overlook shelters, small picnic and pavilion facilities, and benches;
- (iv) A wildlife management plan and predator control;
- (v) Enhancement of desirable plant communities; and
- (vi) Near Hwy. 71 with access from the main boulevard (Vail Divide) in non-COA ETJ area, a ten-space parking lot and restroom facility served by the Falconhead West water and wastewater system.
- (vii) LCRA will be granted an easement for future disposal of wastewater effluent by subsurface irrigation subject to certain conditions and restrictions stated below and within the areas depicted on the attached map.
- (viii) Wastewater lift stations serving the single family residential area;
- (ix) Vegetative filter strips and other structures or controls for water quality purposes.

Except as permitted above, uses are limited to low-impact recreational activities, such as hiking, ecotourism, scientific education and research, habitat preservation and enhancement, and other outdoor activities which are not inconsistent with these activities.

2. Binding Effect, Third Parties. It is intended that the provisions of this Declaration shall be binding on all successors and assigns and run with the land. No rights, privileges or immunities, however, shall inure to the benefit of the public, any adjoining property owner or other third party (other than the City of Austin and the City of Bee Cave) as a result of this Declaration, nor shall any adjoining property owner or other third party (other than the City of Austin and/or the City of Bee Cave) be deemed to be a beneficiary of any of the provisions contained herein. The provisions of this Declaration shall be enforceable by the City of Austin and the City of Bee Cave, and Declarant and his successors and assigns. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin or the City of Bee Cave, and Declarant or his successors and assigns, to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

If at any time the City of Austin or the City of Bee Cave fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

3. Modification. This Declaration may be modified, amended, or terminated only by the collective action of (a) at least fifty percent (50%) of the members of the Council of the City of Austin, (b) at least fifty percent (50%) of the members of the Council of the City of Bee Cave, and (c) the owner(s) of at least fifty percent (50%) of the gross land area of the Bee Cave Release Area at the time of such modification, amendment, or termination.

4. Counterparts. This Declaration may be executed in multiple counterparts, which shall be considered on instrument when taken together.

5. Applicability. Nothing herein shall be interpreted or implied to constitute an amendment, modification or nullification of the existing Development Agreement between the City of Bee Cave, Texas (formerly Village of Bee Cave) and Spillman Development Group, Ltd., a Texas limited partnership and the conditions and requirements of this Declaration shall apply to the Bee Cave Release Area in addition to, and are cumulative of, any requirements in the existing Development Agreement. This Declaration shall apply to the Bee Cave Release Area only and shall not affect other real property owned by Declarant.

DECLARANT:

FALCONHEAD WEST, L.P., a Texas Limited Partnership

By: RYLAND HOMES OF TEXAS, INC., a Texas Corporation, its managing general partner

By:

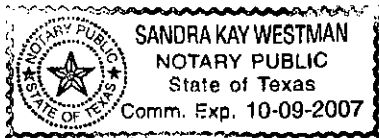
Printed Name: John J. Damrich

Title: Vice President

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared John J. Damrich Vice President of Ryland Homes of Texas, Inc., the Managing General Partner of Falconhead West, L.P., on behalf of said corporation and said limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 4th day of January 2007.



Sandra Kay Westman
Notary Public in and for the
State of Texas

After Recording Return To:

Falconhead West, L.P.
c/o Palisades Developers, Ltd.
P.O. Box 342437
Austin, TX 78734

TRACT A - THE BEE CAVE RELEASE AREA

144.289 Acres
Falconhead West
COA- ETJ
Page 1 of 4

T.C.R.R. Co. Survey No. 181, Abstract No. 2259
C. Wolfe Survey No. 182, Abstract No. 2525
J.A. Polvado No. 547, Abstract No. 645
06538.13
October 17, 2006

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

FIELDNOTE DESCRIPTION of a 144.289 acre tract of land in the T.C.R.R. Co. Survey No. 181, Abstract No. 2259, the C. Wolfe Survey No. 182, Abstract No. 2525 and the J.A. Polvado Survey No. 547, Abstract No. 645, Travis County, Texas, and being a portion that 377.46 acre tract of land conveyed to Falconhead West, L.P. by the deeds recorded as Document Nos. 2006025401 through 2006025415 of the Official Public Records of Travis County, Texas; said 144.289 acre tract is more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod with plastic cap marked "Capital Surveying Co., Inc." set on the curving, northerly right-of-way line of State Highway 71 (variable width R.O.W., 180.00 feet wide at this point) for the southwest corner of said 377.46 acre tract, and being the southeast corner of that 456.63 acre tract conveyed to James P. Heard, Jr. et al as recorded in Document No. 2000133661 of the Official Public Records of Travis County, from which a highway right-of-way marker found at the end of said right of way curve, bears N67°50'31"W, a chord distance of 760.93 feet and an arc distance of 771.51 feet;

THENCE, leaving the northerly right-of-way line of State Highway 71 with the common westerly line of said 377.46 acre tract and easterly line of said 456.63 acre tract, the following two (2) courses:

- 1) N00°07'09"E, at 17.56 feet pass a found cotton spindle and continuing for a total distance of 2302.29 feet to a metal fence post found for an angle point;
- 2) N46°45'08"E, a distance of 2106.35 feet to a 1/2" iron rod found for the common northwest corner of said 377.46 acre tract and northeast corner of said 456.63 acre tract and being on the southerly line of Flint Valley Subdivision recorded as Document No. 199900389 of the Official Public Records of Travis County;

THENCE, with the common northerly line of said 377.46 acre tract and southerly line of Flint Valley Subdivision and generally along the southerly line of the Henning Heights Subdivision, as recorded in Volume 85, Page 790 of the Plat Records of Travis County, Texas, the following two (2) courses:

- 1) S63°48'46"E, at 32.45 feet pass a ½" iron rod found for the southwest corner of Lot 5 of said Flint Valley subdivision, at 600.17 feet pass a 60d nail in a fence post found for the common southeast corner of the Flint Valley subdivision and southwest corner of said Henning Heights subdivision, and continuing for a total distance of 1254.96 feet to a cotton spindle found for an angle point;
- 2) S65°05'52"E, a distance of 160.59 feet to a ½" iron rod with plastic cap marked "Capital Surveying Co., Inc." set for the northwest corner of the herein described tract, being on the westerly line of the Village of Bee Cave's Extraterritorial Jurisdiction (ETJ) as established by Village of Bee Cave Ordinance No. 90-2;

EXHIBIT A

144.289 Acres
Falconhead West
COA- ETJ
Page 2 of 4

T.C.R.R. Co. Survey No. 181, Abstract No. 2259
C. Wolfe Survey No. 182, Abstract No. 2525
J.A. Polvado No. 547, Abstract No. 645
06538.13
October 17, 2006

THENCE, leaving the northerly line of said 377.46 acre tract, across the 377.46 acre tract with the aforesaid Village of Bee Cave ETJ line, the following two (2) courses:

- 1) Southwesterly, with a curve to the left having a radius of 5280.00 feet and a central angle of $04^{\circ}59'15''$ (chord bears $S30^{\circ}37'50''W$, 459.47 feet) for an arc distance of 459.62 feet to a $\frac{1}{2}$ " iron rod with plastic cap marked "Capital Surveying Co., Inc." set for a point of tangency;
- 2) $S28^{\circ}08'13''W$, a distance of 2947.11 feet to a $\frac{1}{2}$ " iron rod with plastic cap marked "Capital Surveying Co., Inc." set on the common southerly line of said 377.46 acre tract and northerly right-of-way line of State Highway 71 (150.00 feet wide right-of-way at this point), from which a found highway right-of-way marker bears $N79^{\circ}52'34''E$, a distance of 164.32 feet and $S56^{\circ}43'40''W$, a distance of 0.5 feet;

THENCE, with the common southerly line of said 377.46 acre tract and northerly right-of-way line of State Highway 71, the following three (3) courses:

- 1) $S79^{\circ}52'34''W$, a distance of 376.78 feet to a calculated point from which a found highway right-of-way marker bears $S47^{\circ}44'20''W$ a distance of 0.3 feet;
- 2) $S83^{\circ}43'22''W$, a distance of 447.21 feet to a highway right-of-way marker found at the beginning of a non-tangent curve to the right;
- 3) Southwesterly with said curve to the right, having a radius of 1342.39 feet and a central angle of $15^{\circ}55'14''$ (chord bears $S87^{\circ}43'59''W$, 371.81 feet) for an arc distance of 373.01 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 144.289 acres of land area;

I, George E. Hopkins, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision. A sketch was prepared this date to accompany this description.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 27th day of October, 2006.




GEORGE E. HOPKINS
Registered Professional Land Surveyor
No. 4685 - State of Texas

EXHIBIT A

**SURVEY OF 144.289 ACRES
OUT OF THE
T.C.R.R. Co. SURVEY No. 181,
ABSTRACT No. 2259,
THE C. WOLFE SURVEY No. 182,
ABSTRACT No. 2525 AND
THE J.A. POLVADO SURVEY No. 547,
ABSTRACT No. 645,
TRAVIS COUNTY, TEXAS**

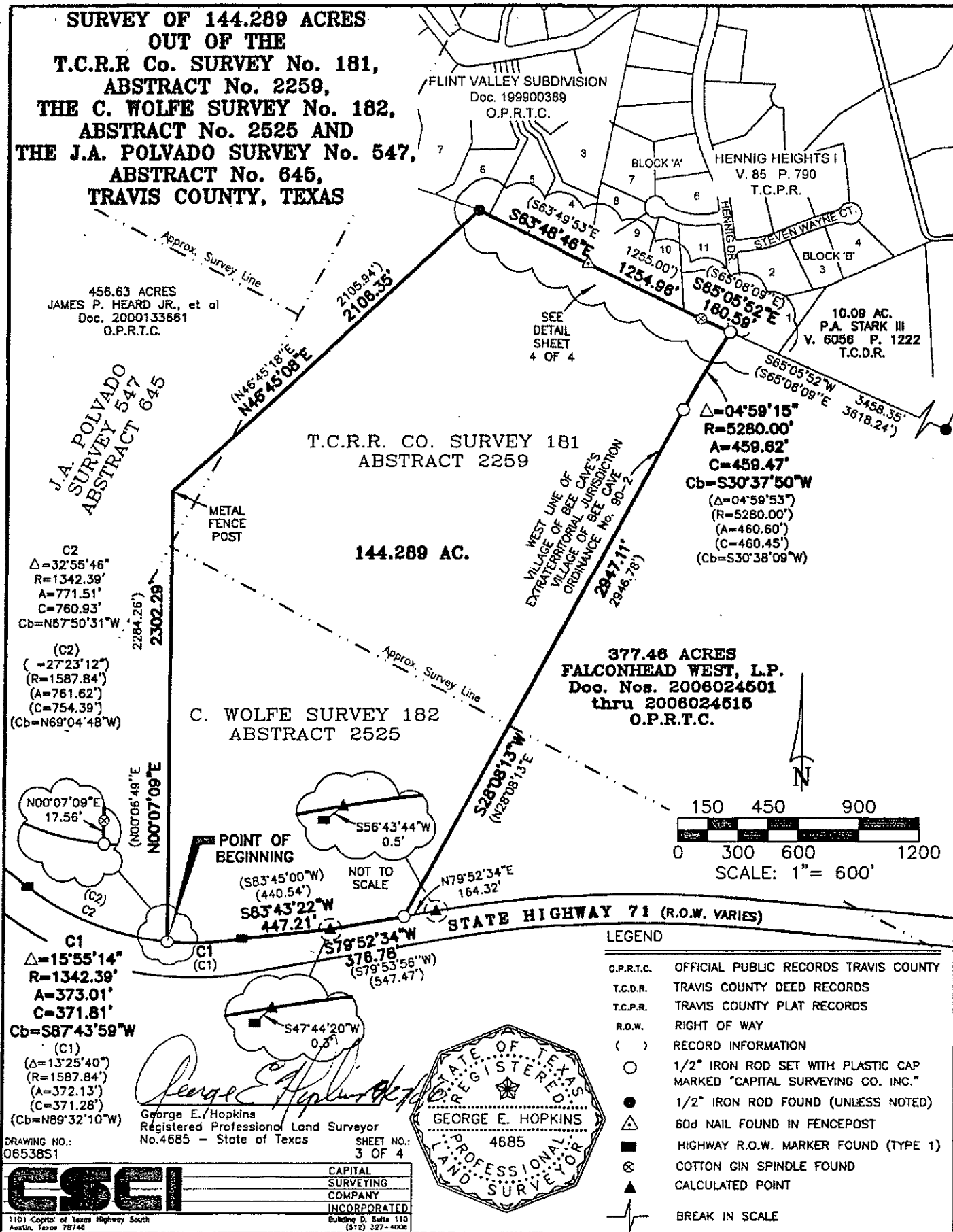
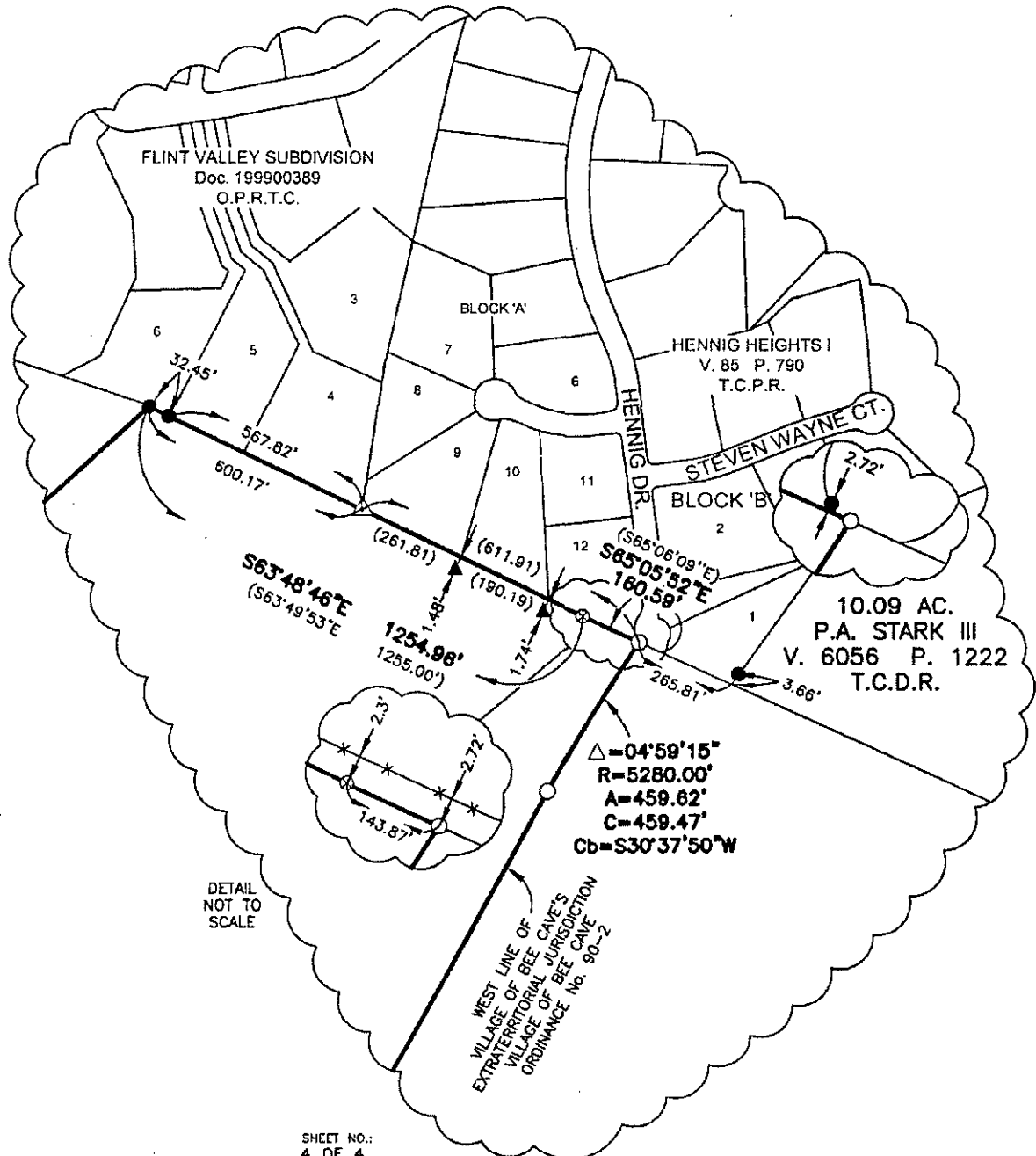


EXHIBIT A

**SURVEY OF 144.289 ACRES
OUT OF THE
T.C.R.R. Co. SURVEY No. 181,
ABSTRACT No. 2259,
THE C. WOLFE SURVEY No. 182,
ABSTRACT No. 2525 AND
THE J.A. POLVADO SURVEY No. 547,
ABSTRACT No. 845,
TRAVIS COUNTY, TEXAS**



DRAWING NO.:
06538S1

SHEET NO.:
4 OF 4

ESCI

CAPITAL
SURVEYING
COMPANY
INCORPORATED

1101 Capital of Texas Highway South
Austin, Texas 78746

Building D, Suite 110
(512) 327-4006

EXHIBIT A