

INTERLOCAL COOPERATION AGREEMENT

This **Interlocal Cooperation Agreement** ("Agreement") is made and entered into as of the Effective Date by and between the **City of Austin**, Texas ("Austin"), and the **City of Buda**, Texas ("Buda"), each of them Texas home-rule cities, acting by and through their authorized representatives.

Recitals.

Whereas, a portion of a tract of land proposed for development is included within City of Austin extra-territorial jurisdiction ("ETJ"), and the property owner has requested that the City of Buda perform development application review and inspections for development on the Property, and

Whereas, the property owner has executed a Restrictive Covenant agreeing to place certain restrictions on the property requested by the City of Austin, in addition to agreeing to regulation of the entire site by the City of Buda and the application of Buda's regulations to development of the Property; and

Whereas, Buda has requested that Austin delegate to Buda review and approval authority for the proposed improvements within the Property; and

Whereas, Austin and Buda recognize that this Agreement will accomplish legitimate public purposes of both cities and will permit urban planning and regulation of development that will benefit the public health, safety and welfare, and Chapter 791, Texas Government Code, the Interlocal Cooperation Agreement Act authorizes cities to enter into interlocal cooperation agreements regarding planning, among other purposes;

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized and permitted by the City Charters of the Cities of Austin and Buda 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 cities, and subject to each and every term and condition of this Agreement, the parties contract, covenant and agree as follows:

Article One Findings.

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

Article Two Term and Nature of Agreement.

Section 2.1. Term of Agreement. The term of this Agreement shall commence on the date of signature by authorized representatives of both cities ("Effective Date") and

continue for a term of one year, and shall automatically renew on each anniversary date for four successive annual terms.

Section 2.2. Termination by Parties. Notwithstanding any other term or condition herein, this Agreement may be terminated by either party by giving thirty days (30) written notice of intent to terminate the Agreement to the other party. Any notice of intent to terminate must be delivered by deposit in the U.S. Mail, certified, return receipt requested.

Section 2.3. Intent and Purpose. The intent and purpose of this Agreement is to provide that the City of Buda shall perform regulatory services for the Property described in Exhibit A to this Agreement. Buda shall be responsible for the review and approval of applications, issuance of permits, and inspection for all development, including public and private construction improvements occurring on the Property, and the development regulations of the City of Buda shall be applied to the Property, provided however that the additional restrictions agreed to by the Property owner in the Restrictive Covenant shall also be required for development on the Property. The Restrictive Covenant is attached to this Agreement as Exhibit B, and is incorporated herein for all purposes.

Article Three

Review and Approval of Development on the Property

Section 3.1. Subdivision, Development and Construction Review and Approval. Austin delegates to Buda its authority to review and approve development applications of every kind for the Property, as described in Exhibit A. Buda shall review application(s) for compliance with Buda regulations, the Restrictive Covenant, and state law, and Buda is authorized to approve such applications on behalf of Austin if it meets all requirements. Buda shall be responsible for review and approval of public and private construction improvements, including that portion within Austin's ETJ, and is authorized to approve such construction if it complies with Buda's development regulations, the Restrictive Covenant and state law.

Section 3.2. Enforcement and Compliance. Buda, its officers, employees, agents and representatives, shall administer, enforce and require compliance with all Buda regulations, the Restrictive Covenant, and state law applicable to the Property. Austin officers, employees, agents and representatives shall not be responsible for review, approval or inspection of development on the Property, and Austin shall not collect development related application fees for the Property.

Article Four

General and Miscellaneous.

Section 4.1. 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 area of the Property, except as specifically set forth in this Agreement.

Section 4.2. 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 Buda 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 4.3. Amendments and Modifications. This Agreement may not be amended or modified except in writing executed by both Austin and Buda and authorized by their respective governing bodies.

Section 4.4. 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 4.5. 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.

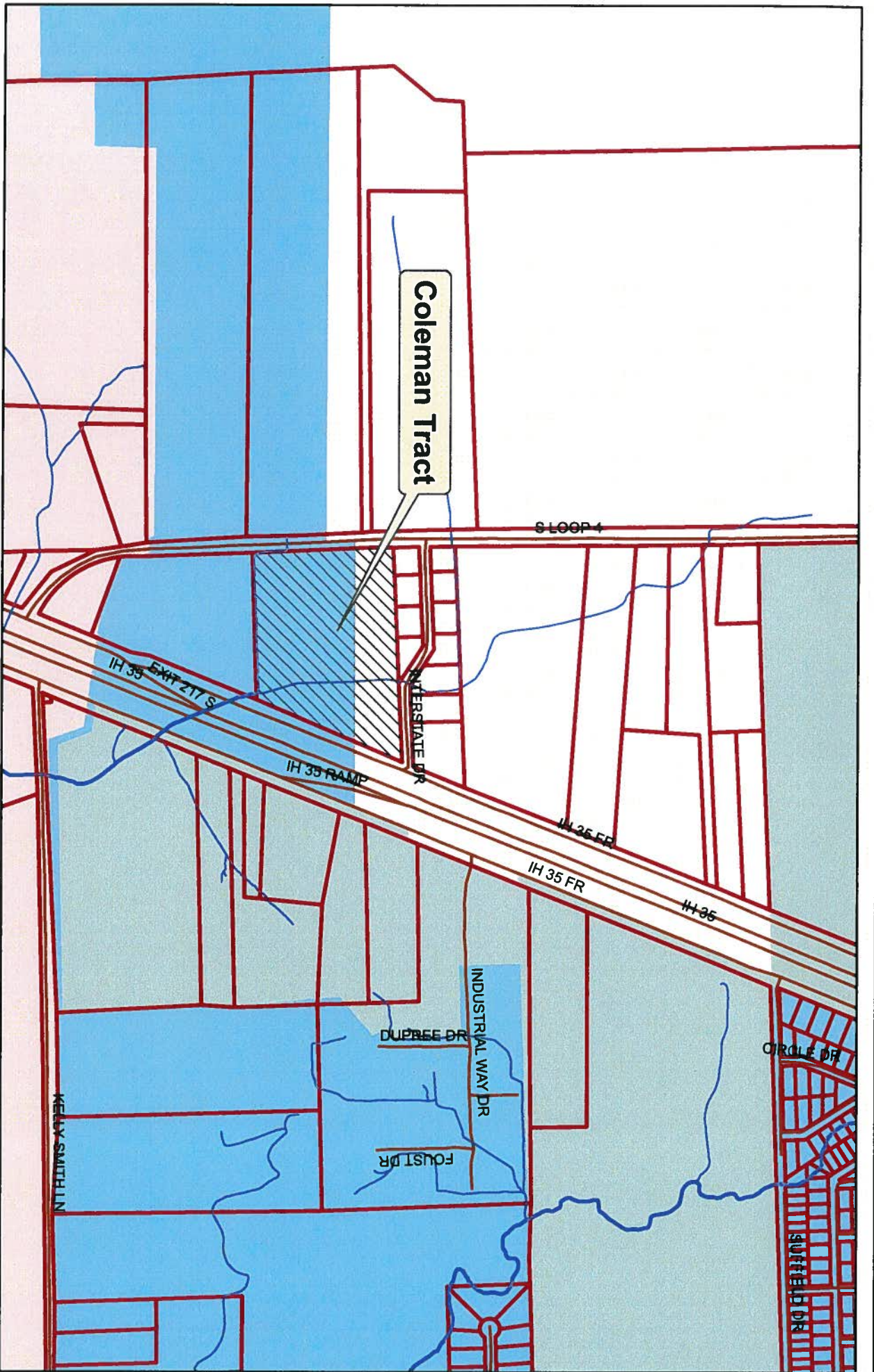
Section 4.6. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

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

City of Austin, Texas

City of Buda, Texas

_____, Date: _____, _____, Date: _____,
_____, Assistant City Manager _____, Mayor



Coleman Tract

S LOOP 4

IH 35
EXIT 217 S

IH 35 RAMP

IH 35 FR

IH 35 FR

IH 35

DUPREE DR

INDUSTRIAL WAY DR

FOUST DR

KELLY SMITH LN

CIRCLE DR

SUTHERLAND DR

Exhibit A

0 250 500 1,000 1,500 2,000 Feet

EXHIBIT "A"

Description of Property

Being approximately 18.220 acres of land, more or less, out of the M.M. Justice Survey, Abstract No. 261, and the N.M. Gatlin Survey, Abstract No. 198, in Hays County, Texas, and being all of that certain tract of land conveyed to Edward R. Coleman by Deed recorded in Volume 1637, Page 621, Official Public Records of Hays County, Texas; said 18.220 acre tract being more particularly described by as follows:

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE M.M. JUSTICE SURVEY, ABSTRACT NO. 261, AND THE N.M. GATLIN SURVEY, ABSTRACT NO. 198 IN

HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 32.465 ACRE TRACT OF LAND CONVEYED TO BUDA BUSINESS PARK, L.L.C. BY INSTRUMENT RECORDED IN VOLUME 1142, PAGE 516 OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS, THE HEREIN DESCRIBED TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron pin found in the West line of the said 32.465 acre tract, being at the Northwest corner of Lot 2, Block A, Coleman Subdivision - Phase I, a subdivision recorded in Plat Book 7, Page 19 of the Plat Records of Hays County, Texas, being in the East r.o.w. line of State Loop 4 South, a public right of way varying in width, for the Southwest corner and PLACE OF BEGINNING hereof;

THENCE along the West line of the said 32.465 acre tract, being along the East r.o.w. line of State Loop 4 South, N 01° 23'59" W for a distance of 563.39 feet to a 1 inch pipe found and N 00°27'14" W for a distance of 220.48 feet to a 1/2" iron pin found at the Northwest corner of the said 32.465 acre tract, for the Northwest corner hereof;

THENCE along the North line of the said 32.465 acre tract, N 00°53'00" E for a distance of 1191.82 feet to a 1 inch iron pipe found at the Northeast corner of the said 32.465 acre tract, being in the West r.o.w. line of Interregional highway 35 South a public r.o.w. varying in width, for the Northeast corner hereof;

THENCE along the East line of the said 32.465 acre tract, being along the West r.o.w. line of IH35 south for the following courses:

S 23°10'42" W for a distance of 709.54 feet to a concrete r.o.w. monument found;
S 33°44'33" W for a distance of 101.22 feet to a concrete r.o.w. monument found;
S 22°59'44" W for a distance of 60.00 feet to a 1/2" iron pin found at the Northeast corner of the said Lot 2, Block A, for the Southeast corner hereof;

THENCE along the North line of the said Lot 2, Block A, S 00°53'00" W for a distance of 815.80 feet to the PLACE OF BEGINNING and containing 18.229 acres of land, more or less.

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS DECLARATON OF RESTRICTIVE COVENANTS (this “**Declaration**”) is made on this 06th day of November, 2008 by Two-Way Land, LP, a Texas limited partnership, hereinafter referred to as “**Declarant**”.

WHEREAS, Declarant is the fee simple owner of a 18.22 acre tract of land described in **Exhibit “A”** (the “**Property**”), of which, a portion of the Property consisting of approximately 12 acres is situated within the City of Austin’s extraterritorial jurisdiction, within which area the City of Austin has certain regulatory authority; and

WHEREAS, the Property is encumbered by liens [“**Liens**”] in favor of First State Bank Central Texas, [“**Two-Way Mortgagee**”] the sole lienholder regarding the Property; and

WHEREAS, Declarant has requested of the Cities of Austin, Texas and Buda, Texas that all of the Property should be made subject to and allowed to develop under the City of Buda’s development regulations, and certain additional restrictions requested by the City of Austin, and the Cities of Austin and Buda have entered into an Interlocal Agreement in which the Cities agree that the restrictions in this Declaration of Restrictive Covenants, including the additional restrictions set out herein, and Buda’s development regulations, shall apply to the entire Property and Buda shall be responsible for review and approval of development on the Property, including that portion within Austin’s extraterritorial jurisdiction; and

WHEREAS, Two-Way Mortgage has joined in this Declaration and consented to the impressing of the covenants, conditions, and restrictions set forth herein; and

WHEREAS, to assure the application these regulations to the Property the Declarant has agreed to subject the Property to certain covenants, conditions and restrictions as more specifically set forth in this Declaration;

NOW THEREFORE, in consideration of the agreement of the Cities to provide for Buda’s review and approval of development, and to apply the certain restrictions and Buda’s development regulations to the Property, including that area within 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 Property the Declarant does hereby declare, impose and subject the Property as follows:

1. **Development of the Property.** The entire Property shall be subject to and shall be developed under the planning and development regulations of the City of Buda, Texas, provided however that the following additional requirements shall also apply to the Property:

a. the combined total number of vehicle trips per day for all development on the Property shall be limited to no more than 2200 trips per day, whether occurring on the entire Property, or on one or more smaller tracts or lots.

b. All site development within the limits of the Property, whether occurring on the entire Property, or on one or more smaller tracts or lots shall be developed with water control facilities that capture and treat the first one-half inch of runoff plus an additional one-tenth of an inch of runoff for each 10 percent increase in impervious cover over 20 percent of the gross site area, or the 2-year storm runoff volume, which ever is greater; and

c. All site development within the limits of the Property, whether occurring on the entire Property, or on one or more smaller tracts or lots, shall be limited to a maximum of 90% impervious cover based on the particular development's gross site area, excluding all land in the 100 year floodplain calculated for fully developed conditions.

The above restrictions apply to the Property as a whole, regardless of whether the Property is subdivided into smaller lots or otherwise converted into individual parcels or developments, and it shall be the responsibility of Declarant and his successors in interest to maintain compliance with these restrictions for the entire Property, notwithstanding that there may be more than one property owner with an interest in the Property at any time.

2. Declarant Waiver of Claims. Declarant waives any and all claims or causes of action against the City of Austin or the City of Buda regarding or arising out of this Declaration, including any claim that the Property, or any portion of the Property, should not be subject to the City of Buda's planning and development regulations.

3. 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 Buda) 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 Buda) 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 Buda. 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 Buda 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 Buda 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.

4. 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 Buda , and (c) the owner(s) of at least fifty percent (50%) of the gross land area of the Property at the time of such modification, amendment, or termination.

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


6. Applicability. This Declaration shall apply to the Property only and shall not affect other real property owned by Declarant.

7. Joinder. By execution below, Two-Way Mortgagee has joined in this Declaration.

DECLARANT:

Two-Way Land, LP, a Texas limited
partnership

By: H&R Land Development, LLC,
General Partner



Edward R Coleman, President & Authorized
Member

ACKNOWLEDGEMENTS

STATE OF TEXAS

§

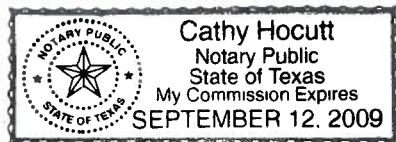
§

COUNTY OF HAYS

§

This Declaration was acknowledged before me on the 06th day of November, 2008, by Edward R. Coleman, President and Authorized Member of H&R Land Development, LLC, a Texas limited liability company, General Partner of Two-Way Land, L.P., a Texas limited partnership, on behalf of said limited partnership and on behalf of said limited liability company in its capacity as general partner of the limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 06th day of November, 2008.



Cathy Hocutt
Notary Public in and for the
State of Texas

JOINDER BY LIENHOLDER-TWO WAY MORTGAGEE

The undersigned, First State Bank Central Texas, a state banking association ("Two-Way Mortgagee"), being the holder of: (a) a first-priority lien presently encumbering the Two-Way Tract pursuant to that certain Deed of Trust (Security Agreement and Financing Statement), dated May 31, 2007, executed by Two-Way Land, L.P. in favor of T. Gerry Gamble, as Trustee, and recorded in Volume 3179, Page 126 (Document No. 2007-70016039), of the Official Records of Hays County, Texas, as modified by that certain Modification Agreement, dated effective as of May 31, 2008, by and between Two-Way Land, L.P. and Two-Way Mortgagee, and recorded in Volume 3401, Page 2 (Document No. 2008-80014890), of the Official Records of Hays County, Texas, and (b) a second-priority lien presently encumbering the Two-Way Tract pursuant to that certain Deed of Trust (Security Agreement and Financing Statement), dated June 28, 2007, executed by Two-Way Land, L.P. in favor of T. Gerry Gamble, as Trustee, and recorded in Volume 3199, Page 875 (Document No. 2007-70019342), of the Official Records of Hays County, Texas, as modified by that certain Modification Agreement, dated effective as of May 28, 2008, by and between Two-Way Land, L.P. and Two-Way Mortgagee, and recorded in Volume 3401, Page 55 (Document No. 2008- 80014899), of the Official Records of Hays County, Texas (the aforementioned Deeds of Trust, as so modified, and any other collateral security documents evidencing or securing the indebtedness secured thereby, as the same may have been supplemented, modified or amended, are referred to herein as the "Liens"), hereby joins in the execution of this instrument in its capacity as the owner and holder of the Liens and the indebtedness secured thereby in order to evidence: (i) Two-Way Mortgagee's consent to the execution of this instrument by all of the aforementioned parties, (ii) Two-Way Mortgagee's acknowledgment and agreement that execution and recordation of this instrument by Grantor

will not constitute a default under the Liens and (iii) the subordination by Two-Way Mortgagee of the Liens to the Declaration and associated rights relating to the Declaration of Restrictive Covenants, as set forth in this instrument; provided, however, that this Joinder shall not be construed or operate as a release of the Liens, in whole or in part.

Brent Standefer

First State Bank Central Texas, Lienholder
Brent Standefer, Senior Vice President

STATE OF TEXAS

§

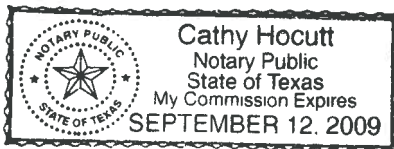
§

COUNTY OF Hays

§

This Declaration was acknowledged before me, the undersigned authority, by BRENT STANDEFER, SENIOR VICE PRESIDENT for FIRST STATE BANK CENTRAL TEXAS, the Lienholder.

GIVEN UNDER MY HAND AND SEAL of office this 06th day of November, 2008.



Cathy Hocutt

Notary Public in and for the
State of Texas

EXHIBIT "A"

Description of Property

Being approximately 18.220 acres of land, more or less, out of the M.M. Justice Survey, Abstract No. 261, and the N.M. Gatlin Survey, Abstract No. 198, in Hays County, Texas, and being all of that certain tract of land conveyed to Edward R. Coleman by Deed recorded in Volume 1637, Page 621, Official Public Records of Hays County, Texas; said 18.220 acre tract being more particularly described by as follows:

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE M.M. JUSTICE SURVEY, ABSTRACT NO. 261, AND THE N.M. GATLIN SURVEY, ABSTRACT NO. 198 IN HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 32.465 ACRE TRACT OF LAND CONVEYED TO BUDA BUSINESS PARK, L.L.C. BY INSTRUMENT RECORDED IN VOLUME 1142, PAGE 516 OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS, THE HEREIN DESCRIBED TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron pin found in the West line of the said 32.465 acre tract, being at the Northwest corner of Lot 2, Block A, Coleman Subdivision - Phase I, a subdivision recorded in Plat Book 7, Page 19 of the Plat Records of Hays County, Texas, being in the East r.o.w. line of State Loop 4 South, a public right of way varying in width, for the Southwest corner and PLACE OF BEGINNING hereof;

THENCE along the West line of the said 32.465 acre tract, being along the East r.o.w. line of State Loop 4 South, N 01° 23'59" W for a distance of 563.39 feet to a 1 inch pipe found and N 00°27'14" W for a distance of 220.48 feet to a 1/2" iron pin found at the Northwest corner of the said 32.465 acre tract, for the Northwest corner hereof;

THENCE along the North line of the said 32.465 acre tract, N 00°53'00" E for a distance of 1191.82 feet to a 1 inch iron pipe found at the Northeast corner of the said 32.465 acre tract, being in the West r.o.w. line of Interregional highway 35 South a public r.o.w. varying in width, for the Northeast corner hereof;

THENCE along the East line of the said 32.465 acre tract, being along the West r.o.w. line of IH35 south for the following courses:

S 23°10'42" W for a distance of 709.54 feet to a concrete r.o.w. monument found;
S 33°44'33" W for a distance of 101.22 feet to a concrete r.o.w. monument found;
S 22°59'44" W for a distance of 60.00 feet to a 1/2" iron pin found at the Northeast corner of the said Lot 2, Block A, for the Southeast corner hereof;

THENCE along the North line of the said Lot 2, Block A, S 00°53'00" W for a distance of 815.80 feet to the PLACE OF BEGINNING and containing 18.229 acres of land, more or less.