

RESOLUTION NO. 48-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CONTRACT OF SALE WITH LANG AND COMPANY, L.L.C., RELATING TO THE PEACHTREE TOWNE CENTER PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE FIRST ADDENDUM TO CONTRACT OF SALE WITH LANG AND COMPANY, L.L.C., FOR SUCH PURPOSES.

WHEREAS, the City Council approved a contract between the City of Mesquite ("City") and Lang and Company, L.L.C. ("Lang") for the Peachtree Towne Center Project with the adoption of Resolution No. 11-2008 on February 18, 2008; and

WHEREAS, the original contract called for the City funds to be paid as a lump sum at the conclusion of the bridge construction; and

WHEREAS, the bridge contractor requests that City funds be available for draws proportionately along with the larger escrowed money during construction of the City's hike and bike portion of the bridge; and

WHEREAS, Lang has a performance bond for the construction cost of the bridge; and

WHEREAS, Staff recommends the City Council approve the proposed addendum by and between the City and Lang, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("1st Addendum to Contract"); and

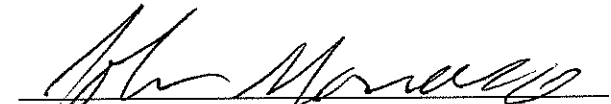
WHEREAS, upon full review and consideration of the 1st Addendum to Contract and all matters attendant and related thereto, the City Council is of the opinion that the 1st Addendum to Contract should be approved and that the Mayor shall be authorized to finalize and execute it on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed amended contract by and between the City of Mesquite ("City") and Lang and Company, L.L.C., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("1st Addendum to Contract"), are found to be acceptable, in the best interests of the City and its citizens, and is hereby in all things approved.


SECTION 2. That the Mayor is hereby authorized to finalize and execute the 1st Addendum to Contract and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the 1st Addendum to Contract.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 20th day of October, 2008.



John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**1ST ADDENDUM TO CONTRACT OF SALE
ENTERED INTO BETWEEN
CITY OF MESQUITE AND LANG AND COMPANY, LLC.**

RECITALS

On February 27, 2008, City of Mesquite, Texas ("City") and Lang and Company, LLC ("Company") entered into the Contract of Sale of real property attached to this Addendum as Exhibit "A" (the "Contract"). Exhibit "A" is incorporated in this Addendum by reference for all purposes as fully as if same were copied herein verbatim.

City and Company desire to amend one of the provisions of the Contract and desire to memorialize the amendment in writing pursuant to Paragraph 7.8 of the Contract.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, together with the covenants and conditions hereinafter contained, City and Company make and enter into this:

1ST ADDENDUM TO CONTRACT OF SALE

1. Paragraph 5.2 of the Contract presently states:

"City Reimbursement. Upon acceptance of the Capital Improvements, City agrees to reimburse to Company an amount equal to thirty percent (30%) of the total costs not to exceed \$600,000 for the cost of the bridge connection to the open space. The City's agreement to partially reimburse Company for these

costs shall be performed within thirty (30) days after notice of substantial completion of the bridge.”

2. City and Company hereby agree to, and do, amend Paragraph 5.2 of the Contract so that same shall provide as follows:

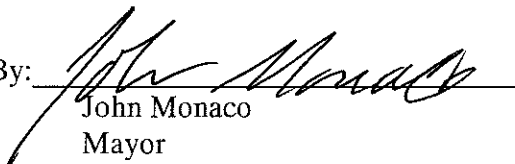
5.2 **City Reimbursement.** City agrees to reimburse to Company an amount equal to thirty percent (30%) of the total costs, for the cost of the bridge connection to the open space, which sum is limited to, and shall not exceed the sum of, \$600,000. City and Company agree that the costs to be paid to Company by City in accordance with this paragraph shall be paid in incremental installments as construction of the bridge progresses. Draws against this \$600,000 shall be made by written draw request, which shall certify, under oath, the percentage of completion of the Contract and that all laborers, mechanics and persons providing materials to the project have been paid in full through the date of the draw request. Payment pursuant to any draw request shall be subject to the consent and approval of City’s staff, in their sole discretion. Ten percent (10%) of the funds to be paid by City under the terms of this paragraph shall be retained by City and shall not be paid to Company until thirty (30) days after substantial completion of the bridge. Company’s construction obligations under Paragraph 5.1 of this Contract, this paragraph, and with regard to the hike and bike trail shall be insured by a performance bond in the total sum of \$2,700,000 in favor of, and payable to, City. The performance bond shall be issued by a company satisfactory to City in its sole discretion and shall contain terms satisfactory to City in its sole discretion. The posting of the performance bond described in this

paragraph is a condition precedent to City's obligations to perform under the terms of this Contract.

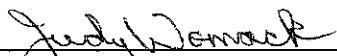
3. In all other respects, the Contract shall remain in full force and effect unmodified except as herein provided.

Dated: October 24, 2008

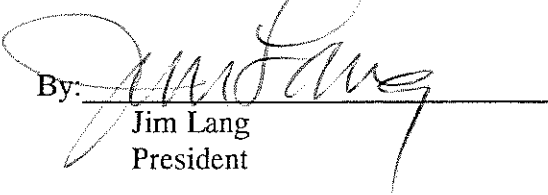
CITY OF MESQUITE

By: 
John Monaco
Mayor

ATTEST:

By: 
Judy Womack
City Secretary

LANG AND COMPANY, LLC

By: 
Jim Lang
President

STATE OF TEXAS §
§
§
COUNTY OF DALLAS §

CONTRACT OF SALE

This Contract of Sale ("Agreement") is made by and between the City of Mesquite, Texas (the "City"), and Lang and Company, LLC ("Company"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the City will transfer the land described in Exhibit "A" to the Mesquite Economic Development Foundation, Inc. (hereinafter "MEDF") for transfer to the Company;

WHEREAS, the Company is or will be under contract to purchase from MEDF approximately 60 acres of land located in Mesquite, Texas (hereinafter the "Property") and as more particularly described in Exhibit "A"; and

WHEREAS, the Company intends to construct an office building with at least 75,000 square feet (hereinafter the "Office Improvements") on the Property, and to further develop the Property with retail, and/or residential uses as initially developed under the concept plan attached as Exhibit "B"; and

WHEREAS, Company has agreed to install or cause to have installed certain roadway and bridge improvements on the Property as depicted and described in Exhibit "C" attached hereto ("Capital Improvements"); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to construct the Office Improvements and the Capital Improvements would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the cost of such construction; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 AND THE ORDINANCES OF THE CITY to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Appraised Value” shall have the same meaning assigned by Section 1.04 of the TEX. TAX CODE, as amended.

“City” shall mean the City of Mesquite, Texas.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and (ii) all necessary permits permitting commencement of construction have been issued by all applicable governmental authorities.

“Company” shall mean Lang and Company, LLC or assigns.

“Effective Date” shall mean the date of execution of this Agreement by the City of Mesquite, Texas.

Exhibit “A” is the approximately 60 acres property description.

Exhibit “B” is the Initial Concept Plan of Company for the Land, which concept shall not be altered without the mutual agreement of the parties to this Agreement.

Exhibit “C” is the Capital Improvements -- Description and Construction Schedule of Road and Bridge.

Exhibit “D” is the *Economic Development Grant*.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Grants” shall mean the Sales Tax Grants and Property Tax Grants to be paid the Company from lawfully available funds.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“MEDF” shall mean Mesquite Economic Development Foundation, Inc.

“Office Improvements” shall mean the construction and operation of an office building or office buildings with at least 75,000 square feet of space therein, and other ancillary facilities such as required parking and landscaping located on the Property.

“Property” shall mean those approximately 60 acres of land described in Exhibit “A” attached hereto, along with any current or future improvements thereto.

“Required Use” shall mean the Company’s development of the property pursuant to this Agreement, the attachments to this Agreement, and the ordinances of City.

“Sales and Use Tax” shall mean the City’s one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items consummated on the Property.

“Sales Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the City setting forth the Company’s collection of Sales and Use Tax imposed by the City and received by the City from the State of Texas for the sale of Taxable Items by Company consummated on the Property for the previous twelve (12) calendar months which are to be used to determine the amount and the Company’s eligibility for a Grant, together with such supporting documentation required herein, and as City may reasonably request.

“Sales Tax Grant Period” shall mean the first full twelve (12) calendar months beginning on the date a final certificate of occupancy is issued for occupancy of the Office Improvements, and each successive twelve (12) calendar month period thereafter during the term hereof. For example, if the final Certificate of Occupancy for the Company’s occupancy of the Office Improvements is issued December 15, 2008 then the first Sales Tax Grant Period shall be from December 15, 2008 through and including December 14, 2009.

“Sales Tax Receipts” shall mean the City’s receipts from the State of Texas from the collection of the City’s Sales and Use Tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code (it being expressly understood that the Sales and Use Tax

receipts are being used only as a measurement for its participation through the use of general funds), attributed to the collection of the City's one percent (1%) sales and use tax by Company as a result of sale of Taxable Items consummated on the Property. Sales Tax Receipts do not include any sales and use tax imposed by City for the benefit of the Mesquite Economic Development Corporation, pursuant to Sections 4A or 4B of the Development Corporation Act of 1979, article 5190.6, Vernon's Revised Civil Statutes.

"State of Texas" shall mean the office of the Texas Comptroller, or its successor.

"Tax Rebate Provision" shall mean that taxes will commence to be rebated upon issuance of a certificate of occupancy by a user and shall continue until the first to occur of six (6) years from issuance of the certificate of occupancy or fifteen (15) years from the date of this Agreement.

"Taxable Items" shall have the same meaning assigned by Chapter 151, TEX. TAX CODE, as amended.

Article II Terms and Conditions Precedent

2.1 **Term.** This Agreement shall be effective on the Effective Date and shall continue for a period of ten (10) years or until all Grants have been paid, whichever is later ("Expiration Date"), unless sooner terminated as provided herein. This term does not effect the period of time granted under this agreement for property tax abatements.

2.2 **Condition Precedent.** A condition precedent to the enforceability of this Agreement shall be Company's purchase or acquisition of the Property from MEDF. Unless or until Company acquires title to the Property, this Agreement shall not be binding upon either Company or City. In the event that Company does not acquire the Property within six (6) months of the Effective Date, this Agreement shall be automatically void.

2.3 **Transfer of Land to MEDF.** A Condition precedent to the enforceability of this agreement shall be the City of Mesquite transferring the land pursuant to the Local Government Code to the MEDF.

2.4 **Transfer of Land to Company.** A condition precedent to the enforceability of this agreement is the sale of the Land to the Company by the MEDF. The terms of the sale are the following:

- 1) MEDF shall deliver to Company a Special Warranty Deed upon the placing in escrow pursuant to paragraph 5.1 \$2,000,000 (two million dollars).
- 2) MEDF shall have a deed of trust lien on the property to be released at the completion of the financial terms of this Agreement. The Deed of Trust shall contain language satisfactory to City in its sole discretion.

2.5 Restrictive Covenants/Deed Restrictions. The Company shall create pursuant to the Texas Property Code and/or other laws of the State of Texas restrictive covenants/deed restrictions and/or an association with applicable rules/restrictions concerning the land that at a minimum does the following, the other covenants/deed restrictions and/or an association rules shall be decided by Company

1) Hotels shall have at least 250 rooms, contain a full service restaurant, provide at least 10,000 square feet of conference space and comply with City's zoning requirements as determined from time to time, for which a conditional use permit is approved by City.

2) Prohibit bargain discount stores. For the purpose of this Agreement, the phrase, "bargain discount stores" shall mean any retail or wholesale establishment characterized by self-serve, no frills atmospheres and interior and/or exterior finish out in an attempt to cut overhead costs in addition to discounting prices on merchandise. No establishment shall be permitted with the following words as a part of the name of the establishment or using the word(s) in their general advertising: bargain, budget price, buy, closeout, deal discount, dollar, exchange, good buy, good deal, good value, low price, markdown, reduction, steal, swap, trade and/or value.

3) Provide that all restaurants located on the property must be "casual plus. For purposes of this Agreement, casual plus restaurants are defined as restaurants that offer a variety of choices, market themselves as fresh, made-to-order selections, with a price point of entrees between \$10.00 and \$20.00 in 2008 dollars.

2.6 INITIAL CONCEPT PLAN. Attached as Exhibit "B" is a initial concept plan that is a proposal for the development of the land by the Company.

2.7 RESTAURANT DEVELOPMENT. A condition precedent to the enforceability of this Agreement's tax rebate provisions shall be Company's development of two pad sites as restaurants with a "casual plus" environment for which a conditional use permit is approved by City's City Council.

2.8 OPEN SPACE LAND. The Company after the deeding of the land to the Company by MEDF shall deed back to the City approximately 30 acres of land as open space. The Company agrees to escrow with a bank satisfactory to City, Fifty Thousand no/100 Dollars (\$50,000.00) to be applied and paid toward improvements dedicated to City in the proposed open space as depicted on Exhibit "B". Company agrees that it shall obtain the written agreement from the escrowing bank to the effect that the funds on deposit may not be withdrawn without the express written consent of City.

2.9. City, Company and MEDF acknowledge and agree that City's conveyance of the Property shall not include the rights and interest of City in and to the oil, gas and other minerals in, on or under the Property; and, the deed to be delivered by City to MEDF shall contain a reservation stating that "Grantor excepts from this conveyance all of it's interest in and to the oil, gas and other minerals in, on and under the Property." The deed to be delivered by MEDF to Company shall specifically reference the prior reservation of mineral interest by City. City

agrees, however, to cooperate with Company concerning the placement of any mineral extraction equipment in an effort to minimize the impact to Company. In the event that City and Company cannot reach an agreement with regard to the placement of such equipment, City and Company agree to submit the issue to an impartial mediator to determine the least disruptive location that allows full recovery of minerals from the Property. City further agrees to abide by the same ordinances or other local regulations established by City concerning extraction of minerals from other similarly developed properties.

Article III Economic Development Grants

Subject to Company's required use and continued satisfaction of the terms and conditions of this Agreement, City agrees to adopt an ordinance in the form attached hereto as Exhibit "D".

Article IV Conditions to Economic Development Grants

4.1 **Conditions to Annual Sales Tax Grants.** The City's obligation to pay the Grants hereunder shall be conditioned upon the Company's compliance and satisfaction of each of the following conditions:

(a) **Office Improvements and Required Use.** During the term of this Agreement following the issuance of a final certificate of occupancy for the Improvements and continuing thereafter until expiration of this Agreement, or earlier termination, Company agrees to continuously own, lease or occupy at least 75,000 square feet of space in the Office Improvements, and that the Office Improvements shall be used for the Required Use and that the Company shall not allow the operation of the Office Improvements in conformance with the Required Use to cease for more than thirty (30) days except in connection with, and to the extent of an event of a Force Majeure.

(b) **Capital Improvements.** Company shall cause the Capital Improvements to be constructed as provided in Article V of this Agreement.

(c) **Sales Tax Certificate.** During the term of this Agreement, within thirty (30) days after the end of each Sales Tax Grant Period, the Company shall provide the City with a Sales Tax Certificate. The City shall have no duty to calculate the Sales Tax Receipts or determine Company's entitlement to any Grant, or pay any Grant during the term of this Agreement until such time as Company has provided the City a Sales Tax Certificate for the applicable Sales Tax Grant Period. The City may but is not required to provide Company with a form for the Sales Tax Certificate required herein. At the request of the City, the Company shall provide such additional documentation as may be reasonably requested by City to evidence, support and establish the Sales and Use Tax paid and collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment permit) by Company for the sale of Taxable Items by Company consummated at the Improvements and received by City from the State of Texas. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

- i. A schedule detailing the amount of the City's Sales and Use Tax collected and paid to the State of Texas as a result of the sale of Taxable Items consummated at the Property for the Sales Tax Grant Period;
- ii. A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, for the Sales Tax Grant Period showing the Sales and Use Tax collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) for the sale of Taxable Items consummated at the Property;
- iii. A copy of all direct payment and self-assessment returns, including amended returns, filed for the Sales Tax Grant Period showing the Sales and Use Tax collected and paid to the State of Texas for the sale of Taxable Items consummated at the Property;

City agrees to the extent allowed by law to maintain the confidentiality of the Sales Tax Certificate. As a condition precedent to the payment of any Sales Tax Grant hereunder, City shall have received a Sales Tax Certificate from the Company for the Sales Tax Grant Period for which payment of a Sales Tax Grant is requested.

(d) **No Uncured Breach.** Company shall not have an uncured breach or default of this Agreement.

(e.) In the event of conflict in the data provided by Company as required by this Article and data supplied by the Comptrollers Office of the State of Texas, the data provided by the Comptrollers Office shall control.

4.2 **Adjustments.** In the event the Company files an amended sales and use tax return, or report with the State of Texas, or if additional Sales and Use Tax is due and owing, as determined or approved by the State of Texas, affecting Sales Tax Receipts for a previous Grant Year, the Grant payment for the Grant Year immediately following such State of Texas approved amendment shall be adjusted accordingly provided the City has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, the Company shall provide the City with a copy of any such amended sales and use tax report or return, and the approval thereof by the State of Texas. The provisions of this Section 4.2 shall survive termination of this Agreement.

4.3 **Refunds.** In the event the State of Texas determines that the City erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to the City exceeds the correct amount of Sales and Use Tax for a previous Sales Tax Grant Period, for which the Company has received a Grant, the Company shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, repay such amount to the City. The City may at its option adjust the Grant payment for the Sales Tax Grant Period

immediately following such State of Texas determination. As a condition precedent to payment of such refund, the City shall provide Company with a copy of such determination by the State of Texas. The provisions of this Section 4.3 shall survive termination of this Agreement.

Article V Capital Improvements

5.1 **Owner Construction Obligations.** Owner agrees, without cost to City, to design, and construct, or have constructed, certain roadway and bridge improvements on the Property as further described in Exhibit "C" attached hereto ("Capital Improvements"), and in accordance with the applicable standards, ordinances and regulations adopted by the City. Construction of the Capital Improvements shall not commence until and unless the City has approved the construction plans for the Capital Improvements, which approved plans shall become a part of this Agreement. Company agrees to place in escrow in Frost Bank or another national banking institution satisfactory to City \$2,000,000 for the construction costs of the Capital improvements. These funds will be drawn down as the Capital improvements are completed. Subject to events of Force Majeure, Owner shall cause Commencement of Construction, completion of construction, and dedication of the Capital Improvements to the City to occur within one year from the date of the deed from MEDF to Company. Company agrees that it shall obtain the written agreement from the escrowing bank to the effect that the funds on deposit may not be withdrawn without the express written consent of City.

5.2. **City Reimbursement.** Upon acceptance of the Capital Improvements, City agrees to reimburse to Company an amount equal to thirty percent (30%) of the total costs not to exceed \$600,000 for the cost of the bridge connection to the open space. The City's agreement to partially reimburse Company for these costs shall be performed within thirty (30) days after notice of substantial completion of the bridge.

Article VI Termination

6.1 This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) the Expiration Date;
- (c) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;
- (e) by City, if any Impositions owed to the City or the State of Texas by Company shall become delinquent (provided, however the Company retains the right to timely and properly protest and contest any such Impositions); and
- (f) by City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

6.2 City may terminate this Agreement upon the following events:

- (a) Company's failure to construct improvements in accordance with Exhibit "C";
- (b) Company's failure to escrow the funds made the subject of paragraphs 2.8 and 5.1 of this Agreement; or
- (c) Company's failure to perform any other matter required of Company by this Agreement.

6.3 **Refund of Grants**. In the event the Agreement is terminated by the City pursuant to this Agreement, the Company shall immediately refund to the City an amount equal to the sum of all previous Grants paid by the City to the Company under this Agreement prior to the date of such termination.

6.4

(a) In the event that Company breaches any of the terms of this Agreement, the Property shall be reconveyed to MEDF by Company free and clear of all liens, unexpended funds required to be escrowed by Company pursuant to paragraph 2.8 and 5.1 of this Agreement shall become the property of City; Company shall assign, transfer and deliver all plans, architectural designs, engineering reports, flood studies and surveys to City; and, Company shall refund the grants pursuant to paragraph 6.3 of this Agreement.

(b) To secure Company's obligations under this Agreement, Company agrees to deliver to City:

- i. A deed of trust lien on the Property;
- ii. A conditional assignment of the escrowed funds called for in paragraphs 2.8 and 5.1 of this Agreement; and,
- iii. A conditional assignment of all of Company's plans, architectural designs, engineering reports, flood studies and surveys concerning the Property.

The deed of trust and assignments called for in paragraph 6.4(b) shall be in such form and contain such provisions as shall be satisfactory to City in its sole discretion.

Article VII Miscellaneous

7.1 **Binding Agreement**. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. This Agreement may not be assigned

without the express written consent of the City Manager. City agrees that any immunity from suit has been waived solely for the purpose of enforcing this Agreement.

7.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Company's performance of the conditions under this Agreement, excluding actions of third parties with whom Company has not contracted with or whom are not injured on the Land or within the Improvements.

7.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

7.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.5 **Notice.**

a. To be effective, any notice to City under this contract relating to claims of default must strictly comply with the provisions of the Texas Government Code, the Texas Local Government Code, and City's ordinances regarding suits and/or claims against a municipality. However, notices sent to the City in the ordinary course of this Agreement shall be sent to City pursuant to paragraph 7.5(b)

b. Any notice required or permitted to be delivered hereunder (other than those described in paragraph 7.5(a)) shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Mesquite, Texas
711 North Galloway Ave
Mesquite, Texas

With a copy to:

Attn: City Attorney
City of Mesquite, Texas
711 North Galloway Ave
Mesquite, Texas

If intended for the Company, to:

Lang and Company, LLC
PO Box 700023
Dallas, TX 75370

With a copy to:

Mr. Craig Laird
Ashley & Laird, L.C.
800 W. Airport Fwy., Ste. 917
Irving, TX 75062

7.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

7.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

7.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

7.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.10 **Recitals.** The recitals to this Agreement are incorporated herein.

7.11 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.12 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.13 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.14 In the event of conflict between this document and Exhibit "D" to this Agreement, Exhibit "D" shall control.

7.15 The exhibits are incorporated herein by reference for all purposes.

EXECUTED on this 27th day of February, 2008.

City of Mesquite, Texas

By: [Signature]
Mayor

Attest:

By: [Signature]
City Secretary

Approved as to Form:

By: [Signature]
City Attorney

EXECUTED this the 27th day of February, 2008.

Lang and Company, LLC

By: [Signature]
President

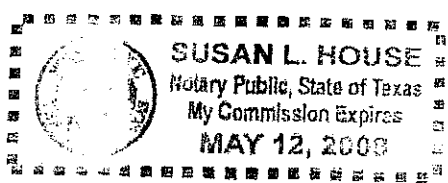
City's Acknowledgment

State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 27th day of February 2008, by John Monaco Mayor of the City of Mesquite, Texas, a Texas municipality, on behalf of said municipality.

Susan L. House
Notary Public, State of Texas

My Commission Expires:
May 12, 2008



Company's Acknowledgment

State of Texas

§

County of Dallas

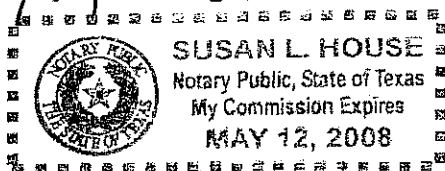
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§

This instrument was acknowledged before me on the 27th day of February 2008, by Jim Lang, President, of Lang and Company, LLC.

Susan L. House
Notary Public In and For the State of Texas

My Commission Expires:
May 12, 2008



My Commission expires: _____

Exhibit "A"

Description of Property

FIELD NOTES

BEING a tract of land situated in the Daniel Tanner Survey, Abstract No. 1426, in the City of Mesquite, Dallas County, Texas, and being part of that called 85.204 acre tract of land described in deed to The City of Mesquite, Texas, as recorded in Volume 95191, Page 00916 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod for the west corner of Lot 1, Block 1 of Peachtree/Gross Addition, and addition to the City of Mesquite, Texas, as recorded in Volume 99074, Page 00009, D.R.D.C.T., said point being on the easterly right-of-way line of Peachtree Road (a 100 foot wide public right-of-way) as described in deed recorded in Volume 71054, Page 0405, D.R.D.C.T., said point also being the most westerly north corner of that tract of land described in deed to Golden Shamrock Realty, Inc., as recorded in Volume 2001007, Page 02031, D.R.D.C.T.;

THENCE South 46 degrees 16 minutes 40 seconds West, along the common westerly line of said Golden Shamrock Realty tract and said easterly right-of-way line of Peachtree Road, a distance of 120.96 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 43 degrees 43 minutes 20 seconds East, departing said common line and along the southeasterly line of said Golden Shamrock Realty tract, a distance of 269.56 feet (deed 270.00 feet) to a 5/8-inch found iron rod for corner;

THENCE South 21 degrees 45 minutes 55 seconds East, continuing along said southeasterly line, a distance of 650.20 feet (deed 650.00 feet) to a 1/2-inch set iron rod with cap for the southwest corner of said Golden Shamrock Realty tract;

THENCE North 77 degrees 14 minutes 05 seconds East, along the southerly line of said Golden Shamrock Realty tract, a distance of 312.75 feet (deed 313.33 feet) to a 1/2-inch set iron rod with cap for the southeast corner of said Golden Shamrock Realty tract, said point being on the common westerly right-of-way line of Interstate Highway 635 (L.B.J. Freeway, a variable width public right-of-way) and the easterly line of said City of Mesquite tract;

THENCE South 15 degrees 17 minutes 27 seconds East, along said common line, a distance of 503.14 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 65 degrees 26 minutes 11 seconds East a distance of 0.68 feet;

THENCE South 09 degrees 56 minutes 00 seconds East, continuing along said common line, a distance of 250.56 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 63 degrees 51 minutes 49 seconds East a distance of 0.74 feet;

THENCE South 02 degrees 28 minutes 33 seconds East, continuing along said common line, a distance of 800.01 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 06 degrees 24 minutes 28 seconds East, continuing along said common line, a distance of 311.76 feet to a 1/2-inch found iron rod with cap stamped "BRITAIN AND CRAWFORD" for the northeast corner of Lots 2 and 3, Block 1, Peachtree Center, an addition to the City of Mesquite as recorded in Volume 2003092, Page 00027, D.R.D.C.T.;

THENCE departing said common line and along the northerly line of said Peachtree Center addition, the following courses and distances:

North 70 degrees 39 minutes 48 seconds West a distance of 578.50 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 19 degrees 20 minutes 12 seconds East a distance of 60.00 feet to a 1/2-inch found iron rod with cap stamped "BRITAIN AND CRAWFORD" for corner;

North 70 degrees 39 minutes 48 seconds West a distance of 70.00 feet to a 1/2-inch found iron rod with cap stamped "BRITAIN AND CRAWFORD" for corner;

South 80 degrees 33 minutes 59 seconds West a distance of 124.66 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 05 degrees 37 minutes 15 seconds East a distance of 103.27 feet to a point for corner from which a found 2-inch diameter disk stamped "MLA RPLS #4873" bears North 21 degrees 18 minutes 56 seconds East a distance of 0.26 feet;

North 84 degrees 22 minutes 45 seconds West a distance of 150.41 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of curvature of a tangent circular curve to the left having a radius of 535.10 feet whose chord bears South 82 degrees 19 minutes 40 seconds West a distance of 246.07 feet;

Westerly, along said circular curve to the left, through a central angle of 26 degrees 35 minutes 10 seconds, an arc distance of 248.29 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of tangency;

South 69 degrees 02 minutes 05 seconds West a distance of 15.00 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 65 degrees 11 minutes 14 seconds West a distance of 45.81 feet to a 1/2-inch set iron rod with cap for the most westerly northwest corner of said Peachtree Center addition, said point also being in the common westerly line of said City of

Mesquite tract and the aforementioned easterly right-of-way line of Peachtree Road, said point being on a circular curve to the left having a radius of 759.73 feet whose chord bears North 31 degrees 03 minutes 06 seconds West a distance of 136.50 feet, said curve being non-tangent to the last described course;

THENCE Northwesterly, departing said northerly line of said Peachtree Center addition, along said common line between said City of Mesquite tract and said Peachtree Road and along said circular curve, through a central angle of 10 degrees 18 minutes 29 seconds, an arc distance of 136.68 feet to a 1/2-inch set iron rod with cap for the point of tangency;

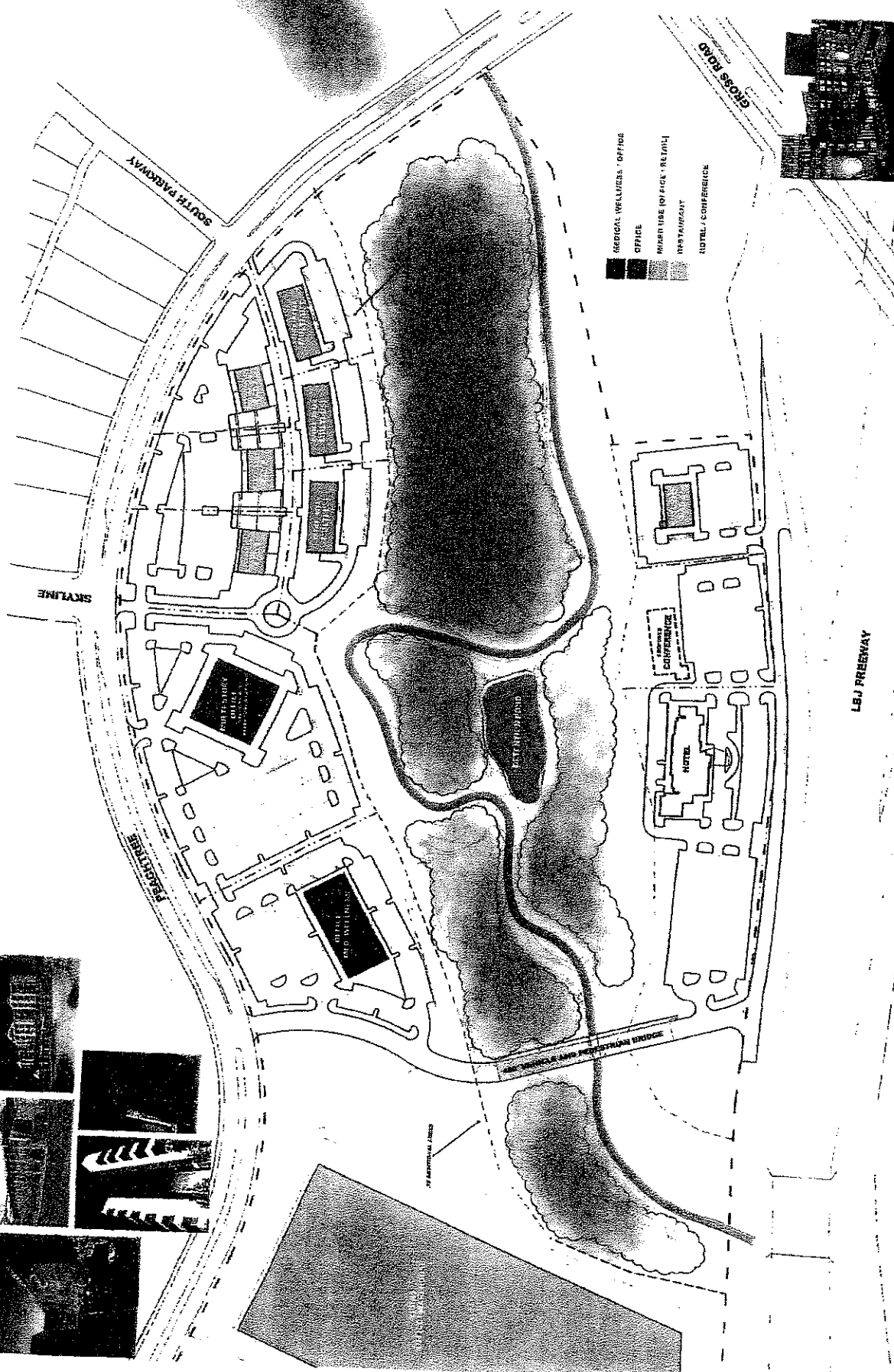
THENCE North 36 degrees 12 minutes 20 seconds West, along said common line, a distance of 248.77 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1,269.75 feet whose chord bears North 05 degrees 02 minutes 10 seconds East a distance of 1,674.13 feet;

THENCE Northerly, continuing along said common line and along said circular curve, through a central angle of 82 degrees 29 minutes 00 seconds, an arc distance of 1,827.94 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE North 46 degrees 16 minutes 40 seconds East, continuing along said common line, a distance of 341.44 feet to the POINT OF BEGINNING AND CONTAINING 2,626,887 square feet or 60.31 acres of land, more or less.

Exhibit "B"

Initial Concept Plan of Company for the Land



MEDICAL WELLNESS OFFICE
OFFICE
RESTAURANT
HOTEL / CONFERENCE

LBJ FREEWAY

CONCEPTUAL MASTER PLAN_011908
SCALE 1"=100'

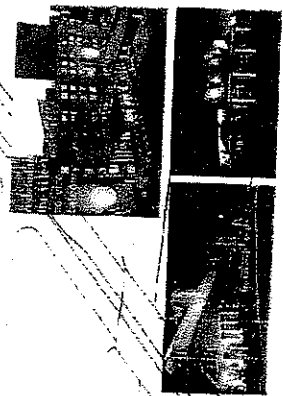
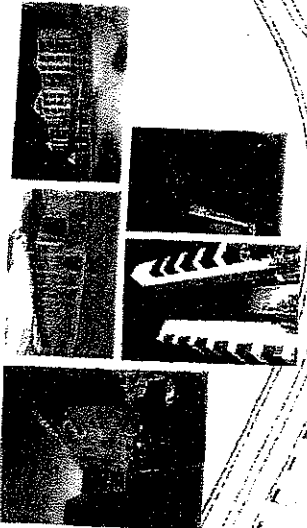
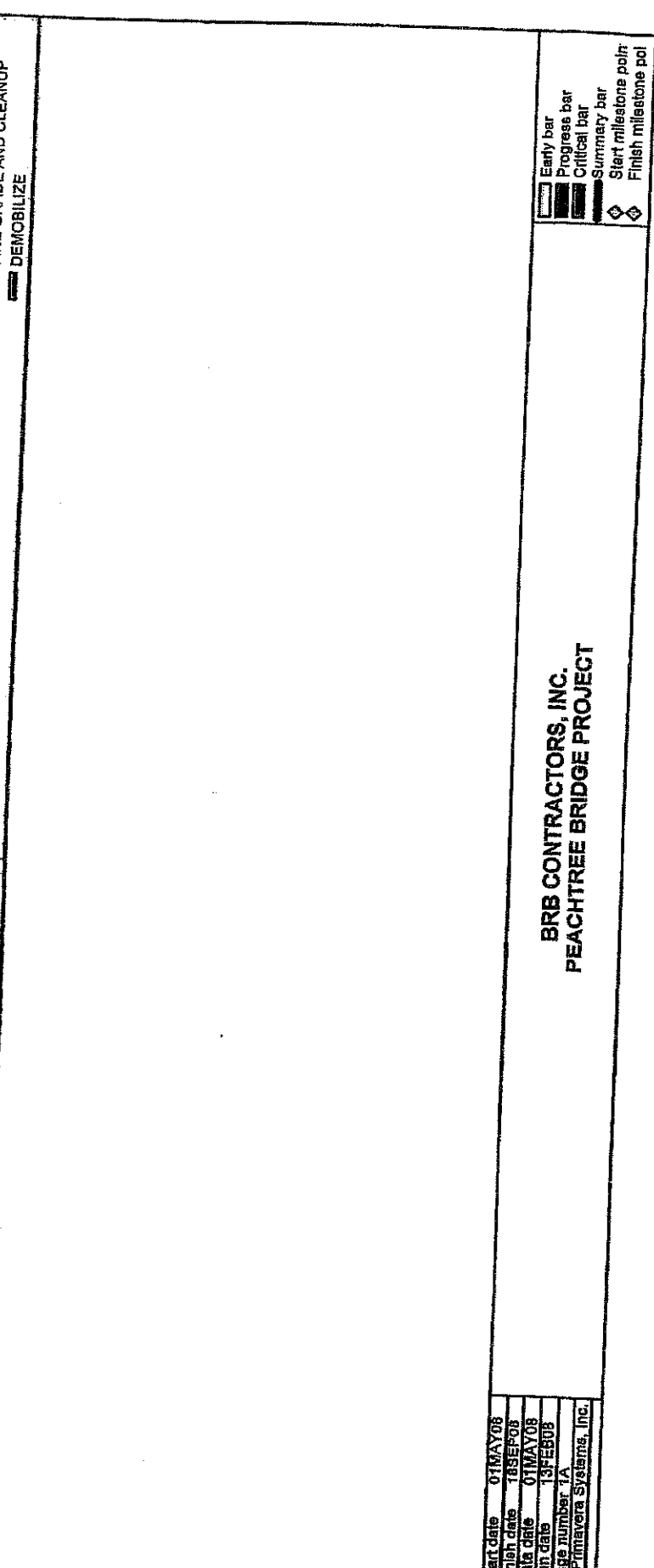


Exhibit "C"

Capital Improvements -- Description and Construction Schedule of Road and Bridge

Activity ID	Description	Orig Dur	Rev Dur	Early Start	Early Finish	Latest Start	Latest Finish
1000	MOBILIZATION	5d	5d	01MAY08	07MAY08		
1010	CLEARING	5d	5d	08MAY08	14MAY08		
1020	ACCESS AND OTHER GRADING	5d	5d	08MAY08	14MAY08		
1030	PIER REBAR	20d	20d	01MAY08	28MAY08		
1040	24 PIERS @ ABUTMENTS AND PIER	30d	30d	28MAY08	10JUL08		
1050	ABUTMENTS AND CAP REBAR	20d	20d	01MAY08	28MAY08		
1060	ABUTMENTS	15d	15d	03JUL08	24JUL08		
1070	PIER COLUMNS AND CAPS (4)	20d	20d	06JUN08	02JUL08		
1080	CURE LAST CAPS/ABUTMENTS	5d	5d	25JUL08	31JUL08		
1090	MANUFACTURE GIRDERS	40d	40d	01MAY08	25JUN08		
1100	PLACE GIRDERS	10d	10d	25JUL08	07AUG08		
1110	DIAPHRAGMS	10d	10d	01AUG08	14AUG08		
1120	FORM DECKING	10d	10d	01AUG08	14AUG08		
1130	DECK AND REST OF REBAR	15d	15d	01AUG08	21AUG08		
1140	FOUR DECK	5d	5d	22AUG08	28AUG08		
1150	CURING TIME DECK	5d	5d	29AUG08	04SEP08		
1160	STRIP DECK	5d	5d	03SEP08	11SEP08		
1170	POUR RAIL	10d	10d	29AUG08	11SEP08		
1180	BACKFILL, GRADING, SLOPE PAVING	15d	15d	22AUG08	11SEP08		
1190	ARCHITECTURAL FENCE AT	6d	6d	08SEP08	11SEP08		
1200	OTHER ARCHITECTURAL	5d	5d	08SEP08	11SEP08		
1210	GUARDRAIL AT ENDS	5d	5d	12SEP08	18SEP08		
1220	FINE GRADE AND CLEANUP	10d	10d	06SEP08	18SEP08		
1230	DEMOBILIZE	5d	5d	12SEP08	18SEP08		



**BRB CONTRACTORS, INC.
PEACHTREE BRIDGE PROJECT**

Start date	01MAY08
Finish date	18SEP08
Data date	01MAY08
Run date	13FEB08
Page number	1A
© Primavera Systems, Inc.	

Exhibit "D"

Economic Development Grant

RIDER TO PERFORMANCE BOND: ADDITIONAL OBLIGEEES

Whereas, on or about the 18th day of September, 2008, BRB Contractors, Inc., as Contractor, entered into a written agreement with HQZ Partners, L.P. as Owner, for the construction of Mesquite, Texas, Bridge Construction Project, Peachtree Towne Center, Mesquite, Texas herein referred to as Contract; and

Whereas, Contractor, as Principal, and Hartford Fire Insurance Company, as Surety, made, executed and delivered to Owner, as Obligee, hereafter called Obligee Owner, their Performance Bond; and

Whereas, Obligee Owner has requested that City of Mesquite, Texas, Lang and Company, LLC, and Walter Capital Funding, LLC

having material interest in the performance of said Contract, be added as Obligees to said Bond and has requested that Principal and Surety join with Obligee Owner in the execution and delivery of the Rider, Principal and Surety agree to do so upon the conditions herein stated.

Now, therefore, in consideration of the premium charged for said Bond and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agrees that City of Mesquite, Texas, Lang and Company, LLC, and Walter Capital Funding, LLC

be added to said Bond as Obligees, hereafter called Obligees, and that Surety's total liability to Obligee Owner and Obligees, jointly and severally, is limited in the aggregate to the penal sum of said Bond.

The purpose of this Rider is to extend to Obligees the Surety's guarantee of performance under said Bond of the Contract between Principal and Obligee Owner; therefore, damages recoverable by any Obligee hereunder are expressly limited in character and amount to those damages which have been sustained and which are recoverable by Obligee Owner against Surety under the law of the jurisdiction in which the Contract is to be performed. Further, in no event shall any Obligee have rights under this Rider which exceed those of Obligee Owner.

As a condition precedent to the exercise of any rights hereunder by any Obligee, Principal must be, and be declared by Obligee Owner or one of the Obligees to be in default under the Contract, and shall have had its right to complete the Contract formally terminated, Obligee Owner and Obligees each having performed all of their obligations thereunder.

Surety may at its option make any payments under this Bond jointly to Obligee Owner and Obligees. Further, Surety shall have no liability under this Bond to Obligee Owner or Obligees, jointly or severally, unless Obligee Owner or Obligees, or any of them, (1) shall have made payments to Principal and each shall have performed all of its other obligations to Principal, in accordance with the terms of the Contract; and (2) in the event Surety arranges for completion of the Contract upon default of Principal, shall make payments and perform all other obligations under the Contract to Surety.

No right of action shall accrue under this Rider to or for use of any person, corporation or entity other than Obligee Owner and Obligees named herein their heirs, executors, administrators or successors.

In the event a Labor and Material Payment Bond has been issued by Surety in connection with the Contract, the Obligees named under "Performance Bond" above shall by this Rider be added as named Obligees on said Labor and Material Payment Bond. Said Labor and Material Payment Bond shall in other respects remain unchanged.

Signed and sealed this 10th day of October, 2008.

Witness: Dud L. Vudger

BRB Contractors, Inc.

By: Michael C. Welch
Michael C. Welch, President

Witness: Cynthia Koger

Hartford Fire Insurance Company

By: John M. Koger, Jr.
John M. Koger, Jr. Attorney-in-Fact

OBLIGEE ACKNOWLEDGEMENT

Witness: Carla Welch

HQZ Partners

By: Jim Long
Name
Title PRESIDENT for the GEN'L. Partner

Witness: Leslie R. Swanson

City of Mesquite, Texas

By: [Signature]
Name
Title City manager

Witness: Carla Welch

Lang and Company, LLC

By: Jim Long
Name
Title PRESIDENT

Witness: _____

Walter Capital Funding, LLC

By: _____
Name
Title

Approved as to form:
[Signature]
City Attorney

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
BOND, T-4
690 ASYLUM AVENUE
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 37-276545

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of unlimited:**

John M. Koger, Jr.
of
Topeka, KS

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Paul A. Bergenholtz

Paul A. Bergenholtz, Assistant Secretary

David T. Akers

David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 23rd day of July, 2003, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka

Scott E. Paseka
Notary Public

My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *October 10, 2008*.

Signed and sealed at the City of Hartford.



Yves Cantin

Yves Cantin, Assistant Vice President

STATUTORY PAYMENT BOND - TEXAS
(Private Work)

KNOW ALL BY THESE PRESENTS, That BRB Contractors, Inc., Original Contractor (hereinafter called the Principal), as Principal, and Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the City of Hartford, Connecticut (hereinafter called the Surety) as Surety, are held and firmly bound unto HQZ Partners, L.P.

(hereinafter called the Owner), in the amount of Two Million, Six Hundred Eighty Three Thousand, One Hundred Ninety-Four & 10/100 Dollars (\$ 2,683,194.10) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the 18th day of September, 2008, to Construct Mesquite, Texas, Bridge Construction Project, Peachtree Towne Center, Mesquite, Texas which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said principal shall promptly pay claimants for all labor, subcontracts, materials and specially fabricated materials performed or furnished under or by virtue of said contract and duly authorized normal and usual extras thereto (not to exceed 15% of said contract price), then this obligation shall be void, otherwise to remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Chapter 53 of the Texas Real Property Code.

PROVIDED, HOWEVER, that the Owner having required the said Principal to furnish this bond in order to comply with the provisions of Chapter 53 of the Texas Real Property Code, all rights and remedies on this bond shall inure solely to such claimants and shall be determined in accordance with the provisions, conditions and limitations of said Real Property Code to the same extent as if they were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument, this 10th day of October, 2008.

Attest:
By: David L. VanDyne
David L. VanDyne, Secretary

BRB Contractors, Inc. (Seal)
(Principal)

By: Michael C. Welch
Michael C. Welch, President (Title)
Hartford Fire Insurance Company

By: John M. Koger, Jr.
John M. Koger, Jr. Attorney-in-Fact

The foregoing bond is hereby approved.
HQZ Partners, L.P.
By: John King, PRESIDENT for the GEN'L. PARTNER
(Title)
P. O. Box 700023 - Dallas, TX 75730

ADDRESS
DATE 10/10/2008

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
BOND, T-4
690 ASYLUM AVENUE
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 37-276545

KNOW ALL PERSONS BY THESE PRESENTS THAT:

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- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

John M. Koger, Jr.
of
Topeka, KS

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Paul A. Bergenholtz

Paul A. Bergenholtz, Assistant Secretary

David T. Akers

David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 23rd day of July, 2003, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka

Scott E. Paseka
Notary Public

My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *October 10, 2008.*

Signed and sealed at the City of Hartford.



Yves Cantin

Yves Cantin, Assistant Vice President

Performance Bond

(NOTE: THIS BOND IS ISSUED SIMULTANEOUSLY WITH PAYMENT BOND ON PAGE 2, IN FAVOR OF THE OWNER CONDITIONED FOR THE PAYMENT OF LABOR AND MATERIAL.)



Know All Men By These Presents:

That BRB Contractors, Inc. - P. O. Box 750940 - Topeka, KS 66675-0940
(Here insert the name and address, or legal title, of the Contractor)

as Principal, hereinafter called Contractor, and the Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the City of Hartford, as Surety, hereinafter called Surety, are held and firmly bound unto HOZ Partners, L.P.
P. O. Box 700023 - Dallas, TX 75730
(Here insert the name and address, or legal title, of the Owner)

as Oblige, hereinafter called Owner, in the amount of Two Million, Six Hundred Eighty Three Thousand, One Hundred Ninety-Four & 10/100 Dollars (\$2,683,194.10), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, Contractor has by written agreement dated September 18, 2008, entered into a contract with Owner for Mesquite, Texas, Bridge Construction Project Peachtree Towne Center, Mesquite, Texas in accordance with drawings and specifications prepared by Half Associates, Inc.
(Here insert full name, title and address)
1201 N. Bowser Road - Richardson, TX 75081

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

Now, Therefore, the condition of this obligation is such that, if Contractor shall promptly and faithfully perform said CONTRACT, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- (1) Complete the CONTRACT in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the CONTRACT falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 10th day of October A. D. 2008

PRINCIPAL		(Corporate Seal)
Witness (If Individual/Partnership)	Name <u>BRB Contractors, Inc.</u>	
Attest (If Corporation)	Signature <i>[Signature]</i>	
By: <u>David L. VanDyne, Secretary</u>	By: <u>Michael C. Welch, President</u> Typed Name and Title	

SURETY		(Corporate Seal)
Witness:	Name <u>HARTFORD FIRE INSURANCE COMPANY</u>	
By: <u>Cynthia Roeger</u>	Signature <i>[Signature]</i>	
	By: <u>John M. Koser, Jr.</u> Typed Name Attorney-in-fact	

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
BOND, T-4
690 ASYLUM AVENUE
HARTFORD, CONNECTICUT 06115
call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Code: 37-276545

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- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

John M. Koger, Jr.
of
Topeka, KS

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Paul A. Bergenholtz

Paul A. Bergenholtz, Assistant Secretary

David T. Akers

David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 23rd day of July, 2003, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka
Scott E. Paseka
Notary Public
My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *October 10, 2008*

Signed and sealed at the City of Hartford.



Yves Cantin
Yves Cantin, Assistant Vice President