

## AGREEMENT IN LIEU OF ANNEXATION

This **Agreement in Lieu of Annexation** ("Agreement") is made and entered into effective as of this the 8 day of May 2007 (the "Effective Date") by and between the **City of Bulverde**, Texas ("Bulverde" or "City"), a municipal corporation, and the **River Crossing Property Owners Association** ("RCPOA"), a Texas non-profit corporation, acting by and through their authorized representatives. The City and the RCPOA are sometimes referred to separately herein as a "Party" and jointly as the "Parties".

### **Recitals.**

**Whereas**, the City has received petitions from the registered voters residing within the River Crossing Planned Unit Development, that includes the several Sections of the River Crossing Subdivision, the Overlook at River Crossing Subdivision and the Waters at River Crossing Subdivision, as more particularly described hereinafter in Section 2.4 (collectively the "River Crossing Subdivision" or "Subdivision"), for the City to release the Subdivision from the City's extraterritorial jurisdiction ("ETJ");

**Whereas**, although the Subdivision is not fully built-out, it is a Master Plan Community, and the RCPOA has been created and the owners of lots in the Subdivision are required to be contributing members of RCPOA, which is active, capable and supported by the authority to levy charges and fees on the lots and property within the Subdivision sufficient to fund RCPOA operations and the maintenance and improvement of streets, parks, drainage and common areas within the Subdivision;

**Whereas**, RCPOA has a Board of Directors (the "Board") that is elected by the members, i.e. the persons and entities owning property within the River Crossing Subdivision, and the Board has the duty and authority to enforce comprehensive restrictions and covenants applicable to the use of property and the types and quality of construction within the Subdivision;

**Whereas**, the lots and building sites within the Subdivision are each sufficient in size to have and maintain a septic tank, and adequate regulations are in place to require and assure septic tanks are state of the art and maintained in a manner to protect the health and environment of the Subdivision and neighboring areas;

**Whereas**, all utility and solid waste disposal services required for the Subdivision are presently provided by third parties that, respectively, have both the legal right and the ability to provide such services in the Subdivision now and in the foreseeable future;

**Whereas**, comprehensive restrictions, covenants and land use regulations are in effect for the Subdivision, the Board has the authority to approve and oversee construction and development within the Subdivision, to arrange for, coordinate and provide for services and the improvement of the streets, parks and common areas within the Subdivision, to maintain and improve the Subdivision, streets, parks and common areas, and to facilitate and coordinate such services with Comal County and third parties as requested by the members and in the discretion of the Board;

**Whereas**, were the City to annex the Subdivision, the current tax revenues from the Subdivision would not be sufficient to fund the required City services and the maintenance and capital improvements that are required within the Subdivision during the next 20 years;

**Whereas**, it is in the best interest of the citizens of the City and the owners of land within the Subdivision for the City and the RCPOA to contract and work cooperatively together in order that the RCPOA will provide regulatory controls in the Subdivision consistent with the applicable restrictive covenants, cause the streets, parks and common areas in the Subdivision to be maintained, and for the RCPOA to make improvements to the parks, streets and common areas during the term of this Agreement;

**Whereas**, given the tax revenues from the Subdivision will not be sufficient to fund the cost of municipal services required in the Subdivision, or fund the necessary improvements to the streets, drainage, parks and common areas within the Subdivision, and the RCPOA will obtain the necessary funding and cause the services and improvements referenced herein to be provided as consideration for the City agreeing not to annex the Subdivision, for a period of twenty (20) years from the Effective Date;

**Whereas**, this Agreement will accomplish legitimate public purposes of Bulverde, assure construction, development and maintenance in the Subdivision consistent with approved plans, appropriate standards and the public welfare, and benefit the environment and the public health, safety and welfare of Bulverde's present and future citizens; and

**Whereas**, the City Council of Bulverde is the only Party that has authority to contract for the City, and the Board has the legal authority to work and contract for the RCPOA, the Parties each waive any requirements or provisions providing for a third party to appoint representatives for the negotiation of this Agreement;

**NOW, THEREFORE**, as authorized and permitted by the laws of the State of Texas, the City of Bulverde, Texas and the River Crossing Property Owners Association, hereby enter into this Agreement in Lieu of Annexation, and contract, covenant and agree that:

### **Article One Findings of Fact.**

**Section 1.1. General Findings.** The recitals hereinabove set forth are incorporated herein for all purposes and are found by the City Council of Bulverde and the Board of the RCPOA to be true and correct. It is further found and determined that both the governing body of the City of Bulverde and the Board of the RCPOA have authorized and approved this Agreement, Bulverde by a resolution duly adopted by its governing body, and the RCPOA by resolution duly adopted by its Board, have provided that the terms, provisions and conditions of such resolutions and this Agreement will be and become in full force and effect upon the execution of this Agreement by their respective representatives.

**Section 1.2. Services.** During the Original Term, or any Extended Term, of this Agreement, the Subdivision will be and remain within the jurisdiction of Comal County, Texas, and Bulverde will not be required to provide any governmental or proprietary services within the Subdivision.

**Article Two  
Term and Nature of Agreement.**

**Section 2.1. Term of Agreement.** The original term of this Agreement shall commence on the Effective Date and continue in full force and effect for twenty (20) years (the "Original Term"). The Original Term and each subsequent one (1) year term thereafter, if any, shall be approved by the parties, requiring action by the City Council and the Board of the RCPOA, extended for an additional one (1) year term (the "Extended Term"). Either party may elect not to renew this Agreement by giving written notice of non-renewal to the other party at least ninety (90) days prior to the end of the Original Term or Extended Term.

**Section 2.2. Termination by Parties.** Notwithstanding any other term or condition herein, this Agreement may be terminated only as follows:

- (a) by either Party upon the expiration of the Original Term or any Extended Term, by giving ninety days (90) written notice of intent to terminate to the other Party;
- (b) by mutual written agreement of the Parties, approved by majority vote of the governing body of the City and the Board of the RCPOA; or
- (c) upon written notice of termination being given by the non-defaulting Party following a final judgment by a court having jurisdiction declaring a Party to be in default of a material provision of this Agreement.

Any notice of termination 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 for the effective and efficient implementation of urban planning, assure the uses of land and the construction of improvements within the Subdivision are consistent with governmental approvals, the plats, and the restrictions and covenants applicable to the Subdivision filed of record in the public records of Comal County, Texas, to accomplish such purposes of the City without the necessity for the expenditure of public funds and municipal tax rate increases, to permit the residents of the Subdivision to assure the streets, drainage, parks and common areas are improved and completed in compliance with the representations, plans and plats regarding the Subdivision, to permit the residents of the Subdivision to rely on the Subdivision not being annexed into the City during the Original Term or any, if any, Extended Term of this Agreement, and in such manner provide assurance to such residents that they will not be subject to both the City's ad valorem tax during the term of this Agreement and the required RCPOA assessments for operations cost, and

the maintenance and improvement of the Subdivision.

**Section 2.4. Identified Area.** The Subdivision, as defined above, including all the land area within all the units or sections of the River Crossing Subdivision and the Overlook at River Crossing Subdivision, save and except for the "Excepted Area" as described below and shown on the plat attached hereto and incorporated herein for all purposes as Exhibit "A", including, but not limited to the following more specifically referenced and described units or sections of the Subdivision: (a) the River Crossing Unit One Subdivision containing 223.33 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 13, Pages 110-114 and Pages 106-109, of the Map Records of Comal County, Texas; (b) the River Crossing Unit Two Subdivision containing 477.11 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 13, Pages 184-188, of the Map Records of Comal County, Texas; (c) the River Crossing Unit Three Subdivision containing 510.48 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Pages 22-26, of the Map Records of Comal County, Texas; (d) the River Crossing Unit Four Subdivision containing 137.57 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Pages 229-220, of the Map Records of Comal County, Texas; (e) the River Crossing Unit Five Subdivision, the Waters at River Crossing, containing 79.64 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Pages 281-284, of the Map Records of Comal County, Texas; (f) the River Crossing Unit Six Subdivision containing 4.22 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Page 386, of the Map Records of Comal County, Texas; (g) the River Crossing Unit Seven Subdivision containing 6.86 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Page 387, of the Map Records of Comal County, Texas ; h) the River Crossing Golf course property consisting of 105.712 acres, more or less, described and shown in document numbers 9906008863 and 9906008862; 118.301 acres, more or less, described and shown in document numbers 9906008863 and 9906008862; 99.018 acres, more or less, described and shown in document number 9906008862 and any other tracts adjoining lot 2 River Crossing Unit One, and adjoining lots 10R and 12R the Overlook at River Crossing Subdivision described and shown in document numbers 9906008863 in the official map records of Comal County, Texas (i) the Overlook at River Crossing Subdivision containing 83.65 acres, more or less, described and shown on a plat thereof filed of record and recorded at Volume 14, Pages 174-175, of the Map Records of Comal County, Texas.

**Section 2.5. Deferred Annexation.** Bulverde, subject to the conditions set forth in this Agreement, agrees to continue the extraterritorial status of the Identified Area, as described in Section 2.4, and its immunity from annexation by Bulverde until this Agreement has terminated.

**Section 2.6. Excepted Area.** As referenced in Section 2.4 above, it is specifically agreed and provided the geographic area described in this Section 2.6, is excepted from the Identified Area, and that such area is described as follows: part of each lot that is south of Copper Rim Street and between Bentwood Drive and River Way Streets in the River Crossing Unit Three Subdivision, together with a portion of Lots 58, 59, 199, 662, 663, 664 and 827, as shown within the "Excepted Area" as hereinafter defined, has been annexed into the corporate limits of the City of Bulverde;

and is described as follows: Beginning at the intersection of the westernmost lot line of Lot 827 and the tract or lot line that separates parcel or tract numbers two and three of Lot 827 (the "Centerline of Lot 827"); Thence in an easterly direction with the Centerline of Lot 827 to a point in the right-of-way ("ROW") line of River Way Street; Thence on a line extending directly across the ROW of River Way Street to the nearest point in the ROW of Copper Rim Street; Thence in an easterly direction with the southerly ROW line of Copper Rim Street to a point for corner in the ROW line at the northeast corner of Lot 199; Thence in a southeasterly with the easternmost lot line of Lot 199 to the southernmost boundary line of the Subdivision; Thence in an easterly direction with the southernmost boundary line of the Subdivision to the southwest corner of the Subdivision; Thence in a northerly direction with the easternmost boundary of the Subdivision to the Point of Beginning, as said area is outlined in black and shown as the "Excepted Area" on the map attached hereto and incorporated herein for all purposes as Exhibit "A".

**Section 2.7. Legal and Equitable Remedies.** The terms, conditions and provisions of this Agreement may be enforced by either Bulverde or the RCPOA, either at law or in equity. The Parties have, respectively, relied on the representations and waivers provided in this Agreement, and estoppel shall be available to the other Party if a Party claims the absence of authority or any other defense to performance hereunder.

### **Article Three Actions By the RCPOA.**

**Section 3.1. Facility Improvements.** The RCPOA will improve the streets, parks, drainage system and common areas in the Subdivision. The plans and specifications for such facilities and improvements and such facilities and improvements as-built will comply with the standards, rules and regulations as set forth in this Agreement as well as those required by State law and applicable provisions of the City's Subdivision ordinance and Sign ordinance in effect in the City's ETJ. All such improvements and facilities shall be designed and constructed in compliance with good engineering practices.

**Section 3.2. Residential Design and Construction.** Residential units constructed within the Subdivision shall be constructed pursuant to plans and specifications, layout and design, approved by the RCPOA. All such residential units shall when constructed comply with the restrictions and covenants applicable to the unit of the Subdivision in which such building is located. The RCPOA will require all such residential units to be constructed in compliance with the National Electrical Code and International Residential Code (including plumbing) as specified by State law. Any modifications to the uses of land and the construction of improvements within the Subdivision which are not consistent with the prior governmental approvals, including the plats applicable to the Identified Area, will require compliance with applicable provisions of the City subdivision ordinance and Sign ordinance in effect in the City's ETJ.

**Section 3.3. Commercial & Multi-Family Design and Construction.** Multi-Family Residential and commercial structures constructed within the Subdivision, if any, shall be constructed pursuant to plans and specifications, layout and design, approved by the RCPOA. All such structures shall when constructed comply with the restrictions and covenants applicable to the unit of the

Subdivision in which such building is located, and the applicable building code specified pursuant to State law and applicable provisions of the City subdivision ordinance and Sign ordinance in effect in the City's ETJ. If not provided otherwise pursuant to State law, the RCPOA shall require all multi-family and commercial structures to be constructed in compliance with the International Fire Code, National Electrical Code, International Plumbing Code or Uniform Plumbing Code, and the International Building Code or International Residential Code, as applicable, specified pursuant to State law.

**Section 3.4. Land Use.** The RCPOA will enforce the land use restrictions and covenants as set forth in the applicable restrictive covenants of record in Comal County, Texas.

**Section 3.5. Other Controls.** The RCPOA will provide such other review, oversight and approval for construction, improvements and development within the Subdivision as is authorized by State law, applicable provisions of the City subdivision ordinance and Sign ordinance in effect in the City's ETJ and the restrictive covenants applicable to the Subdivision.

**Section 3.6. Services.** As applicable if not provided by Comal County, RCPOA will regularly maintain, or supplement the maintenance of, the streets, parks and common areas, preserve the quality of the environment within the Subdivision, and undertake programs to keep the Subdivision free of trash and rubbish.

**Section 3.7. Enforcement and Compliance.** The standards, regulations and conditions set forth in this Agreement for the review and approval of the plans and specifications for buildings and improvements within the Subdivision shall be applied and enforced by the RCPOA, its officers, employees, agents and representatives, in a manner consistent with the wording and intent of this Agreement. The standards to be applied and enforced shall also be as set forth on the respective plat(s) of the Subdivision, the restrictions and covenants filed of record for the Subdivision in Comal County and good engineering practices. The standards and specifications applicable and enforced with respect to any public improvement, e.g. street, drainage facility, or similar public improvement, shall be equal to or better than those established by Comal County.

#### **Article Four Actions By Bulverde.**

**Section 4.1. Building Standards.** During the Original Term and any Extended Term of this Agreement, Bulverde will refer to Comal County and the RCPOA all persons making application for the approval of any construction plans, issuance of any building permit, and all other requests for development or modification of land or permits regarding land within the Subdivision consistent with the prior governmental approvals; provided RCPOA shall enforce the codes, standards and requirements set forth herein and in the restrictions and covenants applicable to the Subdivision and of record in the public records of Comal County, and such additional requirements as are hereafter lawfully established by the RCPOA. All costs and fees lawfully charged and collected by the RCPOA as assessments, or for services, or the review, approval and inspection of buildings and improvements within the Subdivision may be retained by the RCPOA. During the Original Term and any Extended Term of this Agreement, RCPOA will refer to Bulverde all persons making

application for the approval of any requests for development or modification of land within the Identified Area not consistent with the prior governmental approvals.

**Section 4.2. Annexation Jurisdiction.** Bulverde shall not annex any part or portion of the Identified Area during the Original Term or any Extended Term of this Agreement.

**Section 4.3. City Services.** It is specifically and further proved that, as consideration for the City's agreement not to annex, during the Original Term or any Extended Term of this Agreement: (a) the RCPOA will provide the services and perform its obligations under this Agreement; and (b) the City shall not be required to provide any services, either governmental or proprietary, within the Identified Area.

**Section 4.4. Comal County.** A true and correct, fully executed, copy of this Agreement may be filed with the Commissioners Court of Comal County. The Court and the County shall be entitled to take notice of the terms and provisions hereof, and this Agreement shall constitute notice by the City to Comal County that, except as provided by contract herein for performance and services to be made by the RCPOA, the City shall not be required to provide any services, either governmental or proprietary, within the Identified Area during the Original Term or any Extended Term of this Agreement.

## **Article Five General and Miscellaneous.**

**Section 5.1. Exceptions to Release.** Notwithstanding any other term or provision of this Agreement, the Excepted Area referenced and described in Section 2.6 shall be and remain a part of the corporate area of the City, and shall be and remain subject to all the rules, regulations and ordinances of the City. The Excepted Area shall also be and remain subject to the restrictions and covenants filed of record in the public records of Comal County, and the applicable rules, regulations fees and assessments of the River Crossing Property Owners Association to the same extent as provided by law prior to the Effective Date. This Agreement shall not be construed or interpreted otherwise as modifying the rules, regulations or laws applicable to the Excepted Area.

**Section 5.2. Construction and Building Approval.** The Subdivision is a Master Plan Community, and the plats of the respective units and sections of the Subdivision have been previously approved and recorded in compliance with the applicable rules, regulations and ordinances of the City and Comal County. During the Original Term and any Extended Term of this Agreement, Comal County and the RCPOA shall have responsibility for construction, development and improvements within the Subdivision, provided that all such construction, development, improvements and work shall not be inconsistent with the approved plats and specifications for the Subdivision.

**Section 5.3. Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise: (a) any duty or responsibility of the City to undertake any action or to provide any service within the Subdivision, except as specifically set forth in this Agreement; or (b) any

limitation on the authority of the City that is not inconsistent with the agreement not to annex the Subdivision, except as specifically set forth in this Agreement.

**Section 5.4. Jurisdiction.** This Agreement shall not be deemed to extend or increase the jurisdiction or authority of the City or Comal County except as necessary to implement and give effect to this Agreement. All governmental and proprietary functions and services to be performed and provided by Bulverde other than in the Subdivision, except as provided otherwise by State law and this Agreement, shall be and remain in the sole discretion of the City. 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 5.5. 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 the City or the RCPOA nor to create any legal rights or claims on behalf of any third party. Except to the extent necessary to enable the City and RCPOA to enforce the terms and provisions of this Agreement, Bulverde does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State and estoppel shall apply.

**Section 5.6. Quality of Service.** The City shall be and remain solely responsible for the exercise of its governmental discretion and judgment, and the provision of municipal services, within the City and the land areas within Bulverde's ETJ. This Agreement is not intended to and shall not be deemed to establish any additional requirement for, or any specific or implied additional standard or quality for, any level of planning or service to be provided by either Bulverde or the RCPOA, except as specifically provided herein with respect to the duties and obligations of the RCPOA within the Subdivision. Provided the RCPOA will enforce the plat, specifications, restrictions and covenants applicable to the Subdivision, the level and quality of services to be provided within the Subdivision shall be established by the RCPOA and the Comal County budgets, appropriations, resolutions and regulations, as adopted by their respective Board or governing body. It is further specifically provided that nothing in this Agreement shall be deemed or construed as Bulverde granting, or attempting to grant, any authority to the RCPOA for it to perform any act or deed on behalf of or in lieu of Comal County.

**Section 5.7. Effective Date.** This Agreement shall be in full force and effect on the date above first written, from and after its execution by the Parties as hereinafter provided.

**Section 5.8. Amendments and Modifications.** This Agreement may be amended or modified only in a written instrument that is executed by both the City and the RCPOA after it has been approved by the Board and the City Council of the City.

**Section 5.9. Assignment.** Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party.



**Section 5.10. 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.

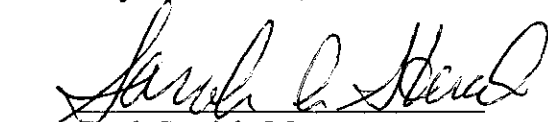
**Section 5.11. Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

**Section 5.12. 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.

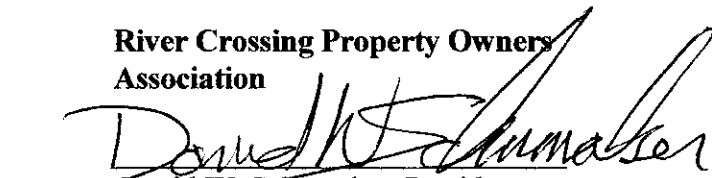
**IN WITNESS WHEREOF,** the Parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date first written above.

Executed this the 8 day of May 2007.

**City of Bulverde, Texas**

  
Sarah Stevick, Mayor

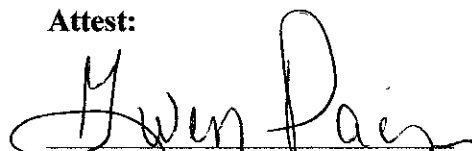
**River Crossing Property Owners  
Association**

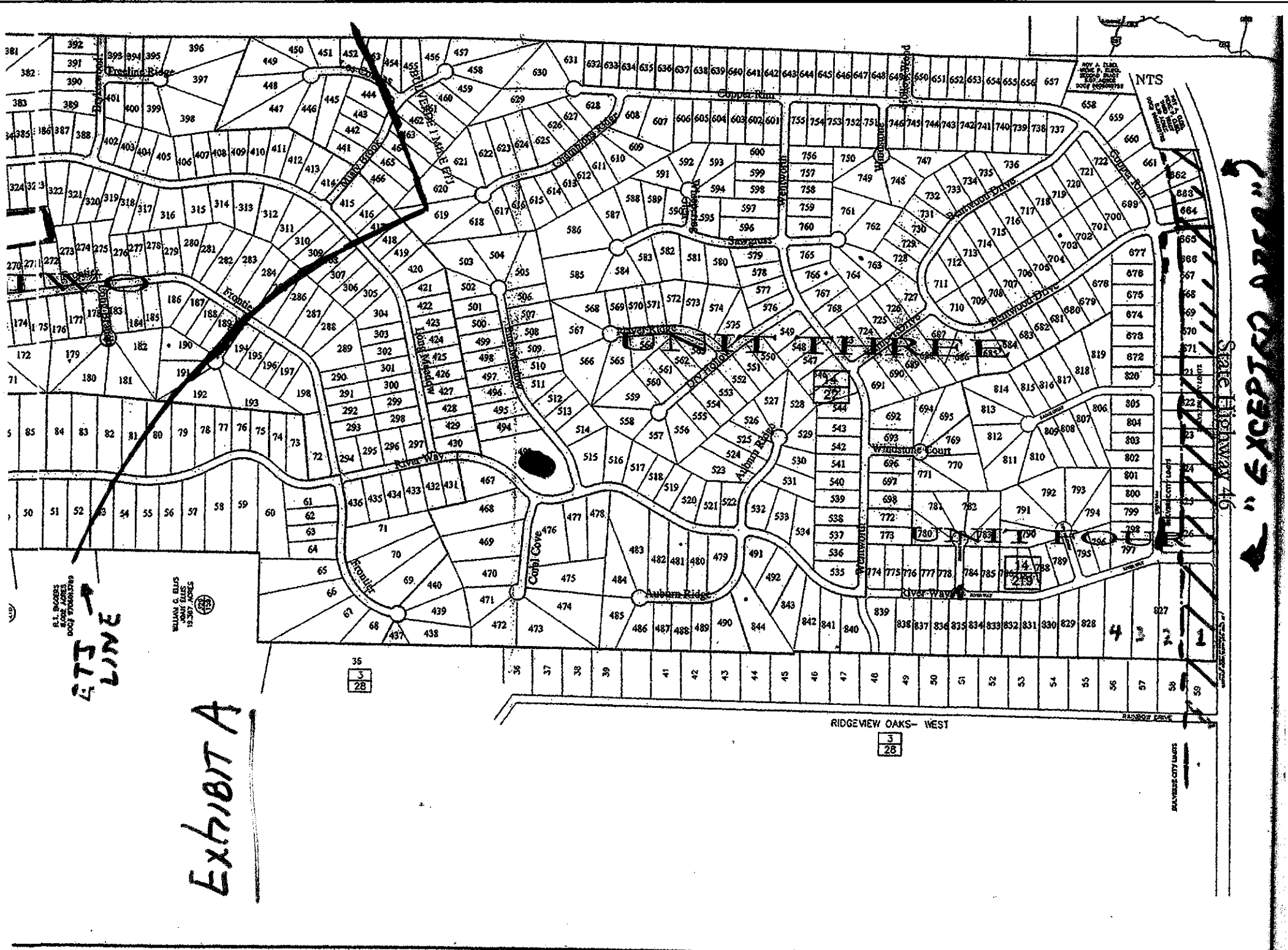
  
David W. Schumaker, President

**Attest:**

  
Tiffany Littlepage, City Secretary

**Attest:**

  
Gwen Pain, Corporate Secretary



EXCEPTED AREA

ETS LINE

Exhibit A

36
3
28

3
28

E.L. ROGERS  
 ENGINEER  
 8027 FROSTLINE

WILLIAM C. ELIAS  
 COUNTY CLERK  
 12.2077 ACRES

NOT A PLAN  
 SHOWING THE  
 LOCATION OF  
 THE  
 2024

NTS

RIDGEVIEW OAKS - WEST

RAINBOW DRIVE

RAINBOW CITY LIMITS