

**ECONOMIC DEVELOPMENT, DRAINAGE AND CORRIDOR BEAUTIFICATION  
PARTICIPATION AGREEMENT BETWEEN THE  
CITY OF COLLEGE STATION AND  
SAHARA REALTY GROUP LTD.**

This Agreement is entered into by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY"), and SAHARA REALTY GROUP LTD, a Texas Corporation (hereinafter referred to as "DEVELOPER").

WHEREAS, CITY is authorized and empowered under applicable Texas law to aid in the development of commercial enterprises within the geographic boundaries of the CITY by offering economic and other incentives to prospective new, developing, and expanding businesses; and

WHEREAS, DEVELOPER is developing property located within College Station for use as a retail commercial site in a designated Gateway Corridor in the city; and

WHEREAS, CITY provides cash incentives for use in attracting new retail businesses and expanding existing retail businesses to and within the CITY that are qualified economic development prospects; and

WHEREAS, CITY considers DEVELOPER to be a qualified economic development prospect that will add capital investment, generate sales tax, and create new jobs in the community; and

WHEREAS, DEVELOPER is over sizing its on-site drainage facility to accommodate regional detention, converting the detention facility to a retention facility and adding additional site improvements to the facility to beautify the facility for the City's Gateway;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties represent and agree as follows:

**1. Definitions**

For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

**1.1 Approved Plans** means the site plans, specifications, elevations, architectural façade, drainage detention improvements and site work meet the requirements of this Economic

Development Grant Agreement, the City of College Station Codes and Ordinances and any other applicable laws and has been reviewed and approved by the City of College Station Planning Department and Economic Development Department.

1.2. **Certificate of Acceptance:** A certificate issued by the City Engineer stating that the construction conforms to the plans, specifications and standards contained in or referred in CHAPTER 9 OF THE CITY OF COLLEGE STATION CODE OF ORDINANCES.

1.3 **Certificate of Completion/Compliance:** As defined in SECTION 1702 of the INTERNATIONAL BUILDING CODE, 2003 EDITION or as subsequently amended or modified. A certificate stating that work was done in compliance with approved construction documents/Approved Plans.

1.4 **Certificate of Occupancy:** A certificate issued by the Building Official pursuant SECTION 110 OF THE INTERNATIONAL BUILDING CODE, 2003 EDITION as adopted and amended by the City Council of the City of College Station.

1.5 **Drainage Improvements:** the upgrade of an on-site drainage detention facility from one meeting CITY of College Station Codes and Ordinances servicing the Project to a regional drainage retention facility serving the Project and a tract adjoining to the west, at a total facility cost of not less than \$1,000,000.00 (excluding land costs), together with related site work, landscaping, hardscape and other amenities and improvements as depicted in Exhibit "A". The Drainage Improvements shall include fountains, water falls, plaza areas, seating, and landscaping and shall be substantially in accordance with the conceptual elevations and site plan as depicted and described in Exhibits "A" and "B"; the plans and specifications to be approved by CITY and filed at the City of College Station Development Services Department.

1.6 **Economic and Drainage Participation:** Consist of the following:

1.6.1 **Cash Economic and Beautification Participation:** An amount not to exceed \$561,379.56 (includes interest and bank fees).

1.6.2 **Infrastructure Participation:**

One (1) traffic signal installed at the intersection of the main entrance (most westerly entrance) of the Project and University Drive. The signal will be installed by City within a reasonable time after a comprehensive investigation of traffic conditions and physical characteristics of the location is done to determine the necessity for a signal installation and to furnish necessary data for the proper design and operation of a signal that is found to be warranted by the Texas Department of Transportation, Bryan District Office in accordance with the requirements in Section 4C of the most current edition of the TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES in effect at the time the warrant study is conducted. Within 30 days of receipt of an engineer's cost estimate, DEVELOPER shall pay to CITY 25% of the total estimate. Within 45 days of

completion of installation of the signal, DEVELOPER shall pay to CITY the balance of the actual cost of materials and installation for the signal not to exceed 50% of the total actual cost. CITY shall provide DEVELOPER documentation of actual cost.

One (1) traffic signal arm installed at the intersection of Tarrow Drive and University Drive to be installed on or before January 31, 2006.

1.6.3 **Drainage Participation:** A cash amount of \$210,000.00.

1.7 **Effective Date:** This Agreement will be effective when signed by the last party whose signing makes the Agreement fully executed.

1.8 **Final Completion.** means that all the work on the Project has been completed in accordance with the Approved Plans, all payments to materialmen and subcontractors have been made, all documentation, and all closeout documents have been executed and approved by the DEVELOPER, Certificates of Occupancy for Phase I, Certificates of Completion and Acceptance have been issued for the Project, all Reports have been submitted and Reporting Requirements have been met, and DEVELOPER has fully performed any other requirements contained herein.

1.9 **Project Concept and Use:** The University Town Center is Property being developed as a retail commercial center on a 17.73 acre site owned by the DEVELOPER which includes retail shops and retail restaurants arranged around a water feature with outdoor facilities, landscaping, amenities and seating. The Project is more fully described in the site plan (Exhibit "B"), and elevations (Exhibit "C"), the Approved Plans, and this Agreement.

1.10 **Project:** The Project consists of the Property and the improvements currently under construction and owned by DEVELOPER, including various retail and restaurant uses. The Project is described in the Approved Plans. The Project known as University Town Center will be located on the Property. The capital investment and square footage of the premises is described in Article 3 herein below.

1.11 **Property** means an approximate 17.73-acre site more fully depicted and described in Exhibit "B" attached hereto and incorporated herein.

1.12 **Restaurant** as defined in CHAPTER 11 OF THE CITY OF COLLEGE STATION UNIFIED DEVELOPMENT ORDINANCE.

1.12a **Casual Dining** means a Restaurant with a market segment between Fast Food and Fine Dining restaurants usually characterized by table service, a relatively fully-stocked and full service bar, and a bill per dinner averaging \$10 - \$30 for an evening meal and slightly less for lunch and does not provide drive thru service.

1.12b **Fine Dining** means a Restaurant serving formal style dinner, and services where food and drink are prepared and served. Customer turnover rates are typically one hour or

longer. Such establishments serve dinner but generally do not serve breakfast and may or may not serve lunch or brunch. These restaurants usually have a dress code and do not provide drive thru service.

1.12c **Drive-in/Take out** means an establishment where food and/or beverages are sold in a form ready for consumption, where all or a significant portion of the consumption takes place or is designed to take place outside the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

1.12d **Fast Food** is as defined in CHAPTER 11 OF THE CITY OF COLLEGE STATION UNIFIED DEVELOPMENT ORDINANCE, AS AMENDED.

1.13 **Drainage facility and Drainage Retention facility:** As defined in CHAPTER 13, CITY OF COLLEGE STATION CODE OF ORDINANCES and as more specifically depicted in the approved Project plans and specifications.

1.14 **Drainage Oversize Participation:** As defined and authorized in CHAPTER 9, SECTION 9, CITY OF COLLEGE STATION CODE OF ORDINANCES and as particularly described herein.

1.15 **Retail Space** means the construction of buildings and retail shell space and related site improvements suitable for lease to establishments engaged in retail sales as that term is defined in the City of College Station Unified Development Ordinance.

## **2. CITY's Economic, Drainage and Corridor/Gateway Participation**

### **2.1. Participation**

2.1.1 CITY agrees to grant economic development funds as authorized by CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (VERNON 1999 AND VERNON SUPP. 2004-5). The grant consists of the participation defined in Sections 1.6.1 and 1.6.2 to be used for the purposes specified in this Agreement.

2.1.2 City will provide Drainage Oversize Participation funds in the amount specified in 1.6.3 to oversize the Project drainage facility to accommodate regional drainage and convert it from a detention to a retention facility. City will reimburse DEVELOPER only for the actual and reasonable costs expended for the improvements up to the maximum participation stated in Section 2.1.3. City Engineer may request any additional information specified in Section 5 herein to verify the accuracy and reasonableness of the costs submitted.

2.1.3 The funds will be paid to DEVELOPER on condition that and only after the requirements established herein have been fulfilled by the DEVELOPER or its successors-in-interest, lessees or assignees as applicable.

The total CITY participation shall not exceed \$771,379.56, which is comprised of \$561,379.56 Economic and Beautification Participation and \$210,000 for Drainage Participation. CITY's contribution is a portion of the actual cost of the Drainage Improvements. The drainage participation payment is contingent upon DEVELOPER's contribution of a minimum of \$300,000 toward the construction of the Drainage Improvements.

2.1.5 DEVELOPER is eligible to receive CITY's participation payments in the amounts and according to the schedule detailed in this Section 2.1.5. To receive the first payment, DEVELOPER must submit (i) engineering plans and specifications for the Detention Facility as depicted in Exhibits "A" and "B"; and (ii) an engineer's estimate of cost of construction of the Detention Facility in an amount equal to or greater than \$1,000,000. CITY will issue a check to DEVELOPER within twenty (20) business days after DEVELOPER's submittal of the request for the payment meeting the requirements set out herein. To receive the January 31, 2007 payment DEVELOPER must have obtained building permits on Phase I in accordance with Exhibits "B", "C", and "D". To receive the January 31, 2008 payment, DEVELOPER must have obtained a building permit for Phase II in accordance with Exhibits "B", "C", and "D" and a Certificate of Completion for Phase I. To receive the January 31, 2009 payment DEVELOPER must have received a building permit for Phase III in accordance with Exhibits "B", "C", and "D".

- a. \$210,000 on or by January 31, 2006
- b. \$187,126.52 on or by January 31, 2007
- c. \$187,126.52 on or by January 31, 2008
- d. \$117,126.52 on or by January 31, 2009

Upon receipt of Certificate of Occupancy for all buildings in Phase I, and Certificates of Completion for all buildings in Phases II and III, City shall make final payment of the \$70,000.

### **3. DEVELOPER'S Obligations and Representations**

#### **3.1 Capital Investment**

3.1.1 DEVELOPER shall:

- (a) construct the retail spaces and restaurants in conformity with the schedule in Exhibit "D";
- (b) secure a minimum of three (3) Casual or Fine Dining restaurants as depicted in Exhibit "B", excluding Fast Food and Drive-in/Take Out establishments which will be clustered around and located directly adjacent to the Drainage Improvements as depicted in Exhibits "A" and "B";

- (c) Design, construct and complete the Project in accordance with the schedule and requirements in Section 2.1.5 and all other requirements herein
- (d) receive a Certificate of Completion for the Drainage Facility by June, 30, 2006;
- (e) own and maintain the Drainage Facility.
- (f) use an alternate façade, elevations, color scheme, and site plan for the Retail and Restaurant Space, which is conceptually depicted in Exhibits "C" and "B" attached hereto and incorporated herein by reference.

3.1.2 DEVELOPER shall apply for and obtain Building Permits and commence construction of the retail and restaurant developments listed above in accordance with the schedule attached as Exhibit "D".

3.1.3 DEVELOPER shall increase the appraised value, as determined and certified by the Brazos County Appraisal District, of the Property in by a minimum of \$10,800,000.00 through capital investment and development of the Project.

### **3.3 Maintenance of upgraded Drainage Facility**

3.3.1 DEVELOPER its successors-in-interest, assignees and lessees warrants that all drainage retention facilities and related improvements will be maintained in accordance with this Agreement and the Approved Plans and standards attached hereto or on file with the City of College Station and all applicable laws or regulations.

3.3.2 DEVELOPER agrees to afford 3<sup>rd</sup> party beneficiary status to the CITY in its covenants, conditions and restrictions filed on the Property for the Drainage Improvements detailed in this Agreement and maintenance of the common areas.

## **4. Term**

The term of this Agreement is from the date of execution of this Agreement through December 31, 2015.

## **5. Reporting Requirements**

### **5.1. Reports**

5.1.1 DEVELOPER shall:

- (a) Provide an engineer's sealed, detailed cost estimates for the Drainage Facility constructed to the City by January 31, 2006.

(b) Within sixty (60) days of Final Completion of the improvements specified in this Section 3, DEVELOPER shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the DEVELOPER has been notified.

(c) Provide a complete itemized sworn statement of the construction account for the Drainage facility, certified by the DEVELOPER and his contractor as correct for review in order to demonstrate that total cost of Drainage facility meet or exceed \$1,000,000.

(d) All submittals in this Section shall be to the Director of Economic Development or her designee.

5.1.2 DEVELOPER shall submit to the CITY any and all information or reports requested to verify the expenditures submitted for participation payment eligibility including but not limited to bid documents, payment applications including any supporting information, cancelled checks, copies of construction and engineering documents, as determined by the City Engineer in his sole discretion, for the verification of the cost of the Drainage Improvements. The submission of these reports and information shall be the responsibility of DEVELOPER and shall be certified by DEVELOPER's Licensed Professional Engineer at DEVELOPER's expense and signed by the President or general partner.

5.1.3 DEVELOPER shall submit the information and/or reports required herein on or before the day that is sixty (60) days after the earlier of (i) the date of issuance of the Certificate of Completion, or Certificate of Occupancy; or (ii) the date on which they are requested by the CITY for Final Completion of the Project. No final payment will be issued until Final Completion and reporting requirements have been met.

5.2 City shall verify with the Brazos County Appraisal District that the appraised value of the Improvements meets the requirements in Section 5.1 upon Final Completion

## 6. **Compliance with Applicable Laws**

DEVELOPER will construct the Project and remain in compliance with all applicable laws, rules and regulations including without limitation, all applicable environmental laws, rules and regulations during the term of this Agreement.

## 7. **Default**

### 7.1 **DEVELOPER Default**

7.1.1 If DEVELOPER defaults in any material term or condition of this Agreement, then CITY shall not disburse the participation funds specified under this Participation Agreement unless DEVELOPER cures the default promptly but not more than thirty (30) days after the occurrence of said default, unless such cure will reasonably take more than thirty (30) days, in which case the City shall approve additional time to cure the default upon submission of a plan and schedule to promptly cure the default within a reasonable time, and provided the party commences the cure within the thirty (30) day period and completes the work in accordance with the revised schedule. In no event shall this Section 7 be construed to extend the time of this Agreement beyond the term specified in this Agreement and the parties acknowledge and agree that a default shall not extend the time for performance or cure beyond the end of the term specified in Section 4.

7.1.2 A material breach by DEVELOPER consists of, but is not limited to, any of the following individual or cumulative events: failure to construct and obtain Final Completion of any of the (3) retail restaurants schedule at the Project site in accordance with Section 2.1.5; failure of DEVELOPER to construct the Drainage Facility; failure of DEVELOPER to comply with all laws, codes and ordinances relating to the Project; failure of DEVELOPER to meet the requirements for the receipt of a Certificate of Completion for the retail spaces and restaurants on or before the dates scheduled in 2.1.5; failure to obtain a Certificate of Occupancy for the Project when scheduled; failure of DEVELOPER to obtain Final Completion of retail space available for lease on or before the dates specified in Section 2,1,5; failure to obtain a Certificate of Completion for the Drainage Facility; submittal of any cost information that DEVELOPER knows or should know is incorrect at the time of its submittal or to correct any information that changes subsequent to its submittal; failure to obtain building permits as scheduled; any material misrepresentation of fact concerning the subject matter of this Agreement.

7.1.3 Except as otherwise provided in this Section 7, in the event DEVELOPER fails to cure any default under this Agreement within the notice and cure periods set forth in Section 7.1.1 hereof, then CITY's shall withhold payment of the Cash Participation and installation of traffic signals. Additionally, DEVELOPER shall repay to CITY any participation payment or portion thereof received from CITY and may terminate this Agreement without any liability therefor. In no event shall either party be liable to the other party for any consequential damages as a result of any breach or default under this Agreement.

## **7.2 CITY Default**

In the event that CITY materially breaches its obligation to participate and DEVELOPER is not in default, DEVELOPER, at its option, may terminate this Agreement, and may thereafter pursue its remedies available at law. In no event shall City be liable to DEVELOPER, any retail business, or any restaurant for any consequential damages as a result of any breach or default under this Agreement. If

DEVELOPER is in default, DEVELOPER may only terminate this Agreement without further liability.

## **8. Indemnity**

**DEVELOPER agrees to and shall indemnify and hold harmless and defend CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with DEVELOPER's operation and construction of improvements contemplated by this Agreement either on DEVELOPER's site, retail space site, or restaurant's business' site, except to the extent any of the foregoing is caused by the negligence or willful misconduct of CITY, its officers, agents and/or employees.**

## **9. Release**

**DEVELOPER, its successors-in-interest, assignees and lessees release, relinquish and discharge the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with the Project and the operation and construction of their respective improvements contemplated by this Agreement.**

**By entering in to this Agreement, the City does not consent to suit, waive its governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act.**

## **10. Assignment**

During the term of this agreement, this Agreement may not be assigned by DEVELOPER without thirty (30) days advance notice to and the consent of the CITY and provided that the assignee expressly agrees in writing to assume the obligations under this Agreement.

## **11. Invalidity**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

**12. Written Notice**

All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To DEVELOPER: SAHARA REALTY GROUP LTD  
Capital Realty Partners LL.C, General Partner  
Attn: David Scarmardo, Manager  
P.O. Box 4508  
Bryan, Texas 77805-4508

with a copy to: Law Office of Charles A. Ellison  
Attn: Charles Ellison, Esq.  
P.O. Box 10103  
College Station, TX 77845-0103  
(979) 696-9889  
(979) 693-8819(fax)

To CITY: City of College Station  
Attn: Economic Development Director  
P.O. Box 9960  
College Station, Texas 77842

with a copy to: City of College Station  
Attention: City Attorney  
1101 Texas Avenue  
College Station, TX 77842

**13. Entire Agreement**

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

**14. Amendment**

No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of CITY and DEVELOPER.

**15. Texas Law**

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

**16. Place of Performance**

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

**17. Authority to Contract**

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations

**18. Waiver**

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

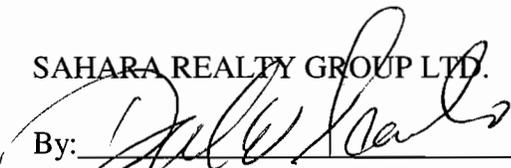
**19. Representation**

DEVELOPER represents and warrants that no member of the College Station City Council has an interest in the Property, and that the same are not owned or leased by any member of the College Station City Council. DEVELOPER further represents and warrants that no member of the College Station City Council is under contract either directly or indirectly with DEVELOPER, or their respective agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

**20. Construction**

The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

SAHARA REALTY GROUP LTD.

By: 

Capital Realty Partners LL.C.

David W. Scarmardo, Manager

Date: 9.29.05

CITY OF COLLEGE STATION, TEXAS

By: \_\_\_\_\_

RON SILVIA, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Glenn Brown,  
Interim City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Kersten, Director of Finance  
and Strategic Planning

Date: \_\_\_\_\_

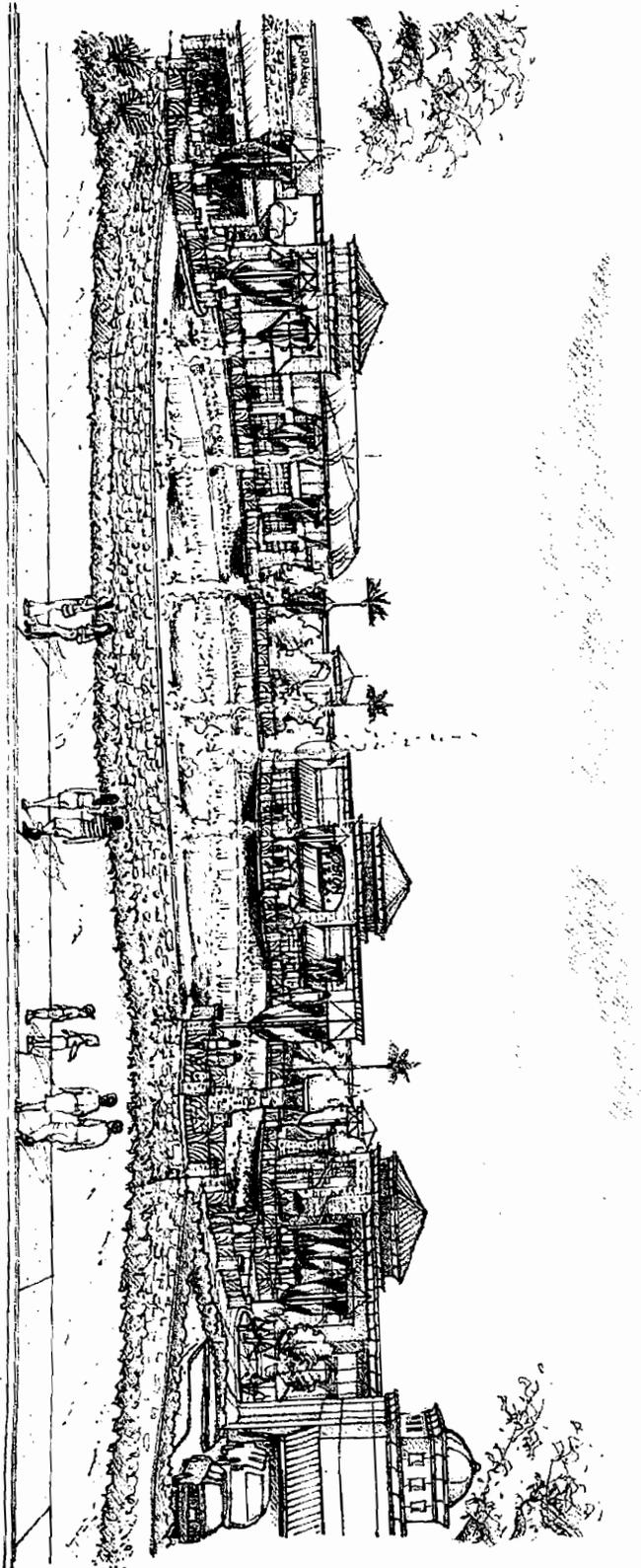


\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_



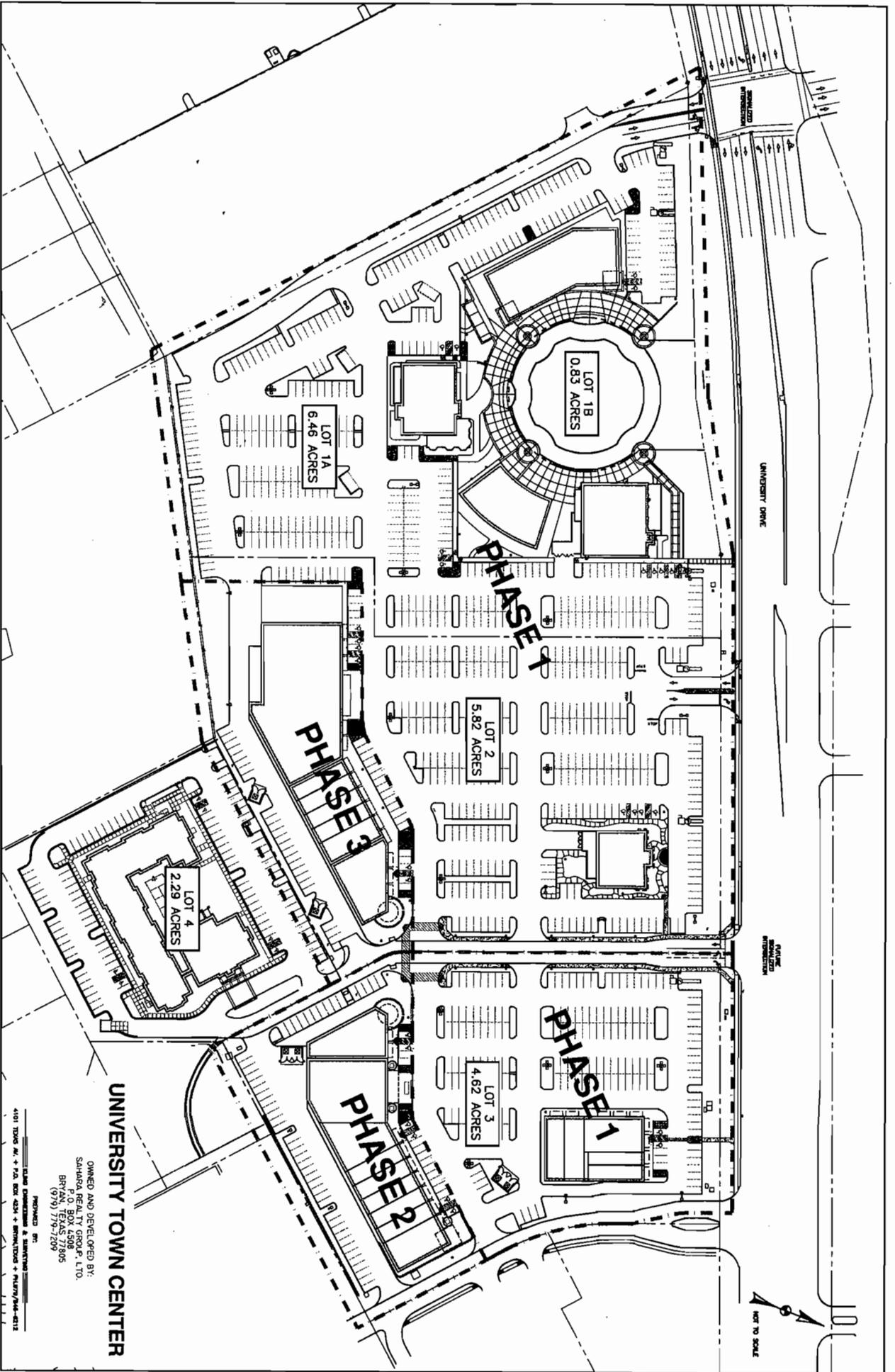
**EXHIBIT A**



  
**LEVINSON**  
ASSOCIATES, L.P.  
ARCHITECTS

**SHOPPING CENTER**  
PRELIMINARY STUDY  
UNIVERSITY DRIVE  
COLLEGE STATION, BRAZOS COUNTY, TEXAS

**DWS DEVELOPMENT, INC.**  
1111 W. 11TH ST. SUITE 100  
COLLEGE STATION, TEXAS 77840



UNIVERSITY TOWN CENTER

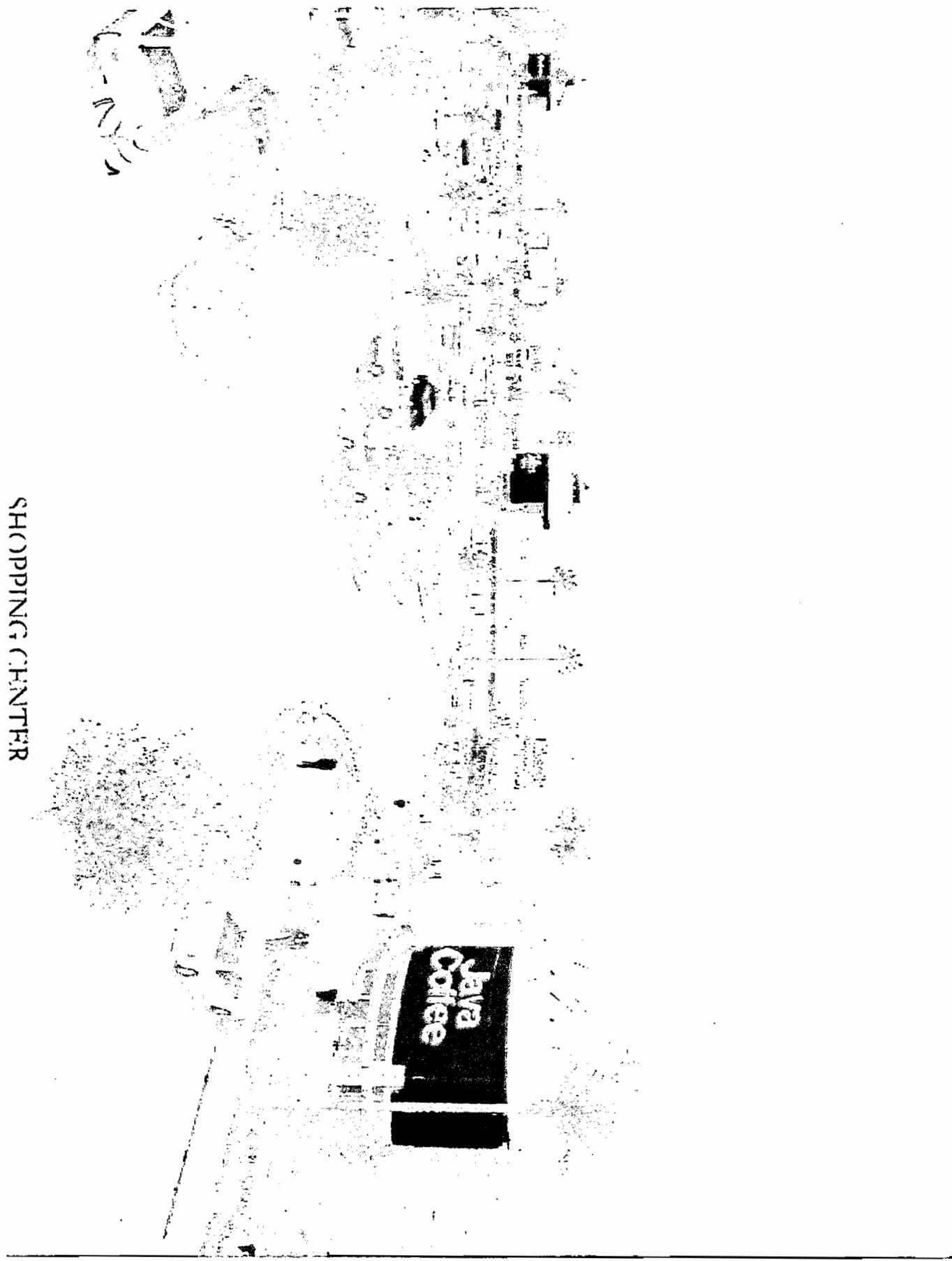
OWNED AND DEVELOPED BY:  
SANDS REALTY  
P.O. BOX 4508  
BRYAN, TEXAS 77805  
(979) 779-7209

PLANNED ZONING INTERSECTION

UNIVERSITY DRIVE

NOT TO SCALE

401 TONG AV. + P.O. BOX 424 + BRYAN, TEXAS + PLATTEN/94-4812



SHOPPING CENTER

**EXHIBIT "D"**

<b><u>Building Permit is Obtained in:</u></b>	<b><u>Capital Investment and Improvements</u></b>
Phase I	10,000 s.f. of retail and restaurant \$1,100,000
Phase I	5,700 s.f. of casual and/or fine dining restaurant \$1,500,000
Phase I	7,500 to 8,200 s.f. of casual and/or fine dining restaurant \$1,800,000
Phase I	6,500 s.f. of retail and restaurants \$800,000
Phase I	6,200 s.f. of casual and/or fine dining restaurant \$1,500,000
Phase I	11,000 s.f. retail and casual and/or fine dining restaurant \$1,300,000
Phase II	25,000 sf of retail and restaurants \$2,500,000
Phase III	31,000 s.f. retail and restaurants \$3,100,000