

RESTRICTIVE COVENANT

OWNER: Eastbourne Crossing Limited Partnership, a Texas limited partnership

ADDRESS: 300 International Drive, Suite 135, Williamsville, NY 14221

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: An 11.760 acre tract of land, more or less, out of the Santiago Del Valle League Grant, Abstract No. 24, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its successors and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by WHM Transportation Engineering, dated October 26, 2006, or as amended and approved by the Director of the Watershed Protection and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated April 25, 2007. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2007.

OWNER:

**Eastbourne Crossing Limited Partnership
a Texas limited partnership**

By: Eastbourne Crossing Management LLC,
a Delaware limited liability company,
its general partner

By: Eastbourne Investments Ltd.,
a Delaware corporation,
its sole member

By: _____
Frank Egan,
President

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2007, by Frank Egan, President of Eastbourne Investments Ltd., a Delaware corporation, sole member of Eastbourne Crossing Management LLC, a Delaware limited liability company, as general partner of Eastbourne Crossing Limited Partnership, a Texas limited partnership, on behalf of the limited partnership.

Notary Public

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal

11.760 ACRES
EASTBOURNE CROSSING

EXHIBIT A

FN. NO. 07-180 (KWA)
APRIL 3, 2007
BPI JOB NO. 1673-01.91

DESCRIPTION

OF 11.760 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE LEAGUE GRANT, ABSTRACT NO. 24, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 389.447 ACRE TRACT CONVEYED TO EASTBOURNE CROSSING LIMITED PARTNERSHIP BY DEED OF RECORD IN DOCUMENT NO. 2006107114 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 11.760 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found in the easterly right-of-way line of F.M. Highway No. 973 (Right-of-Way varies), being the southwesterly corner of that certain 5.0 acre tract of land conveyed to J.V. Gregg, Arvid Johnson and Joe Pearson by deed of record in Volume 1787, Page 399 of the Deed Records of Travis County, Texas for an angle point in the westerly line hereof;

THENCE, leaving the easterly right-of-way line of F.M. Highway No. 973 and the westerly line of said 389.447 acre tract, along the common line of said 5.0 acre tract and said 389.447 acre tract, for a portion of the westerly line hereof, the following two (2) courses and distances:

- 1) S47°33'42"E, a distance of 394.96 feet to a found monument at the southeasterly corner of said 5.0 acre tract for an angle point hereof;
- 2) N42°35'07"E, a distance of 584.43 feet to a 1/2 inch iron rod found at the northwesterly corner of said 389.447 acre tract and hereof, being an angle point in the easterly line of said 5.0 acre tract, also being the southwesterly corner of that certain 74.790 acre tract (Parcel 359) conveyed to the State of Texas by deed of record in Document No. 2005169200 of said Official Public Records, from which a found iron pipe in the common line of said 5.0 acre tract and said 74.790 acre tract bears N42°37'14"E, a distance of 160.80 feet;

THENCE, S62°04'47"E, along the northerly line of said 389.447 acre tract and hereof, being the southerly line of said 74.790 acre tract, a distance of 119.10 feet to the northeasterly corner hereof, from which a found 1/2 inch iron rod in the common line of said 389.447 acre tract and said 74.790 acre tract bears S60°04'47"E, a distance of 1168.19 feet;

THENCE, leaving the northerly line of said 389.447 acre tract and the southerly line of said 74.790 acre tract, over and across said 389.447 acre tract, for the easterly and southerly lines hereof, the following four (4) courses and distances:


- 1) S44°23'04"W, a distance of 68.53 feet to an angle point;

- 2) S43°50'16"W, a distance of 976.12 feet to an angle point;
- 3) S44°41'31"W, a distance of 431.29 feet to the southeasterly corner hereof;
- 4) N62°12'01"W, a distance of 489.30 feet to a point on the easterly right-of-way line of F.M. 973, same being a point on the northwesterly line of the said 389.447 acre tract for the southwesterly corner hereof;

THENCE, N42°43'03"E, along the easterly right-of-way line of F.M. 973, being the northwesterly line of the said 389.447 acre tract, for a portion of the westerly line hereof, a distance of 984.66 feet to the **POINT OF BEGINNING**, containing an area of 11.760 acres (512,276 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILIZING CITY OF AUSTIN AND LCRA PROVIDED MONUMENTS.

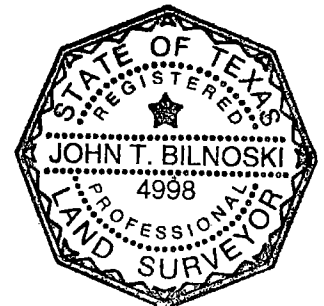
BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
221 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701



JOHN T. BILNOSKI
NO. 4998
STATE OF TEXAS

4/3/07

DATE



STATE HIGHWAY NO. 71
(R.O.W. VARIES)

74.790 ACRES (PARCEL 359)
STATE OF TEXAS
DOCUMENT NO. 2005169200
S62°04'47"E 1168.19'

5.0 ACRES
J.V. GREGG, ARVID JOHNSON
& JOE PEARSON, TRUSTEES
COLORADO COMMON SCHOOL
DISTRICT NO. 36
VOL. 1787, PG. 399

P.O.B.

S47°33'42"E
394.96'

11.760 ACRES
(512,276 SQ. FT.)

N42°43'03"E 984.66'

CITY LIMIT LINE

N62°12'01"W 489.30'

S42°43'03"W
1540.73'

L1

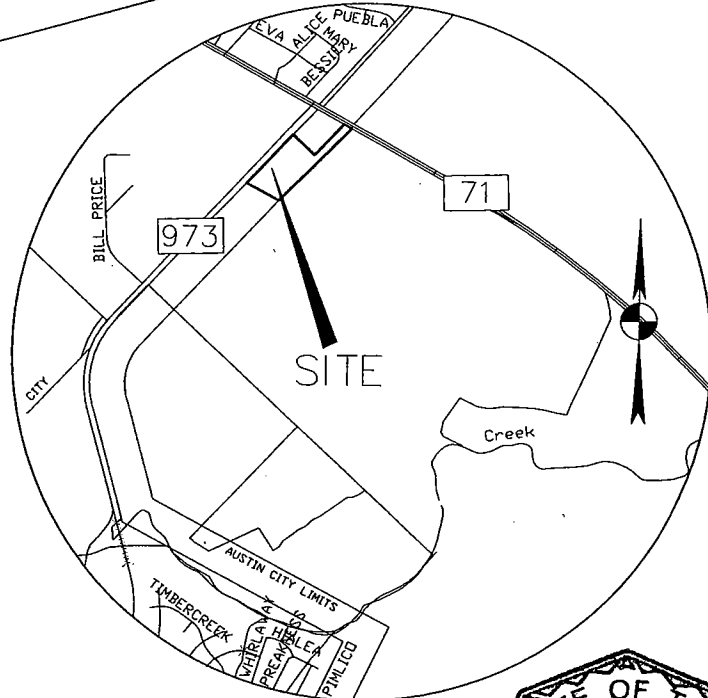
L2

L3

N42°35'07"E 584.43'

S43°50'16"W 976.12'

CITY OF AUSTIN
S44°41'31"W TRAVIS COUNTY
431.29'



VICINITY MAP
N.T.S.

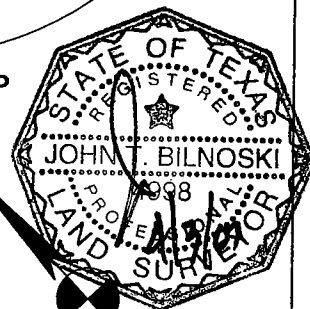
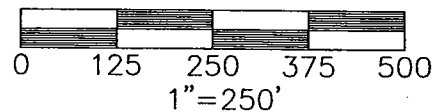
389.447 ACRES
EASTBOURNE CROSSING
LIMITED PARTNERSHIP
DOC. NO. 2006107114

LINE TABLE

LINE	BEARING	LENGTH
L1	N42°37'14"E	160.80
L2	S62°04'47"E	119.10
L3	S44°23'04"W	68.53

LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED)
- MONUMENT FOUND
- ⊙ IRON PIPE FOUND
- P.O.B. POINT OF BEGINNING



Bury+Partners
ENGINEERING SOLUTIONS
221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel. (512)328-0011 Fax (512)328-0325
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SKETCH TO ACCOMPANY DESCRIPTION
OF 11.760 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE
LEAGUE GRANT, ABSTRACT NO. 24, SITUATED IN TRAVIS
COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 389.447
ACRE TRACT CONVEYED TO EASTBOURNE CROSSING LIMITED
PARTNERSHIP BY DEED OF RECORD IN DOCUMENT NO.
2006107114 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS
COUNTY, TEXAS

**EASTBOURNE
DEVELOPMENT**

DATE: 04/03/07

FILE: H:\1673\01\167301EX5.dwg

FN No.: 07-180(KWA)

DRAWN BY: KWA

PROJ. No: 1673-01.91