



Zoning Case No. C14-06-0208

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 (the "Director"). 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 June 14, 2007, and attached as Exhibit "B" incorporated into this covenant. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. Development of this property should be limited to uses and intensities which will not exceed or vary from the projected traffic conditions assumed in the TIA, including peak hour trip generations, traffic distribution, roadway conditions, and other traffic related characteristics. Should the proposed development exceed the trips assumed in this TIA, the TIA must be amended by the applicant and approved by the Director. The TIA amendment may not exceed 8,000 unadjusted trips per day.
3. 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.

6-21-06
119

4. 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.
5. 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.
6. 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.

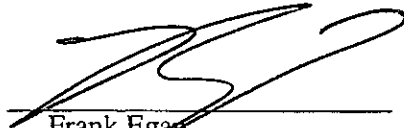
EXECUTED this the 19th day of JUNE, 2007.

OWNER:

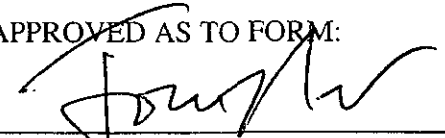
**Eastbourne Crossing Limited Partnership
a Texas limited partnership**

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

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.

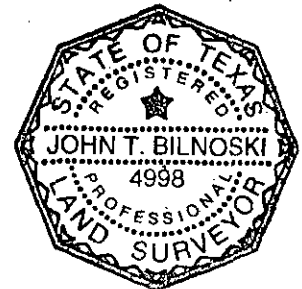
BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
221 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701



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.

F.M. HIGHWAY NO. 973
(R.O.W. VARIES)

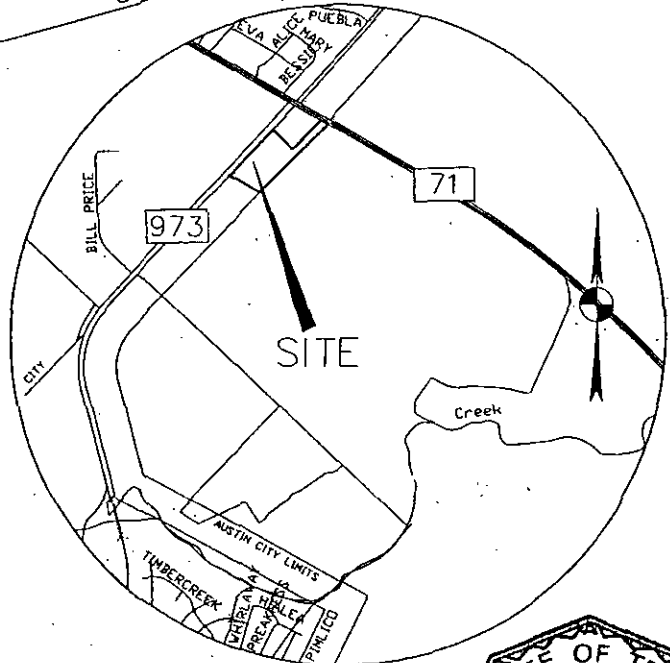
S47°33'42"E
394.96'
11.760 ACRES
(512,276 SQ. FT.)

N42°43'03"E 984.66'

CITY LIMIT LINE

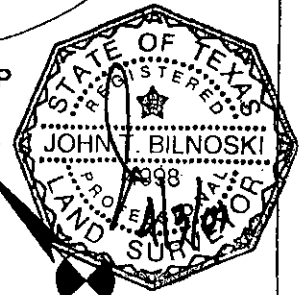
N62°12'01"W 489.30'
S42°43'03"W
1540.73'

L1
L2
L3
N42°35'07"E 584.43'
CITY OF AUSTIN
S44°41'31"W 431.29'
TRAVIS COUNTY
S43°50'16"W 976.12'



VICINITY MAP
N.T.S.

389.447 ACRES
EASTBOURNE CROSSING
LIMITED PARTNERSHIP
DOC. NO. 2006107114

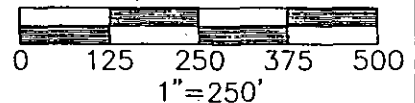


LINE TABLE

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: June 14, 2007
To: Tina Bui, Case Manager
CC: Kathy Hornaday, P.E. HDR/WHM Transportation Engineering
Reference: Eastbourne Crossing TIA (Hwy 71 East at FM 973)\
 C14-06-0208

The Transportation Review Section has reviewed the Traffic Impact Analysis for the Eastbourne Crossing dated October 26, 2006, prepared by Kathy Hornaday, P.E., WHM Transportation Engineering, and offers the following comments:

TRIP GENERATION

Eastbourne Crossing is a 10.71-acre development located in east Austin just southeast of the intersection of State Highway 71 and FM 973. The area analyzed in this TIA is within the City's full purpose jurisdiction and is a portion of a larger planned development, most of which is within Travis County. An interlocal agreement between the applicant, TxDOT and Travis County for significant improvements to SH 130 and SH 71 in conjunction with the overall development is currently being finalized.

The property is currently undeveloped and zoned Development Reserve (DR). The applicant has requested a zoning change to General Commercial Services (CS). The estimated completion of the project is expected in the year 2008.

Based on the standard trip generation rates established by the Institute of Transportation Engineers (ITE), the development will generate approximately 3,882 unadjusted average daily trips (ADT).

The table below shows the adjusted trip generation by land use for the proposed development:

Table 1. Trip Generation						
			AM Peak		PM Peak	
LAND USE	Size	ADT	Enter	Exit	Enter	Exit
Specialty Retail Center	20,000 SF	327	0	0	18	22
Fast Food w/o Drive Thru	4,500 SF	1,015	56	54	36	34
High Turnover Restaurant (Sit-Down)	6,000 SF	525	32	30	19	12
Total		1,867	88	84	73	68

ASSUMPTIONS

1. Traffic growth rates provided by the Texas Department of Transportation were as follows:

Table 2. Growth Rates per Year	
Roadway Segment	%
All Roads	6%

2. In addition to these growth rates, background traffic volumes for 2003 included estimated traffic volumes for the following projects:

Del Valle Detox & Treatment Facility	SP-06-0151C
Paul Keller Investments	C14-06-0125
Interport	C8-00-2121.01

3. Reductions were taken for pass-by for the following uses:

Table 3. Summary of Pass-By Reductions		
Land Use	Pass-By Reductions %	
	AM	PM
Specialty Retail Center	0	18
Fast Food Restaurant w/o Drive Thru	49	50
High Turnover Restaurant	0	47

4. Reductions were taken for internal capture for the following uses:

Table 4. Summary of Internal Capture Reductions		
Land Use	Internal Capture Reductions %	
	AM	PM
Specialty Retail Center	10	10
Fast Food Restaurant w/ Drive Thru	10	10
High Turnover Restaurant	10	10

5. No reductions were taken for transit use.

EXISTING AND PLANNED ROADWAYS

SH 71 – SH 71 forms the northern boundary of the subject site. This roadway is currently classified as a four-lane divided major arterial from Avenue F to SH 130. The CAMPO 2030 Plan identifies this roadway as a six-lane freeway, by 2030. This expansion construction, however, is not assumed to take place before project build out. The 2004 traffic volumes on SH 71 were approximately 45,000 and 49,000 vehicles per day (vpd), respectively, east and west of FM 973.

FM 973 – This roadway is classified as a two lane minor arterial from FM 969 to SH 71 and as two lane major undivided arterial from FM 71 to Pearce Lane. The existing traffic volume for FM 973, between SH 71 and Pearce Lane, was approximately 8,800 vpd.

Fallwell Lane – Fallwell Lane is a two-lane undivided roadway north of the site across SH 71. 24-hour traffic data are not available for this location; however, based on a review of peak traffic period traffic counts, 1,600 vpd are estimated north of SH 71.

SH 130 – This roadway is under construction in the vicinity of the site. The CAMPO 2030 Mobility Plan classifies this roadway as a six-lane toll parkway. Traffic volumes for 2007 on SH 130, north and south of SH 71, are forecasted to be 22,100 vpd and 19,900 vpd, respectively.

INTERSECTION LEVEL OF SERVICE (LOS)

The TIA analyzed 5 intersections, 2 of which are or will be signalized. Existing and projected levels of service are as follows, assuming that all improvements recommended in the TIA are built:

Table 5. PM Peak Level of Service			
Intersection	2006 Existing	2008 Forecasted (Without Site)	2008 Site + Forecasted
Fallwell Ln/FM 973 and SH 71*	D	D	D
FM 973 and SH 71*	C	C	C
FM 973 and Driveway A	-	-	A
FM 973 and Driveway B	-	-	A
Driveway C and SH 71	-	-	A

* = SIGNALIZED

RECOMMENDATIONS

- 1) Prior to 3rd reading at City Council, fiscal is required to be posted for the following improvements:

Intersection	Improvements	Pro Rata Share (%)
Fallwell Lane/FM 973(East) and SH 71	Left turn bays for driveways A and B on FM 973	23.0
FM 973(East) and Driveway A	Install a traffic signal when warrants are met	100

EB=Eastbound WB=Westbound NB=Northbound SB=Southbound

- 2) Final approval from DPWT ~ Signals and TXDOT is required prior to 1st Reading.
- 3) Cost estimates for the above improvements should be submitted prior to 3rd Reading.
- 4) Driveways should be constructed to the widths and cross-sections recommended in the TIA.
 - Recommend no lefts out of Driveway B.
 - Recommend Driveway C operate as a right-in, right-out driveway.
- 5) For information: Two copies of the final version of the TIA incorporating all corrections and additions must be submitted prior to final approval of the zoning case.
- 6) Development of this property should be limited to uses and intensities which will not exceed or vary from the projected traffic conditions assumed in the TIA, including peak hour trip generations, traffic distribution, roadway conditions, and other traffic related characteristics. Should the proposed development exceed the trips assumed in this TIA, the TIA must be amended by the applicant and approved by Director of Development. The TIA amendment may not exceed 8,000 unadjusted trips per day.
- 7) Recommend that an EB right-turn lane on SH 71 to Driveway C be constructed at time of site plan by the applicant

If you have any questions or require additional information, please contact me at 974-3428.


Amber Mitchell

Sr. Planner ~ Transportation Review Staff
City of Austin ~ Watershed Protection and Development Review Department

THE STATE OF Arizona §
COUNTY OF Maricopa §

This instrument was acknowledged before me on this the 19th day of June, 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.

EDETTE M. HEISLER
Notary Public

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



EDETTE M. HEISLER
Notary Public - Arizona
Maricopa County
Expires 05/31/08

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2007 Jun 29 01:33 PM 2007119677

CLARKMM \$52.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

Restrictive covenant
Eastbourne Crossing

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.