



**DECLARATION AND AGREEMENT
REGARDING ROAD CONSTRUCTION**

This Declaration and Agreement Regarding Road Construction (this "Declaration") is entered into as of the 21st day of June, 2007, by and between Eastbourne Crossing Limited Partnership, a Delaware limited partnership ("Declarant") and the City of Austin (the "City").

RECITALS

WHEREAS, Declarant is the owner of two tracts of land totaling approximately 11.760-acres of real property located adjacent to FM 973 ("FM 973"), situated in Travis County, Texas and more particularly described on Exhibit "A" attached hereto (the "Property");

WHEREAS, Declarant or Declarant's successor currently intends to develop a project (the "Project") on the Property, and is seeking or has obtained CS-CO (Commercial Services Conditional Overlay) zoning from the City of Austin for such development pursuant to City of Austin Zoning Case No. C14-06-0208 (the "Zoning Case");

WHEREAS, for the use and development of the Project, Declarant has agreed to design, construct, and pay for certain construction and other improvements on FM 973, as described on Exhibit "B" hereto (collectively, the "Construction"); and

NOW, THEREFORE, for the use and development of the Project, in order to promote the health, safety and welfare of the public, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to hold, sell and convey the Property subject to the following covenants, conditions, and restrictions, which are impressed upon the Property by this Declaration.

DECLARATION

I. Covenants, Conditions, and Restrictions

1.1 Construction. Declarant acknowledges and agrees that the City of Austin (the "City") has determined that Declarant's pro rata share of the estimated cost of designing and constructing the Construction is twenty-three percent (23%) ("Declarant's Proportionate Share"). For the furtherance of the use and development of the Project, constituting good and valuable consideration, Declarant or his successors and assigns will (i) post fiscal for twenty-three percent (23%) of the cost of the Construction prior to the third reading of the Zoning Case and (ii) post fiscal for the remaining seventy-seven

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percent (77%) of the cost of the Construction prior to obtaining a site plan for the Project. Declarant shall post fiscal, pay and complete the Construction, prior to requesting a certificate of occupancy for the Project. In this regard, Declarant recognizes that it is not required by the City to post or pay for more than Declarant's Proportionate Share of such costs, that the City has not required Declarant or his successors and assigns to pay 100% of such costs or to complete the Construction, and that such additional payment by Declarant or his successors and assigns is voluntary. Further, neither Declarant nor his successors and assigns shall bring suit against the City under any theory of law regarding the amount or extent of fiscal posted for the Construction. Notwithstanding anything to the contrary contained herein, in the event the Texas Department of Transportation or any other governmental entity desires to realign FM 973 and commence construction on such realignment prior to the Construction, Declarant shall not be responsible for the Construction and shall be refunded any and all fiscal amounts and costs posted for the Construction.

II. Conditions on Effect; Amendment of Existing Declarations

2.1 Zoning Case. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon final approval (i.e., third reading) of the Zoning Case by the City of Austin City Council (and no subsequent appeal) in a form acceptable to Declarant, such acceptance to be deemed if the Zoning Case is finally approved without changes from the last application by Declarant presented to the City Council.

III. Default and Remedies

3.1 Remedies. In the event of a breach or threatened breach of this Declaration by Declarant, the City shall be entitled to institute proceedings at law or in equity in a court of competent jurisdiction for full and adequate relief from the consequences of said breach or threatened breach.

IV. General Provisions

4.1 No Third-Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of Declarant and the City and their successors and assigns, and not for the benefit of any third person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.

4.2 Notice. All notices given in regard to this Declaration shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Declarant may change its address for notices by giving five

(5) days' advance written notice to the City in the manner provided for herein. Until changed in the manner provided herein, the Declarant's address for notice is as follows:

Declarant:

Eastbourne Crossing Limited Partnership
Attention: Frank Egan
300 International Drive, Suite 135
Williamsville, New York 14221
Telephone: (716) 842-6054
Telefax: (716) 842-3034

With a copy to:

P. Eric Davis
Retail West Properties
Capitol Plaza Building
199 N. Capitol Blvd. Ste. 301
Boise, ID 83702
Telephone: (208) 331-0110
Telefax: (208) 331-0220

and:

Adam Love
SCC Development Company, LLC
301 Congress Ave. Ste. 1550
Austin, TX 78701
Telephone: (512) 329-9947
Telefax: (512) 329-9948

and:

Christopher Jacoby
AMG National Trust Bank
6501 East Belleview Avenue, Suite 400
Englewood, CO 80111
Telephone: (303) 486-1408
Telefax: (303) 694-9242

and:

Steven C. Metcalfe
Drenner & Golden Stuart Wolff, LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701
Telephone: (512) 404-2209
Telefax: (512) 404-2244

4.3 Severability. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent

jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision, or agreement of this instrument that is held invalid, illegal or unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid, and enforceable.

4.4 Rights of Successors. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration shall bind and inure to the benefit of the parties and their respective heirs, representatives, lessees, successors and assigns. Reference to "Declarant" includes the future owners of their respective portions of the Property, including any portions of the Property that may in the future be created as separate tracts pursuant to a resubdivision of any portion of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.

4.5 Counterparts; Multiple Originals. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

4.6 Modification and Cancellation. Any changes to the standards and requirements of this Declaration must be approved in writing by the Director of the City of Austin Watershed Protection and Development Review Department (or successor department).

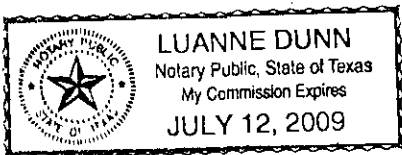
DECLARANT

EASTBOURNE CROSSING
LIMITED PARTNERSHIP,
a Delaware limited partnership

By: [Signature]
Name: FRANCIS EGAN
Title: PRESIDENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 7th day of June, 2007, by Francis Egan, President of Eastbourne Crossing Limited Partnership, a Delaware limited partnership.



[Signature]
Notary Public, State of Texas

ACCEPTED: CITY OF AUSTIN

By: [Signature]
Name: GEORGE ZAPALA
Title: DEVELOPMENT SERVICES MANAGER

APPROVED AS TO FORM:

By: [Signature]

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.

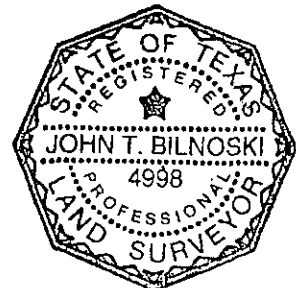
BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILIZING CITY OF AUSTIN AND LCRA PROVIDED MONUMENTS.

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'

P.O.B.

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

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

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

N42°43'03"E 984.66'

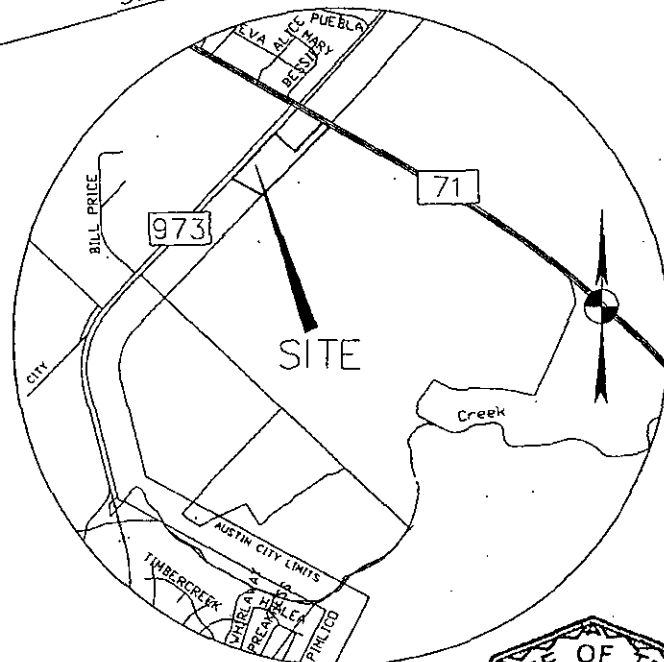
CITY LIMIT LINE

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

L1
L2
L3

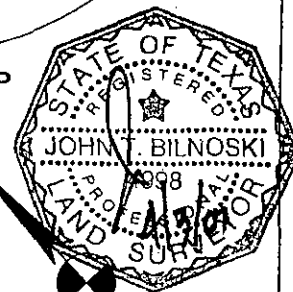
N42°35'07"E 584.43'

CITY OF AUSTIN
S43°50'16"W 976.12'
TRAVIS COUNTY
S44°41'31"W 431.29'



VICINITY MAP
N.T.S.

389.447 ACRES
EASTBOURNE CROSSING
LIMITED PARTNERSHIP
DOC. NO. 2006107114

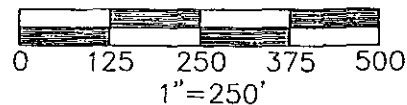


LINE TABLE

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



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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
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PARTNERSHIP BY DEED OF RECORD IN DOCUMENT NO.
2006107114 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS
COUNTY, TEXAS

**EASTBOURNE
DEVELOPMENT**

EXHIBIT "B"

Road Construction

CONSTRUCTION

Intersection/Street	Improvement
FM 973	Provide for 1 Southbound shared through/left turn bay on FM 973.

AFTER RECORDING RETURN TO:

CITY OF AUSTIN

DEPT OF LAW

P.O. BOX 1088

AUSTIN TX 78767

ATTN: DW MINTER, PARALEGAL

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.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2007 Jun 29 01:33 PM 2007119678

CLARKMM \$48.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS