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TRAFFIC PHASING AGREEMENT AND RESTRICTIVE COVENANT

STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF TRAVIS

§

THAT this Traffic Phasing Agreement and Restrictive Covenant ("Agreement") is made and entered into by the Oertli Family Partnership, LP, a Texas limited partnership ("Applicant"), and the City of Austin ("City"), on this 2nd day of April, 2009.

1. **Definitions.** For the purposes of this Agreement, each of the following terms shall have the meaning assigned to it in this section, unless the context clearly requires otherwise:

- (a) "Property" means the property which is the subject of this Agreement, and which is also the subject of City of Austin Zoning Case File No. C814-2008-0146 containing approximately 95.535 acres located at 12422 and 12424 Dessau and 1200 E Parmer Lane, Austin, Texas, as more particularly described in Exhibit "A" attached hereto.
- (b) "Trip", "passby trip", and "internal capture" are defined in Trip Generation, 7th Edition (or most recent version) and the Trip Generation Handbook by the Institute of Transportation Engineers, and those definitions, as well as the manner of measuring and determining the same which are set out therein are adopted herein by reference.
- (c) "PHTs" means the total PM peak hour trips for both entering and exiting movements and which are defined as a single or one-directional vehicle movement with either the origin or the destination inside the Property, and shall be estimated using the ITE Trip Generation, 7th Edition (or most recent version). "Adjusted PHTs" shall mean PHTs which have been adjusted to account for passby trips and internal capture in accordance with guidelines set forth in the ITE Trip Generation Handbook, or as approved by City Staff.
- (d) "TIA" means the Traffic Impact Analysis dated July 2008, and updated January 2009, as prepared by Alliance Transportation Group, Inc., regarding the Oertli Tract, which includes all of the Property.

2. **Covenant and Agreement.** For consideration received, to facilitate the orderly and efficient construction of the improvements contemplated by Applicant, to promote the health, safety and welfare of the public, and to satisfy the City's zoning and development regulations, Applicant hereby impresses the Property with the restrictive covenants contained herein, such covenants to run with the land, and agrees with the City that the development of the Property shall be in conformity with this Agreement.

4-2-09 *45

AUSTIN CITY CLERK
POSTING: DATE/TIME
2009 MAY 22 AM 10 00

3. **Development Phasing and Limitation.** The development of the Property shall be a multi-phased development, which for purposes of this Agreement is described as being comprised of two (2) phases similar in character to those described in the TIA. Applicant agrees that the City may disapprove development plans or decline to issue permits for construction or uses that will contravene the PHT and fiscal surety requirements and limitations set out in Exhibit "B" attached hereto and incorporated herein for all purposes. With each site plan application submitted in connection with the Property, the applicant must provide evidence satisfactory to the City of its compliance with this Agreement. As a condition precedent to the City's approval of future final plats or site plans with respect to the Property or any portion thereof, a sufficient number of PHTs must be allocated to the plat or site plan in accordance with the terms of this Section 3 to accommodate the proposed development of such final plat or site plan. Specifically, for any use requiring a site plan, the allocation of PHTs to the site shall be made at the time a site plan is approved. For any other use, the allocation of PHTs shall be at the time a final plat is approved. The number of PHTs to be utilized or required shall be calculated based upon the methodology set forth in Exhibit "C" attached hereto. The total number of adjusted PHTs available for the complete build-out of the Property is 1,307.

- (a) Phase 1. 414 adjusted PHTs shall be available as provided in subsection (c) below.
- (b) Phase 2. An additional 893 adjusted PHTs shall be available as provided in subsection (c) below.
- (c) The PHTs in each phase shall become available to the Property when the fiscal surety in the amount shown as "Developer Cost" for each such phase on Exhibit "B" is posted by or on behalf of Applicant or the then owner of the Property. The relevant fiscal surety shall be posted by the Applicant with the appropriate governmental entity in connection with that entity's approval of a site plan, and any such surety that is used by a governmental entity shall be used for the roadway improvements described in the TIA and on Exhibit "B". Such fiscal surety shall be posted upon such terms and conditions as are reasonably satisfactory to the governmental entity with which it is posted prior to issuance of a site development permit for the phase or site plan in question. For traffic signal improvements, Applicant shall install pull boxes, conduit, pole foundations and controller foundations as approved and required by the City, but otherwise, have no obligation to construct any of the roadway improvements, or to obtain any approvals, variances or permits, which may be necessary for such construction. Notwithstanding the foregoing, however, it is hereby acknowledged that the total fiscal

contribution toward the installation of a signal at the intersection of Dessau Road and the driveways for Parmer Center and Dessau Road Commercial Center has already been submitted to the City in full so that Applicant owes no amount or action with regard to any such future signal. Further, Applicant shall have no obligation to participate in the costs of obtaining necessary rights-of-way for such roadway improvements. The availability of PHTs shall not be contingent upon the commencement of construction, but rather PHTs shall be available immediately upon the arrangement for and the posting, if necessary, of appropriate fiscal surety.

4. **Modifications.** Modifications to this Agreement and to the timing and nature of the improvements identified herein may be permitted by the Director of Watershed Protection and Development Review Department, or its successor departments, upon approval of an updated traffic impact analysis that demonstrates that all intersections would operate at the same level of service without the improvements identified above or with alternative improvements as identified in the updated traffic impact analysis.

5. **General Provisions.** The following general provisions shall apply to this Agreement:

- (a) Applicant warrants that Applicant owns the Property and is authorized to execute this Agreement.
- (b) If any person or entity shall violate or attempt to violate this Agreement, 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 action, and to collect damages for such actions.
- (c) This Agreement is binding on Applicant's successors and assigns.
- (d) If any part of this Agreement 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.
- (e) 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.
- (f) Except as provided in paragraph 4 above, this Agreement may be modified, amended or terminated only by joint action of both (i) a majority of the members of the City Council of the City of Austin, and (ii) by 50% of the owner(s) of the Property at the time of such modification, amendment or termination.

- (g) When the context requires, singular nouns and pronouns include the plural.

[signature page follows]

OERTLI FAMILY PARTNERSHIP, LP

By: Linda Oertli

Name: Linda Oertli

Title: _____

By: Joy Lyn Offield

Name: Joy Lyn Offield

Title: _____

By: Robin Elaine Heine

Name: Robin Elaine Heine

Title: _____

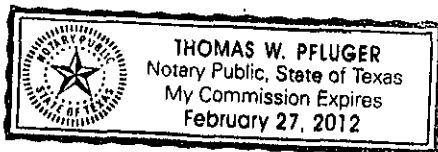
By: Brenda Lee Oertli

Name: Brenda Lee Oertli

Title: _____

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me this 1 day of April, 2009, by Linda Oertli, Joy Lyn Offield, Robin Elaine Heine and Brenda Lee Oertli of Oertli Family Partnership, LP a Texas Limited Partnership, on behalf of said Oertli Family Partnership, LP.



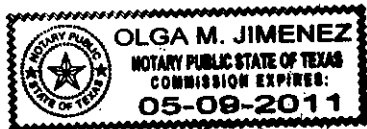
Thomas W. Pfluger
Notary Public, State of Texas

CITY OF AUSTIN

BY: *Victoria J. Ki*
NAME: Victoria J. Ki
TITLE: Director For WPOED

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on April 16, 2009,
by Victoria J. Ki, Director of the City of Austin, a Texas municipal corporation, on
behalf of said municipal corporation.



Olga M. Jimenez
Notary Public in and for the State of Texas

- Exhibit "A" - Property
- Exhibit "B" - Required Improvements by Phase of Development
- Exhibit "C" - Methodology

Return to:
City of Austin Law Dept.
P.O. Box 1088
Austin TX 78767-1088
Attn: D. Minter

EXHIBIT "A"

Property

In this Agreement, the "Property" consists of:

A 95.535 ACRE TRACT OF LAND OUT OF THE EMUCAN HUNT SURVEY NO. 88, ABSTRACT NO. 397 AND THE SAMUEL CUSHING SURVEY OF NO. 70, ABSTRACT NO. 164, BEING THE REMAINDER OF THAT CERTAIN 68.11 ACRE TRACT OF LAND, THE REMAINDER OF THAT CERTAIN 46.263 ACRE TRACT OF LAND AND THE REMAINDER OF THAT CERTAIN 0.99 ACRE TRACT OF LAND ALL HAVING BEEN CONVEYED IN PERCENTEAGES TO JOY LYN OFFIELD, BRENDA LEE OERTLI, ROBIN ELAINE OERTLI HIENE, OERTLI FAMILY PARTNERSHIP, LP AND LINDA OERTLI BY DEEDS OF RECORD IN DOCUMENT NOS. 2006150273, 2006150274, 2006150275, 2007227778, 2007227779 AND 2008002100, ALL OF THE OFFICAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS

EXHIBIT "B"

Required Improvements by Phase of Development

SCHEDULE OF IMPROVEMENTS

PROPOSED IMPROVEMENTS	PM PHT's	CUMULATIVE PM PHT's
Phase I	414	414

PARMER LANE & MCCALLEN PASS

- Eastbound Approach: Add right-turn lane with 100 feet of storage.
Developer Cost: \$606. Total Cost: \$31,893.
- Westbound Approach: Add right-turn lane with 100 feet of storage.
Developer Cost: \$15. Total Cost: \$776.
- The intersection is projected to require signal timing improvements during the PM peak period.
Developer Cost: \$48. Total Cost: \$2,500.

PARMER LANE & HARRIS RIDGE BOULEVARD

- Westbound Approach: Add right-turn lane with 100 feet of storage.
Developer Cost: \$1,406. Total Cost: \$70,294.
- Southbound Approach: Restripe to accommodate a left-turn lane, a shared left/through lane, and a shared through/right lane.
Developer Cost: \$53. Total Cost: \$2,658.

PARMER LANE & HARRIS GLENN BOULEVARD

- Eastbound Approach: Dual left-turn lane with storage for each lane equal to current storage length.
Developer Cost: \$5,086. Total Cost: \$84,776.
- Southbound Approach: Install five-section signal head for right turns, with the right-turn overlap phase being used during the complementary left-turn phase.
Developer Cost: \$116. Total Cost: \$1,940.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$150. Total Cost: \$2,500.

DESSAU ROAD, FROM PARMER LANE TO NORTH OF BRADBURY LANE

- Widen road to six lanes.
Developer Cost: \$15,664. Total Cost: \$979,011.

PARMER LANE & DESSAU ROAD

- All approaches to include a dual left-turn lane and a right-turn lane. The storage lengths of all new lanes should match those of the existing lanes. The existing right-turn lane on northbound Dessau should be

converted to a through lane, and a new right-turn lane added.
Developer Cost: \$14,294. Total Cost: \$549,754.

PARMER LANE & SAMSUNG BOULEVARD

- Westbound Approach: Restripe approach to accommodate a dual left-turn lane and two through lanes. Modify westbound signals to include a fully-protected left turn.
Developer Cost: \$67. Total Cost: \$3,367.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$50. Total Cost: \$2,500.

PARMER LANE & SAMSUNG PLANT

- Westbound Approach: Restripe approach to accommodate a dual left-turn lane and two through lanes. Modify westbound signals to include a fully-protected left turn.
Developer Cost: \$74. Total Cost: \$3,367.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$55. Total Cost: \$2,500.

DESSAU ROAD & HOWARD LANE

- Northbound Approach: Add right-turn lane with 150 feet of storage.
Developer Cost: \$2,097. Total Cost: \$149,806.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$35. Total Cost: \$2,500.

DESSAU ROAD & SHROPSHIRE BOULEVARD

- Northbound Approach: Add right-turn lane with 110 feet of storage.
Developer Cost: \$2,307. Total Cost: \$144,194.
- Westbound Approach: Install a five-section signal head to accommodate right-turn overlap during complementary left-turn phase.
Developer Cost: \$31. Total Cost: \$1,940.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$40. Total Cost: \$2,500.

PROPOSED IMPROVEMENTS	PM PHT's	CUMULATIVE PM PHT's
Phase II	893	1307

PARMER LANE & MCCALLEN PASS

- Eastbound Approach: Add right-turn lane with 100 feet of storage.
Developer Cost: \$1,722. Total Cost: \$31,893.
- Westbound Approach: Add right-turn lane with 100 feet of storage.
Developer Cost: \$42. Total Cost: \$776.
- The intersection is projected to require signal timing improvements during the PM peak period.
Developer Cost: \$135. Total Cost: \$2,500.

PARMER LANE & HARRIS RIDGE BOULEVARD

- Westbound Approach: Add right-turn lane with 100 feet of storage.

Developer Cost: \$3,234. Total Cost: \$70,294.

- Southbound Approach: Restripe to accommodate a left-turn lane, a shared left/through lane, and a shared through/right lane.
Developer Cost: \$122. Total Cost: \$2,658.

PARMER LANE & HARRIS GLENN BOULEVARD

- Eastbound Approach: Dual left-turn lane with storage for each lane equal to current storage length.
Developer Cost: \$1,526. Total Cost: \$84,766.
- Southbound Approach: Install five-section signal head for right turns, with the right-turn overlap phase being used during the complementary left-turn phase.
Developer Cost: \$35. Total Cost: \$1,940.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$45. Total Cost: \$2,500.

DESSAU ROAD, FROM PARMER LANE TO NORTH OF BRADBURY LANE

- Widen road to six lanes.
Developer Cost: \$111,607. Total Cost: \$979,011.

PARMER LANE & DESSAU ROAD

- All approaches to include a dual left-turn lane and a right-turn lane. The storage lengths of all new lanes should match those of the existing lanes. The existing right-turn lane on northbound Dessau should be converted to a through lane, and a new right-turn lane added.
Developer Cost: \$14,294. Total Cost: \$549,754.

PARMER LANE & SAMSUNG BOULEVARD

- Westbound Approach: Restripe approach to accommodate a dual left-turn lane and two through lanes. Modify westbound signals to include a fully-protected left turn.
Developer Cost: \$141. Total Cost: \$3,367.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$105. Total Cost: \$2,500.

PARMER LANE & SAMSUNG PLANT

- Westbound Approach: Restripe approach to accommodate a dual left-turn lane and two through lanes. Modify westbound signals to include a fully-protected left turn.
Developer Cost: \$155. Total Cost: \$3,367.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$115. Total Cost: \$2,500.

DESSAU ROAD & HOWARD LANE

- Northbound Approach: Add right-turn lane with 150 feet of storage.
Developer Cost: \$7,640. Total Cost: \$149,806.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$128. Total Cost: \$2,500.

DESSAU ROAD & SHROPSHIRE BOULEVARD

- Northbound Approach: Add right-turn lane with 110 feet of storage.

Developer Cost: \$3,749. Total Cost: \$144,194.

- Westbound Approach: Install a five-section signal head to accommodate right-turn overlap during complementary left-turn phase.
Developer Cost: \$50. Total Cost: \$1,940.
- The intersection is projected to require signal timing improvements during both peak periods.
Developer Cost: \$65. Total Cost: \$2,500.

DESSAU ROAD & OERTLI EAST DRIVEWAY/J LANE

- The intersection is to be signalized.
Developer Cost: \$165,000. Total Cost: \$165,000.

EXHIBIT "C"

Methodology

PHT CALCULATION FORMULAS

PHTs shall be calculated for the Property according to the following provisions:

Land Use	ITE Code*(1)	PHT Rates
APARTMENT	220	$PHTs = 0.55 * DU + 17.65$
BUSINESS PARK	770	$PHTs = 2.181 * KSF^{0.92}$
FAST FOOD RESTAURANT	934	$PHTs = 34.64 * KSF - \text{Pass-by Adjustment}$

Notes:

1. All PHT calculations shall be based upon Trip Generation (7th Ed.), published by the Institute of Transportation Engineers. If and when an updated Traffic Impact Analysis is submitted to the Director pursuant to this Agreement, "Peak Hour Trip" and "PHT" shall have the same meaning set forth in the most recent edition of Trip Generation that exists as of the date of submittal. For any use not specifically identified in this table, the PHTs shall be calculated in accordance with the most recent Trip Generation edition.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2009 Apr 22 11:21 AM 2009063961

GONZALES \$50.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

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.