

# Late Backup

#66

## DECLARATION OF TRAFFIC PHASING RESTRICTIVE COVENANT

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

THAT this Declaration of Traffic Phasing Restrictive Covenant ("**Declaration**") is made and entered into by CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas ("**Developer**"), on this \_\_\_\_ day of \_\_\_\_\_, 2010.

1.     **Definitions.** For the purpose of this Declaration, each of the following terms has the meaning assigned to it in this section, unless the context clearly requires otherwise:

- (a)     "**Property**" means the property that is the subject of this Declaration and is also the subject of City of Austin Zoning Case File No. C14-2009-0094, consisting of the land described in Exhibit A hereto.
- (b)     "**Trip**", "**passby trip**", "**diverted linked trip**" and "**primary trip**" are defined in ITE Trip Generation Manual, 6<sup>th</sup> Edition (or most recent version adopted by the City of Austin) and the ITE Trip Generation Handbook, and those definitions, as well as the manner of measuring and determining the same that are set out therein are adopted herein by reference.
- (c)     "**PHTs**" means PM peak hour trips that 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 Manual, 6<sup>th</sup> Edition (or most recent version adopted by the City of Austin). "**Adjusted PHTs**" means PHTs that have been adjusted to account for passby, internal capture, and transit trips 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 29, 2009, prepared by Bury + Partners, Inc. regarding the Property.

2.     **Covenant and Agreement.** To facilitate the orderly and efficient construction of the improvements contemplated for the Property, to promote the health, safety and welfare of the public, and to satisfy the City's zoning and development regulations, City hereby impresses the Property with the restrictive covenants contained

herein, such covenants to run with the land, so that the development of the Property shall be in conformity with this Declaration.

3. **Development Phasing and Limitation.** The development of the Property shall be a phased development comprising of four (4) periods or phases similar in character to that described in the TIA. The City need not approve development plans or issue permits for construction or uses that will contravene the PHT and fiscal requirements and limitations set out in Exhibit B attached hereto and incorporated herein for all purposes. With each final plat application (as to residential development that does not require a site plan) or site plan application (as to any development that requires a site plan) submitted in connection with the Property, any applicant must provide satisfactory evidence of its compliance with this Declaration. As a condition precedent to the City's obligation to approve 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. PHTs shall not be assigned by tract, but rather shall be assigned on a first-come, first-served basis. 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 6,717.

- (a) Phase 1: 270 adjusted PHTs shall be available upon posting of the fiscal for the Phase 1 improvements set forth in Exhibit B.
- (b) Phase 2: An additional 1,638 adjusted PHTs shall be available upon posting of fiscal for the Phase 2 improvements set forth in Exhibit B.
- (c) Phase 3: An additional 1,926 adjusted PHTs shall be available upon posting of fiscal for the Phase 3 improvements set forth in Exhibit B.
- (d) Phase 4: An additional 2,883 adjusted PHTs shall be available upon posting of fiscal for the Phase 4 improvements set forth in Exhibit B.

The PHTs in each phase shall become available to the Property when the fiscal surety in the amount shown for each such phase on Exhibit B is posted by or on behalf of the then owner of the Property. The fiscal surety shall be posted with the appropriate governmental entity, 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 satisfactory to the governmental entity with which it is posted. The availability of PHTs shall not be

contingent upon the commencement of construction, but rather PHTs shall be available immediately upon the arrangement for the posting, if necessary, of appropriate fiscal surety.

The Developer, City, and Travis County also desire to provide for the construction of FM 973 (a portion of road #3) and the Wildhorse Connector (road #8) as approximately shown on Exhibit D attached hereto (the "**Priority Roadways**"). Therefore any fiscal surety posted hereunder may, at the City's discretion, also be used to fund Priority Roadways. Furthermore, Developer and Travis County are working out the details of an additional funding mechanism for the Priority Roadways. Which funding mechanism will include participation by other property owners along the SH 130 corridors as well as contributions from governmental entities. Subject to approval by the City, this Agreement may supplemented or replaced by such additional funding mechanisms.

Modifications to this Declaration and to the timing and nature of the improvements identified herein may be permitted by the Director of the Planning and Development Review Department (the "Director") upon approval of an updated traffic impact analysis that demonstrates that all intersections would operate at the same or an acceptable level of service without the improvements identified above or with alternative improvements as identified in the updated traffic impact analysis. Modifications to this Declaration that would result in an increase in adjusted PM PHTs must be approved by the Director of the Planning and Development Review Department.

4. **PID Bonds.** Simultaneously herewith, the City has formed a Public Improvement District for Whisper Valley (the "PID"). At the time bonds are issued under the PID (which is anticipated to occur in a number of phases), Developer will provide the City with various market studies to enable the City to determine the feasibility of the bonds. It is hereby acknowledged the Whisper Valley Public Improvement District Financing Agreement will require that the Developer provide an updated traffic analysis as one of those market studies to be reviewed by the City in making its determination whether or not to issue bonds.

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

- (a) Developer owns the Property and is authorized to execute this Declaration.
- (b) If any person or entity shall violate or attempt to violate this Declaration, 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 this Declaration, to prevent the person or entity from such action, and to collect damages for such actions.

- (c) This Declaration is binding on the owners of the Property and its successors and assigns.
- (d) If any part of this Declaration is declared invalid by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.
- (e) If at any time the City of Austin fails to enforce this Declaration, 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 Section 4 above, this Declaration may be modified, amended or terminated only by joint action of both (i) a majority of the members of the City Council of Austin, and (ii) Developer, or its Designated Successor and Assign. A "Designated Successor and Assign" is any entity to which Developer assigns (in writing) of its rights and obligations contained in this Agreement. Any sale of a portion of the WV Project or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.
- (g) When the context requires, singular nouns and pronouns include the plural.

*[Signature Page to Follow]*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010

CLUB DEAL 120 WHISPER VALLEY,  
LIMITED PARTNERSHIP, a Delaware limited  
partnership qualified to do business in Texas

By: CD120 GP, LLC, a Delaware limited  
liability company

Its: General Partner

By: \_\_\_\_\_  
Douglas H. Gilliland, Manager

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS      §

BEFORE ME, a Notary Public, on this day personally appeared Douglas H. Gilliland, Manager of CD120 GP, LLC, a Delaware limited liability company, general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, in and for the State of Texas

List of Exhibits

Exhibit "A" – Property

Exhibit "B" – Intersection Improvements and Cost Estimates by Phase

Exhibit "C" – Methodology

## EXHIBIT A

### LEGAL DESCRIPTION

2066.284 ACRES  
WHISPER VALLEY

FN NO. 10-101(KWA)  
MAY 17, 2010  
BPI JOB NO. 1758-02

#### DESCRIPTION

OF 2066.284 ACRES OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60; THE JAMES GILLELAND SURVEY NO. 13, ABSTRACT NO. 12; AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING THAT CERTAIN 247.156 ACRE TRACT CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006152073, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; THOSE CERTAIN 548.08 ACRE, 164.73 ACRE, 72.50 ACRE, 750.533 ACRE, 16.00 ACRE, 165.984 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD IN DOCUMENT NO. 2006152076 OF SAID OFFICIAL PUBLIC RECORDS; AND THAT CERTAIN 101.46 ACRE TRACT CONVEYED TO CLUB DEAL WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006231899, OF SAID OFFICIAL PUBLIC RECORDS; SAID 2066.284 ACRES BEING MORE PARTICULARLY DESCRIBED, IN TWO PARTS, BY METES AND BOUNDS AS FOLLOWS:

#### TRACT I - 1819.188 ACRES

BEGINNING, at a TxDOT Type I concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), at the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson by Deed of record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas, for the northwesterly corner of said 164.73 acre tract and hereof;

THENCE, leaving said easterly right-of-way line of F.M. Highway No. 973, along the southerly line of said 2.0 acre tract and the southerly line of that certain 10.0 acre tract conveyed to Veterans Land Board of the State of Texas by Deed of record in Volume 7085, Page 418 of the Deed Records of Travis County, Texas, being the northerly line of said 164.73 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S58°38'32"E, a distance of 1394.58 feet to a 1/2 inch iron rod with cap set at the southeasterly corner of said 10.0 acre tract, for an angle point;
- 2) N27°26'53"E, a distance of 299.02 feet to a 1/2 inch iron rod with cap set in the southerly line of that certain 100.050 acre tract conveyed to Hen-Ball Investments, L.P., by Deed of Record in Document No. 2004041963 of said Official Public Records, at the northeasterly corner of said 10.0 acre tract, for an angle point;

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THENCE, S62°28'22"E, along the southerly line of said 100.050 acre being the northerly line of said 164.73 acre tract, for a portion of the northerly line hereof, a distance of 3702.85 feet to a 1/2 inch iron rod found at the northeasterly corner of said 164.73 acre tract, being an angle point in the northerly line of said 548.08 acre tract, for an angle point;

THENCE, N62°51'29"E, continuing along the southerly line of said 100.050 acre tract, being the northerly line of said 548.08 acre tract, for a portion of the northerly line hereof, a distance of 75.12 feet to a 1/2 inch iron rod found at the southwesterly corner of that certain 196.60 acre tract conveyed to Robert M. Schoolfield, by Deed of record in Volume 13059, Page 427 of the Real Property Records of Travis County, Texas, for an angle point;

THENCE, along the southerly line of said 196.60 acre tract and that certain 90.000 acre tract conveyed to Glad Tidings Assembly of God, Inc., by Deed of Record in Document No. 2004034603 of said Official Public Records, being the northerly lines of said 548.08 acre tract and said 72.50 acre tract, for a portion of the northerly line hereof, the following three (3) courses and distances:

- 1) S62°27'39"E, a distance of 426.01 feet to a 1/2 inch iron rod with cap found at the northwesterly corner of said 72.50 acre tract, for an angle point;
- 2) S62°18'06"E, a distance of 1509.13 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S63°32'25"E, a distance of 54.46 feet to a 1/2 inch iron rod with cap found at the northeasterly corner of said 72.50 acre tract, being the northwesterly corner of that certain remainder of 423.32 acre tract conveyed to Ella Louise Lind, by Deed of record in Document No. 1999120186 of said Official Public Records, for an angle point;

THENCE, leaving the southerly line of said 90.000 acre tract, along the westerly line of said remainder of 423.32 acre tract, being the easterly lines of said 72.50 acre tract and said 548.08 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S28°11'49"W, a distance of 2098.37 feet to a 1/2 inch iron rod with cap set at the southeasterly corner of said 72.50 acre tract, being the northeasterly corner of said 548.08 acre tract, for an angle point;
- 2) S28°51'16"W, a distance of 924.02 feet to a 1/2 inch iron rod found at an angle point in the northerly line of said 750.533 acre tract, for an angle point;

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THENCE, leaving the easterly line of said 548.08 acre tract, along the southerly line of said remainder of 423.32 acre tract, being the northerly line of said 750.533 acre tract, for a portion of the northerly line hereof, the following four (4) courses and distances:

- 1) S61°57'29"E, a distance of 2116.00 feet to a 1/2 inch iron rod found for an angle point;
- 2) N28°16'28"E, a distance of 664.18 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S61°55'40"E, a distance of 231.92 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S62°13'46"E, a distance of 1383.28 feet to a 1/2 inch iron rod found at the northeasterly corner of said 750.533 acre tract, being in the westerly right-of-way line of Taylor Lane (80' R.O.W.), for the northeasterly corner hereof;

THENCE, along said westerly right-of-way line of Taylor Lane, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

- 1) Along a non-tangent curve to the left, having a radius of 14701.15 feet, a central angle of 01°22'03", an arc length of 350.85 feet, and a chord of which bears S27°23'38"W, a distance of 350.84 feet to a 1/2 inch iron rod found at the end of said curve;
- 2) S26°39'38" W, a distance of 454.04 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 3) Along said curve, having a radius of 93712.13 feet, a central angle of 00°13'16", an arc length of 361.66 feet, and a chord of which bears S26°51'11"W, a distance of 361.66 feet to a 1/2 inch iron rod found at the northeasterly corner of that certain 0.23 acre tract conveyed to Manville Water Supply Corporation, by Deed of record in Volume 12641, Page 1561 of said Real Property Records, for an angle point;

THENCE, leaving said westerly right-of-way line of Taylor Lane, along the northerly, westerly and southerly lines of said 0.23 acre tract, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

- 1) N62°38'36"W, a distance of 100.15 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said 0.23 acre tract, for an angle point;



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- 2) S26°51'53"W, a distance of 100.15 feet to a 1/2 inch iron rod found at the southwesterly corner of said 0.23 acre tract, for an angle point;
- 3) S62°42'38"E, a distance of 100.29 feet to a 1/2 inch iron rod found at the southeasterly corner of said 0.23 acre tract, being in said westerly right-of-way line of Taylor Lane, for an angle point;

THENCE, along said westerly right-of-way line of Taylor Lane, being the easterly lines of said 750.533 acre tract, said 16.00 acre tract, and said 101.46 acre tract, for a portion of the easterly line hereof, the following thirteen (13) courses and distances:

- 1) Along a non-tangent curve to the right, having a radius of 93712.13 feet, a central angle of 00°16'05", an arc length of 438.39 feet, and a chord of which bears S27°08'46"W, a distance of 438.39 feet to a 1/2 inch iron rod found at the end of said curve;
- 2) S27°15'08"W, a distance of 2556.92 feet to a 1/2 inch iron rod found at the northeasterly corner of said 16.00 acre tract, for an angle point;
- 3) S27°15'21"W, a distance of 10.55 feet to a 1/2 inch iron rod with cap set at a point of curvature of a curve to the left;
- 4) Along said curve, having a radius of 210712.15 feet, a central angle of 00°05'47", an arc length of 354.74 feet, and a chord of which bears S27°12'27"W, a distance of 354.74 feet to a 1/2 inch iron rod found at the point of compound curvature of a curve to the left, being the southeasterly corner of said 16.00 acre tract;
- 5) Along said curve, having a radius of 210712.15 feet, a central angle of 00°05'48", an arc length of 355.36 feet, and a chord of which bears S27°06'46"W, a distance of 355.36 feet to a 1/2 inch iron rod found at the end of said curve, for an angle point;
- 6) S27°06'32"W, a distance of 384.22 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;
- 7) Along said curve, having a radius of 21059.69 feet, a central angle of 02°10'54", an arc length of 801.87 feet, and a chord of which bears S25°53'03"W, a distance of 801.82 feet to a 1/2 inch iron rod found at the end of said curve;
- 8) S24°42'43"W, a distance of 338.31 feet to a 1/2 inch iron rod with cap found at the southeasterly corner of said 750.533 acre tract, being the northeasterly corner of said 101.46 acre tract, for an angle point;

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- 9) S24°45'18"W, a distance of 89.99 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 10) Along said curve, having a radius of 13545.14 feet, a central angle of 02°57'05", an arc length of 697.70 feet, and a chord which bears S26°13'52"W, a distance of 697.63 feet to a 1/2 inch iron rod found at the end of said curve;
- 11) S27°42'26"W, a distance of 240.29 feet to a 1/2 inch iron rod found at an angle point;
- 12) S25°04'23"W, a distance of 99.53 feet to a 1/2 inch iron rod found at an angle point;
- 13) S27°42'26"W, a distance of 1880.80 feet to a calculated point on the approximate centerline of Gilleland Creek, for the southeasterly corner hereof, from which a 1/2 inc iron rod found at an angle point in said westerly right-of-way line bears S27°42'26"W, a distance of 1568.12 feet;

THENCE, leaving said westerly right-of-way line, along the approximate centerline of Gilleland Creek, being the southerly lines of said 101.46 acre tract and said 750.533 acre tract, for a portion of the southerly line hereof, the following ninety-five (95) courses and distances:

- 1) N74°54'22"W, a distance of 72.42 feet to a calculated point, for an angle point;
- 2) S87°27'20"W, a distance of 49.55 feet to a calculated point, for an angle point;
- 3) S72°06'15"W, a distance of 97.73 feet to a calculated point, for an angle point;
- 4) N60°03'23"W, a distance of 55.23 feet to a calculated point, for an angle point;
- 5) N18°05'14"W, a distance of 69.40 feet to a calculated point, for an angle point;
- 6) N01°52'31"W, a distance of 66.51 feet to a calculated point, for an angle point;
- 7) N28°35'56"W, a distance of 40.67 feet to a calculated point, for an angle point;
- 8) N42°15'00"W, a distance of 135.79 feet to a calculated point, for an angle point;
- 9) N27°09'47"W, a distance of 47.76 feet to a calculated point, for an angle point;

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- 10) N54°26'56"W, a distance of 39.65 feet to a calculated point,  
for an angle point;
- 11) N82°14'06"W, a distance of 65.65 feet to a calculated point,  
for an angle point;
- 12) N46°06'32"W, a distance of 27.98 feet to a calculated point,  
for an angle point;
- 13) N31°32'58"W, a distance of 27.94 feet to a calculated point,  
for an angle point;
- 14) N05°19'44"E, a distance of 48.36 feet to a calculated point,  
for an angle point;
- 15) N10°59'18"W, a distance of 42.27 feet to a calculated point,  
for an angle point;
- 16) N24°46'37"W, a distance of 31.22 feet to a calculated point,  
for an angle point;
- 17) N23°33'56"E, a distance of 48.12 feet to a calculated point,  
for an angle point;
- 18) N33°25'00"E, a distance of 53.14 feet to a calculated point,  
for an angle point;
- 19) N42°33'43"E, a distance of 50.30 feet to a calculated point,  
for an angle point;
- 20) N54°07'33"E, a distance of 95.80 feet to a calculated point,  
for an angle point;
- 21) N32°57'27"E, a distance of 36.48 feet to a calculated point,  
for an angle point;
- 22) N26°02'14"E, a distance of 41.61 feet to a calculated point,  
for an angle point;
- 23) N09°51'27"E, a distance of 76.18 feet to a calculated point,  
for an angle point;
- 24) N01°43'45"E, a distance of 37.41 feet to a calculated point,  
for an angle point;
- 25) N04°13'11"W, a distance of 45.91 feet to a calculated point,  
for an angle point;
- 26) N01°52'49"E, a distance of 41.93 feet to a calculated point,  
for an angle point;
- 27) N65°35'42"E, a distance of 94.19 feet to a calculated point,  
for an angle point;

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- 28) N49°41'41"E, a distance of 50.69 feet to a calculated point,  
for an angle point;
- 29) N07°41'41"E, a distance of 36.84 feet to a calculated point,  
for an angle point;
- 30) N27°33'01"W, a distance of 40.07 feet to a calculated point,  
for an angle point;
- 31) N07°48'42"W, a distance of 36.36 feet to a calculated point,  
for an angle point;
- 32) N45°41'21"E, a distance of 45.65 feet to a calculated point,  
for an angle point;
- 33) N58°06'41"E, a distance of 36.66 feet to a calculated point,  
for an angle point;
- 34) N24°11'14"E, a distance of 42.59 feet to a calculated point,  
for an angle point;
- 35) N03°38'51"W, a distance of 90.98 feet to a calculated point,  
for an angle point;
- 36) N47°42'29"W, a distance of 52.22 feet to a calculated point,  
for an angle point;
- 37) N65°40'01"W, a distance of 94.58 feet to a calculated point,  
for an angle point;
- 38) N57°18'12"W, a distance of 31.69 feet to a calculated point,  
for an angle point;
- 39) N75°39'27"W, a distance of 93.87 feet to a calculated point,  
for an angle point;
- 40) N70°13'14"W, a distance of 44.12 feet to a calculated point,  
for an angle point;
- 41) N65°05'05"W, a distance of 58.53 feet to a calculated point,  
for an angle point;
- 42) N59°44'55"W, a distance of 95.73 feet to a calculated point,  
for an angle point;
- 43) N44°50'55"W, a distance of 106.52 feet to a calculated point,  
for an angle point;
- 44) N52°53'43"W, a distance of 50.71 feet to a calculated point,  
for an angle point;
- 45) N71°16'08"W, a distance of 52.52 feet to a calculated point,  
for an angle point;

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- 46) N59°49'47"W, a distance of 38.08 feet to a calculated point,  
for an angle point;
- 47) N49°26'58"W, a distance of 86.16 feet to a calculated point,  
for an angle point;
- 48) N19°27'23"W, a distance of 45.20 feet to a calculated point,  
for an angle point;
- 49) N00°41'47"E, a distance of 41.66 feet to a calculated point,  
for an angle point;
- 50) N11°10'31"W, a distance of 60.93 feet to a calculated point,  
for an angle point;
- 51) N23°17'44"W, a distance of 71.86 feet to a calculated point,  
for an angle point;
- 52) N51°19'43"W, a distance of 30.29 feet to a calculated point,  
for an angle point;
- 53) N76°09'03"W, a distance of 31.66 feet to a calculated point,  
for an angle point;
- 54) S80°08'05"W, a distance of 62.24 feet to a calculated point,  
for an angle point;
- 55) N47°57'06"W, a distance of 55.71 feet to a calculated point,  
for an angle point;
- 56) N73°49'25"W, a distance of 56.12 feet to a calculated point,  
for an angle point;
- 57) N85°42'01"W, a distance of 31.03 feet to a calculated point,  
for an angle point;
- 58) S89°22'20"W, a distance of 59.65 feet to a calculated point,  
an angle point;
- 59) N62°45'03"W, a distance of 70.09 feet to a calculated point,  
for an angle point;
- 60) N73°41'43"W, a distance of 72.35 feet to a calculated point,  
for an angle point;
- 61) N29°34'38"W, a distance of 49.46 feet to a calculated point,  
for an angle point;
- 62) N00°31'40"E, a distance of 69.33 feet to a calculated point,  
for an angle point;
- 63) N30°48'45"W, a distance of 70.19 feet to a calculated point,  
for an angle point;

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- 64) N05°32'47"E, a distance of 139.88 feet to a calculated point,  
for an angle point;
- 65) N40°28'01"W, a distance of 59.67 feet to a calculated point,  
for an angle point;
- 66) S40°32'37"W, a distance of 163.68 feet to a calculated point,  
for an angle point;
- 67) N60°13'22"W, a distance of 132.37 feet to a calculated point,  
for an angle point;
- 68) N89°15'01"W, a distance of 97.04 feet to a calculated point,  
for an angle point;
- 69) N33°17'01"W, a distance of 87.74 feet to a calculated point,  
for an angle point;
- 70) N12°20'56"W, a distance of 81.96 feet to a calculated point,  
for an angle point;
- 71) N43°37'29"W, a distance of 167.95 feet to a calculated point,  
for an angle point;
- 72) N09°29'37"E, a distance of 69.98 feet to a calculated point,  
for an angle point;
- 73) N35°37'27"E, a distance of 70.59 feet to a calculated point,  
for an angle point;
- 74) N34°52'43"W, a distance of 118.29 feet to a calculated point,  
for an angle point;
- 75) N66°14'09"W, a distance of 126.25 feet to a calculated point,  
for an angle point;
- 76) N13°02'32"E, a distance of 61.63 feet to a calculated point,  
for an angle point;
- 77) N20°02'32"W, a distance of 71.86 feet to a calculated point,  
for an angle point;
- 78) N03°06'54"E, a distance of 108.22 feet to a calculated point,  
for an angle point;
- 79) N31°49'14"W, a distance of 61.52 feet to a calculated point,  
for an angle point;
- 80) S81°43'25"W, a distance of 91.81 feet to a calculated point,  
for an angle point;
- 81) S88°09'57"W, a distance of 198.97 feet to a calculated point,  
for an angle point;

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- 82) N54°58'54"W, a distance of 53.43 feet to a calculated point, for an angle point;
- 83) N32°33'32"E, a distance of 43.54 feet to a calculated point, for an angle point;
- 84) N73°46'59"E, a distance of 65.35 feet to a calculated point, for an angle point;
- 85) N22°07'14"E, a distance of 67.11 feet to a calculated point, for an angle point;
- 86) N01°47'28"E, a distance of 139.30 feet to a calculated point, for an angle point;
- 87) N44°51'12"E, a distance of 147.56 feet to a calculated point, for an angle point;
- 88) N36°10'24"W, a distance of 112.55 feet to a calculated point, for an angle point;
- 89) N41°17'44"E, a distance of 42.83 feet to a calculated point, for an angle point;
- 90) N66°44'37"W, a distance of 218.31 feet to a calculated point, for an angle point;
- 91) S22°41'37"W, a distance of 120.76 feet to a calculated point, for an angle point;
- 92) S59°17'15"W, a distance of 79.96 feet to a calculated point, for an angle point;
- 93) N45°30'19"W, a distance of 109.77 feet to a calculated point, for an angle point;
- 94) N61°10'57"W, a distance of 73.43 feet to a calculated point, for an angle point;
- 95) S86°47'01"W, a distance of 25.00 feet to a calculated point, being an angle point in the northerly line of that certain 137.772 acre tract conveyed to Jennifer Scott Riggs by Deed of Record in Document No. 2003117240 of said Official Public Records, for an angle point;

THENCE, leaving the approximate centerline of Gilleland Creek, along the northerly line of said 137.72 acre tract, being the southerly line of said 750.533 acre tract, for a portion of the southerly line hereof, the following two (2) courses and distances:

- 1) N28°10'51"E, a distance of 206.21 feet to a 1/2 inch iron rod with cap set for an angle point;

- 2) N27°57'39"E, a distance of 698.70 feet to a 1/2 inch iron pipe found at an angle point in the northerly line of said 137.772 acre tract, being in the southerly line of said 165.984 acre tract, for an angle point;

THENCE, continuing along the northerly line of said 137.772 acre tract, being the southerly line of said 165.984 acre tract, for a portion of the southerly line hereof, the following ten (10) courses and distance:

- 1) N62°42'45"W, a distance of 1574.58 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N62°30'14"W, a distance of 390.02 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) N64°21'34"W, a distance of 87.41 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) N62°45'03"W, a distance of 162.16 feet to 1/2 inch iron rod found for an angle point;
- 5) N62°27'50"W, a distance of 291.49 feet to 1/2 inch iron rod found for an angle point;
- 6) N62°43'58"W, a distance of 298.62 feet to 1/2 inch iron rod found for an angle point;
- 7) N62°39'09"W, a distance of 353.97 feet to 1/2 inch iron rod found for an angle point;
- 8) N62°26'41"W, a distance of 124.59 feet to a 1/2 inch iron rod with cap set for an angle point;
- 9) N62°37'20"W, a distance of 145.41 feet to 1/2 inch iron rod found for an angle point;
- 10) N62°42'19"W, a distance of 414.40 feet to a 5/8 inch iron rod found at the southwesterly corner of said 165.984 acre tract, for the southwesterly corner hereof;

THENCE, N28°01'45"E, in part continuing along the northerly line of said 137.772 acre tract, and in part along the easterly line of that certain 51.937 acre tract conveyed to Helen R. Dressen by Deed of record in Volume 10810, Page 40, of said Real Property Records, being the westerly line of said 165.984 acre tract, for a portion of the westerly line hereof, a distance of 1765.59 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said 165.984 acre tract, being the southwesterly corner of said 750.533 acre tract, for an angle point;



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THENCE, N28°16'57"E, in part continuing along the easterly line of said 51.937 acre tract, and in part along the easterly line of that certain 52.119 acre tract conveyed to James A. Nelson, Jr., by Deed of record in Volume 10810, Page 40, of said Real Property Records, a distance of 1561.57 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said 52.119 acre tract, being an angle point in the southerly line of said 548.08 acre tract, for an angle point;

THENCE, N62°20'40"W, leaving the westerly line of said 750.533 acre tract, along the northerly line of said 52.119 acre tract, being the southerly line of said 548.08 acre tract, for a portion of the westerly line hereof, a distance of 1454.92 feet to a 1/2 inch iron rod with cap set at the southwesterly corner of said 548.08 acre tract, being the southeasterly corner of that certain 3.85 acre tract of land conveyed to the City of Austin, by Deed of record in Volume 3296, Page 247 of said Deed Records, for an angle point;

THENCE, along the easterly line of said 3.85 acre tract and the easterly and northerly lines of that certain tract conveyed to Anne B. Schryver, Et. Al., by Deed of record in Volume 12870, Page 1684, of said Real Property Records, tract, being the westerly line of said 548.08 acre tract, for a portion of the westerly line hereof, the following three (3) courses and distances:

- 1) N28°21'05"E, a distance of 1605.54 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N25°42'21"E, a distance of 245.50 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said Schryver tract, for an angle point;
- 3) N26°24'30"W, a distance of 1521.86 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said Schryver tract, being in said easterly right-of-way line of F.M. Highway No. 973, for an angle point;

THENCE, along said easterly right-of-way line of said F.M. Highway No. 973, being the westerly line of said 548.08 acre tract and said 164.73 acre tract, for a portion of the westerly line hereof, the following six (6) courses and distances:

- 1) N28°51'02"E, a distance of 792.97 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N23°08'50"E, a distance of 200.99 feet to a concrete monument found at an angle point;
- 3) N29°17'58"E, a distance of 105.40 feet to a concrete monument found at the northwesterly corner of said 548.08 acre tract, being the southwesterly corner of said 164.73 acre tract, for an angle point;

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- 4) N27°10'09"E, a distance of 23.58 feet to a TxDOT Type I concrete monument found at the point of curvature of a curve to the left;
- 5) Along said curve, having a radius of 2915.00 feet, a central angle of 22°15'13", an arc length of 1132.18 feet, and a chord of which bears N17°43'23"E, a distance of 1125.08 feet to a TxDOT Type I concrete monument found at the point of tangency of said curve;
- 6) N06°38'03" E, a distance of 311.43 feet to the **POINT OF BEGINNING** containing an area of 1819.188 acres (79,243,814 square feet) of land, more or less, within these metes and bounds.

**TRACT II - 247.096 ACRES**

**BEGINNING**, at a 1/2 inch iron rod with cap found in the easterly right-of-way line of Taylor Lane (80' R.O.W.), at the southwesterly corner of that certain 27.92 acre tract conveyed to Walter S. Chamberlin by Deed of Record in Volume 11795, Page 32 of the Real Property Records of Travis County, Texas, for the northwesterly corner of said 247.156 acre tract and hereof;

**THENCE**, leaving said easterly right-of-way line of Taylor Lane, along the southerly line of said 27.92 acre tract and that certain 40.90 acre tract conveyed to Travis County, by Deed of record in Document No. 2002153674 of said Official Public Records, for the northerly line of said 247.156 acre tract and hereof, the following three (3) courses and distances:

- 1) S62°19'58"E, a distance of 127.06 feet to a 1/2 inch iron rod found for an angle point;
- 2) S62°40'50"E, a distance of 875.80 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S62°45'17"E, a distance of 2396.70 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said 247.156 acre tract, being the northwesterly corner of that certain 50.024 acre tract conveyed to Terry Masters, by Deed of record in Volume 12137, Page 79, of said Real Property Records, for the northeasterly corner hereof;

**THENCE**, leaving the southerly line of said 40.90 acre tract, along the westerly and southerly lines of said 52.024 acre tract, being the easterly line of said 247.156 acre tract, for a portion of the easterly line hereof, the following six (6) courses and distances:

- 1) S27°38'37"W, a distance of 1656.72 feet to a 1/2 inch iron rod with cap set for an angle point;

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- 2) S26°46'24"W, a distance of 278.40 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S26°25'17"W, a distance of 310.86 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S24°58'15"W, a distance of 99.44 feet to a wood fence post found for an angle point;
- 5) S62°27'04"E, a distance of 782.06 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) S62°54'09"E, a distance of 319.90 feet to a 1/2 inch iron rod with cap set in the westerly line of that certain 30.00 acre tract conveyed to The Lundell 1991 Trust, by Deed of record in Volume 11422, Page 436 of said Real Property Records, for an angle point;

THENCE, along the westerly line of said 30.00 acre tract, being the easterly line of said 247.156 acre tract, for a portion of the easterly line hereof, the following four (4) courses and distances:

- 1) S25°09'46"W, a distance of 82.68 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) S29°40'59"W, a distance of 328.78 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S28°45'06"W, a distance of 150.93 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S26°44'38"W, a distance of 85.20 feet to a wood fence post found at the northeasterly corner of that certain 130.638 acre tract conveyed to Fannie Ruth Salyer Life Estate, by Deed of record in Document No. 1999019515 of said Official Public Records, for the southeasterly corner of said 247.156 acre tract and hereof;

THENCE, N62°02'23"W, leaving the westerly line of said 30.00 acre tract, along the northerly line of said 130.638 acre tract, for the southerly line of said 247.156 acre tract and hereof, a distance of 4487.32 feet a 1/2 inch iron rod found in said easterly right-of-way line of Taylor Road, at the northwesterly corner of said 130.638 acre tract, for the southwesterly corner of said 247.156 acre tract and hereof;

THENCE, along said easterly right-of-way line of Taylor Lane, being the westerly line of said 247.156 acre tract, for the westerly line hereof, the following four (4) courses and distances:

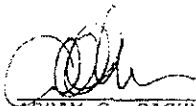
- 1) N27°14'01"E, a distance of 916.35 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;

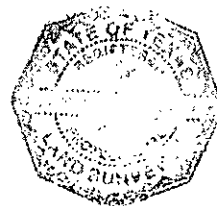
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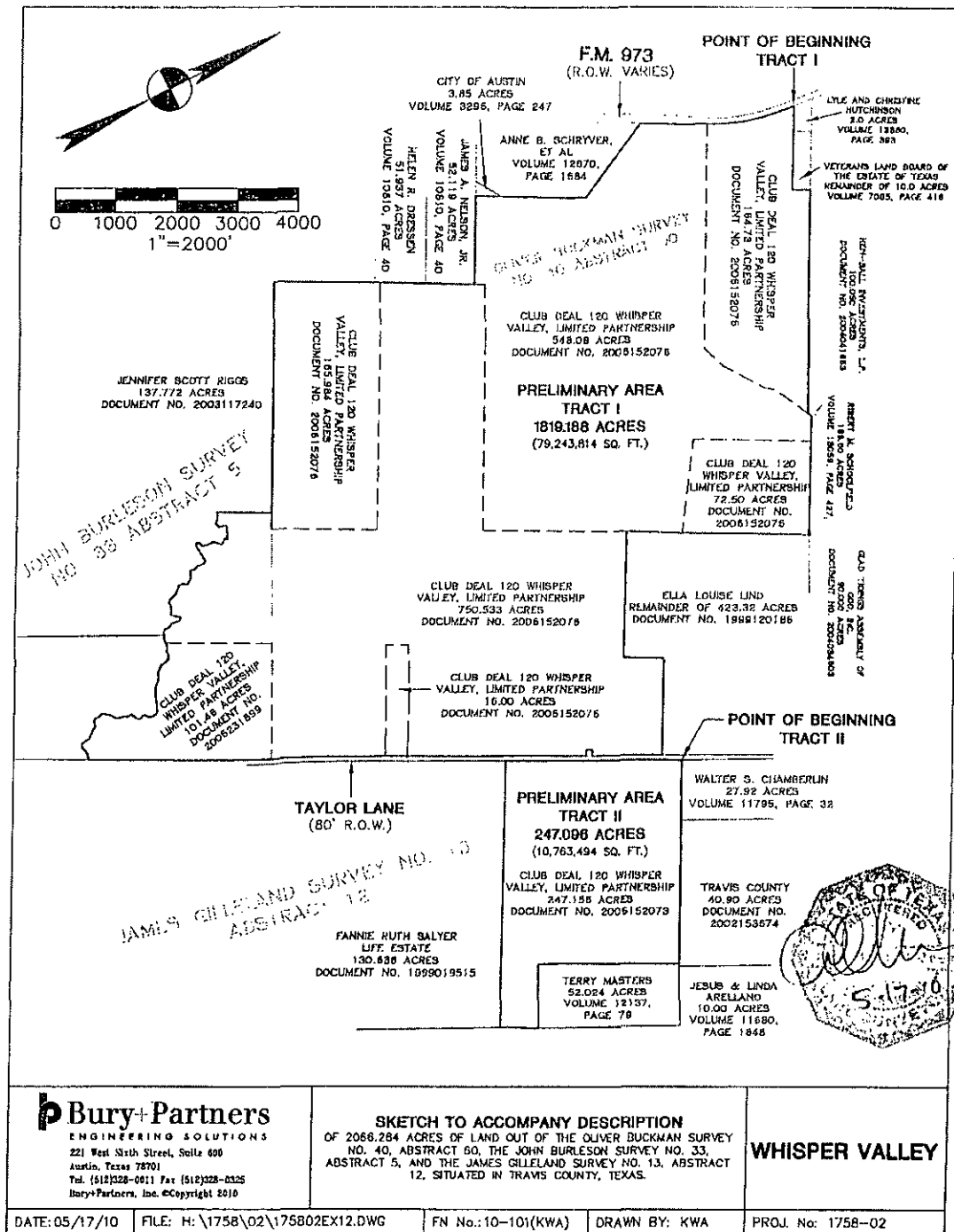
- 2) Along said curve, having a radius of 93792.13 feet, a central angle of  $00^{\circ}33'01''$ , an arc length of 900.84 feet, and a chord of which bears  $N26^{\circ}58'54''E$ , a distance of 900.83 feet to a 1/2 inch iron rod found at the end of said curve;
- 3)  $N26^{\circ}46'57''E$ , a distance of 454.27 feet to a 1/2 inch iron rod with cap found at the beginning of a non-tangent curve to the right;
- 4) Along said curve, having a radius of 14621.15 feet, a central angle of  $02^{\circ}37'39''$ , an arc length of 670.51 feet, and a chord of which bears  $N27^{\circ}58'11''E$ , a distance of 670.45 feet to the **POINT OF BEGINNING** containing an area of 247.096 acres (10,763,494 square feet) of land, more or less, within these metes and bounds.

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS DESCRIPTION IS BASED UPON A SURVEY MADE ON THE GROUND BY BURY+PARTNERS, INC. UNDER MY DIRECTION AND SUPERVISION. A SURVEY SKETCH PLAT WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

BURY & PARTNERS, INC.  
ENGINEERS-SURVEYORS  
221 WEST SIXTH STREET, SUITE 600  
AUSTIN, TEXAS 78701

  
5-17-10  
ABRAM C. DASHNER, R.P.L.S.  
NO. 5901  
STATE OF TEXAS





# EXHIBIT B

Whisper Valley Intersection Improvements and Cost Estimates By Phase				
Exhibit B				
Improvement	Cost	Developer %	Developer Cost	
PHASE I (2014)				
FM 973 and Blake Manor Road Improvements - (NBLT/SBLT/WBRT)	\$ 22,670.19	6%	\$ 1,366.91	
FM 973 and Blake Manor Road Improvements - (SIGNAL)	\$ 150,000.00	6%	\$ 9,000.00	
FM 973 and Blake Manor Road Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 973 and Old Texas 20 Improvements - (NBLT/SBLT/WBRT/WBRT)	\$ 29,689.45	6%	\$ 1,781.37	
FM 973 and Old Texas 20 Improvements - (SIGNAL)	\$ 150,000.00	6%	\$ 9,000.00	
FM 973 and Old Texas 20 Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 734 and US 290 Improvements	\$ -	-	\$ -	
FM 3177 and US 290 Improvements	\$ -	-	\$ -	
FM 973 and Braker Lane East	\$ -	-	\$ -	
Taylor Lane and Braker Lane East	\$ -	-	\$ -	
FM 973 and FM 969 - (Dedicated NBRT and EBRT)	\$ 14,407.34	7%	\$ 1,028.51	
FM 973 and FM 969 - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 973 and Decker Lake Road Improvements - (NBLT/WBRT/SBLT/EBRT)	\$ 25,155.41	2%	\$ 503.11	
FM 973 and Decker Lake Road Improvements - (SIGNAL)	\$ 150,000.00	2%	\$ 3,000.00	
FM 973 and Decker Lake Road Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
Phase I (2014) Subtotal	\$ 549,922.39	6%	\$ 33,879.90	
PHASE II (2018)				
US 290 and FM 973 Improvements (TxDOT Improvements/NBRT Free Flow Acceleration Lane/SBRT)	\$ 18,599.43	7%	\$ 1,301.96	
FM 734 and US 290 SFR Improvements - (EBRT)	\$ 10,014.44	21%	\$ 2,103.03	
US 290 SFR and SH 130 EFR Improvements - (NBRT Restriping Only)	\$ 1,000.23	30%	\$ 300.07	
FM 973 and Braker Lane East Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 973 and Braker Lane East Improvements - (NBRT/WBRT) (DUAL/SBLT)	\$ 29,609.96	100%	\$ 29,609.96	
FM 973 and Braker Lane East Improvements - (SIGNAL)	\$ 150,000.00	43%	\$ 64,500.00	
FM 973 and Braker Lane East Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 969 and SH 130 Improvements - (SIGNAL)	\$ 220,000.00	8%	\$ 17,600.00	
FM 969 and SH 130 Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 973 and Decker Lake Road Improvements - (NBRT/SBRT/EBRT)	\$ 29,609.96	7%	\$ 2,072.70	
FM 973 and FM 969 - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
Phase II (2018) Subtotal	\$ 466,834.02	27%	\$ 125,497.72	
PHASE III (2022)				
US 290 and FM 973 Improvements - (SBRT/NBRT)	\$ 18,946.90	40%	\$ 7,578.76	
US 290 and FM 973 Improvements - (EBRT DUAL/WBRT DUAL)	\$ 31,788.70	6%	\$ 1,911.92	
Blake Manor Road and Taylor Lane Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
Blake Manor Road and Taylor Lane Improvements - (SIGNAL)	\$ 150,000.00	49%	\$ 73,500.00	
FM 973 and Braker Lane East Improvements - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 973 and FM 969 Improvements - (NBRT DUAL/SBLT DUAL)	\$ 22,355.81	24%	\$ 5,374.98	
Decker Lane and Decker Lake Road - (WBRT)	\$ 15,502.98	6%	\$ 930.18	
US 290 and SH 130 - (OPTIMIZATION)	\$ 9,866.60	1%	\$ 98.67	
Phase III (2022) Subtotal	\$ 251,910.99	38%	\$ 94,554.52	
PHASE IV (2030)				
FM 973 and Blake Manor Road - (SBLT DUAL)	\$ 14,253.57	23%	\$ 3,278.32	
Blake Manor Road and Taylor Lane Improvements - (NBLT Restriping Only/WBRT)	\$ 29,816.67	48%	\$ 14,380.00	
FM 973 and Braker Lane East Improvements - (WBRT DUAL)	\$ 11,216.92	24%	\$ 2,692.06	
Taylor Lane and Braker Lane East - (SBRT/NBRT)	\$ 15,092.80	50%	\$ 7,546.40	
Taylor Lane and Braker Lane East - (SIGNAL)	\$ 150,000.00	50%	\$ 75,000.00	
Taylor Lane and Braker Lane East - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
FM 969 and SH 130 Improvements - (EBRT/WBRT/NBRT)	\$ 21,716.35	9%	\$ 1,954.47	
FM 973 and FM 969 Improvements - (DEDICATED NBRT/SBRT)	\$ 34,159.38	8%	\$ 2,732.75	
FM 973 and SH 130 - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
US 290 and FM 973 - (OPTIMIZATION)	\$ 2,000.00	100%	\$ 2,000.00	
US 290 and SH 130 - (OPTIMIZATION)	\$ 284,355.67	41%	\$ 115,984.00	
Phase IV (2030) Subtotal	\$ 553,022.07	24%	\$ 369,488.15	
Total	\$ 1,553,022.07		\$ 369,488.15	

EXHIBIT "C"  
Methodology

PM PEAK HOUR TRIP RATES (PHT'S)

LAND USE CATEGORY	UNITS	UNADJUSTED TRIP RATE	EQUATION
Office	1,000 sq. ft.	1.18	-
Shopping Center	1,000 sq. ft.	2.63	-
Single-Family	dwelling units	0.76	-
Multi-Family	dwelling units	0.55	-
Townhome	dwelling units	0.36	-
Civic (Elementary School)	students	-	-
Middle School	students	0.15	-

NOTES:

(a) Trip rates are based on information derived from the Traffic Impact Analysis completed by Bury + Partners, Inc. on July 29, 2009

(b) The number of Trips calculated in accordance with the Trip Rate Chart above are unadjusted. In order to calculate the number of adjusted PM PHT's the unadjusted PM PHT's should be reduced by 15% for all land uses to reflect internal capture, pass-by trips, pedestrian and bike traffic, and transit.

(c) Trip generation for each phase of development should be determined by calculating cumulative trip generation for all land uses developed through current and all previous phases, and then subtracting cumulative trips for all previous phases of development.

(d) Future rates for these and any other land use categories will be determined in accordance with the latest edition of the ITE Trip Generation Manual adopted by the City of Austin.



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## EXHIBIT D

### Priority Roadways

