

**TRAFFIC IMPROVEMENT AGREEMENT  
(ROADWAY IMPROVEMENTS)**

STATE OF TEXAS  
COUNTY OF TRAVIS

This Traffic Improvement Agreement (“**Agreement**”) is made and entered into by and between the City of Pflugerville, Texas (the “**City**”), a Texas municipal corporation, and TAYLOR MORRISON OF TEXAS, INC., a Texas corporation (“**Developer**”), hereinafter collectively referred to as the “**Parties**”, upon the premises and for the purposes set out herein, and is effective as stated in this Agreement.

**INTRODUCTION**

A. Developer is presently under contract to purchase from the current owners thereof (the “**Current Owners**”) approximately 169 acres of land located at the northeast corner of Wells Branch Parkway and Immanuel Road in Pflugerville, Travis County, as more particularly described on Exhibit A attached hereto (the “**Land**”). Developer intends to develop the Land as a master planned, single family residential project (the “**Project**”) and received City Council’s approval of the zoning for the Project pursuant to Ordinance No. 1413-19-10-22.

B. Developer engaged Kimley-Horn (the “**Traffic Engineer**”) to conduct a Traffic Impact Analysis for the Project. The Traffic Impact Analysis (TIA) prepared by the Traffic Engineer dated August 4, 2020 (the “**TIA**”) has been submitted to and approved by the City. As demonstrated by the TIA, the Project will have development impacts and create additional traffic demands within the area surrounding the Project.

C. In order to ensure improved traffic circulation around the development, the Developer proposes to (1) construct certain traffic and roadway improvements that, per the TIA study findings and recommendations, would be required as part of development of the Project and (2) pay certain dollar amounts to enable the City to further their goals and objectives established in the Pflugerville Pforward Transportation Master Plan adopted by City Council in November, 2019, as set forth below and as more particularly described on Exhibit B attached hereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 Defined Terms. As used in this Agreement, the following terms shall have the following respective meanings where they appear with their initial letters capitalized, unless otherwise specifically provided or unless the context in which they appear otherwise requires:

“**Effective Date**” shall mean the date this Agreement has been executed by all parties hereto.

“**UDC**” shall mean the City of Pflugerville’s Unified Development Code dated effective February 25, 2015.

## **Article II TRAFFIC IMPROVEMENTS**

Section 2.1 Immanuel Road. Developer shall make a contribution to the City in the amount of \$429,887.00 (“**Immanuel Road Contribution**”) which shall be used by the City for design and construction/re-construction of improvements to Immanuel Road commencing at the northeast intersection of Immanuel Road and Wells Branch Parkway and terminating at the southeastern corner of Immanuel Road and Pigeon Forge Drive. Developer shall deliver the Immanuel Road Contribution to the City prior to recordation of the final plat for Phase 1 of the Project.

Section 2.2 E. Pfennig Lane/Wells Branch Traffic Signal. Developer shall install a traffic signal at the intersection of East Pfennig Lane and Wells Branch Parkway (the “**Traffic Signal**”) prior to a certificate of occupancy being issued within Phase 2 of the Project. Upon completion of installation of the Traffic Signal, Developer shall dedicate the Traffic Signal to the City and once dedicated, the Traffic Signal shall be maintained by the City. The completed Traffic Signal will thereafter be covered by a two (2) year maintenance bond provided by the Developer per UDC requirements.

Prior to recordation of the final plat for Phase 1 of the Project, Developer shall post fiscal security in the form of a bond in the amount of \$330,000.00 (“**Traffic Signal Security**”) to secure the completion of the installation of Traffic Signal. The Traffic Signal Security shall remain in place until the Traffic Signal is installed and accepted by the City for maintenance

Section 2.3 TIA Mitigation Contribution. Developer shall also deliver to the City prior to recordation of the final plat for Phase 1 of the Project, the sum of \$309,555.00 (“**TIA Mitigation Contribution**”) which the City hereby agrees shall satisfy all of Developer’s remaining obligations set forth in the TIA.

Section 2.4 Easements – General. The City will make available, at no cost to Developer, the right to use any rights of way or easements held by the City to accommodate Developer’s construction of the Traffic Signal. Recognizing the regional benefit to the City and its residents accruing from the construction of the Traffic Signal, if offsite easements are required and Developer is unable to obtain all required offsite easements, upon written request and documentation of a good faith effort, the City will use best efforts to assist with easement/right of way acquisition. Developer shall be solely liable for any and all costs, incurred by the City, related to the acquisition of offsite easements.

Section 2.5 Plans and Specifications. The Traffic Signal will be designed and constructed in accordance with the City development specifications set forth in the UDC (“**Development Specifications**”). The plans and specifications for the Traffic Signal will be based

on the Development Specifications and will be submitted to the City for review and approval prior to the commencement of construction of the Traffic Signal. The Developer shall also provide to the City a cost estimate of the cost to construct the Traffic Signal based on the plans provided ("**Cost Estimate**"). The City and Developer agree to work diligently with one another to finalize the plans and keep the costs commercially reasonable. The City agrees to provide written comments/notes regarding the submitted engineering design, plans, and specifications within 30 days of the City's receipt of such plans. After Developer receives any comments to the plans, the Developer shall revise the plans accordingly to address such comments and value engineering. The foregoing process shall repeat until the plans are approved by Developer and the City. The plans meeting the requirements contained herein which are approved by the City shall be referred to herein as the "**Approved Plans**". The City agrees not to unreasonably withhold its approval of the plans and not to require any changes that would delay completion of the Traffic Signal or materially increase the costs. The Approved Plans shall not be modified or amended without the prior written consent of both the City and Developer, which both Parties agree to give reasonably; provided that such changes do not result in a material increase in cost.

Section 2.6 **Bidding.** The Developer shall procure bids from at least three (3) independent contractors for the construction of the Traffic Signal and provide copies of the bids to the City. The Traffic Signal shall be bid based on the Approved Plans.

Section 2.7 **Future Roadway/Traffic Impact Fee Applicability.** The City hereby acknowledges and agrees that (i) all waivers contained within the Preliminary Plat remain enforceable and valid and shall apply throughout the development of the Project, (ii) the posting of the Traffic Signal Security and/or construction of the Traffic Signal (as applicable) and the payment of the TIA Mitigation Contribution shall satisfy all traffic mitigation requirements outlined in the TIA for this Project, and (iii) the Project shall not be subject to any future traffic or roadway impact fees imposed by the City nor shall any additional traffic improvements be required to be constructed unless there is an approved increase in density within the boundary of the preliminary plan.

### ARTICLE III [RESERVED]

### ARTICLE IV DEFAULT/REMEDIES

Section 4.1 **Default.** If one Party believes that the other Party is in Default (herein so called) of any provision of this Agreement, the non-defaulting Party will give written notice to the other Party ("**Default Notice**"), specifying the event of Default and extend the defaulting Party 30 days to cure the Default, or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances.

Section 4.2 Remedies. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default. Either Party may seek specific performance of a default by the other Party at any time (after the period to cure the default has expired), and neither Party will be liable for damages to the other Party, except for the costs as specifically listed herein. The non-defaulting Party shall have the right (but not the obligation) to perform such obligations on behalf of the defaulting Party. The defaulting Party shall cooperate in all respects with such efforts by the non-defaulting Party, including without limitation by assigning any construction contracts and easements to the non-defaulting Party at its request. If the non-defaulting Party exercises its self-help rights hereunder and completes construction of any portion of the traffic improvements, the defaulting Party shall pay or reimburse the non-defaulting Party for all costs and expenses incurred by the non-defaulting Party in connection with the cure of Default.

## **ARTICLE V TERM, ASSIGNMENT AND AMENDMENT**

Section 5.1 Term. The term of this Agreement will commence on the Effective Date and continue until each Party has completed all of its obligations hereunder, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Developer. The Effective Date of this Agreement shall be the date stated in Article I above, provided that the obligations of the Parties shall be subject to the acquisition of the Land by Developer. Developer will notify the City at such time as Developer acquires the Land. No Current Owner shall be bound by this Agreement unless such Current Owner subsequently becomes a successor to or assignee of Developer. In the event that Developer fails to acquire the Land within one (1) year after the date of this Agreement, this Agreement shall terminate and be of no further force and effect. In the event, and to the extent from time to time, that Developer acquires the Land, this Agreement shall run with the land, and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 5.2 Amendment by Agreement. This Agreement may be amended as to all or part of the Land at any time by mutual written consent of the City and Developer.

### Section 5.3 Assignment.

(a) Developer shall not assign this Agreement without the prior written approval of the City, which approval shall be granted or denied in the City's sole discretion. If the City grants approval of an assignment, the Developer shall thereafter no longer be liable for the remaining rights and obligations herein and the City shall look solely to the Developer's assignee for performance.

(b) Unless expressly stated in the assignment documentation, no assignment of any rights and/or obligations of the Developer under this Agreement shall be deemed an assignment of the Developer's rights to receive the reimbursements set forth in this Agreement from the City.

### Section 5.4 Binding Obligation. Subject to Section 6.3 above, this Agreement shall bind

and inure to the benefit of the Parties and their permitted successors and assigns; however, this Agreement is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Project. For purposes of this Agreement, the Parties agree as follows: (1) that the term "end buyer" means any owner, lessee, or occupant; and (2) that term "fully developed and improved lot" means any lot, regardless of proposed use, for which the City has approved a final plat.

Section 5.5 Estoppel Certificates. From time to time upon written request by any seller or purchaser of property within the Property, or any lender or prospective lender of the Developer or its assignees, the City shall execute a written estoppel certificate to such seller or purchaser stating, if true that the City has not given or received any written notices alleging any events of default under this Agreement.

Section 5.6 Cooperation.

(1) The City and Developer shall cooperate with each other as reasonable and necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably required.

(2) The City agrees to cooperate with Developer at Developer's expense, in connection with any waivers, permits or approvals Developer may need or desire from Travis County, Texas Department of Transportation, or any other regulatory authority in order to develop the Project in accordance herewith.

(3) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. Each party agrees to pay its own legal fees in connection with any such third party claim.

**ARTICLE VI  
MISCELLANEOUS PROVISIONS**

Section 6.1 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

**City:** City of Pflugerville  
100 East Main Street

Pflugerville, Texas 78660

**With Required Copy to:**

Charles E. Zech  
City Attorney  
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.  
100 East Main Street  
Pflugerville, Texas 78660

**Developer:**

WLH Communities – Texas, LLC  
810 Hesters Crossing, Suite 235  
Round Rock, Texas 78681  
Attn: Michael Slack

**With Required Copy to:**

Metcalf Wolff Stuart & Williams, LLP  
221 W. 6th Street, Suite 1300  
Austin, Texas 78701  
Attn: Talley J. Williams

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. Developer may, by giving at least five (5) days' written notice to the City, designate additional parties to receive copies of notices under this Agreement.

Section 6.2 Severability; Waiver. If any provision of this agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible. Each of the rights and obligations of the parties hereto are separate covenants. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 6.3 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

Section 6.4 Entire Agreement. With the exception of the permits and approvals to be issued in connection with this Agreement, this Agreement contains the entire agreement of the Parties and there are no other agreements or promises, oral or written between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter hereof.

Section 6.5 Exhibits, Headings, Construction and Counterparts. All schedules and

exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The section headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the sections. The Parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts bear the signatures of all the parties.

Section 6.6 Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Section 6.7 Force Majeure. The duties of the Parties to observe or perform any of the provisions of this Agreement on its part to be performed or observed shall be excused for a period equal to the period of prevention, delay or stoppage due to causes beyond the reasonable control of a Party by reason of strikes, civil riots, invasion, fire or other casualty, or acts of God ("Force Majeure"), provided that a Party has taken steps that are reasonable under the circumstances to mitigate the effects of the Force Majeure. Payment of monetary amounts due under this Agreement shall not be limited by Force Majeure.

Section 6.8 Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with City ordinances. Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer.

Section 6.9 Sovereign Immunity. **This Agreement is expressly made subject to City's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code and all applicable federal and state laws. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the City has by operation of law.**

Section 6.10 Allocation of Risk. **THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT. THE PARTIES AGREE THAT ANY LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH COMPARATIVE RESPONSIBILITY LAWS OF TEXAS. THIS PARAGRAPH**

**SHALL NOT BE INTERPRETED TO CREATE OR GRANT ANY RIGHTS, OR WAIVE ANY IMMUNITY, CONTRACTUAL OR OTHERWISE, IN OR TO ANY PERSONS OR ENTITIES NOT A PARTY TO THIS AGREEMENT.**

Section 6.11 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A - Land

Exhibit B - Pro-Rata Shares

[Signature Pages to Follow]




The undersigned parties have executed this Agreement on the dates indicated below.

CITY OF PFLUGERVILLE,  
a Texas municipal corporation

By:   
Name: Sereniah Breland  
Title: City Manager  
Date: 9-18-2020

[Signatures Continue on Next Page]

TAYLOR MORRISON OF TEXAS,  
INC., a Texas corporation

By:   
Name: Michael Slack  
Title: Vice President

Date: 9.15.20

**Exhibit A**  
**Description of the Land**

**BEING** a 170.393 acre (7,422,319 square feet) tract of land situated in the Alexander Walters Survey, Abstract No. 67, Travis County, Texas; and being a portion of a called 223.34 acre Tract II described in instrument to Dwain & Jan Selman in Document No. 2008024920 of the Official Public Records of Travis County; said 170.393 acre tract also containing portions of that certain 120 acre tract recorded in Volume T, Page 124 of the Deed Records of Travis County and that certain 100 acre tract recorded in Volume S, Page 124 of the Deed Records of Travis County.

## Exhibit B Pro-Rata Shares

2022 Pro-Rata Cost Share

Intersection	Approach	Mitigation Measure	Unit Cost	Total Estimated Cost	Pro-Rata Calculation	% of Traffic at Location	Pro-Rata Cost Share
Howard Lane @ Immanuel Rd	All	Install Signal	\$300,000/Intersection	\$300,000.00	Intersection	1%	\$3,523
Dessau Rd @ Howard Ln	Northbound	Extend left-turn bay by 125'	\$350/LF	\$43,750.00	NBL Movement = DW, Used NB Approach	4%	\$1,606
Dessau Rd @ Pecan St	Eastbound	Add 450' left-turn lane	\$350/LF	\$131,250.00	EBL Movement = DW, Used EB Approach	4%	\$4,602
Heatherwide Ln @ Weils Branch Pkwy	Westbound	Extend left-turn lane by 475'	\$350/LF	\$166,250.00	WBL Movement	4%	\$7,333
Immanuel Rd @ Pecan St	All	Modify signal equipment	\$10,000/Intersection	\$10,000.00	Low Cost Improvement - 100%	100%	\$10,000
	Southbound	Restripe to L, TR	\$5,000/Approach	\$5,000.00		100%	\$5,000
	Northbound	Restripe to L, T, R	\$5,000/Approach	\$5,000.00	100%	\$5,000	
	Westbound	Extend left-turn bay by 100'	\$350/LF	\$35,000.00	WBL Movement	12%	\$4,034
Weils Branch Pkwy @ East Pfrenig Ln	All	Install Signal	\$300,000/Intersection	\$300,000.00	Driveway Improvement	100%	\$300,000
Weils Branch Pkwy @ East Pfrenig Ln	Eastbound	Extend left-turn bay by 100'	\$350/LF	\$35,000.00	Driveway Improvement	100%	\$35,000
Weils Branch Pkwy @ Dessau Rd	Northbound	Install 250' Right-Turn Lane	\$350/LF	\$70,000.00	NBR Movement	34%	\$23,553
	Southbound	Extend left-turn bay by 150'	\$350/LF	\$52,500.00	SBL Movement and Approach = DW, Used Intersection Pro-Rata	7%	\$3,421
	Eastbound	Re-stripe existing pavement to add second Left-turn, modify signal equipment	\$10,000/Intersection	\$10,000.00	Low Cost Improvement - 100%	100%	\$10,000
Immanuel Rd @ Weils Branch	Southbound	Install 250' Left-Turn Lane	\$350/LF	\$70,000.00	SBL Movement = DW, Used SB Approach	16%	\$11,402
	Eastbound	Extend left-turn bay by 150'	\$350/LF	\$52,500.00	EBL Movement	28%	\$14,815
		Install 250' Right-Turn Lane	\$350/LF	\$70,000.00	EBR Movement = DW, Used EB Approach	16%	\$10,875
Immanuel Rd @ Purple Martin	Southbound	Install 150' Left-Turn Lane	\$350/LF	\$43,750.00	SBL Movement	100%	\$43,750
Immanuel Rd @ Driveway 2	Northbound	Install 150' Right-Turn Lane	\$350/LF	\$43,750.00	NBR Movement	100%	\$43,750
	Southbound	Install 150' Left-Turn Lane	\$350/LF	\$43,750.00	SBL Movement	100%	\$43,750
SUB TOTAL				\$1,487,644		-	\$681,414
Contingency				\$148,766		10%	\$68,141
TOTAL				\$1,636,410		-	\$749,555

A. Improvements not directly associated with Immanuel Road (highlighted in red above): \$97,942

B. Improvement Directly associated with Immanuel Road (highlighted in blue above): \$211,613

C. Cost to Construct 1/2 Immanuel Roadway Section along property Boundary (cost based on estimates provided in F&N rough proportionality memo, \$1,222/LF 1050LF of frontage): \$641,500

D. Remaining Dollars: needed to Improve 1/2 Immanuel Roadway Section along property boundary (C-B): \$429,887

E. Proposed Improvement By Developer (highlighted in yellow): \$336,000

TOTAL FISCAL CONTRIBUTION (A+B+D) \$739,442

TOTAL DEVELOPER CONTRIBUTION (A+B+D+E) \$1,069,442

\*\*\*NOTE: A, B, AND E ALL HAVE A 10% CONTINGENCY ASSOCIATED WITH THEM IN ORDER TO MATCH THE TOAL OF \$639,556