



LAW DEPARTMENT

MEMORANDUM

TO: Shirley A. Brown, City Clerk

FROM: Holly C. Noelke, Assistant City Attorney

DATE: November 15, 2005

SUBJECT: Community Facilities Contract between SPG Arbor Walk, L.P. and the City of Austin

Attached please find an original of the above referenced Agreement. Council authorized this Agreement on August 25, 2005, Item #25.

If you have any questions, please do not hesitate to contact me.



OTHER 2005193165
41 PGS

COMMUNITY FACILITIES CONTRACT
BETWEEN
SPG ARBOR WALK, L.P. AND
THE CITY OF AUSTIN

LIST OF EXHIBITS:

Exhibit "A"	Legal Description for Liverman Property
Exhibit "B"	Facilities Plan for Upper Shoal Creek Watershed and Easement Agreement Tracts
Exhibit "C"	Ultimate Development Conditions for the Design of the Z-K Pond Expansion and Limitation on Impervious Cover for Property Served
Exhibit "D"	(INTENTIONALLY OMITTED)
Exhibit "E"	Facility Design, Construction, Management, Testing and Observation Costs
Exhibit "F"	Schedule for Work
Exhibit G	Maintenance Requirements and Cost Allocation
Exhibit H	Legal Description of the Project
Exhibit I	Property being Donated to Texas Department of Transportation
Exhibit J	Project Pylon Identification Sign Area

COMMUNITY FACILITIES CONTRACT

STATE OF TEXAS §
COUNTY OF TRAVIS §

This contract ("Contract") is made and entered into between the **CITY OF AUSTIN, TEXAS**, a home rule municipal corporation (the "**City**") and SPG Arbor Walk, L.P., a Texas limited partnership ("**Simon**").

WHEREAS, Simon, as Lessee, has entered into a Ground Lease with the Board of Regents of The University of Texas System for the use and benefit of The University of Texas at Austin, as Lessor, of that certain approximately 46 acres located in Travis County, Texas described in the attached and incorporated EXHIBIT "H" (the "Ground Lease Parcel"); and

WHEREAS, an affiliate of Simon is the contract purchaser of that certain tract of land in Travis County, Texas, located adjacent to the Ground Lease Parcel and currently owned by Liverman Investments, L.P. and containing approximately the 6.931 acres, more or less, as described in EXHIBIT "A" attached hereto and incorporated herein by reference, less and except that portion of said approximately 6.931 acres to be conveyed to the Texas Department of Transportation for the purpose of enhancing and improving Mopac Frontage Road, as shown on Exhibit J attached hereto and incorporated herein by reference (the "Liverman Property") and

WHEREAS, Simon intends to develop and operate the Ground Lease Parcel as an open air, mixed used development that may include retail, commercial, entertainment, residential or related components, together with attendant improvements required for the proposed development described in City of Austin Site Plan Number SP-05- 1365C(the "Project"); and

WHEREAS, the Project is located east of Mopac (Loop1) near the intersection of 360 North and Mopac and is within the Shoal Creek watershed and is immediately upstream of a pond situated partially on the Liverman Property and partially on City-owned property ("City Pond Property"), collectively the pond is called ("the ZK Pond"); and

WHEREAS, the City desires that the ZK Pond, a regional detention pond, be expanded as shown on the "Facilities Plan for the Upper Shoal Creek Watershed and Easement Agreement Tracts" attached hereto as EXHIBIT "B" and incorporated herein by reference; and

WHEREAS, Simon and the City agree that as the result of that certain Drainage and Flood Detention Easement recorded in Book 9344, Pages 60 through 68, inclusive, in the Real Property Records of Travis County, Texas (the "Easement Agreement"), all detention requirements for the Project have been provided for and no additional on-site or off-site detention are required as part of the development requirements for the Project; and

WHEREAS, upon acquisition of the Liverman Property by Simon or its affiliate, Simon shall have certain rights under the Easement Agreement; and

WHEREAS, the City and Simon desire that the Z_K Pond serve as an off-site detention pond for the Project and properties that: (1) are named in the Easement Agreement, (2) are located in the Shoal Creek watershed, (3) have conveyance to the UT pond shown in EXHIBIT C, and (4) may be developed or redeveloped up to the stated impervious cover limits in Exhibit C, (collectively the "Served Properties"). EXHIBIT C is attached and incorporated to identify the Served Properties, their respective benefit limit of impervious cover, and set out the Ultimate Development Conditions for the Design of the ZK Pond expansion; and,

WHEREAS, the City further desires that a water quality pond be designed and constructed to meet water quality treatment for the Project and to enhance the water quality within the Shoal Creek watershed; and

WHEREAS, the City desires that the expanded ZK Pond and the new water quality facility (collectively called "The Facilities") will serve both this Project and other properties with existing drainage patterns within the Shoal Creek watershed. To accomplish the foregoing the City needs to perform Shoal Creek watershed modeling for the Project, the Served Properties, and other existing, and future, development to determine the scope of work required to properly site, size, and design the expanded ZK Pond and the new water quality facility as well as to evaluate the benefit that these two ponds will have on the performance of the existing pond network; and

WHEREAS, Simon is willing to and has engaged PBS&J, an engineering firm, to prepare the modeling study and PBS&J and other design and consulting firms to provide the design for the Facilities, subject to and conditioned upon the City reimbursing Simon those costs set forth on EXHIBIT D attached hereto and incorporated herein by reference; and

WHEREAS, the City has determined that the health, safety and welfare of its citizens in the Shoal Creek watershed will be protected and benefited by the Facilities; and

WHEREAS, the City has determined that it will derive a benefit from cost participation in the construction of the proposed Facilities in accordance with the terms hereof.

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter expressed and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION I SIMON'S RESPONSIBILITIES AND AGREEMENTS

1. Simon is responsible for providing the City with the modeling study and a preliminary plan as described in EXHIBIT E of the proposed Facilities prepared by PBS&J and other design and testing consulting firms at Simon's own cost and expense, on or before the date of execution of this Contract. Included with these deliverables is that material attached hereto as EXHIBIT "C" and incorporated herein. EXHIBIT "C" sets forth the ultimate development conditions used to design the Z-K Pond expansion and also sets out the impervious cover amounts based upon current zoning, for the Served Properties.

Further, EXHIBIT C establishes a limit on the use and transfer of any rights under the Easement Agreement to the Served Properties.

2. By execution of this Contract, the City acknowledges receipt of EXHIBITS C and E and agrees that these items will be processed for cost-reimbursement purposes under the terms of this Contract.
3. Upon acquisition of the Liverman Property and pursuant to the terms of the Easement Agreement, written authorization from Simon or its affiliate shall be required for any of the Served Properties to be included as participants in the Expanded ZK Pond. The City agrees that the Served Properties are eligible for participation in the benefits created by the Easement Agreement.
4. Simon agrees to limit the transfer of drainage right benefits it confers to only the Served Properties.
5. Simon's contribution for the Facilities shall not exceed \$475,589; this amount is exclusive of Simon's maintenance obligations as shown in Exhibit G and the maintenance obligations as set forth in Section III.4. herein.
6. Simon agrees to perform the following in connection with the Facilities:
 - (a) Provide the City with a corporate resolution in recordable form, authorizing its corporate general partner to enter into this Contract on behalf of "Simon" and any other documentation reasonably required by the City to evidence Simon's authority to enter into this Contract.
 - (b) Simon shall submit an application for site plan approval for the Facilities concurrent with the Project design and construction plan submittals, which shall include final engineering design and construction plans (the "Contract Documents") for the Facilities for permit review as part of the Site Plan to the Watershed Protection and Development Review Department ("WPDRD"). Simon shall diligently pursue the completion of the permit process.
 - (c) To maintain commercial liability insurance in an amount not less than \$1,000,000.00 (combined single limit) during the construction of the Facilities. The insurance shall be written by a company or companies licensed to do business in the State of Texas, at the time the policy is issued, and with AM Best Ratings of B+VII or better. The insurance shall specifically provide that the City is listed as an additional insured.
 - (d) To provide the City, prior to commencement of construction, a certificate evidencing that the contractor constructing the Facilities has posted performance and payment bonds in amounts adequate to cover the anticipated cost of constructing the Facilities (which performance and payment bonds will name the City as a co-obligee).

- (e) To provide complete design, construction and project management services for the Facilities as described in Exhibit "E" in accordance with the City's Land Development Code and applicable ordinances, laws, and statutes, as amended.
- (f) Subject to approved waivers and variances, to:
 - i. conform to the City of Austin design criteria and construction standards in effect at the time of the initial site plan submittal for the Facilities, SP-05-1183D; and
 - ii. solicit and publish invitations for bids, evaluate and award for construction of the improvements in accordance with standard City of Austin bidding practices, procedures and Chapter 252 of the Texas Local Government Code in which bids and solicitation based on plans and specifications prepared and approved, including the City MBE/WBE Ordinance.
- (g) Pay any fees required in connection with submittals and permits for the Facilities, which shall qualify for reimbursement and shall be submitted under the applicable cost reimbursement process pursuant Section II.
- (h) Provide, and cooperate with others to provide, the City an easement for access to the Facilities. The preferred access route is off of the Mopac northbound frontage road. Simon shall cooperate with the City and use good faith efforts to obtain such access rights from TxDOT.
- (i) Subject to events of Force Majeure, within 24 months after the final approval and execution of this Contract by all parties (the "Effective Date"), complete construction of the Facilities in a good and workmanlike manner, in accordance with the engineering and construction plans for the Facilities permitted by the City. If the date for completion is extended for reasons other than Force Majeure events, then said date may be extended only with the written approval of the City for good cause shown that is beyond the reasonable control of Simon. The City agrees not to unreasonably withhold consent, upon a showing of good cause. No changes may be made in the permitted plans and specifications, unless the City gives its prior written approval to such changes. The City shall have the right to inspect the construction of the Facilities during and after completion.
- (j) Provide for design and approval of any required changes to the Contract Documents, together with cost estimates for design and construction of such modifications. Any and all such required changes must be reviewed and approved by representatives of both the City and Simon. Required changes will be submitted to the City by Simon or its designated agents and any written comments shall be delivered to Simon within five (5) business days of the initial receipt. Approved changes will be incorporated into the Contract Documents.

Comments will be incorporated into revised change requests that will be resubmitted to the City and Simon.

- (k) Upon receipt of notification by the contractor that the work has been completed, conduct an inspection, performed by appropriate members of the Simon's Engineering Consultant's staff. As a result of this inspection, Simon shall prepare or cause to be prepared a list of the items needing correction. After the contractor has performed the required corrections, Simon shall notify the City in writing that the contract has been substantially performed, according to the Contract Documents and is ready for final inspection by the City and Simon's Engineering Consultant (herein referred to as the Engineer). The Engineer shall accompany the City on the final inspection to assure that the total work has been completed in substantial compliance with the Contract Documents. The Engineer shall review and tabulate all warranties, guarantees, bonds, and similar required materials and documents to make sure that all such materials and documents are received and that they substantially meet the requirements of the Contract Documents, after which they shall be transmitted to the City or its designated representative(s). After determining that all requirements of the Contract Documents have been substantially met, the Engineer shall so certify and recommend approval of the contractor's final application for payment.
- (l) After substantial completion of the Facilities, but as a condition of final acceptance, complete all changes, repairs or alterations reasonably required by the City to comply with the Contract Documents, the requirements of this Contract, and any applicable laws, within 120 days after notification by the City of deficiencies, or within such other time period as the City and Simon may agree upon in writing. The term "substantial completion", as used in this Contract, shall mean that the Facilities have been completed to the point of being usable for the purpose intended, as determined by the City in the ordinary course of its inspection of the Facilities.
- (m) As a condition precedent to final acceptance of construction of the Facilities, provide the City with one set of reproducible final, record, construction plans for the Facilities, at Simon's cost and expense to be included in the City reimbursement amount paid to Simon.
- (n) As a condition precedent to final acceptance of construction of the Facilities by the City, assign to the City the contractor's warranty covering the construction for a period of one year after the date of acceptance.
- (o) Provide digital photo-documentation before, during and upon project completion of the Facilities.
- (p) Submit a reimbursement request package to the financial officer for the City each thirty (30) days, with the first reimbursement request package being submitted on the Effective Date of this Contract and in thirty (30) day cycles thereafter. The

reimbursement request package shall contain copies of invoiced and paid for work. The City will pay the reimbursement amount in accordance with the provisions and schedule set forth in Section II (i) herein.

SECTION II THE CITY'S RESPONSIBILITIES AND AGREEMENTS

1. Payments by the City to Simon shall not exceed \$3,296,568.00. The Funds have been appropriated for expenditures pursuant to this Contract.
2. The City agrees to perform the following in connection with the proposed Facilities:
 - (a) Grant Simon, its consultants, agents, representatives and employees, the right to enter upon the City Pond and adjacent City property for the purpose of performing investigations, tests, construction and other activities contemplated by this Contract.
 - (b) Obtain a license agreement for the benefit of Simon from Union Pacific Railroad allowing Simon to access, investigate, perform tests and construct improvements as required and permitted in connection with providing for outflow for the Z-K Pond going under the railroad tracks. Permitting fees associated with such activity have been paid by the City. The City agrees that Simon shall not be prejudiced or suffer penalties as a result of any delays to Simon's work due to timing issues in obtaining the license agreement. The City will cooperate in devising alternative temporary or permanent solutions as required.
 - (c) Review all construction plans required to be submitted to the City under this Contract for compliance with the requirements of this Contract and applicable City procedures, design and construction standards.
 - (d) Inspect the Facilities during construction, and, if completed in accordance with the terms of this Contract, accept the improvements. The inspections and certifications will be conducted in accordance with standard City policies, procedures and requirements.
 - (e) To pay all applicable inspection and permitting fees in accordance with the cost share allocation shown on EXHIBIT E in connection with the construction and installation of the Facilities.
 - (f) Provide timely notice to Simon, whenever an inspection reveals that an improvement is not constructed or completed, in accordance with the standards and specifications for such improvement or is otherwise defective.
 - (g) Provide a written final acceptance of the construction of the Facilities within 30 days after a determination by the City, that all construction deficiencies noted for

the Facilities during the final on-site inspection have been corrected, and that all requirements set forth in this Contract for acceptance of construction have been met.

- (h) Facilities' costs shall include all costs of the modeling study and designing, engineering and constructing of the Facilities, City fees including but not limited to filing fees and construction inspection fees, geotechnical investigations and testing services and any other costs incidental to the completion of the Facilities as provided in EXHIBIT E.
- (i) Agrees that Simon shall have right, title and use of any and all excess fill from the expansion of the ZK Pond.
- (j) Reimburse Simon as provided in EXHIBIT E for the City's cost participation for the Facilities.
- (k)
 - i Effective upon execution of this Contract, the City shall have that dollar amount shown on Exhibit "E" available and appropriated for allocation of the reimbursement to Simon.
 - ii Subject to City receipt of Simon's reimbursement package, which shall include delivery of the modeling study, design and engineering plans, permit application and technical memoranda, together with the reimbursement request submittal for costs and expenses incurred up to October 13, 2005 for (i) the foregoing and for (ii) hearings and consultant fees. Reimbursement for this specific request shall be made within twenty-five (25) calendar days of submittal of this reimbursement request package.
 - iii Except for reimbursement pursuant to (k) (ii) above, the City shall reimburse Simon upon City's receipt of reimbursement requests for invoices paid by Simon for work described in EXHIBIT E as follows.
 - (x) In thirty (30) day cycles commencing with the first thirty (30) days after execution of this Contract, the City shall pay to Simon, following the receipt of Simon's reimbursement request an amount equal to invoiced and paid costs during the prior thirty (30) days.
 - (y) The City shall pay to Simon, following the receipt of Simon's reimbursement request after substantial completion of the Work the balance of the City's participation, less any retainage. Following final acceptance by the City of the constructed improvements any remaining costs and expense and the retainage amount shall be reimbursed to Simon.

SECTION III INSPECTION AND MAINTENANCE

1. **Inspection and Certification.** The City agrees to inspect the Facilities during construction and, if completed in accordance with the approved standards and specifications for these Facilities, to accept the Facilities. The inspections and certifications will be conducted in accordance with standard City policies and requirements, as amended for retrofit projects.
2. **Change Orders.** Any change orders must be mutually agreed to and addressed through the process approved by both parties, with allocation for any increase/decrease pursuant to Exhibit E and an agreed to billing/credit procedure.
3. **Maintenance of the Facilities.** Upon completion of the inspection, certification and acceptance of the Facilities, and subject to receipt of payment set out in 4 below, the City shall perpetually maintain the same.

Within ninety (90) days of completion by Simon and final acceptance of the Facilities by the City, Simon shall, at no cost to the City, dedicate the Liverman Property to the City, subject to (a) reservation to Simon of drainage rights for the benefit of the Project and (b) reservation to Simon of its rights, duties, benefits and obligations under the Easement Agreement applicable to the Served Properties and (c) reservation to Simon of that area shown on Exhibit J attached hereto and incorporated herein by reference for the Project pylon sign approved by the City of Austin Signage Review Board, together with access rights to the Pylon Sign Area for the purposes of installing lighting, landscaping and the sign and for operation, repair and maintenance of the same. This dedication shall be in a form acceptable to the parties.

4. **Maintenance of Riparian Channel.** For the Riparian Channel, during the first five (5) years following plantings as required by the Army Corps of Engineers, Simon shall replace any plantings in the riparian channels located on the City property that have been placed there in accordance with the Army Corps of Engineers' requirements. Except for the foregoing plant replacement, the City shall perpetually maintain the Riparian Channel.
5. **Cost of Maintenance of Facilities and Riparian Channel.** Simon shall remit to City an annual maintenance payment set out in EXHIBIT G payable on September 15th of each year beginning in 2006, and continuing until expiration or earlier termination of the Ground Lease on the Ground Lease Parcel.
6. **Notice of Defect.** During the construction period and warranty period set out in the Project Manual, the City will provide timely notice to Simon and the Engineer whenever an inspection reveals that any portion of the Facilities is not constructed or completed in accordance with the standards and specifications for the Facilities or is otherwise defective. Simon will have one hundred twenty (120) days from such notice to cure or

substantially cure the defect. The City may not declare a default under this Contract during the one hundred twenty (120) day cure period as a result of any such defect, unless it is clear that Simon does not intend to cure the defect. Notwithstanding the previous sentences in this subsection, if, in the reasonable opinion of the City, the defect creates an immediate and substantial harm to the public health or safety, and the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) days and the City may declare a default under this Contract, if not satisfied that the defect is cured during the cure period.

SECTION IV GENERAL PROVISIONS

1. **The Recitals set forth at the beginning of this document are true and correct and are incorporated herein by reference thereto as if set out in their entirety.**
2. All construction required in connection with this Contract shall be performed in a good and workmanlike manner and in accordance with all applicable federal, state and local laws and regulations. Simon agrees that any contract which it enters into for the construction of the Facilities shall be consistent with and reflective of the terms and provisions of this Contract. The schedule for the studies and construction of the work is attached hereto as Exhibit "F" and incorporated herein by reference (the "Schedule").
3. Simon shall indemnify, and defend the City, with counsel selected by City and approved by Simon, against, and hold harmless the City from all reasonable and verified costs, including reasonable attorney's fees, loss and liability arising directly out of, or directly connected with, the construction activities in and around the Facilities' site which occur prior to the final acceptance of the Facilities by the City. In no event shall Simon be liable for consequential damages or for any loss or liability due to acts of negligence or acts of omission of the City.
4. The terms and provisions of this Contract shall be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.
5. Upon the failure of either party to comply with the provisions hereof, the other party shall have the right to enforce the terms and provisions of this Contract by specific performance, or by such other legal or equitable relief to which the non-defaulting party may be entitled. Any provision in this Contract to the contrary notwithstanding, it is agreed that the City shall not be obligated to make any payment under this Contract if Simon is in default (after expiration of all cure periods) under one or more of its obligations under this Contract. Any remedy or relief described in this Contract shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity. The parties hereto agree to mediate any dispute which may arise under the terms of this Contract in good faith, prior to filing suit for damages.
6. Addresses for notice for the parties hereto shall be as set forth below. Either party may change its address for notice by providing the other party with written notice of the change sent

postage prepaid by certified or registered mail, with return receipt requested, or by overnight mail or by facsimile with an acknowledgment of receipt or by hand delivery. The person designated below for each party shall also be the designated contact person to assist in matters related to this Contract.

7. Whenever a period of time is herein described for the taking or performance of an action by either party (other than the payment of money), such party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, and periods of time for performance shall be equitably extended by the time of any delays due to strikes; riots; acts of God; severe weather; shortages of labor or materials; war; acts of terrorism; governmental laws, regulations, restrictions or moratoriums; walk-outs; inability to obtain suitable equipment or components; accidents; vandalism; fire; water damage; flood; earthquake or other natural catastrophes or other similar events beyond the control of the parties or which could not have reasonably been foreseen and provided against by the parties, and which such party is unable to prevent or overcome.

Simon

SPG Arbor Walk, L.P.
c/o Simon Property Group
115 West Washington Street
Indianapolis, Indiana 46204
Attn: Senior Vice President,
Community Center Development
Telephone: (317) 685-7327
Fax: (317) 263-2363

With a copy to:

Risé A. Friedman
c/o Simon Property Group
115 West Washington Street
Indianapolis, Indiana 46204
Telephone: (317) 263-7971
Fax: (317) 263-7038

With a copy to:

PBS&J
Attn: Scott Smiley, Division Manager
6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730
Telephone: (512) 342-3217
Fax: (512) 327-2455

City

City of Austin
P.O. Box 1088
Austin, TX 78767
Attn: Director, WPDRD
Telephone: (512) 974-2000
Fax: (512) 974-3390

Any notice required or permitted to be given under this Contract will be deemed received three days after it is posted in the U.S. mail, when correctly addressed to the recipient at its address for notice, and sent registered or certified mail, return receipt requested. Notice sent by any other method will be deemed received when and if actually received.

8. This Contract constitutes the entire agreement of the parties hereto as to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral. This Contract may not be amended, except in writing and signed by the parties hereto.

9. Venue for any dispute arising in connection with this Contract lies in the County, in which the Project is located.

10. This Contract may be executed in multiple originals.

11. If a dispute arises out of or relates to this Agreement, or a material breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages, provided, however, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief.

- (1) Either party may make a written request for a meeting between representatives of each party to take place within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall send to the meeting, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such request, the parties have not succeeded in negotiating a resolution of the dispute, they may agree to proceed to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- (2) Upon the initiation of mediation, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, City and Simon agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on mediator within thirty (30) calendar days of the initiation of the mediation process, the Travis County Dispute Resolution Center (DRC) shall select the mediator. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. City and Simon will share the costs of mediation equally.

EXECUTED to be effective as of the _____ day of _____, 2005.

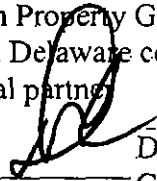
Simon:

SPG Arbor Walk, L.P., a Texas limited partnership

By: Simon Property Group (Texas), L.P., a Texas limited partnership, its general partner

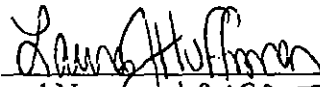
By: Golden Ring Mall Company Limited Partnership, an Indiana limited partnership, its general partner

By: Simon Property Group (Delaware), Inc., a Delaware corporation, its general partner

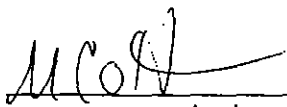
By:  David Simon
Chief Executive Officer

City:

THE CITY OF AUSTIN

By: 
Printed Name: LAURA J. HOFFMAN
Title: 10/13/05

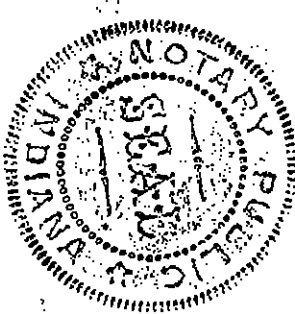
APPROVED AS TO FORM:


_____, Assistant City Attorney

STATE OF INDIANA §

COUNTY OF MARION §

This instrument was acknowledged before me this 12th day of October, 2005 by David Simon, as Chief Executive Officer of Simon Property Group (Delaware), Inc., a Delaware corporation, general partner of Golden Ring Mall Company Limited Partnership, an Indiana limited partnership, general partner of Simon Property Group (Texas), L.P., a Texas limited partnership, general partner of SPG Arbor Walk, L.P., a Texas limited partnership, on behalf of the company.



Joan Walker-Emminger
Notary Public, State of Indiana

Joan Walker-Emminger
Print Name

02-06-13
My Commission Expires

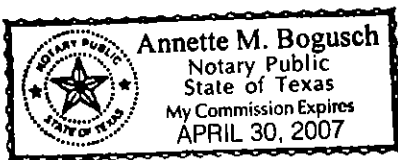
STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this 13th day of October, 2005 by Dana J. Huffman, as Director of the Watershed Protection and Development Review Department of the City of Austin, a Texas municipal corporation, on behalf of said corporation.

Assistant City Manager

Annette M. Bogusch
Notary Public, State of Texas



LOT 1, STONEBRIDGE VII
6.931 ACRES

F.N. NO. 6605 (KM)
October 12, 2005
PBS&J JOB NO. 441446.02

EXHIBIT "A"
METES AND BOUNDS DESCRIPTION

ALL OF THAT CERTAIN 6.931 ACRE TRACT OUT OF THE JAMES P. WALLACE SURVEY NO. 18, TRAVIS COUNTY, TEXAS, BEING LOT 1, STONEBRIDGE VII, A SUBDIVISION RECORDED IN BOOK 88, PAGE 346, PLAT RECORDS OF TRAVIS COUNTY, TEXAS. SAID 6.931 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod found monumenting the west right-of-way line of Missouri Pacific Railroad, a 100 foot right-of-way, and the south line of Braker Lane, a varying width right-of-way;

THENCE, S 18° 32' 05" W, leaving the south right-of-way line of said Braker Lane, over and across that certain 382 acre tract conveyed to the Board of Regents of the University of Texas, by deed recorded in Volume 994, Page 337, Deed Records of Travis County, Texas, with the west right-of-way line of Missouri Pacific Railroad, a distance of 3,342.71 feet to a 1/2 inch iron rod found monumenting the northeast corner of said Lot 1 for the **POINT OF BEGINNING** of the herein described tract;

THENCE, S 18° 30' 30" W, with the west right-of-way line of Missouri Pacific Railroad and east line of Lot 1, a distance of 839.27 feet to a 1/2 inch iron rod found monumenting the southeast corner of said Lot 1 and northeast corner of that certain City of Austin Tract described in a deed recorded in Volume 9373, Page 520, Deed Records of Travis County, Texas;

THENCE, N 71° 28' 47" W, with the south line of said Lot 1 and north line of said City of Austin tract, a distance of 290.48 feet to a TxDOT brass disk in concrete found monumenting the southwest corner of said Lot 1 and east right-of-way line of Loop 1 – Mopac Expressway North, a variable width right-of-way;

THENCE, N 11° 15' 09" E, with the west line of said Lot 1 and east right-of-way line of said Loop 1, a distance of 913.54 feet to a TxDOT brass disk in concrete found monumenting the northwest corner of said Lot 1, from which a TxDOT brass disk in concrete found monumenting the east right-of-way line of said Loop 1 bears N 11° 15' 25" E, a distance of 1,391.16 feet;

LOT 1, STONEBRIDGE VII
6.931 ACRES

F.N. NO. 6605 (KM)
October 12, 2005
PBS&J JOB NO. 441446.02

THENCE, S 62° 06' 59" E, leaving the east right-of-way line of said Loop 1, with the north line of said Lot 1 and south line of the remainder of said 382 acre tract, a distance of 411.36 feet to the **POINT OF BEGINNING** of the herein described tract and containing 6.931 acres, more or less. Survey sketch accompanies and is a part of this description.

BEARING BASIS:

Bearings and Directional Control are based on the Texas State Plane Coordinate System, NAS 83/93 HARN, Central Zone (4203). Controlling monuments used were LCRA Control Monuments AUST, AZ42 and CW30.

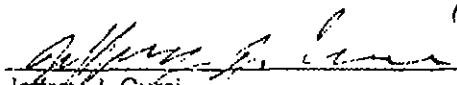
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

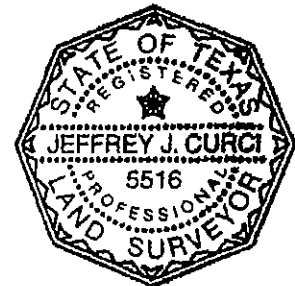
KNOW ALL MEN BY THESE PRESENTS:

That I, Jeffrey J. Curci, a Registered Professional Land Surveyor, do hereby certify that the description herein was determined by a survey made on the ground during September 2004 through March 2005 under my supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 12th day of October 2005 A.D.

PBS&J
6504 Bridge Point Parkway
Suite 200
Austin, Texas 78730


Jeffrey J. Curci
Registered Professional Land Surveyor
No. 5516 - State of Texas



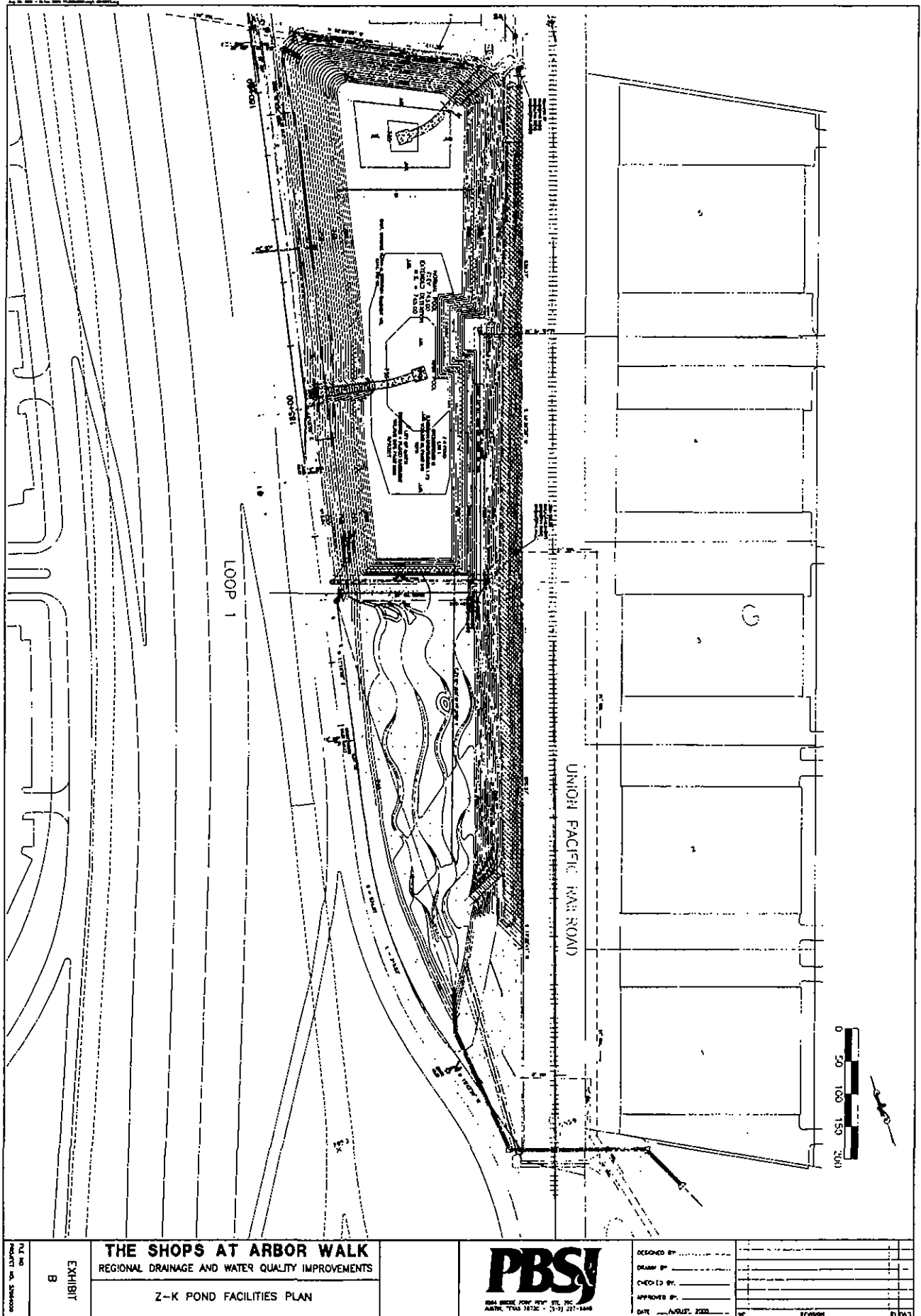
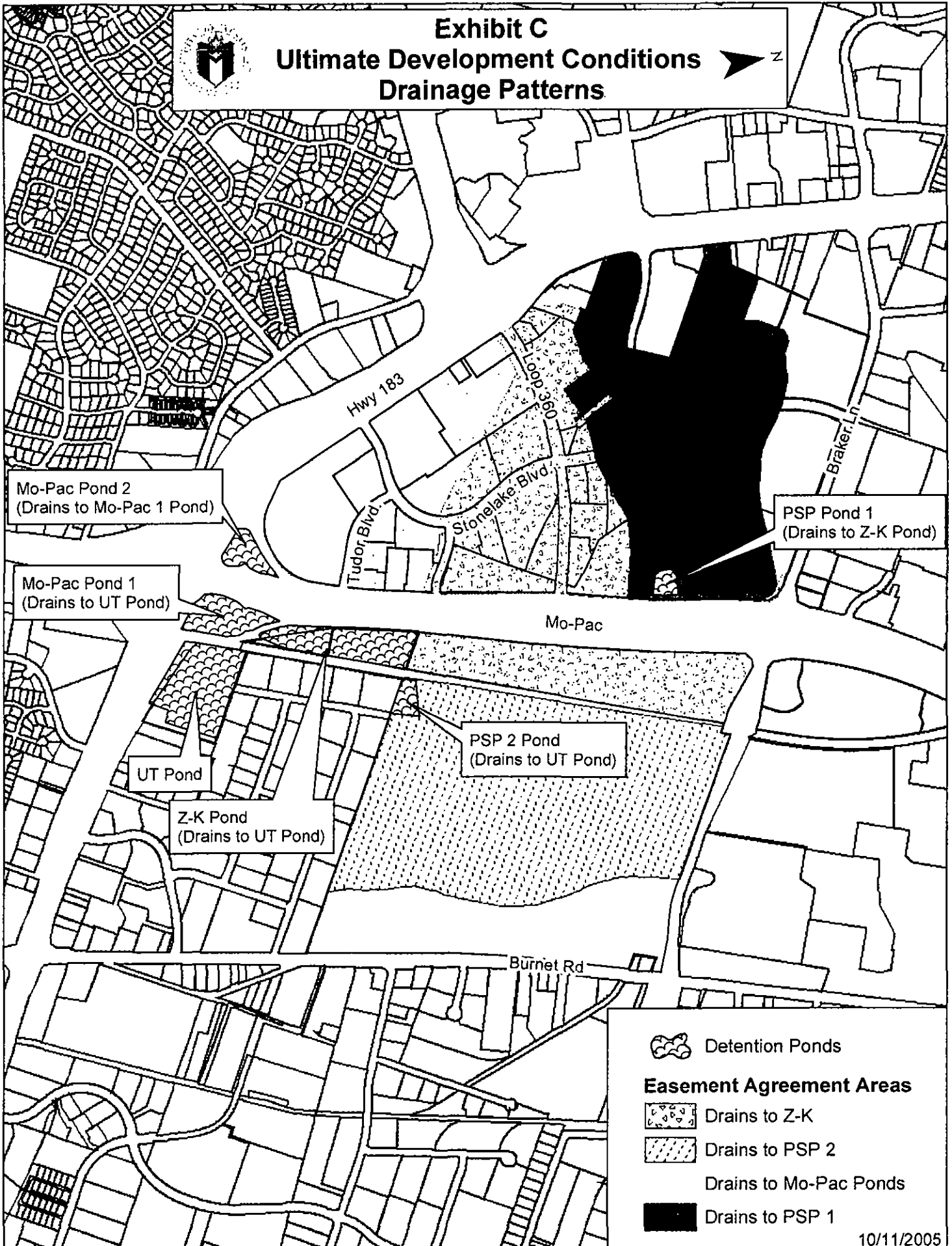


Exhibit B



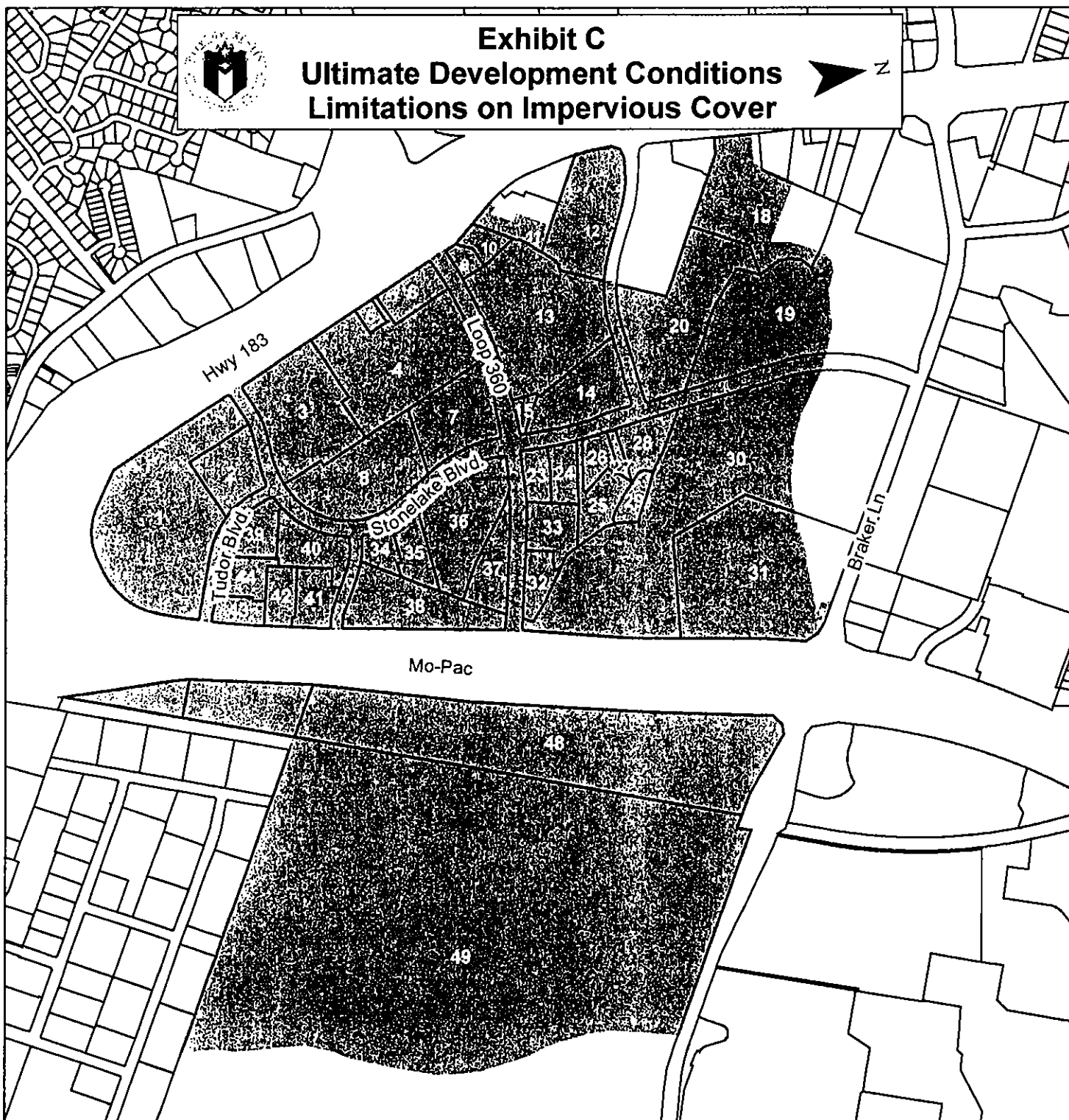
Exhibit C Ultimate Development Conditions Drainage Patterns



10/11/2005



Exhibit C **Ultimate Development Conditions** **Limitations on Impervious Cover**



**Served Properties by
the Easement Agreement**

Lot	IC Allowed	Lot	C Allowed	Lot	C Allowed	Lot	C Allowed
1	85%	12	90%	27	95%	38	95%
2	85%	13	78%	28	95%	39	80%
3	85%	14	90%	29	95%	40	80%
4	85%	15	90%	30	85%	41	85%
5	85%	18	88%	31	85%	42	85%
6	85%	19	85%	32	95%	43	80%
7	85%	20	70%	33	90%	44	80%
8	85%	23	95%	34	85%	48	85%
9	85%	24	95%	35	85%	49	85%
10	90%	25	95%	36	65%		
11	90%	26	95%	37	80%		

10/11/2005

EXHIBIT D
(INTENTIONALLY OMITTED)

EXHIBIT E-Facility Watershed Modeling, Pre-Construction Cost, Design, Construction, Management, Testing and Observation Cost and Cost Allocation

Preliminary Estimate of Construction Costs
ZK Pond Flood Control and Water Quality Improvement Project

SUMMARY OF CONSTRUCTION COSTS:

	Total Costs	Simon Cost	City Cost	Project Line Item Cost Responsibility City/Simon (Percent)
Z-K Weipond Costs	\$ 1,026,928	\$ 343,900	\$ 683,028	66.51%/33.49%
Z-K Detention Expansion Costs	\$ 982,240	\$ -	\$ 982,240	100%/0%
Subtotal Pond Costs	\$ 2,009,168	\$ 343,900	\$ 1,665,268	
Haul-off of Excess Excavation Material	\$ 846,432		\$ 846,432	100%/0%
Subtotal Construction Costs	\$ 2,855,600	\$ 343,900	\$ 2,511,700	
Construction Contingency	10.0% \$ 285,560	\$ 34,390	\$ 251,170	
Subtotal Hard Construction Costs	\$ 3,141,160	\$ 378,290	\$ 2,762,870	

Design Costs

Civil Engineering Fees (PBS&J)	\$ 219,100	\$ 0	\$ 219,100	100%/0%
LOMR (incl. fees)	\$ 35,000	\$24,500	\$ 10,500	30%/70%
Landscape Design (TBG)	\$ 7,500	\$ 0	\$ 7,500	100%/0%
Services for Variance Process (PBS&J)	\$ 7,000	\$3,500	\$ 3,500	50%/50%
Previous Topographic Survey for Liverman Tract (PBS&J)	\$ 5,000	\$2,500	\$ 2,500	50%/50%
Previous Geotechnical Work for Liverman Tract (CTLThompson)	\$ 3,000	\$1,500	\$ 1,500	50%/50%
Supplemental Geotechnical Investigation (CTLThompson)	\$ 4,500	\$ 0	\$ 4,500	100%/0%
Supplemental COE / Section 404 / Enviro. Coordination (Horizon)	\$ 11,000	\$8,800	\$ 2,200	20%/80%
TxDOT Coordination (Huggins/Seller)	\$ 5,000	\$2,500	\$ 2,500	50%/50%
Subtotal Design Costs	\$ 297,100	\$ 43,300	\$ 253,800	
Design Contingency	4.8526% \$ 14,417	\$ -	\$ 14,417	
Subtotal Design Costs	\$ 311,517	\$ 43,300	\$ 268,217	

Construction Admin./Permitting/Contract Admin.

Permitting Fees	\$ 4,000	\$ 0.00	\$ 4,000	100%/0%
Materials Testing	\$ 57,112	\$9,776	\$ 47,336	82.88%/17.12%
Bidding & Contract Admin. (PBS&J)	\$ 42,700	\$7,309	\$ 35,391	82.88%/17.12%
City Inspection	\$ 60,000	\$10,270	\$ 49,730	82.88%/17.12%
Construction Staking	\$ 60,000	\$10,270	\$ 49,730	82.88%/17.12%
Project Management (Developer)	\$ 85,668	\$14,663	\$ 71,005	82.88%/17.12%
Subtotal Construction Phase Services	\$ 309,480	\$ 52,288	\$ 257,192	

Other

Reimbursable Expenses (printing, travel, mileage, etc.)	\$ 10,000	\$1,712	\$ 8,288	82.88%/17.12%
TOTAL PROJECT COST	\$ 3,772,157	\$ 475,589	\$ 3,296,568	



ADDITIONAL SERVICES AGREEMENT

DATE OF ORIGINAL AGREEMENT: 09/07/04

DESIGN PROFESSIONAL:

PBS&J

6504 Bridge Point Parkway, Suite 200

Austin, TX 78730

(telephone): 512-327-6840

PROJECT: Shops @ Arbor Walk

Corp. #: 8500

AGREEMENT DATE: 08/03/05

COMPLETION DATE: 12/01/05

Based upon the OWNER's criteria, budget and schedule identified in Schedule I to this Additional Services Agreement, and in conformity therewith, the Design Professional shall provide the additional architectural, engineering and/or professional services described in Schedule II to this Additional Services Agreement (the "Additional Services"). This agreement modifies the original Agreement entered into between the parties. All terms and conditions of the original Agreement shall remain in effect, except to the extent modified by this Additional Services Agreements.

Compensation: The OWNER shall compensate the Design Professional for the Additional Services as set forth in Schedule II to this Additional Services Agreement, not to exceed \$261,800.00. The OWNER shall also reimburse the Design Professional for the actual amount expended by the Design Professional (without a multiplier or mark-up) not to exceed the aggregate amount of \$6,000.00.

"OWNER"

SPG ARBOR WALK, L.P. a Texas limited partnership
By: SIMON PROPERTY GROUP (TEXAS), L.P.,
a Texas limited partnership, its general partner
By: GOLDEN RING MALL COMPANY LIMITED
PARTNERSHIP, an Indiana limited partnership,
its general partner
By: SIMON PROPERTY GROUP (DELAWARE), INC.
a Delaware corporation, its general partner

Signed: 

Printed: Curt Tappendorf

Title: Civil Engineer

SPG FORM DP-9 ("PBS&J")("08/03/05")

"PROFESSIONAL"

PBS&J

Signed: 

Printed: Scott A. Smiley

Title: 



An employee-owned company

August 3, 2005

Attachment "A" and "B"

Mr. Curt P. Tappendorf, P.E.
Simon Property Group
115 W. Washington Street
Indianapolis, IN 46204

RECEIVED

AUG 05 2005

A & E SERVICES

Re: The Shops at Arbor Walk
Addendum No. 5 to Proposal for Professional Engineering Services
Professional Services for Z-K Pond Expansion and Water Quality Improvements
City of Austin, Texas
PBS&J Project No. 520640

Dear Mr. Tappendorf

PBS&J is pleased to present this proposal for professional engineering and surveying services for the above referenced project to the Simon Property Group. A portion of the work described in Section I below has been previously performed under an Additional Services Agreement dated April 15, 2005. The amount of the April 15, 2005 agreement will be reduced by \$26,000 to offset this overlap of scope and the corresponding charges will be transferred to this new authorization.

In association with the Shops at Arbor Walk project, City of Austin desires to construct detention and water quality treatment facilities to mitigate impacts of site development. PBS&J has previously prepared design and construction drawings to mitigate drainage and water quality impacts associated with the Shops at Arbor Walk project through modifications within the two tracts collectively known as the Z-K Regional Stormwater Detention Facility (Z-K Pond). In this instance, the City wishes to contribute funding to expand the capacity of the Z-K Pond Facility to improve detention capacity and water quality conditions in the Upper Shoal Creek watershed to the extent reasonably attainable under existing site and contributing watershed constraints.

PBS&J proposes to provide a watershed investigation, preliminary engineering, topographic surveying, final design and construction phase services as described below for these expanded facilities to be known as Z-K Pond Stormwater Detention and Water Quality Improvements.

I. WATERSHED INVESTIGATION AND FEASIBILITY STUDY

The Shops at Arbor Walk is wholly within the Shoal Creek watershed and immediately upstream of the Z-K regional stormwater detention facility. Due to previous easement agreements, on-site detention is not required for this development. However, the City of Austin desires to enlarge / modify the Z-K Facility to increase detention storage and improve water quality by also incorporating a regional wet pond within the facility. As part of this overall effort, the City of Austin (City) requests review of previous PBS&J (formerly EH&A) project efforts in the 1980s and 1990s to establish one or more baseline conditions for 100-year peak flow limits for Shoal Creek at the downstream side of the US Hwy 183 crossing. Once the baseline peak flow limits are established (e.g. conditions reflecting 1980s watershed impervious cover and detention pond network design assumptions), 1) the performance of the

existing pond network will be evaluated against the newly established baseline peak flow limits and 2) evaluations will be made concerning future development as described below. If peak flow is not within the newly established limits, the City desires to consider expanding the capacity of the Z-K Pond to provide additional detention capacity.

PBS&J will provide the following watershed investigation services:

A. Baseline Research

Research & Technical Memorandum # 1 - Review and summarize previous reports in a brief (approx. 2 page) technical memorandum that established baseline (1982) hydrologic flow conditions for the Upper Shoal Creek watershed. PBS&J will obtain concurrence from the City on proposed parameters for use in the hydrology models described below.

B. Hydrologic Modeling

1. All models will be developed in HEC-1 format with simulations for the 2, 10, 25, and 100-year return period storms for a 24-hour (SCS Type III) duration.
2. 1982 Updated Existing Conditions model (Existing Conditions Benchmark) – Recreate the 1982 6-basin existing conditions model from the parameters given in the EH&A report dated Oct 1982. This model will reflect 1982 existing conditions land use. The 1982 outer basin boundary will be used. The UT pond will be modeled as a depression as it was before the first official pond was built there. No other ponds will be modeled. However, this model will be updated to reflect latest modeling techniques such as SCS methodology, rainfall amount, duration, distribution, timestep, etc. Additional specific parameters and modeling procedures will be determined from decisions made in Task 1.
3. 1980s Ultimate Conditions model (Ultimate Conditions Benchmark) – A second ‘benchmark’ model will be prepared that considers percent impervious assumptions for ultimate conditions made in the 1980s and ponds that were created to help offset that change. These assumptions were roughly 70% impervious for areas that were developed at the time and are depicted in a Dec 17, 1985 memo from EH&A. This model will utilize PBS&J’s 2001 HEC-1 model structure, 26-basins, and it will include 6 ponds (Intermediate UT (prior to late 1990s expansion), ZK, PSP 1-2, Mopac 1-2). Additional specific parameters and modeling procedures will be determined from decisions made in Task 1.
4. Benchmark Meeting - Meet with the City to agree upon modeling results for development of “benchmark conditions” to be applied in assessment of additional detention storage volume and outlet control structure modification needs. The benchmark condition will be determined based on tasks 1 and 2. The City will determine the applicability of the results and may increase or decrease the benchmark condition, as the City deems necessary.
5. 2005 Existing Conditions and Ultimate Conditions models – Using city provided data on the existing and ultimate watershed development conditions, update the 2001 PBS&J previous models to reflect the current and ultimate states of development in the watershed. These models will include both current and “ultimate” impervious cover levels and current detention pond network—enlarged UT, Z-K, Mopac 1-2, and PSP 1-2 ponds. Private pond modeling will not be included.

6. 2005 Existing plus proposed Arbor Walk model – Add the development of the Arbor Walk tract to the existing conditions model.
7. Ultimate Conditions Mitigation model – Determine the ZK pond volumes and outlet structures required to control the peak flow at the downstream side of US 183 to the benchmark flow rates determined in task 3, if possible. Consider a combination of ZK and/or other ponds to provide an intuitively cost effective solution to reduce the peak flows to the Updated Benchmark rate at US 183.
8. Ultimate Conditions Mitigation model considering UT lands with on-site detention – Same as Item # 7, except that the currently undeveloped UT lands will be built out with on-site detention. PBS&J will assume some hypothetical on-site detention for those areas to match existing flows from those subareas.
9. Technical Memorandum # 2 - Develop a brief technical memorandum outlining modeling procedures recommending proposed improvements solely based upon the modeling results.

C. Conceptual Designs and Costs

After approval of the improvement recommendation perform the following:

1. Conceptual Design - Provide conceptual design sketches of up to two recommended pond improvement scenarios.
2. Conceptual Cost - Prepare conceptual cost estimates for up to two recommended pond improvement scenarios including design, permitting, and construction costs.
3. Technical Memorandum # 3 - Provide a technical memorandum summarizing the research, modeling, and conceptual designs and costs.
4. Meeting - Meet with the City and Simon to discuss the cost estimates.
5. Comment Response and Revisions – Revise the technical memo as needed after one round of review comments from the City and Simon.

D. Additional Feasibility Study Items

1. Verification of stage/outflow rating curves for ZK, UT, and Mopac I ponds. During the feasibility study this need was determined due to possible tailwater interactions between the ponds. Taking advantage of advances in modeling software in recent years, modeling was performed using XP-SWMM to develop more accurate rating curves to place back into the HEC-1 models.
2. Verification of the stage/storage relationship in the ZK pond. Due to new data such as ground survey and LIDAR topography, the existing and proposed conditions storage in ZK was modified to reflect this newer existing conditions data.
3. Attend up to 2 additional meetings as requested by Simon or the City.

II. PRELIMINARY ENGINEERING

Based upon the City approved modeling for the detention and City estimated water quality benefits, PBS&J proposes to provide the following Preliminary Engineering services for this project:

A. Utility Information Research

PBS&J will research existing public utility information including water, wastewater and storm drainage information in the City of Austin and TxDOT public records. We will also

contact private utility companies as evidenced by surface features and improvements to obtain available records of facilities in the immediate vicinity of the work.

B. Preliminary Design and Exhibits

Preliminary design and layout of the proposed wet pond and detention improvements will be prepared and submitted to the City permitting staff for use in the environmental variance process.

C. Agency Meetings

PBS&J will attend meetings with the City to discuss the project, available funding and contract method. PBS&J will work with the Watershed Protection and Development Review Department to coordinate water quality improvement capabilities for the proposed pond expansion. PBS&J will work with the City to quantify the increased benefits obtained by expanding improvements required for the Shops at Arbor Walk project and applying the available space to regional improvements. PBS&J will also attend meetings with the City and TxDOT to coordinate design and access requirements.

III. TOPOGRAPHIC SURVEY

PBS&J will obtain additional topographic information to the south of Lot 1, Stonebridge VII for use in design and preparation of the detention/wet pond construction plans. The scope of this topographic survey will include the following:

- A. Topographic survey of the existing pond from the south line of Stonebridge VII to fifty feet south of the existing drainage pipe into the ponds to the southeast and from the centerline of the railroad to the back of curb of the north bound frontage road of Mopac. The structures connecting the Z-K Pond and the ponds to the southeast will also be located. Topographic information will extend into the ponds to the southeast for approximately 50 feet east of the railroad Right-of-Way.
- B. Location of existing water and wastewater facilities including locations of six wastewater manholes, inverts of nine wastewater manholes and top of nut or top of waterline elevations at six water valve locations.
- C. Location of the closest railroad mile marker.
- D. Location of any trees in the area of the topographic survey, hardwoods eight inches in diameter and above.

IV. FINAL DESIGN

PBS&J will perform final design and prepare construction documents for the expanded wet pond / detention pond improvements in general conformance with the requirements of the City of Austin. Due to the limitations of the site area and elevations, it is anticipated that the desired extended detention volume above the water quality volume necessary to treat the entire contributing runoff will not be available. The wet pond design will provide as much extended detention volume as is reasonably possible within the site constraints while also improving stormwater detention. The scope of the Final Design phase will include the following:

- A. Water quality calculations will be performed and pond volumes will be determined based on hydrologic study information, preliminary City water quality calculations and the City Wet pond criteria. Water balance modeling will also be performed to estimate possible durations of wet/dry periods to assist in plant selection.
- B. A site plan will be prepared to be included in the construction drawings. This site plan will show the pond configuration, inflow and outflow facility configurations, existing utility information and site boundary information.
- C. Grading plans and tree/natural protection plan will be prepared and will reflect preconstruction and post-construction conditions. All protected trees of 8" size and larger will be located and identified.
- D. Wet pond plan, sections and details will be prepared to indicate improvements including slopes, pond liners, base flow by-pass, maintenance access, pond divider, extended detention drain piping, wetlands plant list (provided by others) and other items necessary for pond construction.
- E. Layout the mitigation area and riparian channels through the detention pond bottom.
- F. Pond discharge facilities will be designed to accommodate the deepened conditions. The entrance conditions for the existing 42" pipe culverts will be modified to conform to the deepened pond conditions and new pipe culverts will be designed to drain across the Missouri Pacific Railroad to the existing downstream ponds. It is anticipated that the existing gabion outfall structure will remain in its current configuration. The crossing of the railroad will be bored and cased by methods satisfactory to the railroad. Railroad crossing permitting will be performed by the City of Austin.
- G. Plans for modifications to existing drainage facilities discharging to the pond will be prepared including systems discharging from the Loop 1 right-of-way at several locations. The previously prepared double 8'x5' box culvert design running parallel the east right-of-way of Loop 1 will be revised to discharge into the proposed wet pond configuration. Proposed Arbor Walk drainage system designs will be coordinated. A bypass system will be designed to collect upstream base flows at the end of the proposed double 8'x 5' box culverts and bypassed to trickle channels located beyond the wet pond.
- H. Existing water and wastewater piping across and adjacent to the existing Z-K Pond will be located by field survey of sanitary sewer manhole inverts and valve operating nuts. If pipe depths cannot be determined by field survey, potholing will be arranged to expose the top-of-pipe or encasement. Where shallow cover conditions are anticipated, additional measures will be designed to protect the existing piping. Where manhole, valve stem or other appurtenance adjustments are necessary, they will be called out on the plans.
- I. Maintenance access to the pond forebay and main pool will be designed and detailed. Existing driveway permits issued by the City will be used if suitable for the proposed improvements. After pond access from the Loop 1 north bound frontage road have been defined, plans for access points will be prepared and submitted for TXDOT approval.

- J. Based on the final design of the detention/wet pond improvements, PBS&J will update hydrologic modeling to reflect watershed conditions with the improvements included.
- K. TCEQ dam safety criteria will be followed. Hydrologic modeling will be performed with the appropriate PMF and the ZK dam crest where overtopping occurs will be designed to meet TCEQ dam safety criteria.
- L. Erosion control plans and SWPPP plan will be prepared for construction of the pond improvements using locally recognized best management practices conforming to currently adopted City of Austin and TCEQ requirements. The existing WPAP application will be modified to incorporate the enlarged pond system.
- M. Contract documents and specifications will be prepared for use in bidding and construction of the proposed pond improvements.
- N. Quantities will be estimated from the completed drawings and a construction cost projection will be provided to Simon Property Group and the City of Austin.
- O. A pond maintenance plan will be prepared and submitted to the City.

V. DESIGN COORDINATION / REVIEW STAGE

PBS&J will provide design coordination through the design and agency review phase including the following items:

- A. Coordination will be provided with the City to discuss design considerations and to facilitate maintenance and operation of the proposed facility and we will assist in the preparation of a Community Facilities Contract between Simon Property Group and the City of Austin
- B. The enlarged pond will be included into the ongoing variance process with the City.
- C. Plans for the pond improvements will be submitted to the City of Austin for review. PBS&J will meet with City staff, address comments and revise the construction documents as appropriate. City comments and questions will be addressed in writing along with submittal of revised documents.
- D. Driveway connections and storm drain discharge modification plans will be submitted to TxDOT for review. Comments and questions resulting from TxDOT's review will be addressed during the plan review stage.
- E. Plans will be distributed to private utility companies for coordination purposes.
- F. PBS&J will endeavor to obtain City approval of the construction plans.

VI. BIDDING AND CONSTRUCTION PHASE SERVICES

PBS&J will provide the following services during the bidding and construction phase of the project:

- A. Beginning in the permitting process, we will coordinate bid and construction phase with the City Project Manager assigned to this project.
- B. One month prior the bid process, we will contact the City's Department of Small and Minority Business Resources (DSMBR) to coordinate goals to be included in Volume II of the plans and specifications set.
- C. During the bidding phase, PBS&J will:
 - 1. attend the pre-bid meeting at DSMBR offices to describe the project and address any relevant questions.
 - 2. address project-specific questions from bidders and assist in preparing necessary addenda to all plan holders.
 - 3. assist the Client in the preparation of the bid tabs and determination of qualifications of the low bidder.
- D. We will attend the pre-construction meeting to address project-specific issues related to the project design.
- E. We will make periodic site visits during construction for the purpose of determining if the construction is in general conformance with the plans. We anticipate one weekly site visit over an estimated 8-month time period.
- F. PBS&J will provide the following services during construction:
 - 1. Review the contractor's monthly pay application.
 - 2. Review contractor submittals for materials to be incorporated into the project.
 - 3. Make recommendations on proposed change orders submitted by the contractor.
 - 4. Provide responses to contractor requests for information.
- G. We will attend the final inspection when scheduled by the City of Austin.
- H. We will prepare record drawings based on as-built information provided by the contractor.

VII. REIMBURSABLE EXPENSES

Reimbursable expenses including consultant fees, printing and reproduction costs, courier fees, travel, mileage and other direct costs will be billed separately to the Client at cost.

VIII. SERVICES PROVIDED BY OTHERS

The following services are necessary for the design of this project but are not included in this scope of services:

- A. Landscape design services for the preparation of a Landscape Plan and associated planting lists and details for the Z-K Pond will be performed under a separate agreement between the Owner and the landscape service provider.

- B. Coordination with U.S. Army Corps of Engineers regarding waters of the U.S. will be performed under a separate agreement between the Owner and the service provider.
- C. Coordination with TxDOT regarding permitting of pond maintenance access points from the Loop 1 north bound frontage road will be performed under a separate agreement between the Owner and the service provider.
- D. Coordination with the Missouri Pacific Railroad regarding railroad crossings and work within the railroad right-of-way will be performed by the City of Austin.

IX. ADDITIONAL SERVICES/EXCLUSIONS/ASSUMPTIONS

PBS&J understands that the following scope items have been previously performed, will be provided by governmental agencies or are not necessary. All tasks, including but not limited to the following, are not included in this scope of services but can be provided as additional services.

- A. Permit acquisition for utility crossings of the Missouri Pacific Railroad will be performed by the City of Austin.
- B. The City will provide a review of the 2001 PBS&J hydrologic model to reflect any latest changes that it may be aware of (current impervious cover values recently researched by City, information developed by City for existing on-site detention ponds to be incorporated into model, areas where time of concentration should be re-evaluated by PBS&J, etc.). PBS&J will make requested changes by the City as part of this contract.
- C. Survey or site visits necessary for the watershed investigation phase will be provided as additional services.
- D. In performing the modeling, it will be assumed that the storage, stage, and outflow relationships for detention facilities provided in past models are adequate and will not be verified and/or updated except as described in Scope Item I. D. Pond PSP # 1, however, may be adjusted as part of this contract to reflect field observations.
- E. Hydrologic modeling downstream of US Hwy 183 or any hydraulic modeling will be provided as additional services.
- F. It is assumed that TxDOT driveway permits are available for use as pond maintenance access points from Loop 1 north bound access road. Design changes required due to inability to provide direct access from the Loop 1 frontage road will be performed as additional services.
- G. Drainage conduit serving the Shops at Arbor Walk site will be designed under a separate agreement. Coordination of discharge points is included herein.
- H. Based on information reviewed to date, existing water and wastewater facilities will maintain adequate cover under proposed grading conditions. In some cases, manhole rim adjustments, concrete caps or other protection measures may be necessary to protect existing piping. Design of utility profile adjustments or relocations is not included in this scope of services.
- I. Application and review fees will be provided by Owner.
- J. This proposal assumes that construction staking will be provided by the contractor.
- K. Submittal to TCEQ for dam safety review/permitting is not included in this scope of services.

- L. Water rights/use permitting, if necessary, will be provided by PBS&J as an additional service.
- M. CLOMR / LOMR applications are not included in this scope of services.
- N. Geotechnical borings have been obtained for the land area north of the south line of Lot 1, Stonebridge VII. Additional borings, if necessary, can be performed as additional services through a separate subconsultant agreement.
- O. Detailed construction inspection will be performed by the City of Austin Public Works.

X. SCHEDULE AND COMPENSATION

PBS&J is prepared to begin performing the services described above immediately upon authorization by the Client. PBS&J anticipates submittal of plans to the City of Austin for review on July 14, 2005.

We propose to provide the scope of services described above for the following fees:

<u>No.</u>	<u>Description</u>	<u>Fee Type</u>	<u>Fee Amount</u>	
I.	Watershed Investigation & Feasibility Study	Lump Sum	\$ 32,000.00	642111
II.	Preliminary Engineering	Lump Sum	\$ 20,800.00	642111
III.	Topographic Survey	Lump Sum	\$ 9,400.00	642242
IV.	Final Design	Lump Sum	\$130,100.00	642112
V.	Design Coordination/Review	Not to Exceed	\$ 26,800.00	642112
VI.	Bidding and Construction Phase Services	Not to Exceed	\$ 42,700.00	642112
VII.	Reimbursable Expenses (estimate)	At Cost	\$ 6,000.00	642410
	Grand Total		<u>\$267,800.00</u>	

If this proposal meets with your approval, please indicate your acceptance by attaching this to your modified short form agreement between Owner and Engineer. Upon receipt, we will return fully executed copies to you. If you have any questions, please call me at (512) 327-6840. Thank you for this opportunity to be of service to you.

Sincerely,

Christopher A. Smiley
FOR Scott A. Smiley, P.E. *CIVIL PROGRAM MANAGER*
Civil Division Manager

cc: Bernie Hietbrink, P.E. – PBS&J
Saul Nuccitelli, P.E. – PBS&J
Robert Scholz, P.E. – PBS&J

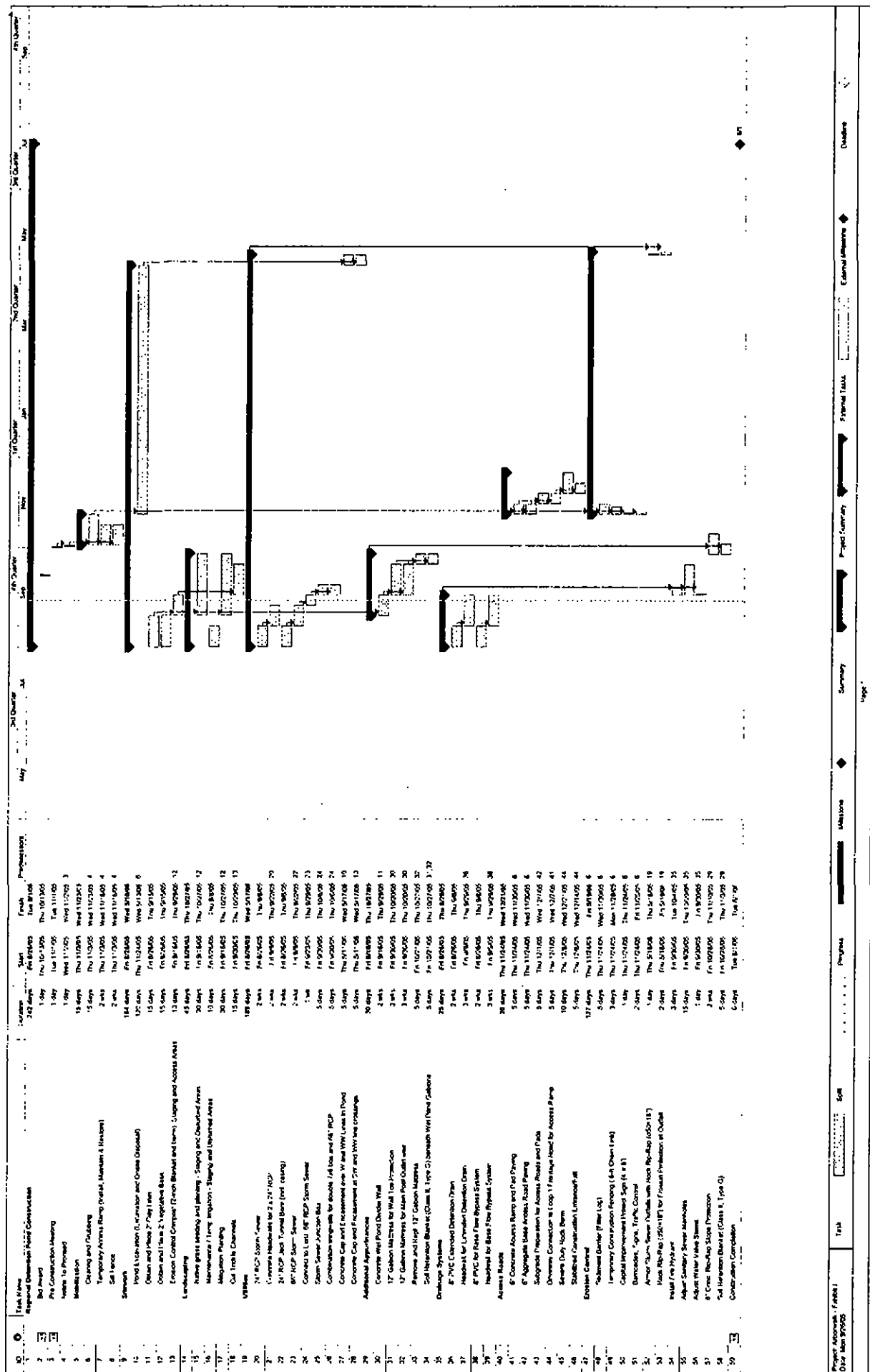


Exhibit F

EXHIBIT G - Maintenance Requirements and Cost Allocation
Z-K POND WATER QUALITY AND STORMWATER DETENTION BASIN
 Estimate of Vegetative Maintenance Costs

Quantities listed are for each year. Total Cost represents annual cost.
 Mowing, weeding and trash collection requirements are described in the Z-K Pond Water Quality and Stormwater Detention Basin Maintenance Manual.

VEGETATIVE MAINTENANCE - YEAR 1 AND YEAR 2

VEGETATIVE MAINTENANCE	LAND AREA	REQUIRED FREQUENCY	Quantity	Units	Unit Price	Total	Simon Cost	City Cost
Turf Mowing of Buffalo Grass to 4" height on east embankment of pond (3:1 slopes, 10' top width).	2.42 acres	Bimonthly between Apr. 1 and Oct. 30 (5 events/year)	4	Event	\$480.00	\$1,920.00		\$1,920.00
Weeding and removal of woody invasive plants (except mitigation area).	2.75 acres	Bimonthly between (throughout the year)	6	Event	\$990.00	\$5,940.00		\$5,940.00
Weeding and removal of woody invasive plants in mitigation area.	3.0 acres	Bimonthly between (throughout the year)	6	Event	\$1,080.00	\$6,480.00	\$6,480.00	
Remove and dispose of trash and debris in vegetated areas and wet pond edge (except mitigation area)	5.17 acres	During each weeding event	6	Event	\$517.00	\$3,102.00		\$3,102.00
Remove and dispose of trash and debris in mitigation area.	3.0 acres	During each weeding event	6	Event	\$300.00	\$1,800.00	\$1,800.00	
TOTAL ANNUAL COST - YEAR 1 AND YEAR 2						\$19,242.00	\$8,280.00	\$10,962.00

VEGETATIVE MAINTENANCE - YEAR 3 AND BEYOND ⁽³⁾

VEGETATIVE MAINTENANCE	LAND AREA	REQUIRED FREQUENCY	Quantity	Units	Unit Price	Total	Simon Cost	City Cost
Turf Mowing of Buffalo Grass to 4" height on east embankment of pond (3:1 slopes, 10' top width).	2.42 acres	Bimonthly between Apr. 1 and Oct. 30 (5 events/year)	4	Event	\$480.00	\$1,920.00		\$1,920.00
Weeding and removal of woody invasive plants (except mitigation area).	2.75 acres	4 times per year (quarterly)	4	Event	\$990.00	\$3,960.00		\$3,960.00
Weeding and removal of woody invasive plants in mitigation area.	3.0 acres	4 times per year (quarterly)	4	Event	\$1,080.00	\$4,320.00	\$4,320.00	
Remove and dispose of trash and debris in vegetated areas and wet pond edge (except mitigation area)	5.17 acres	During each weeding event	4	Event	\$517.00	\$2,068.00		\$2,068.00
Remove and dispose of trash and debris in mitigation area.	3.0 acres	During each weeding event	4	Event	\$300.00	\$1,200.00	\$1,200.00	
TOTAL ANNUAL COST - YEAR 3 AND BEYOND ⁽³⁾						\$13,468.00	\$5,520.00	\$7,948.00

Notes:

1. Above estimated costs based on the following assumptions:
 - a. Buffalo grass mowing - 8 manhours @ \$40/hr + 4 hours equip./supplies @ \$40/hr = \$480
 - b. Weeding - \$320/acre + \$40/acre equip./supplies = \$360/acre
 - c. Remove trash - \$100/ac. (2.5 manhours/acre)
2. Costs included above are for vegetative maintenance only and are for the purpose of allocating costs between City and Simon.
3. Simon cost for vegetative maintenance for year 3 and beyond shall be adjusted annually from the date of the Contract by applying the Consumer Price Index.

METES AND BOUNDS DESCRIPTION

ALL OF THAT CERTAIN 45.782 ACRE TRACT OUT OF THE JAMES ROGERS SURVEY NO. 19 AND THE JAMES P. WALLACE SURVEY NO. 18, TRAVIS COUNTY, TEXAS, BEING OUT OF AND A PART OF THAT CERTAIN 382 ACRE TRACT OF LAND CONVEYED TO THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS BY DEED RECORDED IN VOLUME 994, PAGE 337 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 45.782 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8-inch iron rod found at the intersection of the south right-of-way line of Braker Lane (variable width right-of-way easement according to Deed recorded in Volume 8122, Page 601, Deed Records of Travis County, Texas) and the west right-of-way line of Missouri Pacific Railroad (100 foot right-of-way according to Deed recorded in Volume 36, Page 80, Deed Records of Travis County, Texas) for the northeast corner of herein described 45.782 acre tract;

THENCE, S 18° 32' 05" W, with the west right-of-way line of said Missouri Pacific Railroad, a distance of 3342.71 feet to a 1/2 inch iron rod found at the northeast corner of Lot 1, Stonebridge VII, a subdivision in Travis County according to a plat thereof as recorded in Volume 88, Page 346 of the Plat Records of Travis County, Texas, from which a 1/2 inch iron rod found at the southeast corner of said Lot 1, bears S 18° 30' 30" W, a distance of 839.27 feet;

THENCE, departing the west right-of-way line of said Missouri Pacific Railroad and along the north line of Said Lot 1, N 62° 06' 59" W, a distance of 411.36 feet to a TxDot Type II monument found on the east right-of-way line of Mopac Expressway (Loop 1, variable right-of-way, variable width right-of-way easement according to Deed recorded in Volume 8261, Page 799 of the Deed Records of Travis County, Texas), same being the northwest corner of said Lot 1, from which a TxDot Type II monument found at the southwest corner of said Lot 1 bears S 11° 15' 09" W, a distance of 913.54 feet and a 1/2 inch iron rod found on the west right-of-way line of said Mopac Expressway (Loop 1) bears N 65° 34' 39" W, a distance of 436.26 feet;

THENCE, along the west right-of-line of said Mopac Expressway (Loop 1) the following six (6) courses:

1. N 11° 15' 25" E, a distance of 1391.16 feet to a TxDot Type II monument found,
2. N 15° 38' 43" E, a distance of 1002.72 feet TxDot Type II monument found,
3. N 11° 16' 54" E, a distance of 909.52 feet TxDot Type II monument found,
4. With the arc of a curve to the right having a radius of 5454.58 feet, a central angle of 00° 54' 18" and a chord that bears N 11° 43' 53" E, a distance of 86.17 feet to a TxDot Type II monument found,
5. N 50° 23' 23" E, a distance of 89.75 feet to a 1/2 inch iron rod set with cap stamped "PBS&J" and,

45.782 ACRE TRACT
ARBOR WALK

F.N. NO. 6606 (BA)
September 20, 2005
PBS&J JOB. NO. 441494.00

6. S 87° 58' 38" E, a distance of 81.12 feet to a 5/8 inch iron rod found monumenting the south right-of-way line of Braker Lane (variable width right-of-way easement according to Deed recorded in Volume 8122, Page 601, Deed Records of Travis County, Texas);

THENCE, along the south right-of-way line of said Braker Lane, the following two (2) courses:

1. S 52° 11' 42" E, a distance of 507.08 feet to a 1/2 inch iron rod set with cap stamped "PBS&J";
2. S 62° 08' 44" E, a distance of 155.95 feet to the **POINT OF BEGINNING** of the herein described tract and containing 45.782 acres of land, more or less. Survey sketch accompanies and is a part of this description.

BASIS FOR BEARINGS:


State Plane Coordinate System, NAD 83(93), Texas Central Zone (4203). Controlling monuments used were LCRA control monuments AUST, AZ42 and CW30.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

That I, Burney Akhtar, a Registered Professional Land Surveyor, do hereby certify that the description herein was determined by a survey made on the ground during October 2004 through February 2005 under my supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 20th day of September 2005 A.D.

PBS&J
6504 Bridge Point Parkway
Suite 200
Austin, Texas 78730



Burney Akhtar
Registered Professional Land Surveyor
No. 4768 - State of Texas

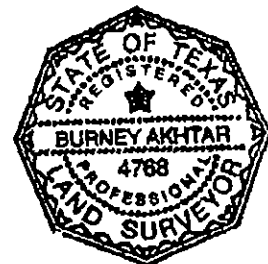


EXHIBIT "A"
METES AND BOUNDS DESCRIPTION

ALL OF THAT CERTAIN 0.238 ACRE STRIP OF LAND OUT OF THE JAMES P. WALLACE SURVEY NO. 18, TRAVIS COUNTY, TEXAS, BEING OUT OF AND A PART OF LOT 1, STONEBRIDGE VII, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK 88, PAGE 346, PLAT RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.238 ACRE STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a TxDot Type II monument found monumenting the east right-of-way line of MoPac Expressway North (Loop 1), variable width right-of-way according to deed recorded in Volume 9637, Page 107, Deed Records of Travis County, Texas, being the northwest corner of said Lot 1, from which a 1/2 inch iron rod found on the west right-of-way line of said MoPac Expressway North (Loop 1) bears N 65°34'39" W, a distance of 436.26 feet;

THENCE, S 62°06'59" E, leaving the east right-of-way line of said Mopac Expressway North (Loop1), with the north line of said Lot 1 and south line of that certain 382 acre tract conveyed to the Board of Regents of the University of Texas by deed recorded in Volume 994, Page 337, Deed Records of Travis County, Texas, a distance of 15.66 feet to a 1/2 inch iron rod set with cap stamped "PBS&J", from which a 1/2 inch iron rod found on the west right-of-way line of Missouri Pacific Railroad (100.00 foot right-of-way according to deed recorded in Volume 36, Page 80, Deed Records of Travis County, Texas) monumenting the northeast corner of said Lot 1 bears S 62°06'59" E, a distance of 395.70 feet;

THENCE, departing the south line of said 382 acre tract, over and across said Lot 1 the following two (2) courses:

1. S 11°15'09" W, a distance of 689.53 feet to a 1/2 inch iron rod set with cap stamped "PBS&J", and
2. N 78°44'51" W, a distance of 15.00 feet to a 1/2 inch iron rod set with cap stamped "PBS&J", in the east right-of-way line of said Mopac Expressway (Loop 1), from which a TxDot Type II monument found monumenting the east right-of-way line of said MoPac Expressway (Loop 1), bears S 11°15'09" W, a distance of 219.53 feet;

0.238 ACRE TRACT
ARBOR WALK

F.N. NO. 6621 (KM)
OCTOBER 7, 2005
PBS&J JOB. NO. 441446.00

THENCE, N 11°15'09" E, with the east right-of-way line of said MoPac Expressway North (Loop 1), a distance of 694.01 feet to the **POINT OF BEGINNING** of herein described strip of land and containing 0.238 acres of land, more or less. Survey sketch accompanies and is a part of this description.

BASIS FOR BEARINGS:

State Plane Coordinate System, NAD 83(93), Texas Central Zone (4203). Controlling monuments used were LCRA control monuments AUST, AZ42 and CW30.

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

That I, Burney Akhtar, a Registered Professional Land Surveyor, do hereby certify that the description herein was determined by a survey made on the ground during November 2004 through June 2005 under my general supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 7th day of October, 2005 A.D.

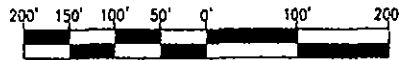
PBS&J
6504 Bridge Point Parkway
Suite 200
Austin, Texas 78730



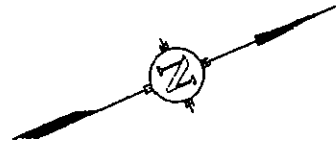
Burney Akhtar
Registered Professional Land Surveyor
No. 4768 - State of Texas



EXHIBIT "A"

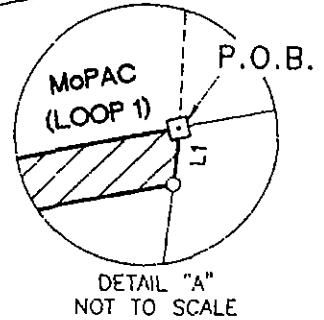


GRAPHIC SCALE
SCALE: 1" = 200'
TRAVIS COUNTY



JAMES P. WALLACE
SURVEY NO. 18

MOPAC-EXPRESSWAY NORTH (LOOP 1)
(VARIABLE R.O.W.)
VOL. 9637, PG. 107
D.R.T.C.T.



CITY OF AUSTIN
VOL. 9673, PG. 520
D.R.T.C.T.

0.238 AC.
ADDITIONAL R.O.W.

LOT 1
STONEBRIDGE VII
BK. 88, PG. 346
P.R.T.C.T.

SEE
DETAIL "A"

BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS
PORTION OF THE
"FIRST TRACT"
382 ACRES
VOL. 994, PG. 337
D.R.T.C.T.

MISSOURI PACIFIC RAILROAD
(100' R.O.W.)
Vol. 36, Pg. 80, D.R.T.C.T.

INDUSTRIAL TERRACE
SECTION FOUR
VOL. 60, PG. 3
P.R.T.C.T.

BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS
PORTION OF THE
"FIRST TRACT"
382 ACRES
VOL. 994, PG. 337
D.R.T.C.T.

LEGEND

- 1/2" IRON ROD SET WITH CAP STAMPED "PBS&J"
- IRON ROD FOUND (1/2" UNLESS NOTED)
- TxDOT TYPE II MONUMENT FOUND
- △ CALCULATED POINT
- P.R.T.C.T. PLAT RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- (XXXX) RECORD COURSE
- P.O.B. POINT OF BEGINNING

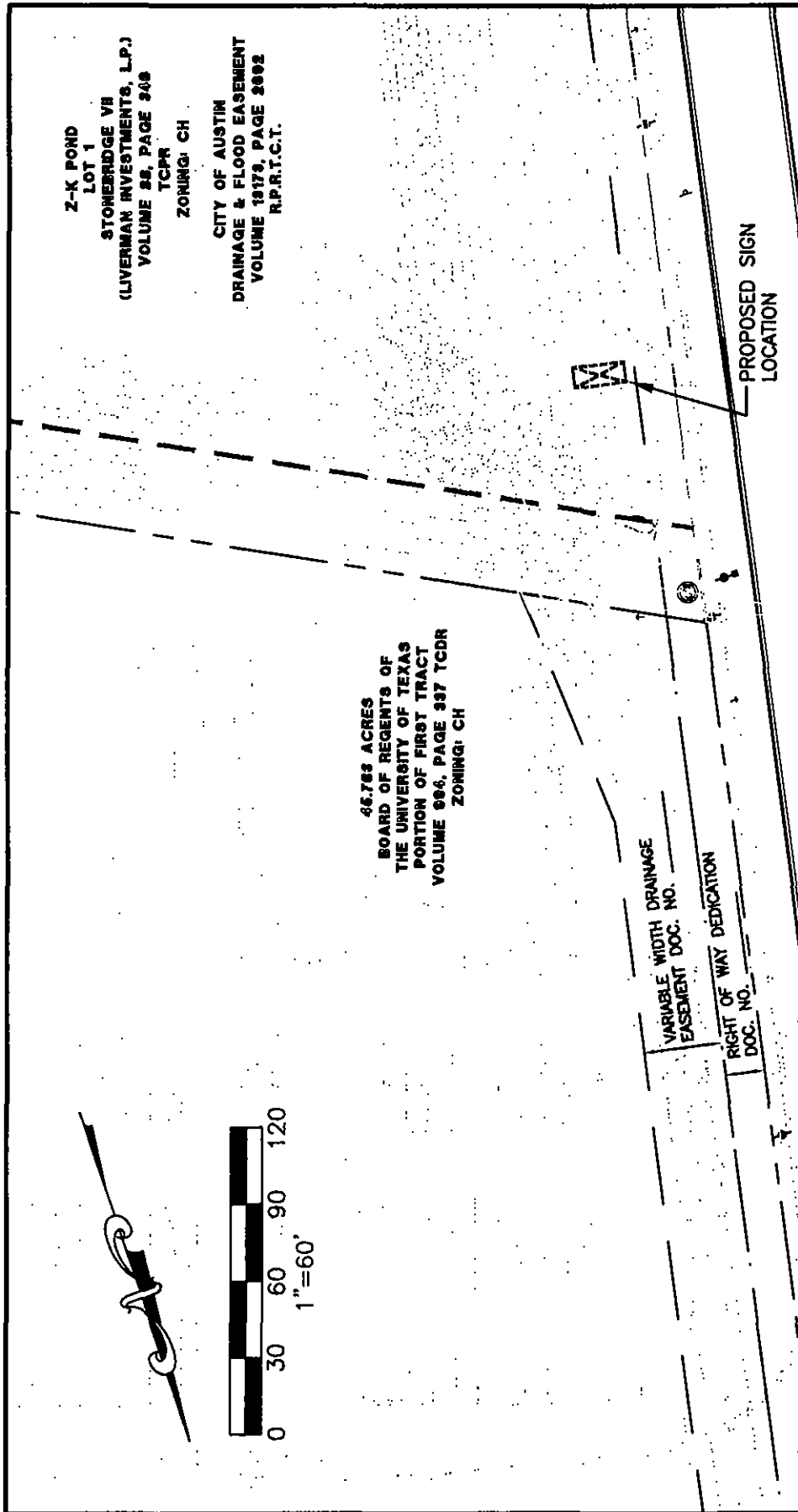
LINE TABLE		
LINE	BEARING	LENGTH
L1	S62°06'59"E	15.66'
L2	N78°44'51"W	15.00'
L3	S11°15'09"W	219.53'


SKETCH to ACCOMPANY FIELDNOTE No. 6621



6504 BRIDGE POINT PKWY
SUITE 200
AUSTIN, TEXAS 78730
(512) 327-6840

0.238 ACRES
OF LAND OUT OF THE
JAMES P. WALLACE SURVEY No.18
TRAVIS COUNTY, TEXAS





6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730-5091
Phone: (512) 327-6840 FAX: (512) 327-2453

ARBOR WALK SOUTH SIGN LOCATION

Prepared for: SIMON	
Job No.: 441448.04 0302	Scale: 1" = 60'
Drawn by: S.R.	
File: K:\Projects\0444\ARBOR WALK\dwg\exhibit\South Sign Exhibit.dwg	

AFTER RECORDING, RETURN TO:

City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767
File Name: SPG Arbor Walk, L.P.
Attn: Mitzi Cotton/Holly Noelke

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2005 Oct 17 02:35 PM 2005193165

HAYWOODK \$176.00

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.