



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 102
AGENDA DATE: Thu 12/15/2005
PAGE: 1 of 3**

SUBJECT: Approve an ordinance authorizing the negotiation and execution of an agreement with Lion Gables Realty Limited Partnership, including an agreement to exchange and vacate right-of-way and public street dedications, to facilitate public improvements in and adjacent to the area known as the Sand Beach Reserve, generally bounded on the north by Lumbermen's Investment Corporation property, on the west by North Lamar Boulevard, on the south by Cesar Chavez and on the east by the Seaholm Power Plant Property, in an amount not to exceed \$2,024,107.

AMOUNT & SOURCE OF FUNDING: Funding in the amount of \$2,024,107 is available in the Fiscal Year 2005-2006 Approved Capital Budgets in the following departments: \$1,867,588 Economic Growth and Redevelopment Services, \$89,519 Public Works and Transportation, and \$67,000 Watershed Protection and Development Review.

FISCAL NOTE: A fiscal note is attached.

REQUESTING Economic Growth and **DIRECTOR'S**
DEPARTMENT: Redevelopment Services **AUTHORIZATION:** Sue Edwards

FOR MORE INFORMATION CONTACT: Austan Librach, Assistant Director / 974-2357; Fred Evins, Redevelopment Project Manager / 974-7131

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The City has initiated efforts to redevelop the Seaholm Power Plant site and extend the Pfluger Bicycle and Pedestrian Bridge north of Cesar Chavez. Adjustments to the infrastructure surrounding Seaholm, particularly roads and parkland, are being proposed to fully utilize the area for community purposes in a manner consistent with the Seaholm District Master Plan.

Several infrastructure improvements are proposed for the Sand Beach Reserve, an area generally bounded on the north by Lumberman's Investment Corporation (LIC) property, on the west by North Lamar Boulevard, on the south by Cesar Chavez, and on the east by the Seaholm Power Plant Property. The infrastructure improvements will improve public access to the Seaholm District from the west, add a water quality meadow, facilitate the preferred alignment of the Pfluger Bridge extension, and consolidate usable parkland.

Lion Gables Realty Limited Partnership (Gables) has contracted with LIC to purchase two tracts of land comprising approximately 4.524 acres, located north of the Sand Beach Reserve between North Lamar Boulevard and the Union Pacific Railroad and adjoining City properties. Gables intends to develop a mixed-use project on the property containing approximately 500,000 square feet of residential, retail and office uses.

Gables has agreed to cost participate in, and provide for the design, construction and maintenance of some of the public improvements in the Sand Beach Reserve. Gables' participation will reduce the City's cost to construct the



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public improvements and provide the City with access through the LIC/Gables property to connect the Pfluger Bridge extension with a proposed pedestrian underpass at Bowie Street and the Union Pacific Railroad.

This Council action would allow the City to enter into a Master Agreement with Gables consistent with the draft agreement attached hereto, having key terms summarized as follows:

- The Master Agreement will replace and supersede the Settlement Agreement between LIC and the City dated January 8, 2001, which recognized access rights to the LIC/Gables property across park roads and parking lots.
- Gables will provide design and construction management for, and cost participate in, certain public improvements as more fully set forth in Community Facilities and Cost Reimbursement Agreements (CFCAs) attached as exhibits to the Master Agreement, which include:
 1. CFCA for Bio-Filtration Meadow, with City cost participation not to exceed \$324,658 (total estimated cost of Bio-Filtration Meadow is \$721,462). The \$67,000 maximum in Watershed Funds for water quality retrofit of existing impervious cover is conditional on the final design of the bio-filtration meadow meeting the criteria established by WPDR for this unique facility.
 2. CFCA for Right-of-Way Improvements, with City cost participation not to exceed \$1,397,805 (total estimated cost of ROW improvements is \$1,884,180).
 3. CFCA for Park Improvements, with no City cost participation (total cost of Park improvements is \$275,000).
 4. CFCA for Pedestrian Path and Bike Path through Gables' private drive, in an easement granted to the City, with no City cost participation (total estimated cost of Pedestrian and Bike Path improvements is \$20,000).
- Gables will be solely responsible for the design, construction and cost of relocating a 30" wastewater line in connection with development of its mixed-use project.
- The public improvements designed and constructed by Gables will be required to comply with applicable laws, regulations and City standards.
- Gables will comply with applicable provisions of the City's minority owned and women owned business enterprise procurement program with respect to those improvements that are subject to reimbursement by the City.
- The City waives fiscal posting requirements for the public improvements encompassed by the CFCAs.
- The City will remain responsible for the design and construction of public improvements in the Sand Beach Reserve area, which include:
 1. Extension of the Pfluger Pedestrian Bridge
 2. Bowie Street Pedestrian Underpass
 3. Lance Armstrong Bikeway
- Gables, the City, and their respective design professionals and contractors will coordinate the design and construction of the public improvements and Gables' mixed-use project.
- If requested by the City at a later date and subject to negotiation and execution of a CFCA, Gables will design and construct a City parking garage on the City-owned Crescent Tract that utilizes a joint access easement with an adjoining Gables parking garage.



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- Gables will match the City's CIP contributions to Art in Public Places in connection with the public improvements, up to \$100,000.
- The City will provide a dedicated review and inspection team to expedite the processing of permits and approvals for the public improvements and Gables' mixed-use project.
- The City will exchange and vacate right-of-way and public street dedications, and dedicate additional park tract(s) created as a result of the reconfiguration of public streets.
- Gables will be responsible for the ordinary and ongoing maintenance of the Park Tracts, (excluding the hike and bike trails in the Park Tracts), Bio-Filtration Meadow, and the Pedestrian Path and Bike Path within Gables' private drive. The City shall be solely responsible for all other maintenance, capital repair, and replacement of the public improvements constructed pursuant to the Master Agreement.
- The City accepts Gables' obligations to fund, design, construct and maintain the Park improvements as sufficient consideration for parkland dedication requirements or fee in lieu of dedication requirements.
- A draft Master License Agreement, which sets out Gables' rights and responsibilities pertaining to construction and maintenance activities on designated portions of City-owned tracts, is attached as an exhibit to the Master Agreement. No license fees will be charged in connection with the public improvements.

**CIP BUDGET
FISCAL NOTE**

DATE OF COUNCIL CONSIDERATION:

15-Dec-05

WHERE ON AGENDA:

Resolution

DEPARTMENT:

Economic Growth and Redevelopment Services

DESCRIPTION: Approve an ordinance authorizing the negotiation and execution of an agreement with Lion Gables Realty Limited Partnership, including an agreement to exchange and vacate right-of-way and public street dedications, to facilitate public improvements in and adjacent to the area known as the Sand Beach Reserve, generally bounded on the north by Lumbermen's Investment Corporation property, on the west by North Lamar Boulevard, on the south by Cesar Chavez and on the east by the Seaholm Power Plant Property, in an amount not to exceed \$2,024,107.

FINANCIAL INFORMATION:

Project Name:	Traffic Signals P1/1998
Project Authorization:	2002-2003 Amended Capital Budget
Funding Source:	1998 General Obligation Bonds, P1
Fund/Agency/Orgrn:	8780-607-2155

Total Current Appropriation	\$2,351,703.00
Unencumbered Balance	\$237,317.00
Amount of this Action	<u>(\$89,519.00)</u>

Estimated Available	<u><u>\$147,798.00</u></u>
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Financial Approval: Rusty Cobern

Date: November 22, 2005

**CIP
Fiscal Note**

DATE OF COUNCIL CONSIDERATION:
WHERE ON AGENDA:
DEPARTMENT:

12/15/2005
Ordinance
Economic Growth and Redevelopment Services

DESCRIPTION: Approve an ordinance authorizing the negotiation and execution of an agreement with Lion Gables Realty Limited Partnership, including an agreement to exchange and vacate right-of-way and public street dedications, to facilitate public improvements in and adjacent to the area known as the Sand Beach Reserve, generally bounded on the north by Lumbermen's Investment Corporation property, on the west by North Lamar Boulevard, on the south by Cesar Chavez and on the east by the Seaholm Power Plant Property, in an amount not to exceed \$2,024,107.

FINANCIAL INFORMATION:

Project Name: Downtown Roadway Improvements
Project Authorization: 2005-06 Approved Capital Budget
Funding Source: Capital Metro Quarter Cent Funding
Number: 8581-257-0470

Current Appropriation	\$ 2,000,000
Unencumbered Balance	2,000,000
Amount of This Action	(1,609,930)
Remaining Balance	<u>\$ 390,070</u>

Project Name: CBD Roadway Improvements
Project Authorization: 2005-06 Approved Capital Budget
Funding Source: Capital Metro Quarter Cent Funding
Number: 8581-257-0011

Current Appropriation	\$ 812,443
Unencumbered Balance	812,076
Amount of This Action	(257,658)
Remaining Balance	<u>\$ 554,418</u>

Financial Manager, EGRSO: Mary Triguero

Date: 11/22/05

CIP BUDGET FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:

15-Dec-05

WHERE ON AGENDA:

DEPARTMENT:

Watershed Protection & Development Review

Description: Approve an ordinance authorizing the negotiation and execution of an agreement with Lion Gables Realty Limited Partnership, including an agreement to exchange and vacate right-of-way and public street dedications, to facilitate public improvements in and adjacent to the area known as the Sand Beach Reserve, generally bounded on the north by Lumbermen's Investment Corporation property, on the west by North Lamar Boulevard, on the south by Cesar Chavez and on the east by the Seaholm Power Plant Property, in an amount not to exceed \$2,024,107.

FINANCIAL INFORMATION:

TOWN LAKE - SAND BEACH GABLES

Project Name:
Project Authorization: 2005-2006 Amended Capital Budget
Funding Source: Urban Watershed Fund
Fund/Agency/Orgn: 4850-617-6218

Total Current Appropriation	\$320,000.00
Unencumbered Balance	\$310,648.50
Amount of this Action	<u>(\$67,000.00)</u>
Remaining Balance	<u>\$243,648.50</u>

Financial Approval:



Date:

11/22/05

GABLES PARK PLAZA MASTER AGREEMENT

This Master Agreement (this "Agreement") is made and entered into by and between Lion Gables Realty Limited Partnership, a Delaware limited partnership ("Gables"), and the City of Austin, a Texas home rule city (the "City"), sometimes collectively referred to as the "Parties".

RECITALS

WHEREAS, Gables has contracted with Lumbermen's Investment Corporation ("Lumbermen's") to purchase those two tracts of land comprising approximately 4.524 acres, located on the eastern side of Lamar Boulevard between the Union Pacific Railroad and adjoining City real property, as more particularly described in Exhibit "A" (the "Property").

WHEREAS, Gables currently intends to develop a mixed-use project on the Property that may include, but not necessarily be limited to, residential, retail, office, and non-commercial uses, as generally depicted on Exhibit "B" (the "Project").

WHEREAS, the City currently intends to construct certain public improvements in the vicinity of the Project, as generally depicted on Exhibits "C-1" through "C-8" (the "Improvements") and as described in Article III.

WHEREAS, the Parties presently desire to coordinate the development and construction of their respective Project and Improvements.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties specifically acknowledge, the Parties agree as follows:

ARTICLE I GENERAL AGREEMENTS

Section 1.01 Master Agreement. This Agreement is intended to encompass all of the agreements between the Parties with respect to the Improvements, including the attached separate exhibits, which are intended to be consistent with this Agreement and which are subject to the General Provisions hereof.

Section 1.02 Effect on Settlement Agreement. The Parties intend that this Agreement will replace and supersede all of the terms of the Settlement Agreement between Lumbermen's and the City dated January 8, 2001 (the "Settlement Agreement"). Any approval or other disposition of the entitlement applications by Gables for the Project, including without limitation any zoning approval, will not constitute and will not be construed as "Project Approval" for any purposes under the Settlement Agreement. Upon the approval of Gables' site plan for the Project, any remaining entitlements created by the Settlement Agreement will terminate.

Section 1.03 Austin City Code Amendment.

- (a) This Agreement is approved by ordinance of the Austin City Council and the ordinance adopting this Agreement is an amendment to the Austin City Code to the extent necessary to give effect to this Agreement. It is specifically acknowledged that all processes required for the enactment of such ordinances have been duly observed.
- (c) To the extent of any conflict with the Austin City Code, the provisions of this Agreement will prevail and be binding on the Parties.

Section 1.04 Budget. This Agreement provides for cost participation by the City and Gables in the design and construction of certain of the Improvements. The City will cost participate in the cost of certain of the Improvements to be designed and constructed by Gables, as described herein, and the City will be responsible for reimbursing Gables for a portion of the costs of such design and construction up to the not to be exceeded amount of TWO MILLION TWENTY FOUR THOUSAND ONE HUNDRED SEVEN AND NO/100 DOLLARS (\$2,024,107.00) without further authorization by the Austin City Council. The City acknowledges that so-called "scope-creep" and market forces may result in bids which exceed the present estimates and the presently available funding.

Section 1.05 Effective Date. This Agreement is effective upon full execution by the Parties, provided however, that obligations of Gables are contingent upon: (i) the approval of the Chapter 26 hearing, (ii) the conditions set forth in Article IX below, and (iii) Gables' acquisition of the Property and the obligations of the City are contingent upon Gables' acquisition of the Property. Gables will notify the City of its acquisition of the Property within three (3) days of closing. This Agreement will have no effect on the Settlement Agreement until Gables acquires the Property.

**ARTICLE II
Design and Management**

Section 2.01 City Standards.

- (a) For the purposes of this Agreement, the "City Standards" to which the Improvements and the Project must be designed and constructed are the applicable written, published requirements of the City Code and City rules and regulations in effect on the date of this Agreement (the "City Standards"), specifically including but not limited to the City's Transportation and Drainage Design Criteria Manuals.
- (b) The Improvements will be designed and constructed in accordance with the City Standards in effect in the date of this Agreement and such City Standards will apply for five years from the date of this Agreement.
- (c) The Project will be designed and constructed in accordance with the written, published

City Standards, as determined in accordance with Chapter 245 of the Texas Local Government Code and in substantial conformance with the Commercial Design Standards developed at the time of execution of this Agreement.

Section 2.02 Improvement Design and Construction Contract Requirements. The construction contract documents for the Improvements will comply with the requirements for a City project, as more fully set forth in Exhibits "D", "F", "G" and "H", below. The design of the Improvements to be undertaken by Gables will be submitted to the City at appropriate intervals for review, comment and approval. The City will be responsible for the design of the Improvements for the extension of the Pfluger Pedestrian and Bicycle Bridge, the Bowie Street Pedestrian and Bicycle Underpass, and the Lance Armstrong Bikeway, which are depicted on Exhibits "C-1", "C-2", and C-3". Gables will comply with the applicable provisions of the City's minority owned and women owned business enterprise procurement program found in Chapter 2-9 of the City Code and Chapter 252 of the Texas Local Government Code with respect to those Improvements that are subject to reimbursement by the City.

Section 2.03 Project Design & City Review. As stated above, the Project will be designed in accordance with applicable City Standards, specifically including but not limited to the applicable portions of the City's Commercial Design Standards or substantial compliance with such Commercial Design Standards, if such standards have not yet been officially adopted at the time of the preparation of the design. In addition, Gables may proceed under and in accordance with any subsequent changes to the City Standards and/or the Commercial Design Standards that enhance or protect the Project without forfeiting any rights hereunder. The design of the Project will be compatible with and provide interconnectivity to the various Improvements, as described in Article III. Signage in the Project will conform to applicable City requirements. In addition, the Parties intend that the Bowie Street Pedestrian and Bicycle Underpass will align with the Pedestrian Path and Bike Path as those Improvements are depicted on Exhibits "C-2" and "C-8".

Section 2.04 Management by Gables. The design and construction of the Improvements to be undertaken by Gables will be managed by Gables and its consultants. Gables will provide a duly qualified and experienced project manager to coordinate its design and construction activities, submittals and approvals with the City.

Section 2.05 City Review and Inspection Team and Project Manager .

- (a) The City will provide a dedicated review and inspection team to expedite processing of all permits and other required approvals for the Project and the Improvements described in this Agreement.
- (b) The City's Economic Growth and Redevelopment Services Office will designate a Project Manager to act on behalf of the City (the "Project Manager") with respect to the day to day administration of this Agreement. The Project Manager will: (i) act as a single point of contact to facilitate communication between the Parties; (ii) schedule project development meetings between the Parties to discuss the Project and the Improvements; and (iii) act as a conflict resolution facilitator in connection with the matters arising under this Agreement.

- (c) The City agrees to use best efforts to expedite the review and approval of the plans and specifications for the Right-of-Way Improvements and the Bio-Filtration Meadow Improvements. In addition, the City's Project Manager will facilitate dispute resolution meetings and communications in connection with the review and approval of the Improvements, the interconnection of the Improvements and the Project, and the Project, itself.

Section 2.06 Right-of-Way Dedication. In order to provide for the development of the Improvements described herein, the City, at its expense, will provide for the timely dedication of the right-of-way necessary for (i) the construction of the Public Streets in coordination with the anticipated construction activities in the right-of-way and (ii) the contemplated access to the Project as set forth in a subsequent site development plan application.

Section 2.07 Park Dedication. The City will also timely dedicate the additional park tract(s) to be created as a result of the reconfiguration of the public streets.

Section 2.08 Design Development. Exhibits "B" and "C-1" through "C-8" depict the approximate location of the Improvements and the layout of the Project, which will be subject to further design development in the site plan process, but which will remain in substantial conformance with the depicted locations.

ARTICLE III IMPROVEMENTS

Section 3.01 Extension of the Pfluger Pedestrian and Bicycle Bridge. The City will design and construct the Pfluger Pedestrian and Bicycle Bridge Extension depicted on Exhibit C-1 at the City's sole cost and expense.

Section 3.02 Bowie Street Pedestrian and Bicycle Underpass.

- (a) The City will design and construct the Bowie Street Pedestrian and Bicycle Underpass depicted on Exhibit C-2 at the City's sole cost and expense. The City agrees that the exterior finish of the visible facade of the Underpass structure facing the Project will incorporate appropriate design elements. The City's Project Manager will coordinate an initial design meeting with the Parties and their consultants to discuss the design of the Underpass. In the event that the design and construction of the Bowie Street Underpass cannot be accomplished within the first twelve (12) months of the construction of the first phase of the Project, the City agrees not to take access for construction purposes to the Bowie Street Underpass project from the Project.
- (b) Gables will design and construct a storm water drainage inlet to collect storm water from the Bowie Street Pedestrian and Bicycle Underpass and provide a connection into the storm sewer serving the Private Drive to outfall at the Bio-Filtration Meadow. Gables will design its storm sewer line with extra capacity to accommodate the increased flows from the Underpass. The City will reimburse Gables the cost of the design and construction of the storm water inlet and the storm sewer connection and any oversizing

of the storm sewer in the Project as a part of the Pedestrian Path and Bike Path Community Facilities and Cost Reimbursement Agreement.

Section 3.03 Lance Armstrong Bikeway. The City will design and construct the Lance Armstrong Bikeway depicted on Exhibit C-3 at the City's sole cost and expense.

Section 3.04 City Parking Garage.

- (a) Gables will provide thirty (30) days written notice to the City of its commencement of the design of the Project's adjacent parking garage ("Adjacent Parking Garage") in the location depicted on Exhibit "B" and Exhibit C-4, which Gables presently anticipates will occur approximately six months after receipt of site plan approval for that phase of the Project, which is a present good-faith estimate only and does not consist of a covenant of time for performance, and the City must notify Gables as soon as practicable, but no later than within thirty (30) days from the date of the receipt of such notice of its intention to participate in the coordinated design of the City Parking Garage depicted on Exhibit C-4 with a requested scope of the number of spaces to be included in the garage with the design of the Adjacent Parking garage for a cost of design not to exceed \$300,000.00. If the City notifies Gables to include the design of the City Parking Garage, the design process will follow the criteria set forth in a Community Facilities and Cost Reimbursement Agreement to be agreed to at the time of commencement of design in substantial compliance with the general terms and conditions of the Community Facilities and Cost Reimbursement Agreements attached to the Master Agreement and entered into by and between the Parties and as otherwise subsequently agreed to by the Parties.
- (b) At the request of the City and subject to the requirement that Gables is prepared to commence the construction of the phase of the Project including the Adjacent Parking Garage, Gables will construct the City Parking Garage. The City must provide its request to construct the City Parking Garage to Gables in a written notice and in a timely manner, but no later than the time at which the construction of the City Parking Garage could be included in the bidding process for the construction of the Adjacent Parking Garage. If the City notifies Gables to include the construction of the City Parking Garage in its bidding process, the construction process will follow the criteria set forth in the Community Facilities and Cost Reimbursement Agreement to be agreed to at the time of the commencement of design as set forth above.
- (c) Construction, maintenance, access to, use (including any shared use) of and revenue allocation from the Parking Garage, and related matters, will be set out in a separate agreement(s) between Gables and the City.
- (d) The City will reimburse Gables the full cost of the design of the City Parking Garage up to the not to exceed amount of \$300,000.00 and, if Gables constructs the City Parking Garage, the cost of the construction of the City Parking Garage on terms and conditions to be mutually agreed to by the Parties, which may include the financing of the Improvements over a period of time.

- (e) The design of the Adjacent Parking Garage and the City Parking Garage will be compatible in design and will accommodate the phased future construction of the City Parking Garage. In the event that the design and/or construction of the City Parking Garage is not included in the design and/or construction of the Project, the City will be responsible for the future design and/or construction of the City Parking Garage and will not take construction access through or over the Project without the express written consent of Gables. In addition, if the design and/or construction of the City Parking Garage is not included with the construction of the Adjacent Parking Garage, the City will design and/or construct the City Parking Garage in accordance with the plans and specifications provided by Gables hereunder or in accordance with a design and plans and specifications which are compatible with the Adjacent Parking Garage.

Section 3.05 Bio-Filtration Meadow. As more fully described in Exhibit "D", Gables will design and construct the Bio-Filtration Meadow depicted on Exhibit "C-5" and the City will reimburse Gables a portion of the cost of the design and construction of the Bio-Filtration Meadow, which will be designed to capture and treat storm water runoff from the Project and the drainage area depicted or described on Exhibit "E". In connection therewith, the City specifically authorizes Gables and its successors and assigns to use of the Bio-Filtration Meadow and the City's storm sewer system to convey, capture and treat storm-water run-off from the Project, subject to applicable City Standards.

Section 3.06 Right-of-Way Improvements. Gables will (i) design and construct the Public Streets depicted on Exhibit "C-6", (ii) remove the existing pavement of Sandra Muraida Way and the access easements described in Section 4.03 and other paved areas when the Public Streets have been completed, (iii) provide for any required utility relocations associated with such street construction, (iv) design and construct the traffic improvements, and (v) design and (in coordination with the City) construct the traffic signal improvements, all as more fully described in Exhibit "F" and the City will reimburse Gables a portion of the cost of the design and construction of the improvements generally described in this paragraph and more specifically described in attached Exhibit "F", hereinafter referred to as the "Right-of-Way Improvements."

Section 3.07 Park Improvements. As more particularly described in Exhibit "G", Gables will design, construct, and fund \$275,000.00 of the cost of the Park Improvements, excluding the hike and bike trails to be located in the Park Tracts, (the design and construction of which will be approved by the City, as provided in Section 2.01 above) and as generally depicted on Exhibit "C-7". Gables will post fiscal security for \$275,000.00 of Park Improvements and such fiscal will be released to Gables upon completion and acceptance of the Park Improvements.

Section 3.08 Pedestrian Path and Bike Path. As more particularly described in Exhibit "H", Gables will design and construct the Pedestrian Path and Bike Path Improvements in the Project through the area of the Private Drive depicted on Exhibit "B" and Exhibit "C-8" in a dedicated easement, and the City will reimburse Gables a portion of the cost of such design and construction. The plan of the Private Drive, including the Pedestrian Path and Bike Path, is depicted on attached Exhibit "I". The City acknowledges that the design of the Pedestrian Path and Bike Path Improvements has been developed with input from the City, from a City

consultant, and public comment. The City will reimburse Gables the cost of the design and construction of the storm water inlet and the storm sewer connection and any oversizing of the storm sewer described in Section 3.02 above as a part of the Pedestrian Path and Bike Path reimbursement, if any.

Section 3.09 Thirty Inch Wastewater Line Relocation. In connection with its development of the Project, Gables will provide for any necessary relocation of the City's 30 inch wastewater line (the "Wastewater Line"), depicted on Exhibit "J", in accordance with applicable City Standards. The City consents to the relocation of the wastewater line into an easement located within the area of the Private Drive on the Project, provided that the exact location of the wastewater line and the wastewater easement to be dedicated pursuant to Article IV will be determined at the time of the approval of the site plan for the Project, subject to final engineering and approval by the applicable City departments. If the City requests or requires any increase in the size or scope of the wastewater line beyond applicable City Standards for the Project, the City will reimburse Gables a portion of the cost of the design and construction of the wastewater line in accordance with Chapter 25-9 of the City Code.

Section 3.10 Coordination of Design. The Parties and their respective professional consultants will coordinate and cooperate in the design of the Improvements, including the construction of the Improvements to be undertaken solely by either party. In doing so, the respective consultant contracts will provide that the consultants will attend a reasonable number of meetings to determine the scope and the schedule of the Improvements and the consultants will provide the other consultants with reasonable access to their designs and data related to the development of the design of the Improvements. In addition, said consultants will coordinate and cooperate with the consultant designing the Project in the development of the design of the Improvements and their relationship to the Project. In addition, the Parties anticipate that the City will design and construct the proposed Lance Armstrong Bikeway in the area of the Improvements prior to or at the time of the design and construction of the Improvements and the Parties and their respective consultants will coordinate and cooperate in the development of their respective Improvements with the Lance Armstrong Bikeway.

Section 3.11 Coordination of Construction. The Parties and their respective contractors will coordinate and cooperate in the construction of the Improvements and the Project, including the construction of the Improvements to be undertaken solely by the City. In doing so, the construction contracts for the Parties' respective projects shall, without creating any liability on the part of the Parties, themselves, include provisions which substantially comply with the following:

- (a) The contractor specifically acknowledges that a major construction project or projects will be in progress in the area adjoining the "Work", which is the subject of this contract, during the construction of the Work. The contractor must plan and prosecute the Work in such a manner and sequence that there will be no substantial interference, interruptions or delays to the operations of the other contractors. In planning and executing the sequence of Work, the contractor must take into consideration the progress and state of completion of the other existing project(s).

- (b) The contractor shall prepare a comprehensive schedule for the Work in the form of a bar chart or other schedule method approved by the City and Gables, which shall take into account the coordination to be required with the multiple construction projects constituting the Improvements and the Work, itself.
- (c) It is anticipated that other work, including utility construction and adjustment, may be in progress when contractor begins construction and during construction.
- (d) The contractor shall participate in up to three initial meetings and, if required by the Parties, a series of additional meetings to be scheduled by the Parties with the other separate contractors and appropriate representatives of the Parties' forces in order to review their separate construction schedules and formulate the coordination of multiple project activities. The ultimate purpose of the meetings will be to formulate a revised schedule to coordinate the prosecution of the Work with the other projects in such a manner as to avoid or minimize any interference with the schedule of the Work. The Parties and the contractor(s) agree to and shall make such reasonable revisions to the multiple construction schedules as deemed reasonably necessary by the Parties and the contractors, taking into consideration the other schedules, in order to provide for the logical sequencing and coordination of the Work with the other projects. The resulting construction schedules will be used by contractor for the prosecution of the Work in coordination with the work of other contractors, until subsequently revised.
- (e) During construction of the Work, the contractor shall make commercially reasonable efforts to allow (i) proper and safe access to the site, (ii) free ingress and egress over the right of way, and (iii) a reasonable opportunity for the introduction of materials and equipment and the execution of such other work.
- (f) Contractor shall properly connect and coordinate the Work with the work of others, as required and necessary to make the several parts of the Work properly come together with such other work. Contractor shall not damage or endanger any work of others by cutting, excavating or otherwise altering their work and will only cut, excavate or alter their work with the written consent of the affected Parties' representatives and the other contractor(s) whose work will be affected.
- (g) To the extent that any delays resulting from the conditions and scheduling issues described above are beyond the reasonable control of both the respective Parties and contractors, the affected contractor will be provided an appropriate extension of time, but no additional compensation will be allowed for any hindrance or delays in construction operations that may be attributed to observance of the requirements outlined in this Section, unless such delays result from an inability to work on all areas of the Work or such substantial portions of such Work that Contractor is unable to reasonably prosecute the critical path of the Work in which event the respective party and the contractor will negotiate a reasonable change order for such delays.

Section 3.12 Special Events. The City, acting by and through its Project Manager, will endeavor to timely inform Gables of the schedule for any special events in order to minimize any interference with construction activities and the Parties' respective construction contracts must provide that the respective contractors will agree to and acknowledge that their construction activities may have to be scheduled to facilitate certain special events. The City's Project Manager will provide Gables with the currently projected schedule for special events which may impact the area of the Improvements and will provide updated schedules as available.

ARTICLE IV EASEMENTS

Section 4.01 Private Drive Easements.

In addition to those easements required for public service and emergency service vehicles, public utilities, the 30 inch Wastewater Line, and storm water lines in the Private Drive, required as part of the site plan approval process for the Property, including the portion of the Private Drive on the Bowie Street Right-of-Way tract described herein, Gables will grant to the City an easement on, over, under and across the portion of the Private Drive, as generally depicted on Exhibit "B" for pedestrian path and bike path purposes, in the form attached hereto as Exhibit "K" with the exact area of the easement to be determined by an on-ground survey. The easement will be executed and placed in escrow with Heritage Title Insurance Company of Austin pursuant to an escrow agreement to be approved by Gables and the City Law Department, which will be released and recorded upon completion of the Bowie Street Pedestrian and Bicycle Underpass project by the City.

Section 4.02 Bowie Street Right of Way Exchange.

- (a) Subject to the requirements of Section 272.001 of the Texas Local Government Code, the parties agree that (i) the City will exchange, abandon, release and quitclaim to Gables its interest in the portion of the Bowie Street Right-of-Way described as lying to the south of the northern property line of the Property in a Quitclaim Deed and (ii) Gables will (a) exchange and dedicate a Wastewater Easement to the City for the thirty inch (30") City wastewater line, which is located in and under the Property, in the City's standard form of Wastewater Line Easement, provided that the easement will allow for the relocation of the wastewater line at Gables' sole cost and expense and will contain a special rather than a general warranty of title, and (b) exchange, abandon, and release and quitclaim to the City its interests in the public streets dedicated by (1) implication, as determined in a lawsuit between the State of Texas, the City and the Missouri Pacific Railway Company, Cause No. 477,213 in the 201st Judicial District Court of Travis County, Texas, affirmed by the Third Court of Appeals in Case No. 3-92-466-CP (2) ordinance as set forth in Ordinance No. 85-0110-X, and (3) the private right-of-access easements in the deed to the 0.609 acre parcel recorded at Document No. 2002000252 of the Official Public Records of Travis County, Texas, depicted on Exhibit "B". The forms of the respective Quitclaim Deeds and Wastewater Line Easement are attached hereto as Exhibits "L-1",

“L-2”, and “L-3”, respectively.

- (b) The exchange is subject to the requirement set forth in subsections 272.001(b) of the Texas Local Government Code that the City’s interest must be exchanged for not less than the fair market value of the City’s interest, as determined by an independent appraisal obtained by the City, including a transaction partly for cash. Gables agrees to accept, as full consideration for the exchange described above, the Bowie Street Right-of-Way parcel described above and Gables further agrees, if the appraisal of the tracts to be exchanged indicates that the City’s interest is in excess of the interests of Gables, to pay the City any such excess value in cash upon delivery and exchange of the Quitclaim Deeds and Wastewater Line Easement. In addition, the exchange is subject to the vacation of the Bowie Street Right-of-Way remnant described below.**
- (c) In addition, the Quitclaim Deeds will be subject to the following conditions:**

 - (1) The Quitclaim Deed from the City to Gables will be executed, delivered and exchanged subject to easements to be retained for a public utility easement, a portion of the Pedestrian Path and Bike Path Easement, and to the extent applicable, the storm sewer inlet and storm sewer line easement to provide drainage from the area of the Bowie Street Pedestrian and Bicycle Underpass. Subject to the site planning process, the locations of such easements will be further defined by metes and bounds surveys and re-recorded in separate documents.**
 - (2) The Quitclaim Deed from Gables to the City will be executed and exchanged and placed in escrow with Heritage Title Insurance Company of Austin pursuant to an escrow agreement to be approved by Gables and the City Law Department, which will be released and recorded when the Bowie Street Right-of-Way has been vacated and the reconfigured Public Streets described herein have been constructed, completed and accepted by the City and are available to replace Gables’ rights of access.**
- (d) Subject to Section 1.05 above, the Parties will execute and deliver the respective Quitclaim Deeds described above within thirty (30) days of the date of this Agreement.**

Section 4.03 Vacation and Release of Easements.

- (a) At such time as reconfigured Public Streets are dedicated, completed and accepted by the City and Gables has established alternate access to the Property, the City will vacate the public streets dedicated by implication as determined in a lawsuit between the State of Texas, the City and the Missouri Pacific Railway Company, Cause No. 477,213 in the 201st Judicial District Court of Travis County, Texas, affirmed by the Third Court of Appeals in Case No. 3-92-466-CP and to the street right-of-way dedicated by Ordinance No. 85-0110-X, in a form to be approved by Gables and the City Law Department, such approval not to be unreasonably withheld or denied..**
- (b) In addition, upon the exchange and the escrow of the Quitclaim Deeds and Wastewater Line Easement, as described above, the City will vacate the portion of the Bowie Street Right-of-Way described above or will proceed to expeditiously complete such vacation.**

Section 4.04 Construction Staging Areas. Subject to the permitting requirements set forth in the City Code, the City will grant Gables construction staging areas in the areas of the access easements defined in the Settlement Agreement and underlying judgment for the construction of the Improvements. In addition, subject to the permitting requirements set forth in the City Code and the approved phasing and schedule for the Project and the Improvements as set forth in Sections 7.01 and 7.02 below, the City will grant Gables a construction staging area in the 0.609 acre City right-of-way parcel described in that certain deed recorded at Document No. 2002000252 of the Official Public Records of Travis County, Texas, in connection with the construction of the Improvements and adjacent portions of the Project.

Section 4.05 City Parking Garage Easement. When the Project has received zoning, site development plan approval, and, as a condition to the issuance of a building permit for the phase of the Project that includes the Adjacent Parking Garage, Gables will grant to the City an easement for joint access over, upon and across the entrance to Gables' adjacent Project parking garage, as generally depicted on Exhibit "B", for access to the City Parking Garage, in the form of an easement(s) to be approved by Gables and the City Law Department. The easement will provide that it will only be effective when the City Parking Garage has been constructed and the City has received a Temporary Certificate of Occupancy for the City Parking Garage. In the event that the City constructs the City Parking Garage prior to the construction of the Adjacent Parking garage, Gables will convey to the City an access easement for access to the City Garage within 30 days of written request by the City on terms and conditions acceptable to Gables and the City Law Department.

Section 4.06 Lamar Boulevard Service Driveway. In connection with the development of the phase of the Project adjacent to Lamar Boulevard, the City will grant a driveway permit or other permission, such as inclusion on an approved site plan, to Gables for access from Lamar Boulevard to its truck loading area in the Project on, over, upon and across the portion of the Lamar Boulevard right-of-way generally depicted on Exhibit "B", subject to and in accordance with applicable City requirements, including but not limited to the applicable portions of Chapter 25-6 of the City Code, the City's Transportation Criteria Manual and the City Drainage Criteria Manual.

ARTICLE V FUNDING

Section 5.01 General. The Parties will fund their respective share of the cost of the Improvements as set forth in Exhibit "M" and as more particularly described in Exhibits "D", "F", "G", and "H" attached hereto. In addition, Gables will fund \$275,000.00 for the design and construction of the Park Improvements described in Sections 3.07 above and 5.03 below.

Section 5.02 Fees. Gables will pay all fees applicable to the Project and the Improvements, excluding the Bowie Street Pedestrian and Bicycle Underpass, the Pfluger Pedestrian and Bicycle Bridge Extension, the Lance Armstrong Bikeway, and, if applicable, the Thirty Inch Wastewater Line Relocation, and the City will reimburse Gables a percentage of the fees for the construction of the Improvements as set forth in Exhibit "M" and as more particularly described

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in Exhibits "D", "F", "G" and "H" attached hereto. The City agrees that fiscal posting requirements are inapplicable to and will be waived for the Right-of-Way, Bio-Filtration Meadow, Park and Pedestrian Path and Bike Path public Improvements.

Section 5.03 Parkland Dedication and Improvement The City agrees and finds that the negotiated obligations for the funding, design, construction and maintenance of the Park Improvements to be undertaken by Gables hereunder, constitute sufficient consideration for any and all parkland dedication requirements or fee in lieu of dedication requirements that would otherwise apply to development of the Project, regardless of whether any plat or re-plat of the Property is approved or other subdivision of the Property occurs, provided that this agreement and finding is limited to the development of the Project, as described herein and in the attached exhibits, and is inapplicable to any other project or any other development of the Property.

Section 5.04 License Fees. The cost of the designated Improvements and maintenance to be undertaken by Gables hereunder to City infrastructure, including the Bio-Filtration Meadow, the Right-of-Way Improvements, the Park Improvements, and Pedestrian Path and Bike Path, described in Exhibits "C-5" through "C-8" constitutes a present public benefit and, subject to continued maintenance by Gables, no license fees, including the application fee, the annual fee and the escrow fee, will be charged in connection with the Improvements.

Section 5.05 Reallocations. The City funding described in Section 1.04 is intended to provide full funding for the City's financial obligations for the development of the public Improvements described herein. Without affecting in any way any other reallocation provisions in this Agreement or in the attached Exhibits, the Parties will reasonably consider, to the extent allowed by law or other written agreement, the reallocation of any and all amounts of funding described in this Agreement or in the attached Exhibits (whether characterized as contributions, reimbursements, or otherwise) from one category of Improvement to another such that to the extent possible the full aggregate amount of the City's and Gables' credits and contributions for the Improvements may be made available to the Parties in connection with the development of the Improvements, including the phasing and separate completion and acceptance of separate Improvements, but excluding the Bowie Street Pedestrian and Bicycle Underpass and the Pfluger Pedestrian and Bicycle Bridge Extension, and, as applicable, the Thirty Inch Wastewater Line Relocation. The Parties acknowledge that certain sources of City funding may be restricted to specifically allocated purposes. To the extent allowed by Texas law, the Austin City Code, and this Agreement, the City will consider its funding as a pooled source of funding available for the payment of individual component Improvements, as the same are completed and accepted by the City, so that payment may be made from the total pool of funding rather than from funds specifically designated for the estimated costs of a particular component part of the Improvements. In doing so, any cost savings with respect to one category of the Improvements will be considered for the funding of other categories of the Improvements.

Section 5.06 Art in Public Places Fee. The City will comply with the Art in Public Places requirements of Chapter 7-2 of the City Code in the construction of the Improvements on the basis of its percentage shares of the cost of the Improvements and Gables will match the City's contribution up to the amount of \$100,000.00. The Parties will jointly prepare recommendations for the use of the public art fees, but acknowledge that the ultimate award of the public art fees is

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subject to the City's then current policies regarding public art, provided that the City Manager will approve the final selection and location of the public art projects and will consider Gables recommendations in granting any such approval. The Parties agree that the first priority for the public art in the vicinity of the Project and the Improvements will be in the largest contiguous Park Tract created by the construction of the Public Street Improvements or as otherwise subsequently agreed to by Gables and the City Manager.

ARTICLE VI LICENSES FOR CONSTRUCTION IN CITY PROPERTY

Section 6.01 Master License Agreement. As more particularly described in the draft Master License Agreement attached as Exhibit "N", Gables will perform certain construction and maintenance activities on certain designated portions of City-owned tracts. The final Master License Agreement will be approved by the City Manager or designee.

Section 6.02 Construction Permitting. Whenever Gables is required or permitted to perform construction activities wholly or partially off of the Property, the Parties will coordinate and cooperate in the application and issuance of any necessary permits or licenses.

ARTICLE VII PERFORMANCE AND PAYMENT

Section 7.01 Time for Performance. Subject to all of the terms and conditions of this Agreement, Gables will construct the Improvements described in this Agreement in the estimated timeframes set out on the schedule attached as Exhibit "O" which represent present good-faith estimates only and do not consist of a covenant of time for performance. In the event that the necessary approvals for the construction of the Improvements are not granted in accordance with the estimated timeframes set forth in the attached schedule, the timeframes will be tolled until such approvals have been obtained and construction may proceed and the timeframes will be extended accordingly. The City's presently anticipated schedule for the design and construction of the Pfluger Pedestrian and Bicycle Bridge, the Bowie Street Pedestrian and Bicycle Underpass, and the Lance Armstrong Bikeway Improvements is included in Exhibit "O" which schedule represents a present good-faith estimate only and does not consist of a covenant of time for performance.

Section 7.02 Phasing. The Project and the Improvements may be developed and constructed in separate and distinct phases. Similarly, the funding described in Section 5.01 of this Agreement may be used in whole or in part in different phases of development of the Improvements, as necessary or desirable. The estimated phasing of the construction of the Right-of-Way Improvements is set out on Exhibit "P" hereto.

Section 7.03 Completion and Acceptance. The separate Improvements described in Sections 3.04 to 3.08 and Exhibits "D", "F", "G", and "H" may be individually considered "complete" for purposes of approval, acceptance and reimbursement by the City. The City will perform interim inspections of the Improvements within two (2) working days and final inspections of the Improvements within ten (10) working days after a request for inspection is received, and, if

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completed in accordance with the terms of the Plans and Specifications and the requirements of the applicable Community Facilities and Cost Reimbursement Agreement in all material respects, will certify the Improvements as being in compliance with City Standards, and issue a final acceptance letter, accepting the Improvements for operation and maintenance. The final acceptance letter will be the effective date of "completion" for the purposes of this Agreement. The inspections and certifications will be conducted in accordance with standard City policies, procedures, and requirements. The City will provide Notice to Gables within two (2) working days, whenever a completed inspection reveals that the Improvements are not constructed or completed in accordance with the Plans and Specifications or are otherwise materially defective. The Notice will specifically detail any deficiencies. The foregoing notwithstanding, inspection of construction by the City is not a guaranty that construction of the Improvements is free from defects or complies with all applicable laws. In the event of a dispute regarding any notice of failure to complete the construction of the Improvements in accordance with the applicable plans and specifications, either party may request in writing a dispute resolution meeting with the City's Project Manager. The meeting will be held within three business days of such a request and the Parties agree that the recommendations of the Project Manager will be given due consideration in the resolution of the dispute. If the Parties are not satisfied with the recommendations of the Project Manager, the matter may be appealed to the Director of the applicable City department with jurisdiction over the Improvements in question and thereafter to mediation, as allowed by this Agreement.

Section 7.04 Reimbursement and Payment.

(a) Gables will initially pay for all costs associated with the design and construction of the Improvements in a timely manner. The City will reimburse Gables the portion of the design and construction costs of the Improvements, approved in accordance with the applicable Community Facilities and Cost Reimbursement Agreement, after Gables has constructed and the City has accepted the Improvements or a designated portion of the Improvements for operation and maintenance. The City's participation in the cost of the Improvements may include third party contributions. Subject to the requirements of the applicable Community Facilities and Cost reimbursement Agreement, the City will reimburse Gables for the design and construction costs of the Improvements within 30 days after final acceptance.

(b) The eligible costs for reimbursement will include the so-called "hard costs" of construction, as evidenced by the amounts paid to the general contractor for the performance of the Work, and the so-called "soft costs" of the fees to be paid under this Agreement, design fees, the construction management fee, permitting and inspection fees, and other professional services fees, but will exclude the costs of Gables' financing and Gables' accounting, and legal fees.

ARTICLE VIII MAINTENANCE

Section 8.01 Maintenance and Repair of Park Tracts, Pedestrian Path and Bike Path and Bio-Filtration Meadow. Gables will be responsible for the ordinary and ongoing maintenance and repair of the Park Tracts (excluding the hike and bike trails in the Park Tracts), the Pedestrian Path and Bike Path, certain streetscape improvements adjacent to the Project, and the

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Bio-Filtration Meadow, constructed in accordance with Gables' approved site plan and as added by Gables through an amendment to the Master License Agreement, including, but not limited to, mowing, landscaping, and litter control (including but not limited to trash receptacle maintenance), and routine silt abatement for the Bio-Filtration Meadow, but excluding storm sewer lines and box culverts, and excluding those improvements added by the City or third parties. Gables will also be responsible for the cost of any utility service utilized in connection with such maintenance and repair. The City will be responsible for the major repair and maintenance of the Park Tracts (and the ordinary and ongoing maintenance of the hike and bike trails in the Park Tracts), Pedestrian Path and Bike Path and Bio-Filtration Meadow and the future capital costs of any such repairs, including repairs to and maintenance of any storm sewer lines and box culverts. Major repairs and maintenance are defined as those made necessary by extraordinary or unforeseen events and include, but are not limited to, repair of significant portions of such sites, and repairs and/or replacement of walls, weirs, pipes, outlet structures, filter bed or other structural components of any bio-filtration meadow area. Major repair and maintenance will be performed to substantially the same level of quality as the original improvement. The City will be responsible for any maintenance and/or repair of the Park Tracts or Bio-Filtration Meadow resulting from any special events permitted or otherwise allowed by the City on or adjacent to such tracts, specifically including but not limited to litter control. Gables will provide for routine animal waste control and clean-up on the Park Tracts.

Section 8.02 Public Infrastructure Maintenance. Except as set forth in Section 8.01, the City shall be solely responsible for the maintenance, capital repair, and replacement of the Improvements and any other associated public improvements constructed pursuant to this Agreement.

Section 8.03 Assignment of Warranties. Upon substantial completion of the construction of any given Improvement, Gables will assign the contractor's warranty for the construction of that Improvement to the City, excluding any portion of such warranty pertaining to Gables' Project. Except as set forth in Sections 8.01 and 8.02, Gables will have no maintenance obligation for any given Improvement to the extent that the maintenance of such Improvement is covered by a warranty that has been assigned to or is otherwise held by the City.

Section 8.04 Master License Agreement. The maintenance rights and responsibilities of Gables and the City will be more particularly set forth in the Master License Agreement to be entered into by and between the Parties.

Section 8.05 Contingent Obligation. The maintenance rights and responsibilities of Gables hereunder are contingent upon reimbursement by the City in accordance with the provisions of this Agreement.

ARTICLE IX CONDITIONS PRECEDENT

Section 9.01 Conditions Precedent to Gables' Obligations. Notwithstanding anything in this Agreement to the contrary, the Parties expressly agree and acknowledge that Gables has no obligation whatsoever to construct any of the Improvements described in this Agreement

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separately or independently of Gables' construction of the Project. If Gables does not construct the Project, Gables will not be required to construct the Improvements and any fiscal security posted by Gables for the construction of the Improvements will be returned to Gables. Gables shall not be obligated to undertake or complete any action otherwise required of Gables hereunder, unless at any given time each and every one of the following conditions has been satisfied as determined in Gables' sole, reasonable judgment (provided, however, that Gables may waive any such condition by providing Notice of that waiver to the City, and provided further that Gables' performance hereunder is also subject to all of the other terms and conditions of this Agreement):

- (a) Gables has received from the City any and all approvals necessary for construction of the Project and the Improvements then contemplated for construction, excluding the Bowie Street Pedestrian and Bicycle Underpass and the Pfluger Pedestrian and Bicycle Bridge Extension, including (i) (approval of) infrastructure plans, budgets, development schedules, and construction contracts for the development of the Project, (ii) a site development permit(s), and (iii) a building permit(s);
- (b) Any subdivision required for development of the Project has been completed and a subdivision plat(s) therefor filed in the Official Public Records of Travis County, Texas; and
- (c) The transactions required for the exchange and vacation of the Bowie Street Right-of-Way and the access easements described in Article IV have been completed or are otherwise subject only to those conditions agreed to by the Parties.

Section 9.02 City Scheduling. The City will review and approve the actual schedule for the construction of the Improvements prior to the commencement of construction of any individual Improvement.

ARTICLE X LENDER PROTECTION

Section 10.01 Collateral Assignments of Interests. In order to fund its obligations hereunder, Gables may borrow money from a lender, whether one or more or acting through an agent (a "Lender"), which may require Gables to mortgage, pledge, collaterally assign, or otherwise transfer or encumber its rights and interests in this Agreement to Lender as collateral for Lender's loan (collectively, an "Encumbrance"), provided, however, that any such Encumbrance shall comply with the requirements set forth herein, including, but not limited to the requirements that there can be no Encumbrances on City infrastructure and/or property and that partial subordinations of any Encumbrances and subsequent releases with respect to the Improvements may be required in connection with any loan proceeds used in connection with the construction or maintenance of the Improvements. Notwithstanding the foregoing, Gables may not mortgage, pledge, collaterally assign, or otherwise encumber its rights and interests in Property subject to City easements described herein, unless the Lender subordinates the

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Encumbrance to the easements or the Lender specifically acknowledges and consents to the easements.

Section 10.02 Lender Succeeding to Interests. If a Lender succeeds to the interest of Gables hereunder, the City shall be bound to such Lender in accordance with all of the terms of this Agreement; provided, however, that the City shall be under no obligation to pay amounts to such Lender until such payment is otherwise due and payable, and the City receives notice from such Lender that Lender has succeeded Gables hereunder. If a Lender does succeed to the interest of Gables hereunder, such Lender shall be bound to the City under all of the terms, covenants and conditions hereof; provided, however, that such Lender shall not be obligated to construct or complete all or any part of the Project or any Improvement.

Section 10.03 Notice Prior to Default. If Gables defaults in the performance of any of its obligations under this Agreement, the City will, prior to exercising any remedy or taking any action with respect to such default, give written notice of default to Gables and all Lenders. Gables and its Lenders will have the right, but, as to Lender, not the obligation, to cure such default. If such default is not cured within the initial 30 day cure period set forth in Section 11.02, the City will give a second written notice to such effect to all Lenders. Upon receipt of the second written notice, a Lender will have an additional 30 days in which to cure the event of default and, except for actions to protect the public health and safety, the City will not take any action with respect to such default, including termination of this Agreement for such additional 30 day period, which may be reasonably extended in the case of any default which cannot with diligence be cured within said 30 day period, if the Lender proceeds promptly to cure such default and thereafter prosecutes the completion of the curing of such default with diligence and continuity. In any event, if any Lender delivers notice to the City that such Lender is commencing foreclosure or other enforcement action, all cure periods hereunder shall be extended, subject to the Lender proceeding with prompt, diligent and continuous cure efforts, as reasonably necessary to complete such enforcement action.

Section 10.04 Additional Agreements. Upon a Lender's request, the City will execute and deliver to any Lender no more than once a year an estoppel certificate to be approved by the City Law Department in connection with any construction financing for the Project or Improvements. If the City terminates this Agreement by reason of Gables major, uncured default, the City may enter into a novation agreement with a Lender(s) succeeding to Gables interest, effective as of the date of such termination, incorporating this Agreement.

Section 10.05 Lender Released. If a Lender succeeds to Gables' position hereunder and then subsequently transfers its position hereunder to a third party, subject to terms and conditions reasonably acceptable to the City Manager, such Lender shall be released and relieved of all liability hereunder for those matters arising after such transfer.

ARTICLE XI GENERAL PROVISIONS

Section 11.01 Termination.

(a) The Parties may terminate this Agreement at any time by mutual agreement. In the event of any such termination, the Parties shall coordinate the clean up and removal of any pending construction and the required reconstruction of any City infrastructure and the City will reimburse Gables the amount of its costs of construction of the Improvements to date of termination and the reasonable construction costs associated with such termination.

(b) Either Party may terminate this Agreement for the major, uncured default of the other Party of its obligations under this Agreement subject to the notice and cure provisions stated herein. A major, uncured default includes a failure to perform a permitting, construction, or payment obligation of a party hereunder, which affects the material rights of the other party, provided that written notice of any such default must be given to the allegedly defaulting party within three (3) days and the allegedly defaulting party will have a reasonable amount of time, not to exceed twenty (20) days in which to cure such default, provided, if the party attempting to cure such default diligently prosecutes the cure, the time to effect the cure will be reasonably extended for the period of time necessary to fully cure the alleged default. In the event that the City terminates Gables for a major default, the City shall have the right to complete any uncompleted Improvements and the obligations of Gables for its proportionate share of the cost thereof will survive any such termination.

(c) At any time during the term of this Agreement, the City may take such immediate action as is reasonably required in the City's sole discretion to protect the public health and safety with respect to the construction or maintenance of the Improvements or any part thereof without terminating the Agreement or otherwise being considered in default hereunder.

Section 11.02 Notice of Default; Opportunity to Cure; Remedies; and Mediation.

(a) If a Party alleges that the other has defaulted in the performance of any obligation hereunder, and subject to any different notice and cure provisions expressly set forth in this Agreement, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.

(b) If the event of default continues beyond the 30-day notice and cure period provided above (or, if such default is not reasonably susceptible to a cure within the 30-day period and the other Party has not commenced and continued to diligently pursue such cure), the Party shall have the right to enforce the terms and provisions of this Agreement by seeking such legal or equitable relief to which the non-defaulting Party may be entitled.

(c) If a dispute arises under this Agreement, the mediation provisions in Section 11.04 will apply, provided, however, that the Parties may mutually agree to first refer the matter to other alternative dispute resolution proceedings. The Parties agree that any such alternative dispute resolution or mediation will be conducted in good faith.

Section 11.03 Warranty Obligations. As provided in Section 8.03, upon substantial completion of any Improvement constructed by Gables' contractors pursuant to this Agreement, Gables will promptly assign to the City any and all contractual warranties and product or

material warranties that apply to such construction and/or Improvement, excluding any portion of such warranty applying to Gables' Project. Except as may otherwise be specifically provided in this Agreement, Gables does not guarantee either the performance or quality of the work undertaken or materials used by any contractor or subcontractor undertaking such construction. With respect to such construction for which warranties have been assigned, **GABLES DISCLAIMS ANY AND EVERY WARRANTY OR GUARANTY OF PERFORMANCE, QUALITY, SUITABILITY FOR ANY AND EVERY PARTICULAR PURPOSE WHATSOEVER, AND THE CITY HEREBY ACKNOWLEDGES AND ACCEPTS SUCH DISCLAIMER.**

Section 11.04 Mediation. In the event of a dispute between the Parties hereunder, either Party may refer the dispute to mediation. The Parties will attempt to agree on the selection of a mediator, but if the Parties cannot agree, the Parties agree to request that the Dispute Resolution Center of Austin select an appropriate mediator for the dispute. Any dispute requiring mediation in accordance with the terms of this Agreement may be settled by mediation in Austin, Texas, pursuant rules agreed to by the Parties. The Parties agree that mediation is an appropriate forum for dispute resolution hereunder. Each Party will pay its own costs of any such mediation.

Section 11.05 Liability and Responsibility. Each Party is and will be responsible for its own proportionate share of any liability for injury or death to any person or damage to any property, including environmental liability, under applicable statutory, administrative and case law, as finally determined by a court or administrative agency of competent jurisdiction, arising out of or connected in any way to this Agreement and the performance of the obligations of the Parties hereunder, to the exclusion of any responsibility of the other Party for any such liability.

Section 11.06 Entire Agreement. This Agreement, including the attached Exhibits referenced herein, is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control. Unless specifically indicated otherwise in the other document, these General Provisions apply to every ancillary document attached as an Exhibit hereto as if more fully set forth in such other document. If there is a conflict between this Agreement and the specific provisions of any of the attached Exhibits, the Exhibit shall control. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either party.

Section 11.07 Other Instruments, Actions. The Parties hereto agree that they will take such further actions and execute and deliver such other consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

Section 11.08 No Third Party Beneficiaries. Except as expressly provided herein with respect to any Lender, nothing herein will be construed to confer upon any person other than the Parties hereto any rights, benefits or remedies under or because of this Agreement.

Section 11.09 No Joint Venture, Agency. This Agreement will not be construed in any form or manner to establish a joint venture or agency, either express or implied, by and among the Parties

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hereto.

Section 11.10 Applicable Law & Continued Performance. This Agreement will be construed under and according to the laws of the State of Texas and other applicable federal and municipal laws and ordinances, including the City Standards as of the date of this Agreement, subject to revisions thereto for health and safety purposes, and specifically including the provisions of Article XI, Section 5, of the Texas Constitution. This Agreement shall be contingent upon approval by the Austin City Council of a City operating budget for each City fiscal year which identifies sufficient funds that have been appropriated for payment of the City's obligations under this Agreement. In the event that such funding is not so appropriated and approved, this Agreement shall terminate automatically on the last day in the fiscal year for which sufficient funds were budgeted and appropriated for this Agreement, subject to the following provisions. Any action or termination due to non-appropriation of funds will not be construed as a default under this Agreement. Notwithstanding the foregoing, in the event that this Agreement would terminate due to non-appropriation, Gables may elect to continue to perform its obligation to diligently prosecute the completion of any Improvement(s), which it had commenced prior to the date of a non-appropriation termination event. In the event that Gables completes an Improvement after such an event, subject to the applicable provisions of the Community Facilities And Cost Reimbursement Agreement for that Improvement and the provisions of this Agreement, the City will reimburse Gables for the City's share of the cost of the Improvement to the extent of available funds. To the extent that funding is not available to reimburse Gables, upon completion of the Improvement, Gables may submit close-out documentation with accompanying cost information to the City in accordance with the requirements of the Community Facilities and Cost Reimbursement Agreement for that Improvement and the City will consider the close out documentation and cost information as a claim, which may be paid with further Council approval.

Section 11.11 Severability. The provisions of this Agreement are severable, and if any part of this Agreement is held to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion.

Section 11.12 Force Majeure. If, by reasons of Force Majeure, any Party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its Effective Date, then such Party will give written Notice of the particulars of the Force Majeure to the other Party or Parties within a reasonable time after the occurrence of it. The obligations of the Party giving the Notice, to the extent affected by such Force Majeure, will be suspended during the continuance of the inability claimed and for no longer period. "Force Majeure" means and refers to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts, governmental laws, regulations or restrictions, or any act, omission, delay, or neglect of the other party or any of such other party's employees or agents, or any other event or occurrence beyond the reasonable control of the party having an obligation to perform under this Agreement, provided, however, that the City's failure to budget the funds necessary to perform its obligations hereunder shall not be considered an event of Force Majeure.

Section 11.13 Cooperation. The Parties agree that each will reasonably cooperate with the

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other Party in furtherance of the objectives of this Agreement as stated herein, including, without limitation, by executing and delivering ancillary agreements, by delivering approvals, and otherwise, and shall in all respects deal with each other fairly and in good faith.

Section 11.14 Personal Jurisdiction and Venue. The parties agree that jurisdiction and venue for any suit arising hereunder will lie in Travis County, Texas.

Section 11.15 Counterparts. The Parties may execute this Agreement in one or more duplicate originals.

Section 11.16 Notices. Any notices or other communications required or permitted to be given under this Agreement will be deemed delivered within three business days after deposit in the U.S. mail, registered mail, return receipt requested, addressed to the receiving Party as set forth below, with a copy sent by facsimile. Notices sent by any other method, including hand delivery and overnight delivery, will be deemed delivered only if and when actually received. Notice may be delivered by facsimile, with confirmation, if hard copy of the Notice is simultaneously mailed to the recipient, in which event the date of the facsimile confirmation will be deemed to be the date of delivery.

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

GABLES:

Lion Gables Realty Limited Partnership
6850 Austin Center Boulevard, Suite 200
Austin, Texas 78731
Attn: Alexa Knight
Telephone: (512) 502-6010
Facsimile: (512) 502-6009

And

Lion Gables Realty Limited Partnership
2925 Briarpark, Suite 1220
Houston, Texas 77042
Attn: Ben Pisklak
Telephone: (713) 784-4144
Facsimile: (713) 784-4650

With Copies to:

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

CITY OF AUSTIN:

City of Austin
Economic Growth and Redevelopment
Services Office
301 W. 2nd Street
Austin, Texas 78701
Attn: Sue Edwards, Director
Telephone: (512) 974-7820
Facsimile (512) 974-7825

And

City of Austin
Economic Growth and Redevelopment
Services Office
301 W. 2nd Street
Austin, Texas 78701
Attn: Austan Librach, Assistant Director
Telephone: (512) 974-2357
Facsimile (512) 974-7825

With Copies to:

City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701
Attn: Gordon Bowman,
Assistant City Attorney
Telephone: (512) 974-2346
Facsimile (512) 974-6490

The Parties will have the right from time to time to change their respective addresses upon written Notice to the other Party given as provided above. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 11.17 No Waiver. Any waiver of any provision of this Agreement will not be deemed to constitute a waiver of any other provision or any other agreement between the Parties and will not be deemed to constitute a continuing waiver unless expressly provided for by written

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amendment to this Agreement, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the City, Gables, or their successors or assigns, whether the violations are known or not, shall not constitute a waiver or estoppel of the right to do so.

Section 11.18 Governmental Authority. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of the facilities constructed under the terms of this Agreement which are to be operated and maintained by the City, except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same. This Section is not intended, however, to modify or limit the express obligations of the City under this Agreement.

Section 11.19 Assignability. It is acknowledged that Gables will act as the master developer for the development of the design and construction of the Right-of-Way Improvements, the Bio-Filtration Meadow, the Park, and the Pedestrian Path and Bike Path Improvements. It is contemplated that Gables or its permitted successor or assign will also provide for the design and construction of the City Parking Garage. This Agreement is not assignable by Gables without the prior written consent of the City Manager of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Gables will provide the City with sufficient information with which to evaluate the proposed successor entity. Notwithstanding the foregoing, (i) Gables may mortgage, pledge, collaterally assign, or otherwise transfer or encumber its interest in this Agreement to a Lender in connection with the development of the Project and (ii) Gables may transfer its interest hereunder to an affiliate, and in the event of an occurrence under either clause (i) or (ii) of this sentence, the prior written consent of the City Manager is not required. For purposes of this Agreement, "affiliate" means any entity that controls, is under common control with, or is controlled by Gables. Any such permissible assignment shall be in writing, and the assignee shall accept the rights and responsibilities of Gables hereunder. Gables shall provide the City a true and correct copy of any such written assignment promptly following its execution and delivery. In addition, it is contemplated that Gables maintenance obligations may be assigned to an owners association of the owners and lessees in the Project which may assume maintenance responsibility for the Project and the applicable portions of the Improvements as set forth in the Master License Agreement.

Section 11.20 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

Section 11.21 Interpretation of Terms, and Incorporation of Exhibits and Recitals. Except where the context otherwise clearly requires, in this Agreement: Words imparting the singular will include the plural and vice versa. All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length herein; References to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns. The recitals set forth beginning on the first page of this Agreement are incorporated herein for all purposes.

Section 11.22 Expiration of Reimbursements. The reimbursements to Gables for the

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construction of the Improvements will be subject to any applicable offsets described herein and will be available to Gables until the completion of construction of all of the Improvements to be constructed through Gables, but not longer than ten (10) years from the effective date of this Agreement, which time period is subject to extension by mutual agreement.

Section 11.23 Amendment and Ancillary Agreements. Any amendment to this Agreement must be in writing, and signed by the duly authorized representatives of the Parties hereto. Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties. The City Manager will have the authority to negotiate and execute amendments to this Agreement without further City Council action, but only to the extent necessary to implement and further the clear intent of this Agreement, but not in such a way as would constitute a substantive modification of the terms and conditions hereof. The City Manager is further authorized to negotiate and execute all documents necessary to accomplish the intent of this Agreement, but which do not substantively modify this Agreement, including agreements for the reallocation of funding as described above.

Section 11.24 Memorandum of Agreement. The Parties or either party may prepare a Memorandum of Agreement, setting forth the rights and obligations of the Parties hereunder, and by agreement or after 30 days notice to the other party, the Parties or a party may file the Memorandum of Agreement in the Official Public Records of Travis, County, Texas.

Section 11.25 City Construction and Gables Reimbursement. Notwithstanding anything to the contrary in this Agreement, the City may design and/or construct any of the Improvements in its discretion and, if the City elects to design and/or construct any Improvement contemplated to be designed and constructed by Gables hereunder, Gables or its successors or assigns, as the case may be, will reimburse the City the percentage of such cost of the Improvement, which is not the responsibility of the City under this Agreement and its exhibits, in accordance with Exhibit M, at the time of subsequent plat or site development permit approval.

Executed as of _____, 2005.

Signature Pages Follow.

APPROVED AS TO FORM:

By: _____

Assistant City Attorney

CITY OF AUSTIN:

By: _____
Toby Hammett Futrell
City Manager

APPROVED AS TO CONTENT:

By: _____
Sue Edwards, Director
Economic Growth and Redevelopment Services Office

By: _____
Austan Librach,
Economic Growth and Redevelopment Services Office

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2005, by Toby Hammett Futrell, as City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.
(SEAL)

Printed/Typed Name of Notary
My Commission Expires: _____

**LION GABLES REALTY LIMITED
PARTNERSHIP, a Delaware limited
partnership**

By: Gables GP, Inc.
a Texas corporation,
its sole general partner

By: _____
Ben Pisklak, Vice President

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2005, by Ben Pisklak, Vice President, of Gables GP, Inc., a Texas corporation, general partner of Lion Gables Realty Limited Partnership, a Delaware limited partnership, of said corporation and partnership.

(SEAL)

Printed/Typed Name of Notary
My Commission Expires: _____

Exhibit "A": Legal Description of Property
Exhibit "B": the "Project"
Exhibits "C-1" through "C-8": the "Improvements"
Exhibit "D": Community Facilities and Cost Reimbursement Agreement for Bio-Filtration Meadow
Exhibit "E": Drainage Area
Exhibit "F": Community Facilities and Cost Reimbursement Agreement for Right-of-Way Improvements
Exhibit "G": Community Facilities and Cost Reimbursement Agreement for Public Park Improvements
Exhibit "H": Community Facilities and Cost Reimbursement Agreement for Pedestrian Path and Bike Path Improvements
Exhibit "I": Pedestrian Path and Bike Path Plan
Exhibit "J": Wastewater Line
Exhibit "K": Pedestrian Path and Bike Path Easement
Exhibits "L-1", "L-2", and "L-3": Quitclaim Deeds and Wastewater Line Easement
Exhibit "M": Funding
Exhibit "N": Draft Master License Agreement
Exhibit "O": Estimated Schedule for Construction of Improvements
Exhibit "P": Estimated Construction Phasing of Right-of-Way Improvements

EXHIBIT 'A'

2.582 ACRE
LUMBERMEN'S INVESTMENT
CORPORATION

FN 04-272(MM)
JULY 30, 2004
BPI JOB NO. 1159-01.92

DESCRIPTION

OF 2.582 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, OUT OF OUTLOT 11, DIVISION 2 OF THE ORIGINAL CITY OF AUSTIN, BEING A PORTION OF THAT CERTAIN 3.19 ACRE TRACT CONVEYED TO LUMBERMEN'S INVESTMENT CORPORATION BY DEED OF RECORD IN VOLUME 12038, PAGE 535 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 2.582 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found at the southeasterly corner of that certain 1.94 acre tract being Lot A, Jetco Partners International Resubdivision One, a subdivision of record in Book 83, Page 184A of the Plat Records of Travis County, Texas, same being the southwesterly corner of said 3.19 acre tract, also being in the agreed upon Boundary line between Lumbermen's Investment Corporation and the City of Austin of record in Document No. 2001013549 of the Official Public Records of Travis County, Texas for the southwesterly corner hereof;

THENCE, leaving said Boundary Line Agreement of record, along the common line of said 3.19 acre tract and said Lot A, Jetco Partners International Resubdivision One, the following four (4) courses and distances:

- 1) N26°28'47"E, a distance of 222.40 feet to a 1/2 inch iron rod found;
- 2) N65°11'45"W, a distance of 53.96 feet to a 1/2 inch iron rod found;
- 3) N36°00'59"E, a distance of 153.54 feet to a 1/2 inch iron rod found;
- 4) N31°18'32"E, a distance of 22.34 feet to a 1/2 inch iron rod found, being the northeasterly corner of said Lot A, Jetco Partners International Resubdivision One, same being in the westerly line of Missouri Pacific Railroad Right-of Way;

THENCE, N31°37'22"E, a distance of 6.92 feet to a 1/2 inch iron rod found at the northwesterly corner of said 3.19 acre tract, being in the westerly line of the Missouri Pacific Railroad Right-of-Way (R.O.W. Varies) and the northwesterly corner hereof, being the point of curvature of a non-tangent curve to the right;

EXHIBIT 'A'

FN NO. 04-272 (MM)
JULY 30, 2004
PAGE 2 OF 2

THENCE, along said non-tangent curve to the right, along a portion of the northerly line of said 3.19 acre tract, being a portion of the westerly line of the Missouri Pacific Railroad Right-of-Way, having a radius of 520.00 feet, a central angle of $57^{\circ}48'02''$, an arc length of 524.58 feet and a chord which bears $S25^{\circ}50'12''E$, a distance of 502.62 feet to a PK nail set in concrete for the northeasterly corner hereof;


THENCE, leaving the westerly line of Missouri Pacific Railroad right-of-way, over and across said 3.19 acre tract the following two (2) courses and distances;

- 1) $S20^{\circ}22'13''W$, a distance of 45.27 feet to a cotton spindle set for the southeasterly corner hereof;
- 2) $N74^{\circ}57'47''W$, a distance of 321.98 feet to a calculated point in the southerly line of said 3.19 acre tract, same being the aforementioned Boundary Line Agreement of record;

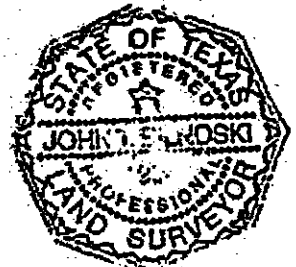
THENCE, $N49^{\circ}56'23''W$, along said Boundary Line Agreement of record, being the southerly line hereof, a distance of 62.77 feet to the POINT OF BEGINNING, containing an area of 2.582 acres (112,470 sq. ft.) of land, more or less, within these metes and bounds.

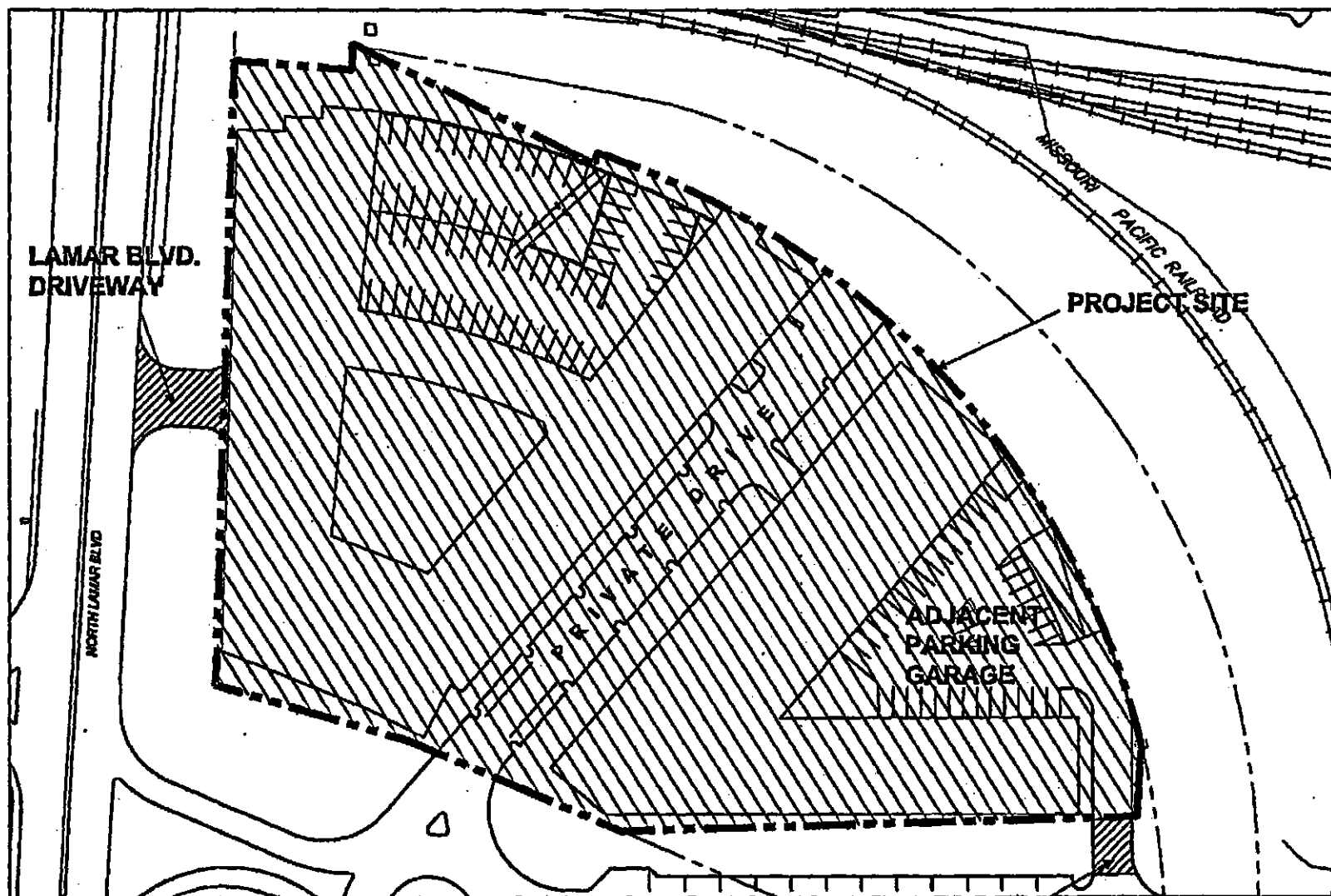
I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A LAND TITLE SURVEY WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERS-SURVEYORS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746


JOHN T. BILNOSKI
NO. 4998
STATE OF TEXAS

7/30/04
DATE





PROPOSED JOINT
ACCESS DRIVE

EXHIBIT B

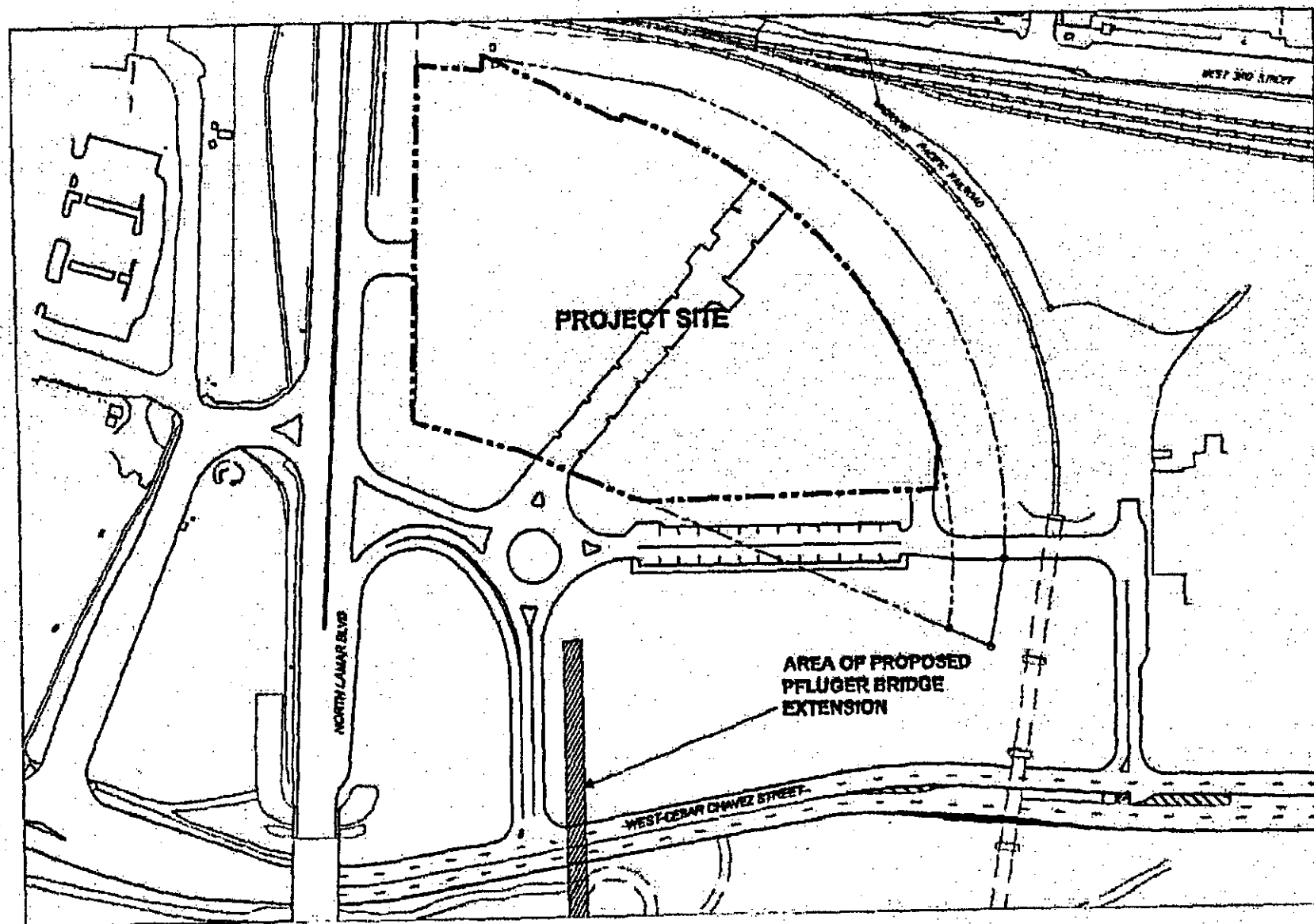


EXHIBIT C-1

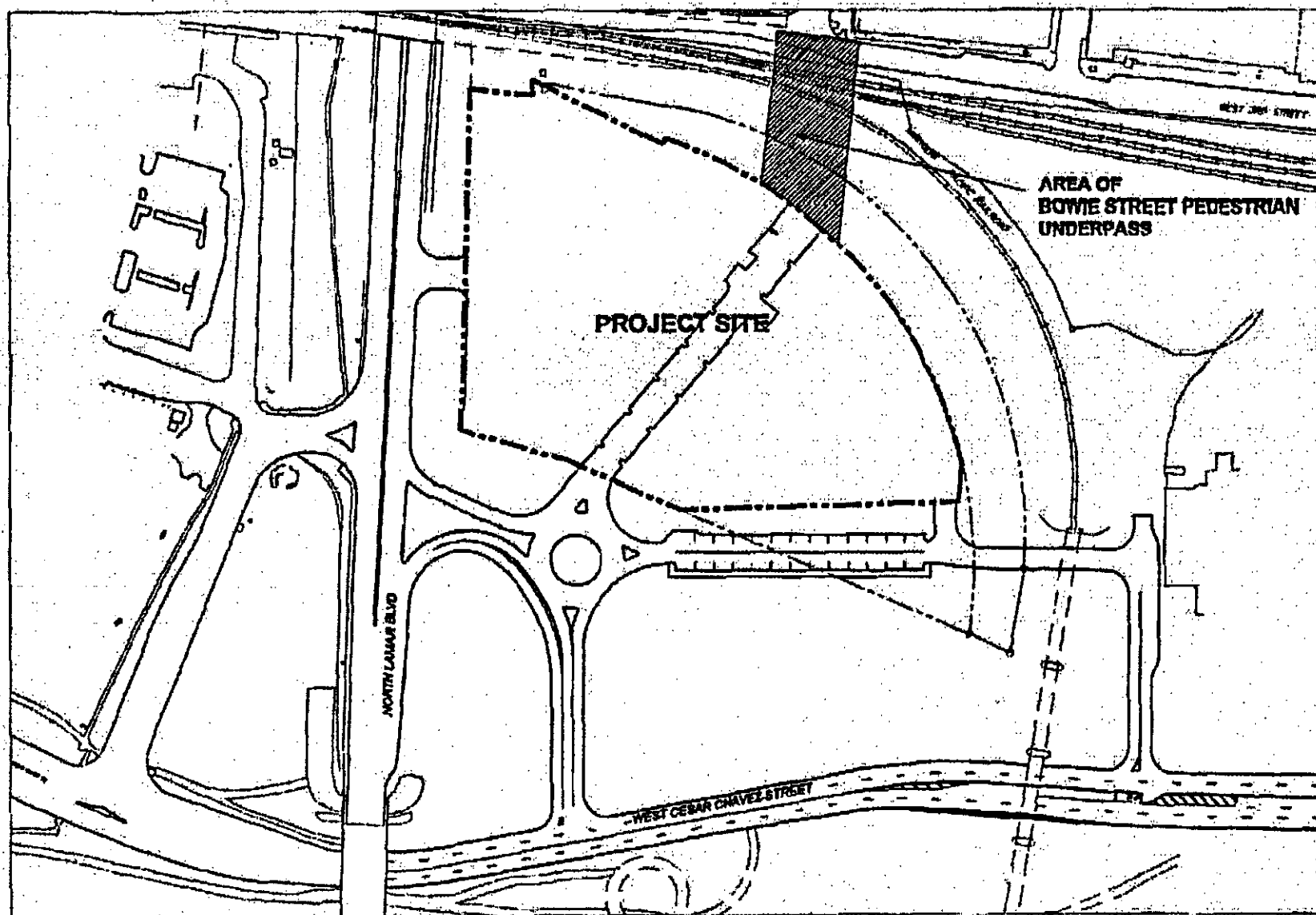


EXHIBIT C-2

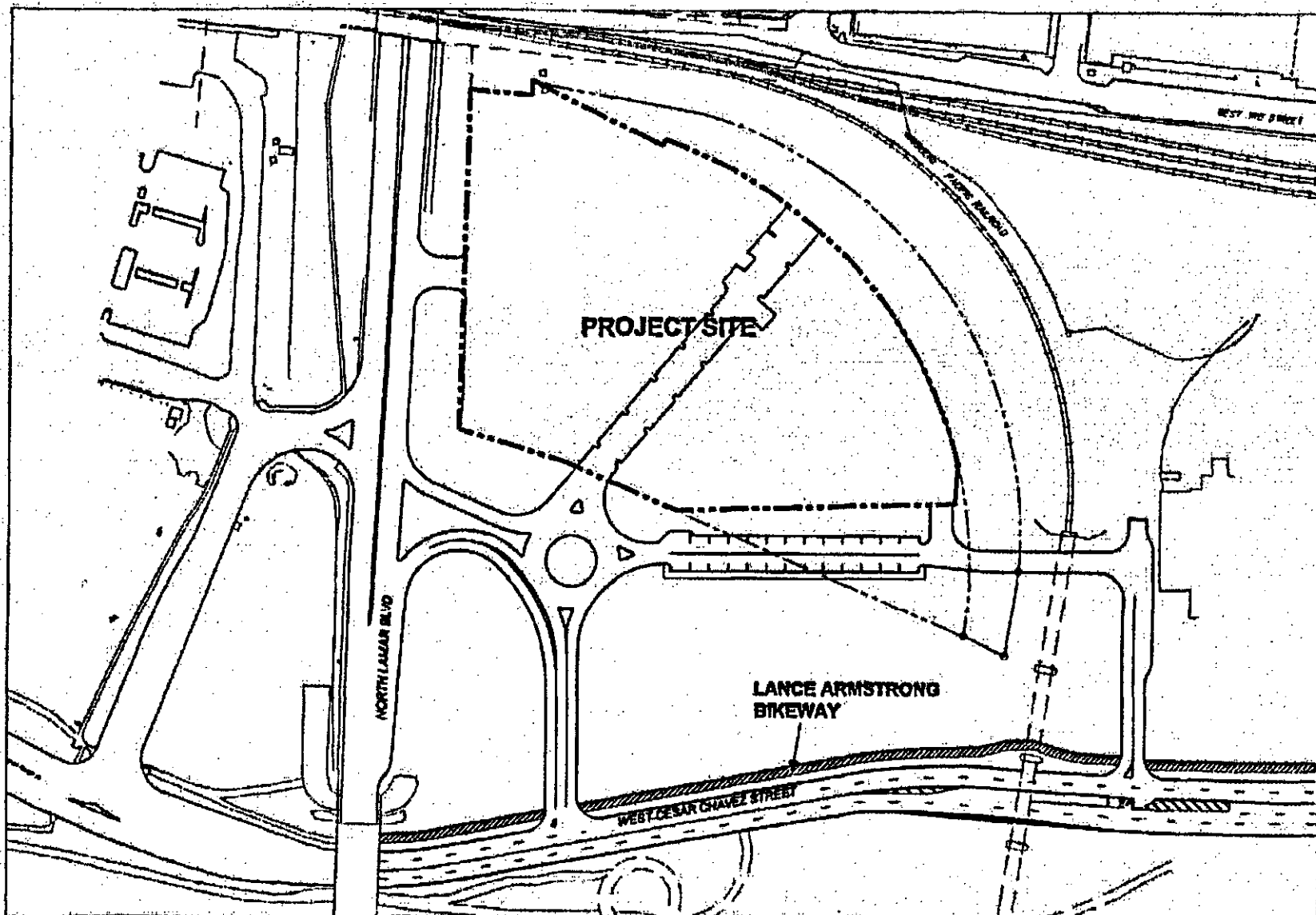


EXHIBIT C-3

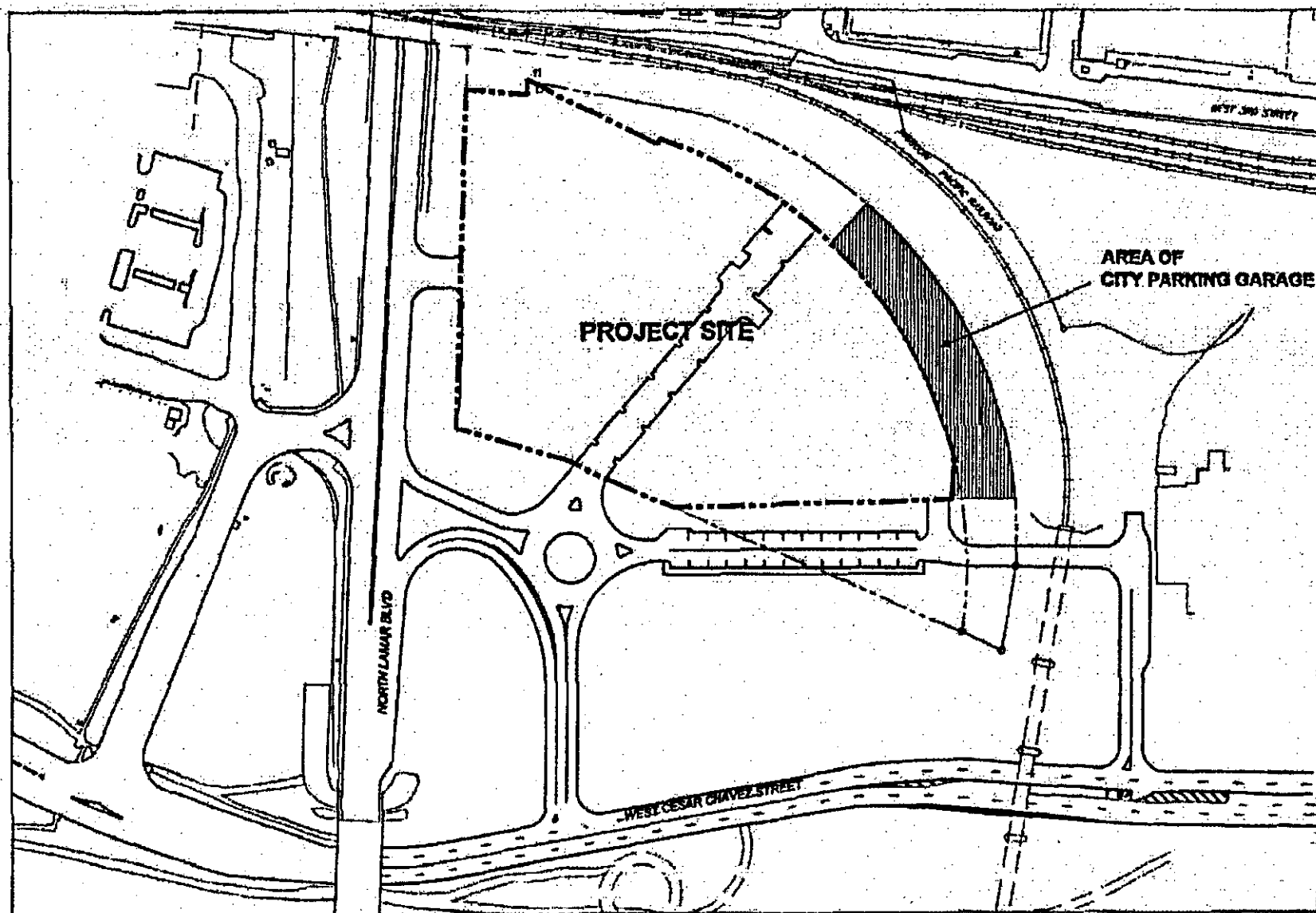


EXHIBIT C-4

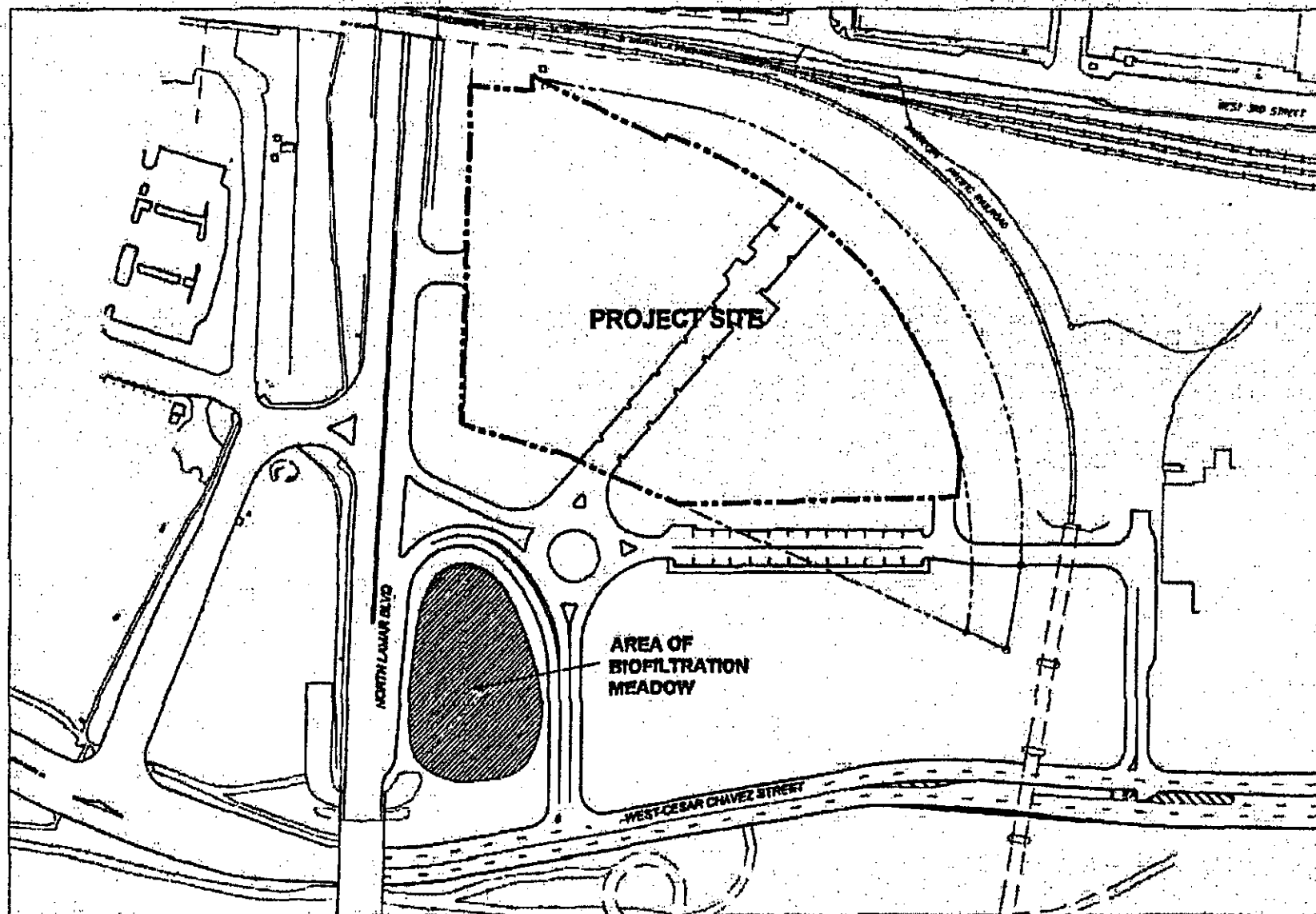


EXHIBIT C-5

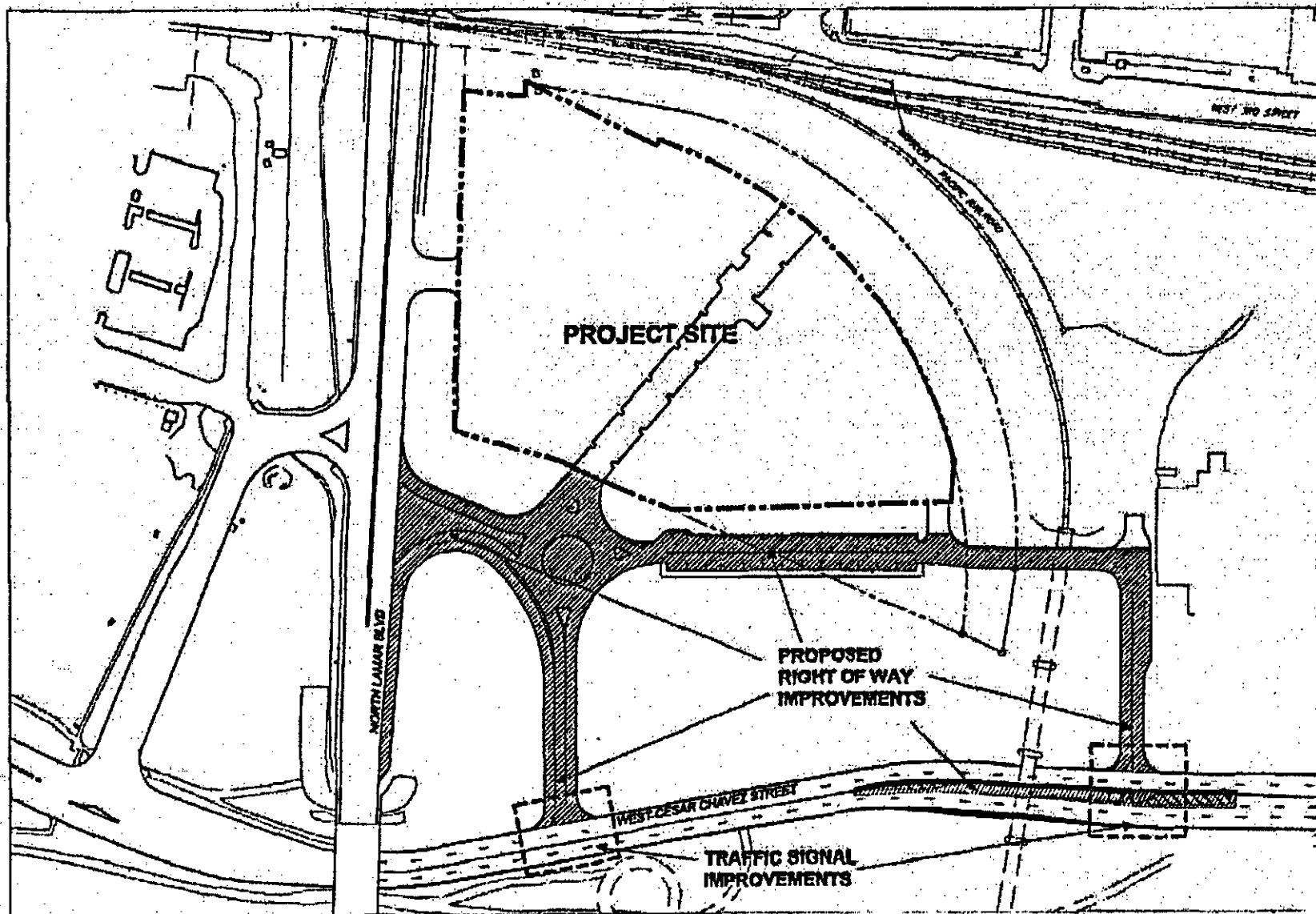


EXHIBIT C-6

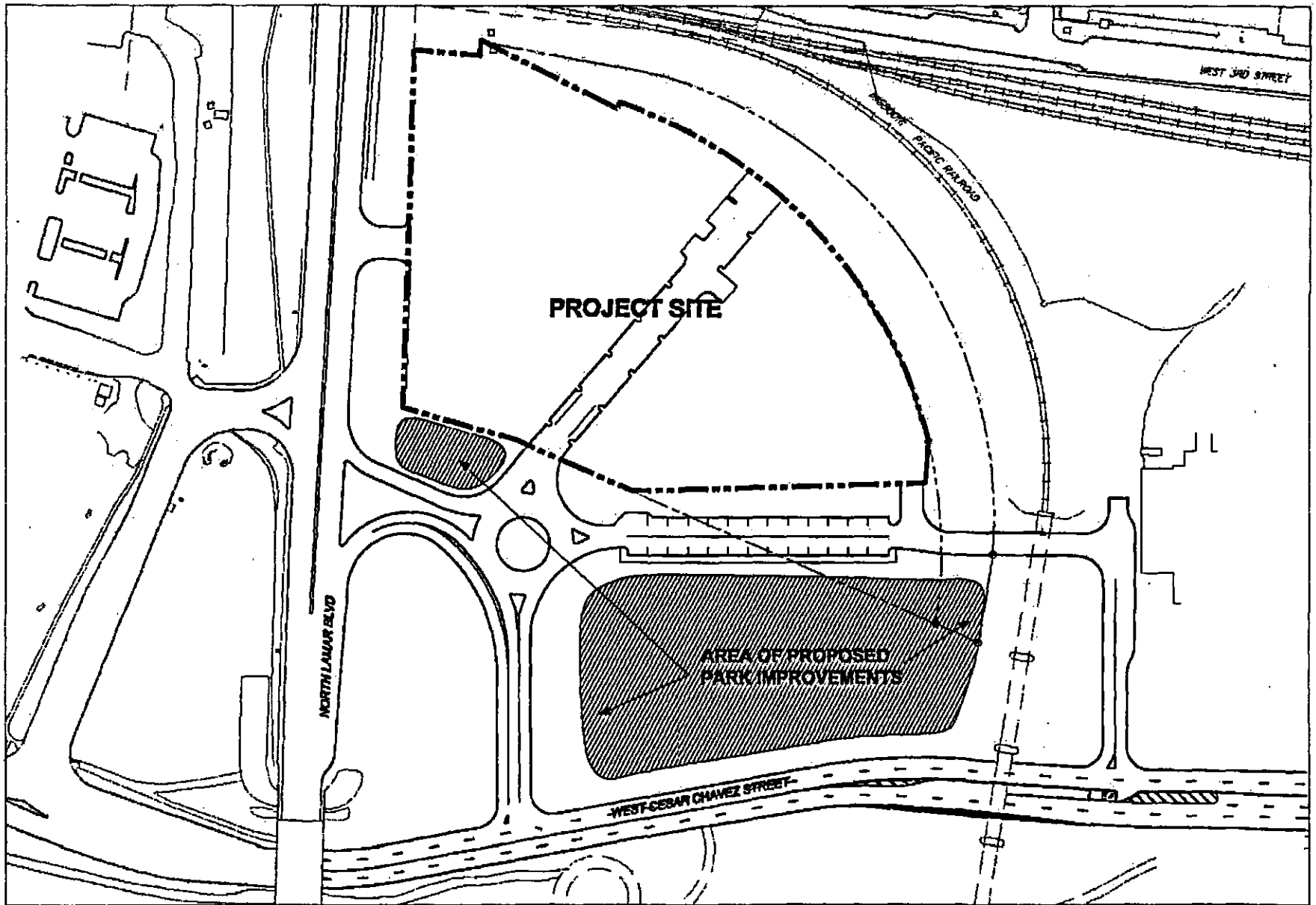


EXHIBIT C-7

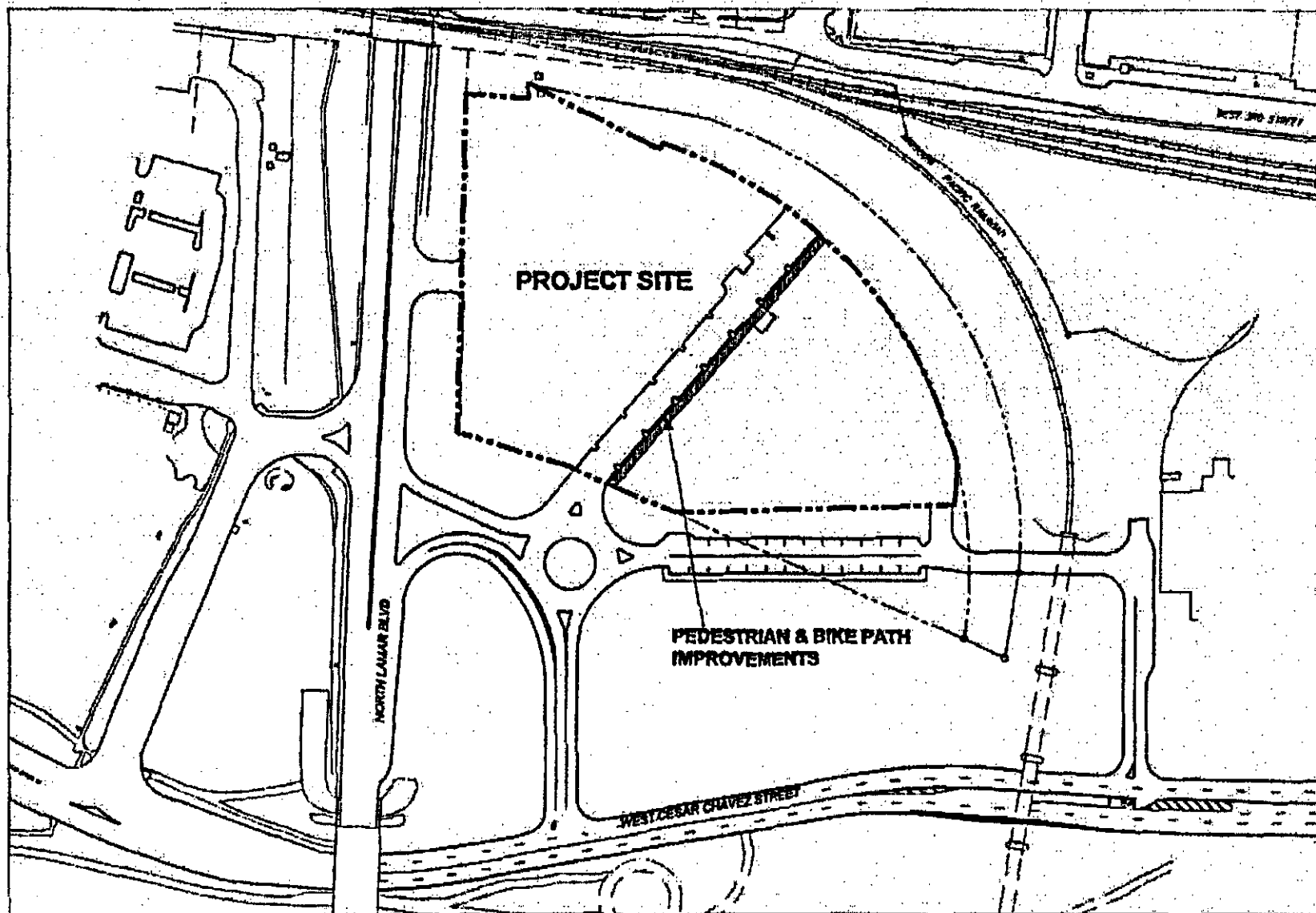


EXHIBIT C-8

EXHIBIT D

COMMUNITY FACILITIES AND COST REIMBURSEMENT AGREEMENT FOR BIO-FILTRATION MEADOW IMPROVEMENTS

This Community Facilities and Cost Reimbursement Agreement for Bio-Filtration Meadow Improvements ("Agreement") is made by and between the City of Austin, a home rule city and municipal corporation situated in Travis and Williamson Counties, Texas (the "City"), and Lion Gables Realty Limited Partnership, a Delaware limited partnership ("Gables"). The City and Gables are each sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Gables has contracted with Lumbermen's Investment Corporation ("Lumbermen's") to purchase those two tracts of land comprising approximately 4.524 acres, located on the eastern side of Lamar Boulevard between the Union Pacific Railroad and adjoining City real property, as more particularly described in Exhibit "A" (the "Property").

WHEREAS, Gables currently intends to develop a mixed-use project on the Property that may include, but not necessarily be limited to, residential, retail, office, and non-commercial uses, as generally depicted on Exhibit "B" (the "Project").

WHEREAS, the City and Gables currently intend to design and construct certain public Bio-Filtration Meadow improvements in the vicinity of the Project and in connection with the development of the Project and adjacent City property, including walls, weirs, pipes, outlet structures, filter bed and other components, together with other related landscaping amenities, as applicable, in accordance with applicable City standards and the City's Drainage Criteria Manual and subject to City review and approval, in the location shown on Exhibit "C" (the "Improvements").

WHEREAS, the Parties have provided for the design and construction of other improvements which will convey regional storm water drainage from the improvements and the Project to the Bio-Filtration Meadow.

WHEREAS, in separate Community Facilities and Cost Reimbursement Agreements, the Parties have provided for the design and construction of other improvements, including but not limited to Right-of-Way and Park Improvements.

WHEREAS, the Parties presently desire to coordinate the development and construction of the Improvements in connection with the development and construction of the Project.

WHEREAS, the City has allocated funding (the "Funding") for the design and construction of the Improvements, including funding from the proceeds of the City's Interlocal Agreement with the Capital Metropolitan Transportation Authority, as passed and approved by

the Austin City Council on May 23, 2003.

WHEREAS, the Parties have entered into a Master Agreement (the "Master Agreement") of even date herewith, which Master Agreement, together with all exhibits attached thereto, sets forth the obligations of the Parties with respect to the development and construction of the various improvements described therein.

WHEREAS, the use and meaning of the capitalized terms in this Agreement (including, without limitation, the terms "Project" and "Gables") shall be the same as the use and meaning of those same terms as defined in the Master Agreement, unless this Agreement expressly defines the term otherwise.

WHEREAS, the City will reimburse Gables from the Funding a percentage of the cost of construction of the Improvements.

WHEREAS, the City and Gables desire to enter into this Agreement in accordance with the Master Agreement to further describe and implement the development and construction of the designated Improvements and the reimbursements authorized by the Ordinance, as defined below.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both parties acknowledge, the City and Gables agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Additional Definitions.

- a. **Bidding Documents** means the Plans and Specifications together with the proposed Construction Contract for the Improvements.
- b. **Construction Contract** means the construction contract executed by Gables for the construction of the Improvements.
- c. **Contractor** means the bidder with whom Gables contracts for the construction of the Improvements.
- d. **Effective Date** means the date of execution of this Agreement.
- e. **Engineer** means the engineer hired by Gables, in Gables' discretion on the basis of a qualifications-based selection process, to undertake the tasks described in Section 3.02 of this Agreement.
- f. **Notice** means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.

g. Ordinance means the Ordinance enacted by the City Council of the City of Austin on the date of approval of the Master Agreement and this Agreement by the City in support of the development and construction of the Improvements and the allocation of the Funding thereto'.

h. Plans and Specifications mean plans and specifications prepared by the Engineer for the construction of the Improvements as described herein.

i. Substantial Completion means that the Improvements have been completed in accordance with the Plans and Specifications, in all material respects, to the point of being usable for the purpose intended, as certified by the Engineer to the City and as determined by the City in the ordinary course of its inspections of such Improvements.

Section 1.02 Interpretation of Terms, and Incorporation of Exhibits.

Except where the context otherwise clearly requires, in this Agreement:

- (a) Words imparting the singular will include the plural and vice versa;
- (b) All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
- (c) References to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

Section 1.03 Compliance with Certain City Bidding Requirements.

Notwithstanding any provision of this Agreement to the contrary, Gables' obligation to comply with the City's minority-owned and women-owned business enterprise procurement program set out in the City's Code, or any other similar law or regulation, including any provisions requiring award of a construction contract to a low bidder or any other particular bidder, shall apply only in the context of construction of the Improvements that are subject to reimbursement by the City as set out in this Agreement. In all other aspects of construction of the Project, Gables may choose its consultants, contractors, and other agents in its sole and absolute discretion, provided, however, that Gables is aware of and may consider the City's Minority and Women's Business Ordinance in making its decisions regarding other aspects of construction of the Project.

ARTICLE II GABLES AUTHORITY & RESPONSIBILITY

Section 2.01 Required Information.

At the time of execution of this Agreement, as a condition precedent, Gables has provided the City with appropriate evidence of authority, authorizing Gables' execution and performance of this Agreement, the receipt of such evidence the City hereby acknowledges.

Section 2.02 Design and Construction Responsibility.

- a. Notwithstanding any other provision in this Agreement to the contrary, Gables' responsibility to design and construct the Improvements is contingent upon the pre-construction conditions set forth in Article IX of the Master Agreement, which are incorporated herein by reference,
- b. Notwithstanding any other provision in this Agreement to the contrary, Gables' obligation to construct and maintain the Improvements is contingent upon its commencement of construction of the Project, timely reimbursement by the City hereunder, and as provided in Section 8.05 and Article IX of the Master Agreement. Once commenced, Gables shall diligently prosecute the construction of the Improvements to completion.

ARTICLE III ENGINEERING DESIGN OF THE IMPROVEMENTS

Section 3.01 Agreement to Design the Improvements.

The City and Gables agree that the Improvements shall be designed by Gables in accordance with the applicable portions of the City's written, published requirements of the City Code and City rules and regulations in effect on the date of this Agreement (the "City Standards"), specifically including but not limited to the City's Transportation and Drainage Design Criteria Manuals and as further described in this Agreement. Notwithstanding anything herein to the contrary, Gables will design the Improvements to provide sedimentation bio-filtration of the area depicted on Exhibit "C", and the City's Watershed Protection and Development Review Department will cost participate in the Improvements up to the amount of \$67,000 based upon the criteria set forth in attached Exhibit "D".

Section 3.02 Design Duties of Gables.

Gables shall:

- a. engage the services of an Engineer to perform the following functions:
 1. prepare Plans and Specifications for the Improvements using (and ensure that the Plans and Specifications conform to) the City's design criteria and Standards applicable to the Improvements; prepare preliminary schedules and cost estimates for the construction of the Improvements; the Engineer's opinion of construction costs shall be based on materials and labor prevailing at the time of the preparation of the preliminary estimate without consideration of inflationary increases in costs with the understanding that the Engineer will not be construed to have guaranteed costs of construction, however, if either of the Parties reasonably believe that the estimates are no longer accurate, Gables will promptly obtain a revised opinion of construction costs with estimates of more accurate construction costs together with a description of the variance between the original and revised construction costs;

2. provide the City with a copy of the draft Bidding Documents;
3. if requested, attend and conduct pre-bid conferences to provide clarification and interpretation of the Bidding Documents to bidders;
4. if requested, prepare and issue addenda required to clarify the Bidding Documents;
5. if requested, attend the opening of bids at City's Contract Compliance Section, review bids, and furnish a recommendation regarding the award of the Construction Contract, within five working days following the bid opening;
6. review and approve (or take other appropriate action regarding) shop drawings and samples, the results of tests and inspections and other data that the Contractor is required to submit for conformance with the design criteria and standard specifications of the Improvements and compliance with the information given in the Project construction documents;
7. determine the acceptability of substitute materials and equipment proposed by Contractor; and receive and review (for general content as required by the applicable specification) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor in accordance with the construction documents;
8. review change order requests relating to the Improvements and submit the change order requests along with recommendations to Gables and the City for review and approval by Gables and the City. Change orders will be reviewed and approved or rejected by the City within five business days of submittal, provided, if more information is required for the City review, the City will notify Gables within the initial five day period and will have up to an additional five days after receipt of the additional information in which to approve or reject the change order request and in the event of a dispute, the Parties will follow the same procedure outlined for dispute resolution in Section 4.04 below;
9. review any changes to the Improvements and, if necessary, design any engineering changes that may be required after construction has begun;
10. attend the final inspections of each portion of the Improvements in the presence of the City inspector and transmit a list of items to be completed or repaired to the City, Gables, and the Contractor;
11. review the Plans and Specifications of the Improvements marked to show "as built" conditions to ascertain to the best of his knowledge and belief that the reflected field changes are substantially complete and correct; and

12. after final completion of the Improvements, submit as-built documents to the City, consisting of an electronic file, one set of mylar and two sets of one-half size print record Plans and Specifications to the City certified "As Built" by the Engineer. Copies of the Project record Plans and Specifications that may be relied upon by the City are limited to the printed copies ("hard copies") that are signed and sealed by the Engineer; record Plans and Specifications on electronic files that are furnished by the Engineer to the City are only for the convenience of the City.
- b. ensure that the Plans and Specifications:
 1. conform, in all material respects, to the City design criteria and construction and material standards, as contained in the applicable City ordinances and regulations, including the City's Transportation and Drainage Criteria Manuals, for the Improvements to be constructed by Gables; and
 2. are accompanied by appropriate engineering reports, as reasonably required by the City.
 - c. engage the services of a duly qualified and experienced consultant or a duly qualified and experienced Gables employee or employee of a Gables affiliate to act as a professional construction manager ("Construction Manager") to work with the Engineer in connection with Engineer's tasks, as appropriate, and to act as a liaison with the City and with subcontractors. The City will recognize the Construction Manager as the single point of contact with Gables during the construction of the Improvements for the purposes of daily communication, resolution of routine construction matters, and construction contract administration, including but not limited to the purpose of receiving payments from the City pursuant to the Master Agreement and this Agreement. The City further recognizes and agrees that such reasonable fees as are paid by Gables to the Construction Manager in connection with construction of the Improvements are costs of constructing the Improvements, and are subject to proportionate reimbursement hereunder. Gables will charge a reasonable fee for the costs of construction administration, which will not exceed five percent (5%) of construction costs of the Improvements. The construction management fee will be documented in any requests for reimbursement with supporting information of activities undertaken and expenses incurred and the City will reimburse a portion thereof as specified in Article V.
 - d. make timely payments for work properly performed in connection with the design, construction management and contract administration of the Project in accordance with the terms of the applicable professional services agreements.

ARTICLE IV CONSTRUCTION OF THE IMPROVEMENTS

Section 4.01 Agreement to Construct the Improvements

- a. Gables will submit the Plans and Specifications for the Improvements prepared by