

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'

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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;

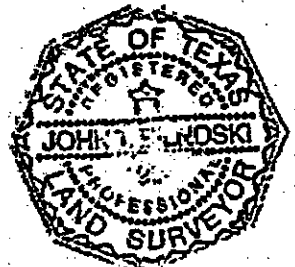
THENCE, $N49^{\circ}56'23''W$, along said Boundary Line Agreement of record, being the southerly line hereof, a distance of 62.77 feet to the POINT OF BEGINNING, containing an area of 2.582 acres (112,470 sq. ft.) of land, more or less, within these metes and bounds.

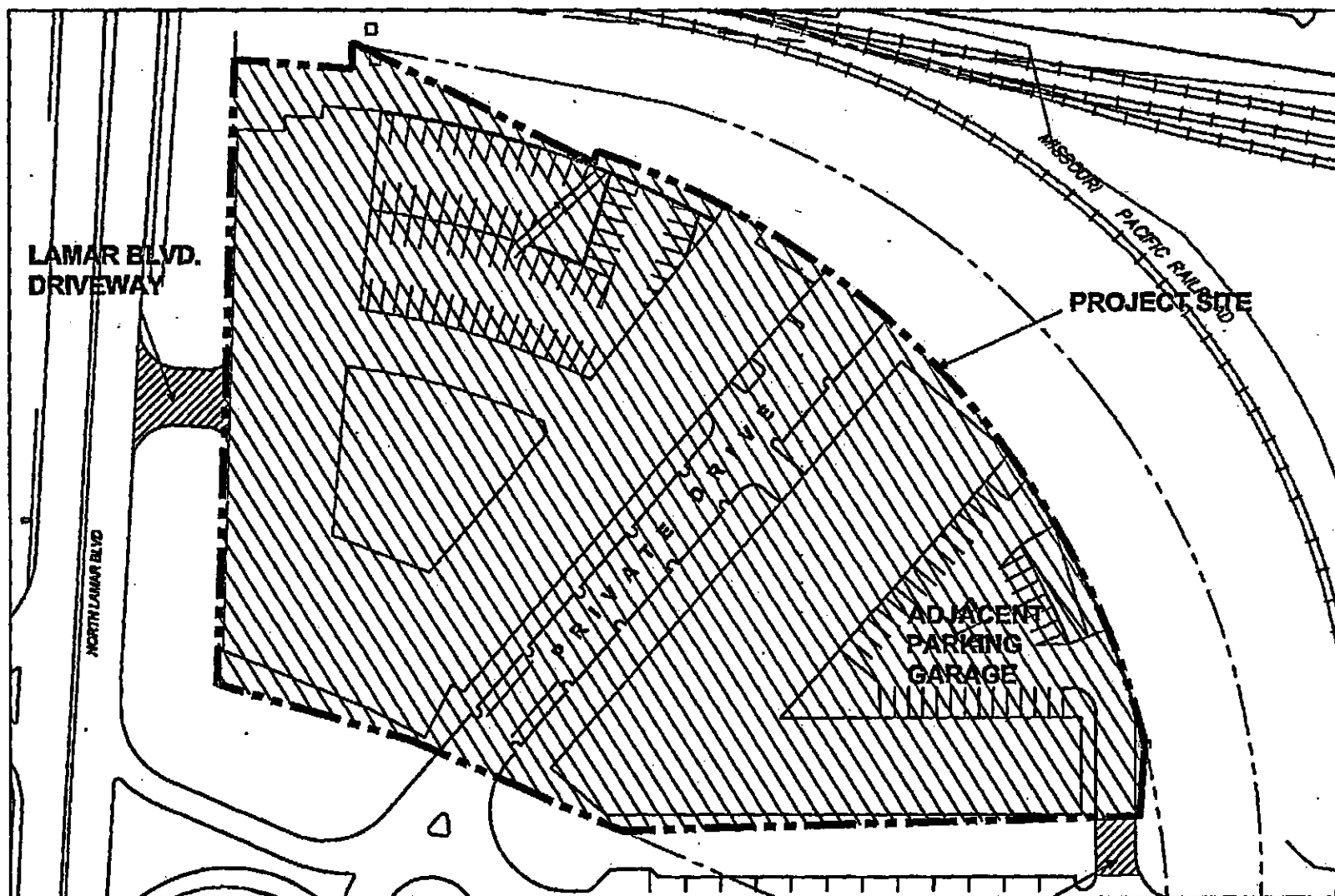
I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A LAND TITLE SURVEY WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

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


JOHN T. BILNOSKI
NO. 4998
STATE OF TEXAS

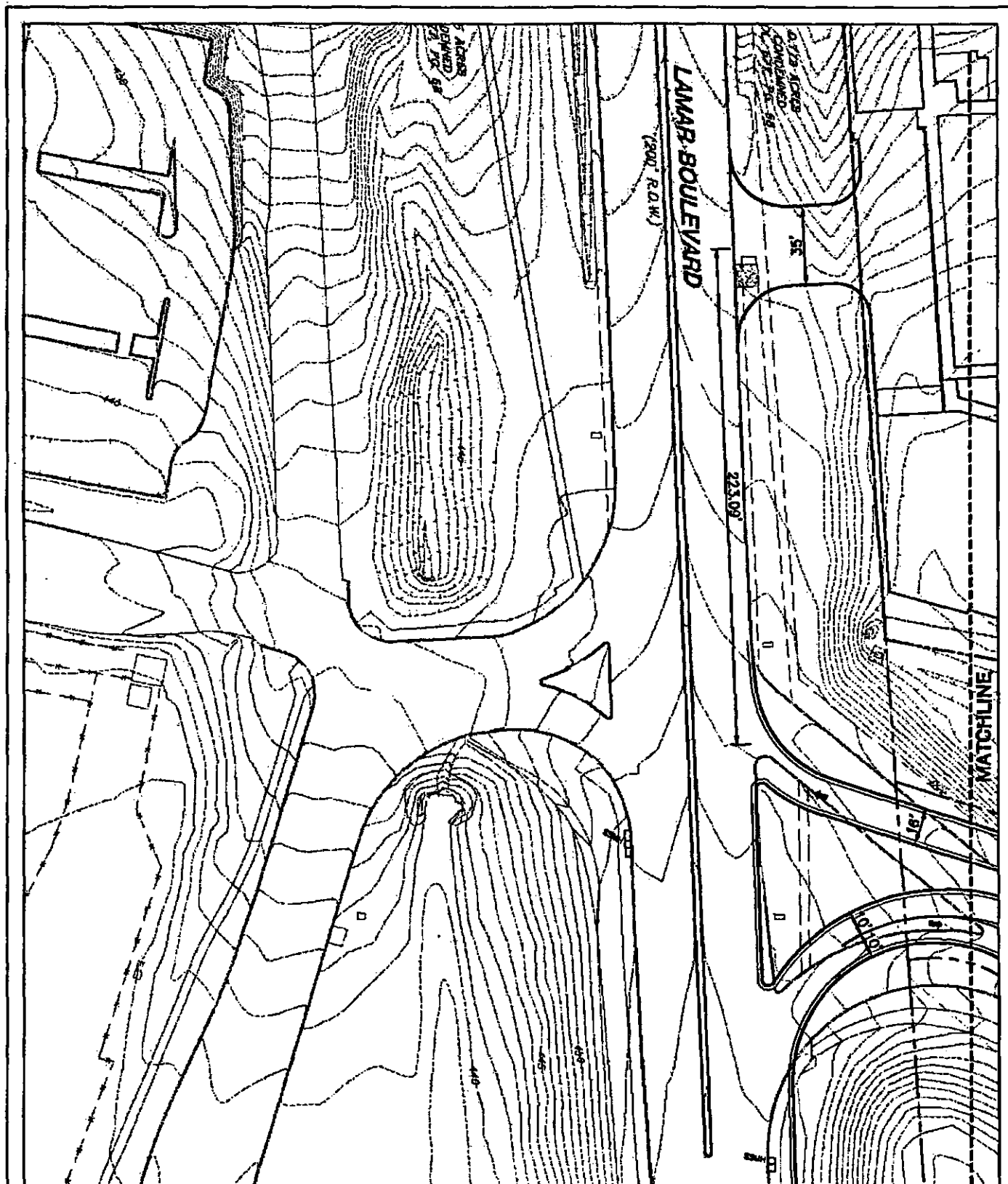
7/30/04
DATE





PROPOSED JOINT
ACCESS DRIVE

EXHIBIT B



b Bury+Partners
 ENGINEERING SOLUTIONS
 2345 Pec Cove Road, Suite 200
 Austin, Texas 78746
 Tel. (512)323-0011 Fax (512)323-0325
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ROAD EXHIBIT

GABLES RESIDENTIAL

EXHIBIT C-1

DATE: 11/14/05

SCALE: 1" = 60'

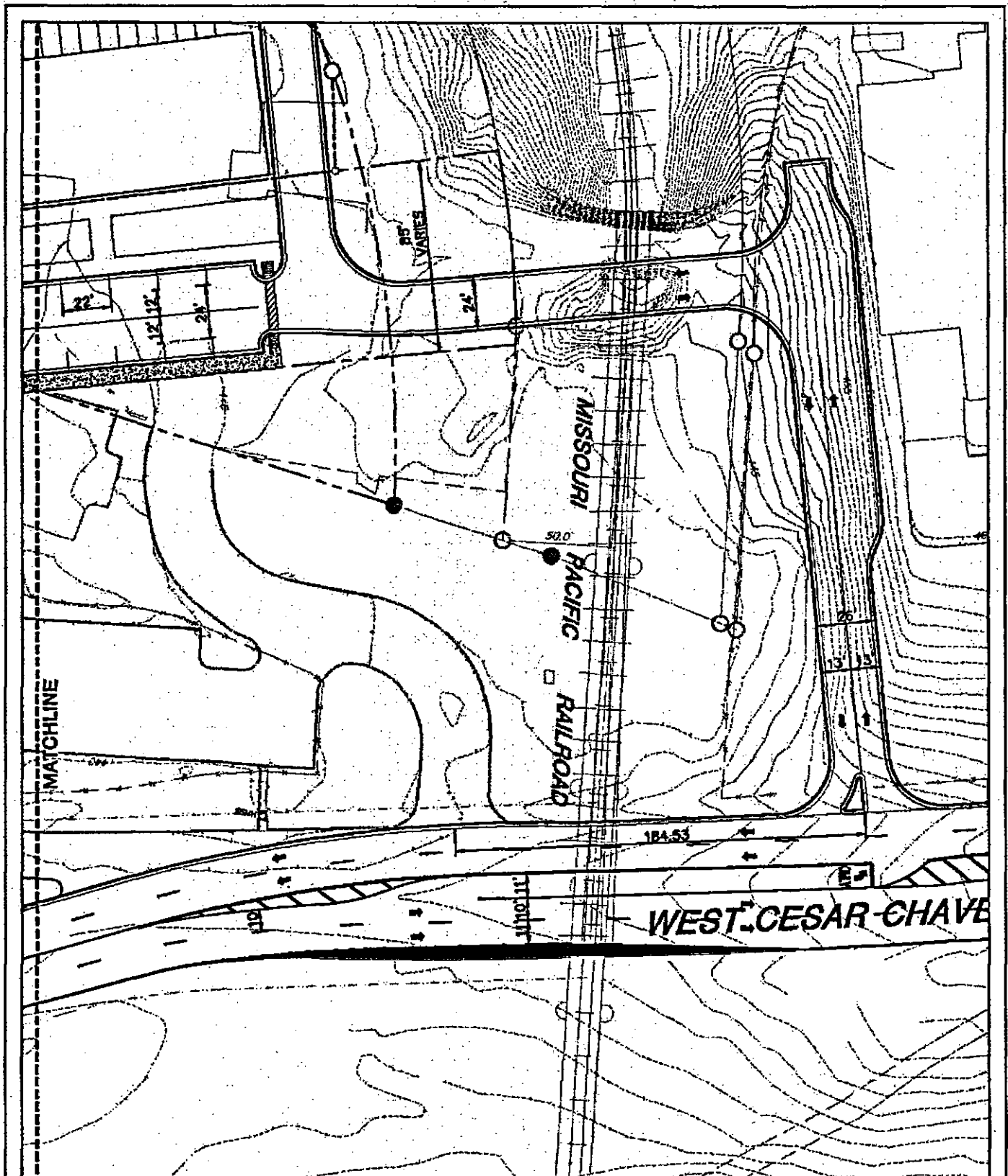
DRAWN BY: DAZ

FILE: G:\659\23\EXH\65923EXH111

PROJECT No.: 659-23.00



PROJECT No.: 659-23.00



Bury+Partners
ENGINEERING SOLUTIONS

3345 Bee Caves Road, Suite 200
Austin, Texas 78746
Tel. (512)328-0011 Fax (512)328-0325
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ROAD EXHIBIT

GABLES RESIDENTIAL

EXHIBIT C-3

DATE: 11/14/05

SCALE: 1" = 80'

DRAWN BY: DAZ

FILE: G:\659\23\EXH\65923EXH111

PROJECT No.: 659-23.00

EXHIBIT D

Insurance and Bond Requirements

A. General Requirements

Gables shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that Gables shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

Gables shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Gables hereunder and is not a limitation of liability on the part of Gables.

Gables must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Improvements and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

Gables' and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Public Works
City of Austin
P. O. Box 1088
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Gables, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Gables, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision

or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Gables shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Gables and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Gables.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Gables.

B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Gables', its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, Form WC 420304
 - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
 - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
 - (ii) Independent contractor's coverage.
 - (iii) Products/completed operations liability for the duration of the warranty period.

(b) The policy must also include these endorsements in favor of the City:

- (i) Waiver of Subrogation, endorsement CG 2404
- (ii) Thirty days notice of cancellation, endorsement CG 0205
- (iii) The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Gables, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

(a) The policy must include these endorsements in favor of the City of Austin:

- (i) Waiver of subrogation, endorsement TE 2046A
- (ii) Thirty days notice of cancellation, endorsement TE 0202A
- (iii) The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of Gables, then Gables shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Gables, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Gables and The City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49

CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Gables and the City.

Performance and Payment Bonds. In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, Gables shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Additional Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City, with the City and Gables named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Additional Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Additional Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Gables will be in material default under this Agreement.

Payment Bond. Gables shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Gables shall require contractor to provide a performance surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.

EXHIBIT E
Cost Participation in Improvements

City costs and contributions may include third party funding. The roadway segments referred to below are depicted on Attachment 1, which is attached hereto and made a part hereof.

- A. Soft costs will be apportioned for all road projects at a rate of:
- a. Gables 25%
 - b. City 75%
- Total Estimated Costs: \$ 491,839
25% of total soft cost reimbursement will occur as each segment is completed
- B. Public street construction and traffic improvements
- 1. Roadways A and B Deconstruction/Reconfiguration, including but not limited to (i) water line system with required fire hydrant spacing (ii) paving and storm water drainage system, (iii) sidewalks, (iv) related streetscape improvements and landscaping and (v) standard City street lights.
 - a. Proportionate Shares
 - Gables: 20.4 %
 - City: 79.6 %
 - b. Total Estimated Costs: \$634,228
 - Gables: \$129, 383
 - City: \$ 504, 845
 - 2. Roadways C and D Construction, including but not limited to (i) water line system with required fire hydrant spacing (ii) paving and stormwater drainage system, (iii) sidewalks on north side, (iv) related streetscape improvements and landscaping and (v) parallel parking spaces on north and south sides.
 - a. Proportionate Shares
 - Gables: 32.9%
 - City: 67.1%
 - b. Total Estimated Costs : \$ 645,832
 - Gables: \$ 212,479
 - City: \$ 433,353
 - 3. Roadway E Construction, including but not limited to (i) water line system with required fire hydrant spacing, (ii) paving and stormwater drainage system, but specifically excluding (a) sidewalks, and (b) left turn out of Seaholm property, and (iii) related streetscape improvements and landscaping.
 - a. Proportionate Shares
 - Gables: 22.8 %
 - City: 77.2 %
 - b. Total Estimated Costs: \$259,569
 - Gables: \$ 59,182
 - City: \$ 200,387

4. Caesar Chavez Improvements, including but not limited to eastbound left turn lane, but excluding left turn lane out of Seaholm property, and related streetscape improvements and landscaping.

- a. Proportionate Shares
 - Gables: 22.8 %
 - City: 77.2 %
- b. Total Estimated Costs: \$17,188
 - Gables: \$ 3,919
 - City: \$ 13,269

5. Total public street construction and Other Paving/Drainage fees

- a. Total hard and soft costs: \$ 2,048,656

C. Traffic Signal Improvements

1. New signal at Roadway B Intersection at Caesar Chavez

- a. Present Estimate: \$ 82,500
- b. Proportionate Shares
 - Gables: 9.3 %
 - City: 90.7 %
- c. Present Estimated Shares
 - Gables: \$ 7,673
 - City: \$ 74,827

2. New signal at New Signal at Roadway E Intersection with Caesar Chavez

- a. Present Estimate: \$82,500
- b. Proportionate Shares
 - Gables: 22.8% costs
 - City: 77.2% costs
- c. Present Estimated Shares
 - Gables: \$ 18,810
 - City: \$ 63,690

3. Additional traffic headpole @ Sandra Muraida

- a. Present Estimate: \$ 20,000
- b. Proportionate Shares
 - Gables: 0%
 - City: 100%
- c. Present Estimated Shares
 - Gables: \$ 0
 - City: \$ 20,000

4. Fiber optic line between new signals (Interconnect)

- a. Present Estimate: \$22,625
- b. Proportionate Shares
 - Gables: 9.3 %
 - City: 90.7 %

c. Present Estimated Shares

Gables: \$ 2,104

City: \$ 20,521

5. Subtotal Traffic Signal Costs

a. Present Estimate:

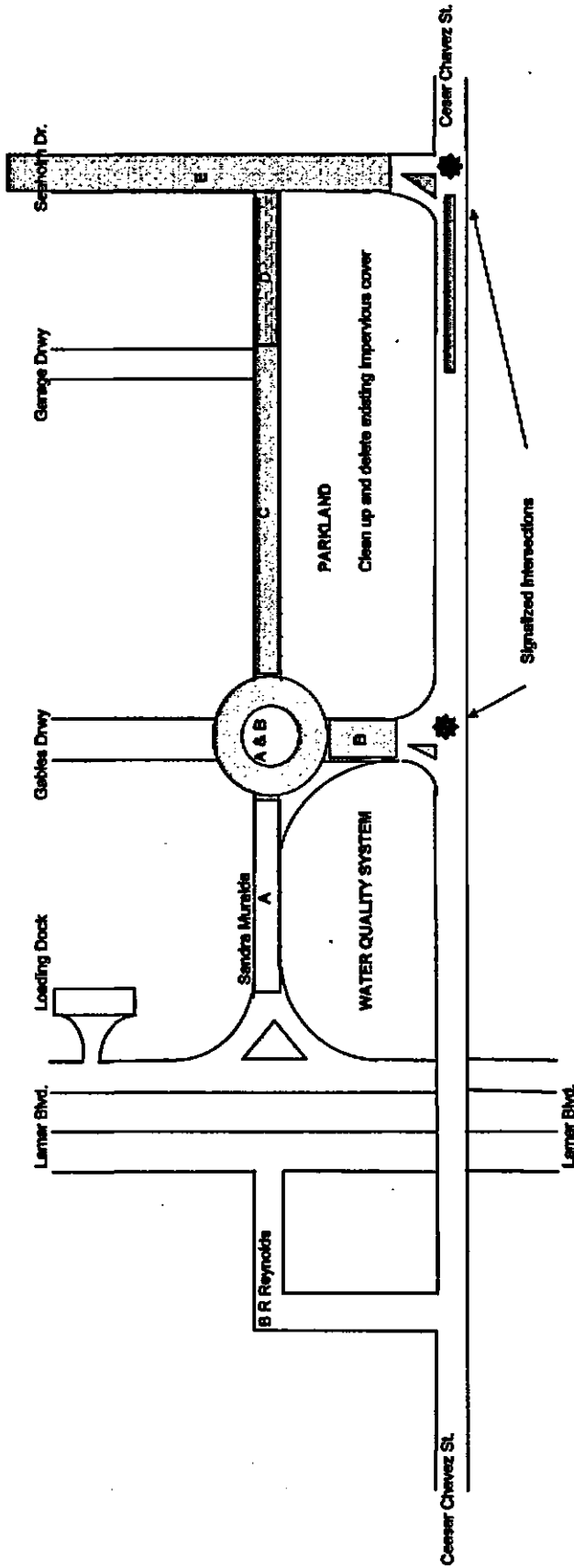
Gables: \$ 28,577

City: \$ 179,038

*** 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, permit and inspection fees, the construction management fee, and other professional services fees, but will exclude the costs of Gables' financing and Gables' accounting and legal fees.**

ATTACHMENT 1

Roadway and Signal Changes



Land Use	Segment A	Segment B	Segment C	Segment D	Segment E
Retail	7.7%	15.5%	15.7%	15.7%	13.0%
Gables Apartments	4.4%	8.8%	10.6%	10.6%	7.3%
General Office	1.5%	3.0%	3.6%	3.6%	2.5%
SubTotal	13.5%	27.3%	32.9%	32.9%	22.8%
Existing Traffic	71.8%	66.0%	0.0%	0.0%	0.0%
Seesholtz	14.7%	6.7%	67.1%	67.1%	77.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Based on Daily Volumes

Currently assumes 25% of Seesholtz traffic uses West Ave.

EXHIBIT G

COMMUNITY FACILITIES AND COST REIMBURSEMENT AGREEMENT FOR PUBLIC PARK IMPROVEMENTS

This Community Facilities and Cost Reimbursement Agreement for Public Park 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 park improvements, including but not limited to landscaping and related park improvements, in the vicinity of the Project and in connection with the development of the Project and adjacent City property, in accordance with applicable City standards and subject to City review and approval, in the locations shown on attached Exhibit "C" (the "Improvements").

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 a regional bio-filtration meadow to accept the storm water drainage from the Improvements and the Project.

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 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 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.

a. While it is presently contemplated that the City will not be cost participating in the development of the Improvements described herein, subject to available funding, the City may by amendment to this Agreement, cost participate in the development of the Improvements. Unless and until the City elects to cost-participate, the provisions of this Agreement related to cost reimbursement and to the requirement of bidding or other purchasing requirements are inapplicable, although Gables is strongly encouraged to seek competition in its procurement processes and to maximize MBE/WBE participation in the procurement process.

b. 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.

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 the Engineer at logical points in the development of the design to the City for review and approval. The City will perform interim design reviews of the Plans and Specifications and provide any written comments to Gables within ten working days of submittal, unless additional time will be required due to the requirement of reviews by multiple City departments or additional time will be required in connection with the site plan or permit review and approval process. In the event that such additional time is required, the City will notify Gables in writing of the additional time requested for the review, which may not exceed an additional five working days for the review of interim design submittals

or the additional time required for the site plan review and approval process. Once approval is obtained, no material changes may be made to the Plans and Specifications without following the change order procedure described in Section 3.02(a)(8) hereof.

b. The City will perform site plan and permitting reviews in a timely manner and in accordance with City requirements, including but not limited to Section 25-5-114 of the City Code.

c. After approval of the Plans and Specifications and, subject to reimbursement as described in this Agreement and subject to all of the other terms and conditions of this Agreement and the Master Agreement, Gables agrees to construct the Improvements.

d. Subject to reimbursement as described in this Agreement, Gables agrees to construct the Improvements in a good and workmanlike manner and in all material respects substantially in accordance with the Plans and Specifications and all applicable laws, regulations, and ordinances, including (but with respect only to those Improvements that are subject to reimbursement under Section 5.02 hereof) the City's MBE/WBE requirements.

e. Gables or Gables' Construction Manager or other agent will serve as the manager for the construction of the Improvements.

Section 4.02 Schedule of Construction.

a. Gables will construct the Improvements at one time or in phases, as reasonably approved by the City, on a timely basis as is needed in connection with the development of the Project and adjacent public infrastructure.

b. Gables will begin construction of the Improvements during the construction of the first phase of development of the Project.

Section 4.03 Construction Duties of Gables.

Subject to all of the terms and conditions of this Agreement, including, without limitation, Section 1.03 hereof (limiting the applicability of the City's minority-owned and women-owned business enterprise procurement program), Gables (or Gables' Engineer, Construction Manager, or other agent) will:

a. solicit public invitations for bids for the construction of the portion of the Improvements subject to reimbursement, following all applicable state laws and regulations and City Codes, regulations and procedures to which the City must adhere that pertain to competitive bidding procedures for Construction Contracts. This requirement includes compliance with the 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 or at the option of Gables, substantial compliance with the requirements of Section 271.116 of the Texas Government Code

and the other applicable provisions of the Code related to competitive sealed proposals for those Improvements, which may be constructed for less than \$1,500,000.00;

b. prepare the Construction Contract to comply, in all material respects, with all applicable laws, regulations, ordinances, City procedures, and the terms of this Agreement. The Construction Contract must include general conditions that include the following provisions:

1. reasonable warranties, and insurance, payment and performance bonding requirements, as more fully set forth in Exhibit "D" hereto;
2. include the City as an approved future assignee to the Construction Contract, together with the applicable Plans and Specifications, with the ability of the City, as assignee, to complete the Improvements, if Gables fails to complete the Construction Contract; and
3. certificates of insurance evidencing that the required insurance has been obtained and that the City has been designated as an additional insured under Endorsement CG2010 (or equivalent approved by the City Risk Manager) with respect to all liability coverages to the extent allowed by law;

c. award the Construction Contract to the lowest responsible bidder (who is duly qualified and can meet the construction schedule) for those Improvements that are subject to reimbursement hereunder, following construction contract competitive bidding procedures set forth in Chapter 252 of the Texas Local Government Code (or as applicable Section 271.116 of the Code) and the minority-owned and women-owned business enterprise procurement program found in Chapter 2-9 of the City Code, as applicable; prior to entering into any other contract for the provision of construction, demolition, material generation or non-professional services (eg., services other than design, surveying, etc.) to satisfy Gables obligations hereunder, Gables will in good faith solicit bids for such items from at least three qualified entities, review all timely submitted bids in good faith and select the entity to provide such item which in Gables discretion represents the best overall value for the Improvements taking into account all relevant factors and circumstances or will use the process set forth in Section 271.116 of the Code and select the entity providing the "best value," taking into consideration the enumerated evaluation criteria;

d. obtain all required permits, consents, inspections, tests, and authorizations necessary for construction of the Improvements; provided, however, that the City will cooperate with Gables in obtaining those items listed herein;

e. provide the City with a copy of the Construction Contract and any additional documents pertaining to the Construction Contract on or about the time they have been signed, and thereafter provide copies of any documents amending or replacing any of said documents;

f. submit all changes to the Plans and Specifications and change orders to the Construction Contract to the City for its review and approval prior to the commencement

of any work incorporating the change, which approval will not be unreasonably withheld or delayed;

g. ensure that all change orders submitted for the Construction Contract, either singularly or in the aggregate, do not increase the portion of the Construction Contract cost subject to City reimbursement by more than twenty five percent of the original contract amount;

h. make timely payment to the Engineer and Contractor for work properly performed concerning the Improvements in accordance with the terms and provisions of the applicable contract with the Engineer or the Construction Contract (including any provisions related to statutory retainage and withheld amounts due to improper work or punch list items);

i. arrange and coordinate materials testing with each Contractor and provide the City with all testing information; if the City reasonably determines that the work needs to be corrected or rejected or requires special testing because of unforeseen circumstances, the City will promptly notify Gables and Gables will take appropriate action to remedy the identified problem;

j. reject all work found not to conform to minimum requirements of the Construction Contract and the applicable Plans and Specifications, and advise the Engineer and the City of work that Gables determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval;

k. arrange and observe with the Contractor all acceptance testing, if applicable, for the Improvements and notify the City and the Engineer of the schedule and results of the testing;

l. maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable Plans and Specifications, change order, addenda, daily inspection reports, additional or revised drawings, and other related construction documents;

m. coordinate the preparation of letters indicating Substantial Completion for the Improvements with the Engineer, together with the submission to the Contractor of a list of observed items requiring completion or correction;

n. ensure access and permit the City to inspect the construction of the Improvements at all reasonable times during construction until final acceptance of the Improvements by the City;

o. conduct and coordinate final inspection of the Improvements with the Engineer and the City inspector; transmit a final list of items to be completed or repaired, if any, and observe Contractor correction of the same;

p. prepare and submit to the City monthly during construction of the Improvements

a report regarding minority-owned and women-owned business enterprise participation in the construction of the Improvements; and

q. within thirty (30) days after final completion and acceptance of the Improvements by the City in writing, provide the City with complete sets of the Plans and Specifications, certified "as-built", by the Engineer in accordance with the requirements of this Agreement. The City's acceptance of the Improvements shall be governed by this Agreement and the requirements of the City Code. As a condition of final acceptance of the Project by the City, Gables will provide the City with:

1. an assignment to the City of all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Improvements, but not to Gables' Project, after final acceptance by the City;
2. copies of separate books of accounts, accurately documenting costs and expenses incurred in connection with the Improvements; and
3. a written, sealed statement from the Engineer certifying that the Improvements have been constructed in accordance with the Plans and Specifications (subject to approved change orders) in all material respects.

Section 4.04 Duties of the City

The City will:

- (a) review the Plans and Specifications, in a timely manner as set forth in Section 4.01 above, for substantial compliance with the requirements of this Agreement and applicable City procedures and Standards, and will approve all Plans and Specifications that comply with these requirements in all material respects, within a reasonable period of time after submission;
- (b) inspect the Improvements within two (2) days for an interim inspection and ten (10) days for a final inspection after a request for inspection is received, and, if completed in accordance with the terms of the Plans and Specifications and this Agreement in all material respects, will certify the Improvements as being in compliance with City Standards and specifications, and issue a final acceptance letter. 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;
- (c) provide timely written Notice to Gables within two working days whenever a completed inspection reveals that an item of the Improvements is not constructed or completed in accordance with the Plans and Specifications or is 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; and

(d) reimburse Gables for the engineering design and construction costs of the Improvements, in accordance with the provisions of Article V hereof within 30 days after final acceptance.

Section 4.05 City's Right to Construct Improvements on Default of Gables.

a. Subject to the provisions of the Master Agreement, including, without limitation, those pertaining to lender protection, notice and cure periods, and public health and safety, if Gables begins but does not complete construction of the Improvements materially in accordance with the Plans and Specifications and the terms and provisions in this Agreement, the City has the right, but not the obligation, to complete the construction of the Improvements.

b. If the City elects to complete the Improvements, all plans, designs, easements, real and personal property, and Improvements produced or installed by Gables or its Engineers or Contractors within the City property prior to the take over of construction of the Improvements by the City, will become the property of the City.

c. Gables grants to the City a nonexclusive right and easement to enter the Property to the most limited extent as may be necessary for the purpose of performing Gables' construction obligations pertaining to the Improvements under this Agreement in accordance with its terms and provision and in accordance with the notice and cure periods contained in this Agreement.

d. If Gables is terminated pursuant to Section 11.01 of the Master Agreement, the City will reimburse Gables for its prorata share of the work performed in accordance with the plans and specifications and the terms of this Agreement to the date of such termination, subject to the receipt of acceptable close-out information, including the contractor's invoice for services rendered to the date of termination.

ARTICLE V COSTS AND REIMBURSEMENT

Section 5.01 Gables' Initial Responsibility for Improvements Costs.

Gables will initially pay all costs associated with the design and construction of the Improvements in a timely manner as provided in this Article V.

Section 5.02 Cost Reimbursement.

The City will reimburse Gables the portion of the design and construction costs of the Improvements described herein, approved in accordance with this Agreement, as specified in attached Exhibit "E", in accordance with the terms of this Article V, after Gables has constructed and the City has accepted the Improvements described herein for operation and maintenance. The City's participation in the cost of the Improvements may include third party contributions. 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 ZERO DOLLARS (\$0.00) without amendment to this Agreement or other authorization by the Austin City Manager.

Section 5.03 Report of the Project Costs Required.

- a. On or before the date of final acceptance of the Improvements, Gables will submit a report to the City of the total costs of the Improvements that includes reasonable supporting information. Gables agrees to provide all information and documents in its possession or immediate control reasonably required by the City for proper processing and for accurate accounting and documentation of actual Project costs.
- b. The City will verify and determine the final total cost amount and will certify the amount due to Gables for the Project. If the City determines that the amount due to Gables is the same as the amount submitted by Gables, the City will have 30 days after receipt of all supporting information or the date of final acceptance of the Project, (whichever is later), in which to make the payment to Gables. If the City determines that the amount owing to Gables is less than the amount submitted by Gables, the City will: (i) notify Gables of the discrepancy within twenty days of Gables' submittal to the City; (ii) provide Gables with all supporting documentation upon which the discrepancy is based; and (iii) work diligently and in good faith to resolve the discrepancy within the ensuing ten days. If the Parties are unable to resolve the discrepancy, either Party may refer the matter to mediation in accordance with Article VII.
- c. If Gables allows work to commence on a change order that effects a material change of the Plans and Specifications for any approved phase before receiving the approval of the applicable City department(s) for the change order, any additional costs incurred on that change order may not be eligible for reimbursement, if the City reasonably determines that the change in the Project is materially unacceptable.
- d. In any event, subject to the applicable not to be exceeded amount and notwithstanding anything to the contrary contained herein, the City will reimburse Gables the amounts not in dispute then owing to Gables.

ARTICLE VI CONSTRUCTION

Section 6.01 Conditions for City Ownership and Maintenance of the Improvements.

After the City's final acceptance of the Improvements, the City will own and maintain the Improvements, subject to the Contractor's one-year warranty and provisions of 6.02 below, except that Gables expressly shall have certain ordinary and ongoing maintenance responsibilities for any portions of the Improvements described to be the maintenance responsibility of Gables in the Master License Agreement.

Section 6.02 Warranty.

a. Upon Substantial Completion of the Improvements and as a condition precedent to final acceptance by the City, Gables will transfer to the City all warranties for the Improvements, including the Contractor's one year warranty and any warranty bond and any other warranty or rights Gables has in connection with the Plans and Specifications as they relate to the Improvements, excluding any portion of such warranty pertaining to Gables' Project. Except as may otherwise be specifically provided in this Agreement or any other Agreement, Gables in no way guarantees either the performance or quality of the work undertaken or materials used by any contractor or subcontractor undertaking construction pursuant to this Agreement or any Other Agreement, and **GABLES HEREBY 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.**

b. Gables will be responsible for any material damage (ordinary wear and tear excepted) to the Improvements accepted by the City for operation and maintenance for one year following acceptance by the City, but only to the extent that the damage was caused directly by Gables or its Contractor during construction of the Improvements or Project.

Section 6.03 No Liens Permitted.

Gables will make timely payment for all aspects of properly performed engineering, design, construction work (including inspection fees), and for all materials and services relating to the Improvements in accordance with the applicable Construction Contract(s) and design services contracts for the Improvements. Gables will not suffer or permit the filing, perfection, or execution of any lien or encumbrance on the Improvements, and will cause any such lien to be released of record by payment, deposit, bond, or order of court of competent jurisdiction. Gables will have the right to contest any claim asserted in connection with the design and construction of the Improvements described herein, including the right to contest such claim in any court of competent jurisdiction. Gables shall secure the release within ninety days of the recordation of any lien or encumbrance. The foregoing notwithstanding any lien disputed by Gables may be bonded, as applicable, by the payment and performance bonds provided by the Contractor for the Improvements or otherwise bonded or secured by other fiscal, including a letter of credit, acceptable to the City Law Department within sixty days of its recordation.

Section 6.04 Agreement May be Pledged as Collateral.

Gables may pledge this Agreement as collateral for the purpose of securing financing from one or more lenders for the Improvements. Gables or its lender will provide documentation of the use of this Agreement as collateral to the City Law Department for its review and approval, which approval will not be unreasonably withheld or delayed.

**ARTICLE VII
GENERAL PROVISIONS**

Section 7.01 Interpretation of this Agreement, and Entire Agreement.

The Parties agree that in the event of any conflict between provisions of this Agreement and of the Master Agreement, the provisions of this Agreement shall control, provided, however, that notwithstanding the foregoing, (i) the General Provisions of Article XI of the Master Agreement shall apply to and control this Agreement, as if more fully set forth herein, and (ii) the mortgagee protection provisions of the Master Agreement (Article X thereof) shall apply to and control this Agreement. Subject to the foregoing, 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 7.02 No Waiver.

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written 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 any covenant by the City, the 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 7.03 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 Improvements 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.

Section 7.04 Expiration of Reimbursement.

The reimbursement described herein shall be available to Gables until the completion of construction of all of the Improvements, but not longer than ten (10) years from the date of this Agreement, which time period is subject to extension by mutual agreement.

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

SIGNATURE PAGES FOLLOW.

Executed to be effective on _____, 2005.

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

By: _____
Austan Librach,
Economic Growth and Redevelopment Services

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-
Exhibit "C": Improvements
Exhibit "D": Insurance and Bond Requirements
Exhibit "E": Cost Participation**

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;

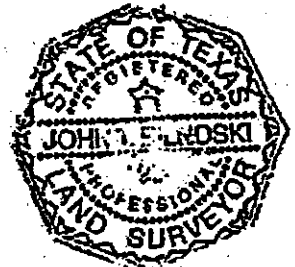
THENCE, $N49^{\circ}56'23''W$, along said Boundary Line Agreement of record, being the southerly line hereof, a distance of 62.77 feet to the POINT OF BEGINNING, containing an area of 2.582 acres (112,470 sq. ft.) of land, more or less, within these metes and bounds.

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



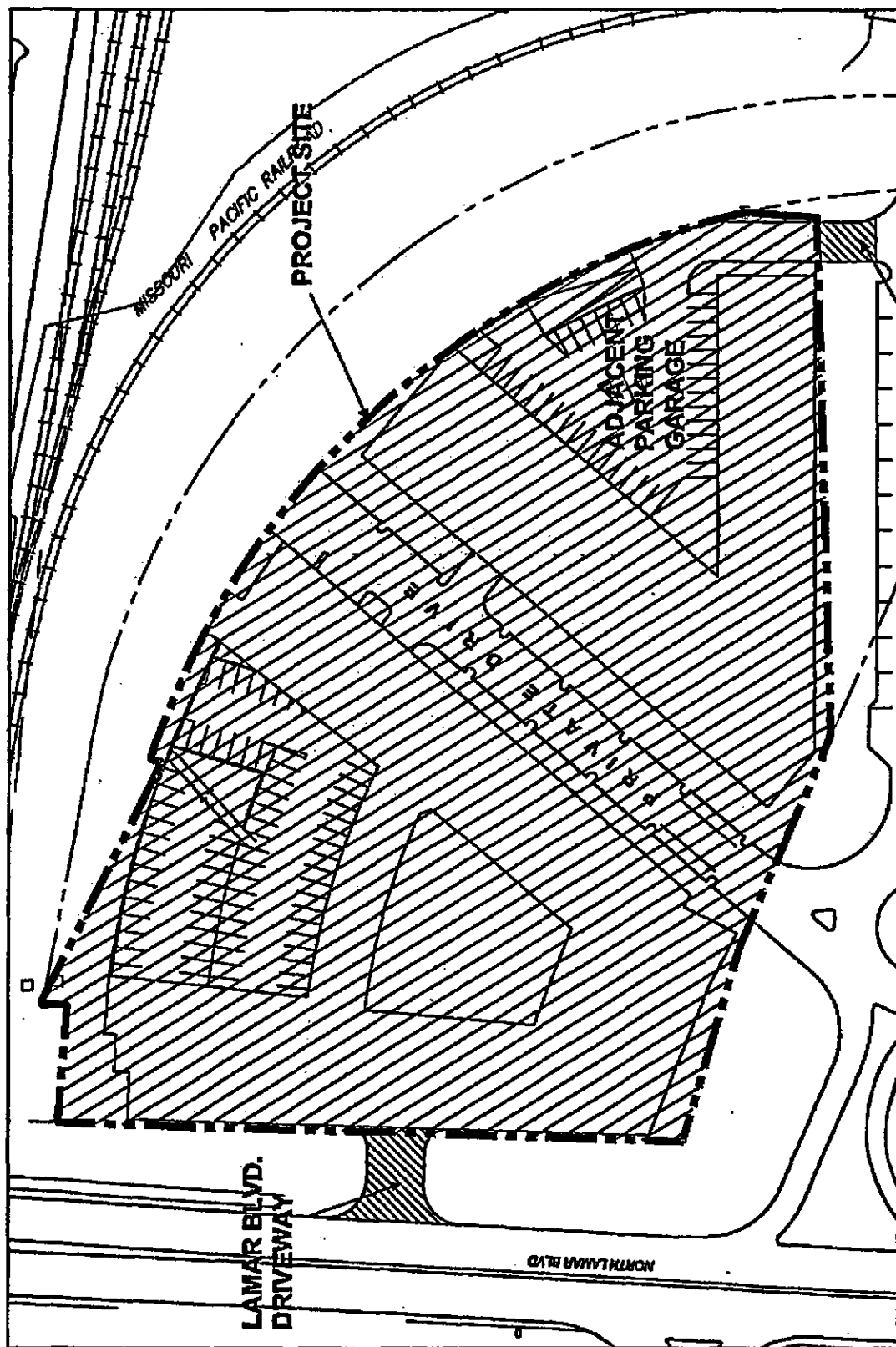


EXHIBIT B
PROPOSED JOINT
ACCESS DRIVE

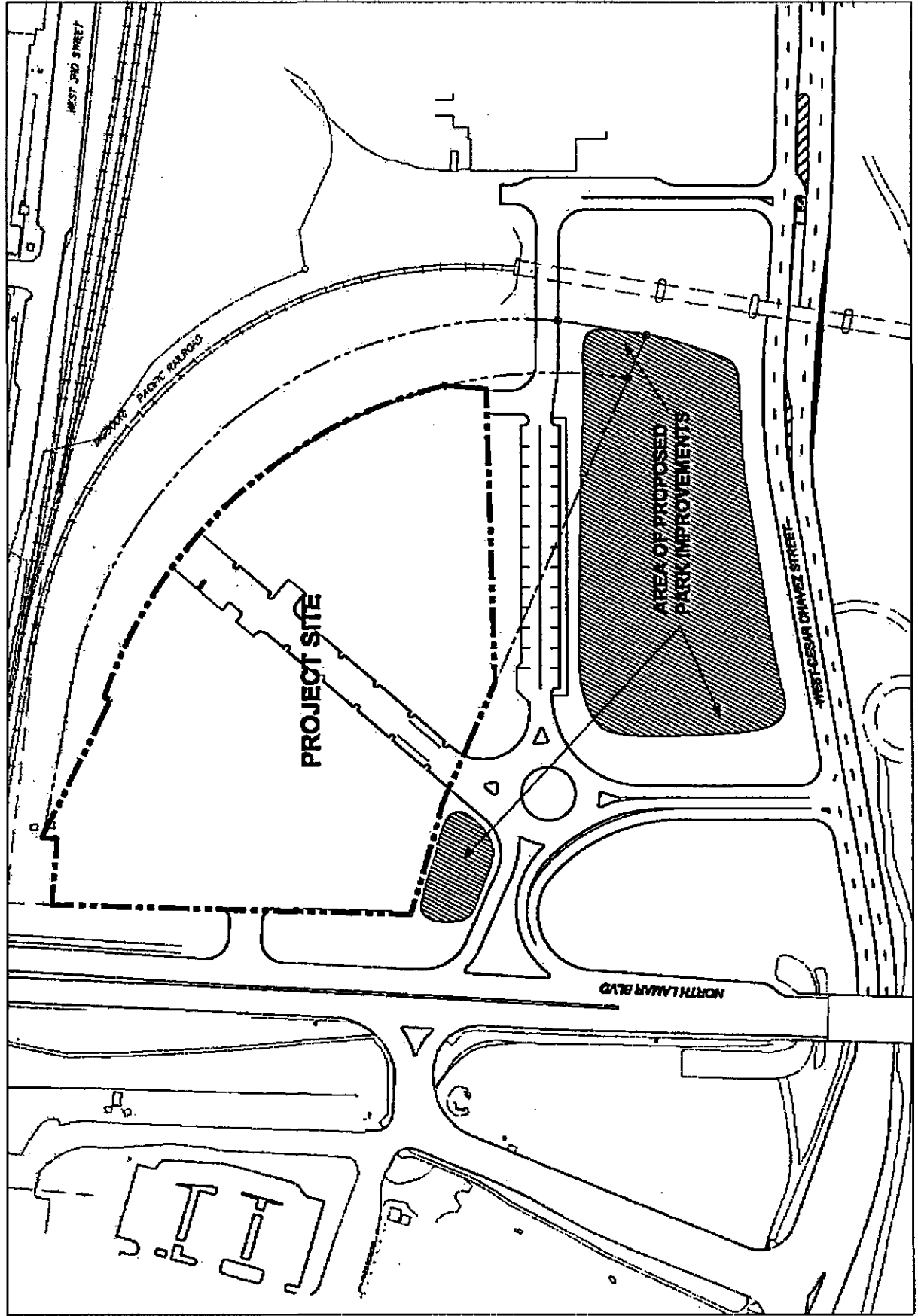


EXHIBIT C

EXHIBIT D

Insurance and Bond Requirements

A. General Requirements

Gables shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that Gables shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

Gables shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Gables hereunder and is not a limitation of liability on the part of Gables.

Gables must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Improvements and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

Gables' and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Public Works
City of Austin
P. O. Box 1088
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Gables, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Gables, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision

or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Gables shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Gables and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Gables.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Gables.

B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Gables', its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, Form WC 420304
 - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
 - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
 - (ii) Independent contractor's coverage.
 - (iii) Products/completed operations liability for the duration of the warranty period.

(b) The policy must also include these endorsements in favor of the City:

- (i) Waiver of Subrogation, endorsement CG 2404
- (ii) Thirty days notice of cancellation, endorsement CG 0205
- (iii) The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Gables, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

(a) The policy must include these endorsements in favor of the City of Austin:

- (i) Waiver of subrogation, endorsement TE 2046A
- (ii) Thirty days notice of cancellation, endorsement TE 0202A
- (iii) The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of Gables, then Gables shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Gables, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Gables and The City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49

CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Gables and the City.

Performance and Payment Bonds. In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, Gables shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Additional Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City, with the City and Gables named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Additional Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Additional Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Gables will be in material default under this Agreement.

Payment Bond. Gables shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Gables shall require contractor to provide a performance surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.

EXHIBIT E
Cost Participation in Improvements

City costs and contributions may include third party funding.

Park Improvements

The Park Improvements to be constructed on several park tracts, including the 2.5 acres of contiguous, useable, dedicated parkland will be based upon a plan for the Improvements to be approved by the City, which will exclude the Pfluger Bridge Extension, the Lance Armstrong Bikeway, the Great Streets Program, the Bike Path connections related to the Pfluger Bridge Extension and the overall bike path system network and any associated surface parking.

a. Proportionate Shares

Gables: 100% soft costs and 100% hard costs up to \$275,000.00

City: 0% soft costs and 0% hard costs

b. Total Estimated Costs \$275,000.00

Subject to available funding, the City may cost participate in the development of the Improvements. In such an event, 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, permit and inspection fees, the construction management fee, and other professional services fees, but will exclude the costs of Gables' financing and Gables' accounting and legal fees.

EXHIBIT H

COMMUNITY FACILITIES AND COST REIMBURSEMENT AGREEMENT FOR PEDESTRIAN PATH AND BIKE PATH IMPROVEMENTS

This Community Facilities and Cost Reimbursement Agreement for Public Pedestrian Path and Bike Path 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, Gables and the City intend to design and construct certain pedestrian path and bike path improvements, including the connection of a storm water inlet on the City's Bowie Street Underpass tract to the storm water system serving the Project within a dedicated easement in the Project and in an adjacent tract of right-of-way, and other associated improvements in accordance with applicable City standards, including the City's Transportation Criteria and Drainage Manuals, subject to City review and approval, and in the locations shown on Exhibit "C" hereto (the "Improvements").

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 a regional bio-filtration meadow to accept the storm water drainage from the Improvements and the Project.

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 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 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.

a. While it is presently contemplated that the City will not be cost participating in the development of the Improvements described herein, subject to available funding, the City may by amendment to this Agreement, cost participate in the development of the Improvements. Unless and until the City elects to cost-participate, the provisions of this Agreement related to cost reimbursement and to the requirement of bidding or other purchasing requirements are inapplicable, although Gables is strongly encouraged to seek competition in its procurement processes and to maximize MBE/WBE participation in the procurement process.

b. 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.

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 the Engineer at logical points in the development of the design to the City for review and approval. The City will perform interim design reviews of the Plans and Specifications and provide any written comments to Gables within ten working days of submittal, unless additional time will be required due to the requirement of reviews by multiple City departments or additional time will be required in connection with the site plan or permit review and approval process. In the event that such additional time is required, the City

will notify Gables in writing of the additional time requested for the review, which may not exceed an additional five working days for the review of interim design submittals or the additional time required for the site plan review and approval process. Once approval is obtained, no material changes may be made to the Plans and Specifications without following the change order procedure described in Section 3.02(a)(8) hereof.

b. The City will perform site plan and permitting reviews in a timely manner and in accordance with City requirements, including but not limited to Section 25-5-114 of the City Code.

c. After approval of the Plans and Specifications and, subject to reimbursement as described in this Agreement and subject to all of the other terms and conditions of this Agreement and the Master Agreement, Gables agrees to construct the Improvements.

d. Subject to reimbursement as described in this Agreement, Gables agrees to construct the Improvements in a good and workmanlike manner and in all material respects substantially in accordance with the Plans and Specifications and all applicable laws, regulations, and ordinances, including (but with respect only to those Improvements that are subject to reimbursement under Section 5.02 hereof) the City's MBE/WBE requirements.

e. Gables or Gables' Construction Manager or other agent will serve as the manager for the construction of the Improvements.

Section 4.02 Schedule of Construction.

a. Gables will construct the Improvements at one time or in phases, as reasonably approved by the City, on a timely basis as is needed in connection with the development of the Project and adjacent public infrastructure.

b. Gables will begin construction of the Improvements during the construction of the first phase of development of the Project.

Section 4.03 Construction Duties of Gables.

Subject to all of the terms and conditions of this Agreement, including, without limitation, Section 1.03 hereof (limiting the applicability of the City's minority-owned and women-owned business enterprise procurement program), Gables (or Gables' Engineer, Construction Manager, or other agent) will:

a. solicit public invitations for bids for the construction of the portion of the Improvements subject to reimbursement, following all applicable state laws and regulations and City Codes, regulations and procedures to which the City must adhere that pertain to competitive bidding procedures for Construction Contracts. This requirement includes compliance with the 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 or at the option of Gables,

substantial compliance with the requirements of Section 271.116 of the Texas Government Code and the other applicable provisions of the Code related to competitive sealed proposals for those Improvements, which may be constructed for less than \$1,500,000.00;

b. prepare the Construction Contract to comply, in all material respects, with all applicable laws, regulations, ordinances, City procedures, and the terms of this Agreement. The Construction Contract must include general conditions that include the following provisions:

1. reasonable warranties, and insurance, payment and performance bonding requirements, as more fully set forth in Exhibit "D" hereto;
2. include the City as an approved future assignee to the Construction Contract, together with the applicable Plans and Specifications, with the ability of the City, as assignee, to complete the Improvements, if Gables fails to complete the Construction Contract; and
3. certificates of insurance evidencing that the required insurance has been obtained and that the City has been designated as an additional insured under Endorsement CG2010 (or equivalent approved by the City Risk Manager) with respect to all liability coverages to the extent allowed by law;

c. award the Construction Contract to the lowest responsible bidder (who is duly qualified and can meet the construction schedule) for those Improvements that are subject to reimbursement hereunder, following construction contract competitive bidding procedures set forth in Chapter 252 of the Texas Local Government Code (or as applicable Section 271.116 of the Code) and the minority-owned and women-owned business enterprise procurement program found in Chapter 2-9 of the City Code, as applicable; prior to entering into any other contract for the provision of construction, demolition, material generation or non-professional services (eg., services other than design, surveying, etc.) to satisfy Gables obligations hereunder, Gables will in good faith solicit bids for such items from at least three qualified entities, review all timely submitted bids in good faith and select the entity to provide such item which in Gables discretion represents the best overall value for the Improvements taking into account all relevant factors and circumstances or will use the process set forth in Section 271.116 of the Code and select the entity providing the "best value," taking into consideration the enumerated evaluation criteria;

d. obtain all required permits, consents, inspections, tests, and authorizations necessary for construction of the Improvements; provided, however, that the City will cooperate with Gables in obtaining those items listed herein;

e. provide the City with a copy of the Construction Contract and any additional documents pertaining to the Construction Contract on or about the time they have been signed, and thereafter provide copies of any documents amending or replacing any of said documents;

f. submit all changes to the Plans and Specifications and change orders to the

Construction Contract to the City for its review and approval prior to the commencement of any work incorporating the change, which approval will not be unreasonably withheld or delayed;

g. ensure that all change orders submitted for the Construction Contract, either singularly or in the aggregate, do not increase the portion of the Construction Contract cost subject to City reimbursement by more than twenty five percent of the original contract amount;

h. make timely payment to the Engineer and Contractor for work properly performed concerning the Improvements in accordance with the terms and provisions of the applicable contract with the Engineer or the Construction Contract (including any provisions related to statutory retainage and withheld amounts due to improper work or punch list items);

i. arrange and coordinate materials testing with each Contractor and provide the City with all testing information; if the City reasonably determines that the work needs to be corrected or rejected or requires special testing because of unforeseen circumstances, the City will promptly notify Gables and Gables will take appropriate action to remedy the identified problem;

j. reject all work found not to conform to minimum requirements of the Construction Contract and the applicable Plans and Specifications, and advise the Engineer and the City of work that Gables determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval;

k. arrange and observe with the Contractor all acceptance testing, if applicable, for the Improvements and notify the City and the Engineer of the schedule and results of the testing;

l. maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable Plans and Specifications, change order, addenda, daily inspection reports, additional or revised drawings, and other related construction documents;

m. coordinate the preparation of letters indicating Substantial Completion for the Improvements with the Engineer, together with the submission to the Contractor of a list of observed items requiring completion or correction;

n. ensure access and permit the City to inspect the construction of the Improvements at all reasonable times during construction until final acceptance of the Improvements by the City;

o. conduct and coordinate final inspection of the Improvements with the Engineer and the City inspector; transmit a final list of items to be completed or repaired, if any, and observe Contractor correction of the same;

p. prepare and submit to the City monthly during construction of the Improvements a report regarding minority-owned and women-owned business enterprise participation in the construction of the Improvements; and

q. within thirty (30) days after final completion and acceptance of the Improvements by the City in writing, provide the City with complete sets of the Plans and Specifications, certified "as-built", by the Engineer in accordance with the requirements of this Agreement. The City's acceptance of the Improvements shall be governed by this Agreement and the requirements of the City Code. As a condition of final acceptance of the Project by the City, Gables will provide the City with:

1. an assignment to the City of all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Improvements, but not to Gables' Project, after final acceptance by the City;
2. copies of separate books of accounts, accurately documenting costs and expenses incurred in connection with the Improvements; and
3. a written, sealed statement from the Engineer certifying that the Improvements have been constructed in accordance with the Plans and Specifications (subject to approved change orders) in all material respects.

Section 4.04 Duties of the City

The City will:

- (a) review the Plans and Specifications, in a timely manner as set forth in Section 4.01 above, for substantial compliance with the requirements of this Agreement and applicable City procedures and Standards, and will approve all Plans and Specifications that comply with these requirements in all material respects, within a reasonable period of time after submission;
- (b) inspect the Improvements within two (2) days for an interim inspection and ten (10) days for a final inspection after a request for inspection is received, and, if completed in accordance with the terms of the Plans and Specifications and this Agreement in all material respects, will certify the Improvements as being in compliance with City Standards and specifications, and issue a final acceptance letter. 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;
- (c) provide timely written Notice to Gables within two working days whenever a completed inspection reveals that an item of the Improvements is not constructed or completed in accordance with the Plans and Specifications or is 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