

**LEASE AND PARKLAND IMPROVEMENT AGREEMENT BETWEEN
THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT
SCHOOL DISTRICT REGARDING THE KENNEMER SWIMMING POOL LOT**

This Lease and Parkland Improvement Agreement Between the City of Austin and the Austin Independent School District Regarding the Kennemer Swimming Pool Lot (the "Agreement") is made and entered into by and between the City of Austin, a municipal corporation situated in the Counties of Travis, Hays and Williamson, State of Texas (the "City"), and the Austin Independent School District, a political subdivision of the State of Texas (the "District").

RECITALS:

A. The District is the owner of that certain tract of land more particularly described on Exhibit "A" attached hereto and made a part hereof ("District Property") and locally know as 1201 Payton Gin Road, Austin, Texas 78758, upon which Lanier High School (the "Campus") is located. The District Property is situated adjacent to that certain tract of land more particularly described on Exhibit "B" attached hereto and made a part hereof known as the Kennemer Swimming Pool Lot (the "Park Property"), owned by the City for the benefit of its citizens.

B. The District has constructed certain renovations and additions on the Campus. In connection therewith, the District desires to use a portion of the Park Property for a 27 car parking lot to serve the Campus (the "Parking Lot").

C. The City has agreed to lease a portion of the Park Property to the District for the construction and use of the Parking Lot, which will mutually benefit the parties hereto.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the City and the District hereby agree as follows:

AGREEMENT:

1. Term. Subject to Paragraph 8 below, the initial term of this Agreement shall commence on the Effective Date (hereinafter defined) and shall continue for a term of fifty (50) years, unless terminated earlier by the District as provided in this Agreement. Subject to such termination provision, upon the expiration of the initial term, the term of this Agreement shall automatically renew for one (1) additional term of fifty (50) years on the same terms and conditions unless the District or the City notifies the other party in writing that it does not wish to renew the Agreement at least sixty (60) days prior to the expiration of the initial term.

2. Leased Premises. The City hereby leases to the District and the District hereby leases from the City, for the District's non-exclusive use on the terms and conditions set forth herein, that portion of the Park Property depicted by shading on Exhibit "C" attached hereto and made a part hereof (the "Leased Premises"). The Leased Premises shall be used by the District

for the construction, operation, use, maintenance and replacement of the Parking Lot and all required utilities and other installations necessary to comply with applicable City codes.

3. Construction of Improvements. The District has constructed the Parking Lot on the Leased Premises at its sole expense in accordance with the site plan approved under City of Austin Case No. SP-2007-0591CX. All improvements constructed by the District on the Leased Premises shall be owned by the City. The City agrees that in connection with construction and use of the Parking Lot, the District shall have the right to permanently remove the City's chain link fencing running parallel to the westernmost boundary of the Leased Premises.

4. Use of the Parking Lot. The District shall have the non-exclusive right to use the Parking Lot at all times on a first come, first served basis to serve the Campus. In addition, the City shall have the non-exclusive right to use the Parking Lot at all times on a first come, first served basis for patrons of the Park Property.

5. Maintenance of Leased Premises. During the term of this Agreement, the District shall maintain the Parking Lot in good condition and repair, at its sole expense. The District shall not be responsible for maintaining any chain link fencing on the Park Property.

6. City's Rights to Leased Premises. The right of the District to use the Leased Premises is expressly subject and subordinate to the right of the City to construct, install, maintain, operate, and renew any public utilities facilities, franchised public utilities, or streets or park facilities on, beneath, or above the surface of the Leased Premises. Provided, however, City agrees that said uses of the Leased Premises by the City will be permitted only so long as such uses do not interfere with or destroy the District's use of the Leased Premises or any property or improvements placed thereon or therein by the District. In case of an officially declared City emergency, however, damage to or destruction of the District's property in or on the Leased Premises shall be at no charge, cost, claim, or liability to the City, its agents, contractors, officers, or employees. Nothing in this Agreement shall be construed to limit, in any way, the power of the City to use, alter, or improve the Leased Premises subject to this Agreement pursuant to official action by the governing body of the City, or its successors. The City does, however, agree to cooperate with the District to effect the relocation of the District's installation and improvements in the event of such use, alteration or improvements, and further, to cooperate with the District wherever possible, to effect such use, alteration or improvement of the Leased Premises so that the District's operations and improvements on the Leased Premises will not be materially affected thereby.

7. Default/Remedies.

A. It shall be an event of default hereunder if the District fails to comply with the terms and conditions of this Agreement and such failure continues for a period of sixty (60) days following the District's receipt of written notice regarding same from the City. Provided, however, if the default is curable but cannot reasonably be cured within the 60-day cure period, and if the District commences to cure the default during the 60-day cure period and diligently proceeds thereafter to cure such default, then the cure period shall be extended for a reasonable time not to exceed an additional thirty (30) days (for a total of 90 days) in order to provide the District the opportunity to cure the default.

B. It shall be an event of default hereunder if the City fails to comply with the terms and conditions of this Agreement and such failure continues for a period of sixty (60) days following the City's receipt of written notice regarding same from the District. Provided, however, if the default is curable but cannot reasonably be cured within the 60-day cure period, and if the City commences to cure the default during the 60-day cure period and diligently proceeds thereafter to cure such default, then the cure period shall be extended for a reasonable time not to exceed an additional thirty (30) days (for a total of 90 days) in order to provide the City the opportunity to cure the default.

C. If an event of default occurs by either party and the default is not cured within the applicable cure period, the Agreement may be enforced in law or in equity, including a suit for specific performance and/or for damages. Provided, however, no termination of this Agreement by the City shall be effective until the date which is one (1) year after the date of the City's termination notice, in order to allow the District to establish alternative off-site parking for the Campus. The parties agree that specific performance shall be an available remedy due to the difficulty in determining damages that may accrue as a result of a material breach of this Agreement by the other party. In addition, if an event of default is not cured within the applicable cure period, the non-defaulting party shall have the right (but not the obligation), without waiver of any other right or remedy, to perform such obligations of the defaulting party on such party's behalf, and the defaulting party shall reimburse the non-defaulting party within thirty (30) days of receipt of an invoice (including sufficient documentation of the costs and expenses incurred) demanding payment for any reasonable and actual out-of-pocket costs and expenses incurred by such party in connection with performance of such obligations.

8. Commitment of Current Revenue. If at any time during the term of this Agreement, funding is not made available for the continuation of this Agreement for the following fiscal year of the District by adoption of the District's budget, the District shall have the right to terminate this Agreement upon written notice to the City and such termination shall be effective as of the last day of the then current fiscal year of the District.

The Parties agree that the City has no financial obligations under this Agreement. However, should a Court determine that the City does have a financial obligation as a result of this Agreement, the City shall execute its best efforts to obtain and appropriate funds for payment of the contract. Should those efforts be unsuccessful, the City shall have the right to terminate this Agreement upon written notice to the District and such termination shall be effective as of the last day of the then current fiscal year for the City.

9. Interpretation. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

10. Administration. The City Parks and Recreation Department shall administer this Agreement on behalf of the City. The District's Department of Construction Management shall administer this Agreement on behalf of the District. Either party may designate a new administrator upon written notice to the other.

11. Application of Law. This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this

Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

12. Survival. Conditions and covenants of this Agreement which by their terms are performable after the termination, expiration or end of the Agreement, shall survive such termination, expiration or end and remain fully performable.

13. Venue. Venue for all lawsuits concerning this Agreement will be in the City of Austin, Travis County, Texas.

14. Assignment. Neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

15. Notices. Any notice or request required by this Agreement must be in writing, and may be given or be served by depositing the same in the United States Postal Service, postal prepaid, and certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party (or to an officer of such party), or by telecopy, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner herein above described shall be effective from and after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall, until changed as herein provided, be as follows:

For the District: Austin Independent School District
Department of Construction Management
1111 West Sixth Street, Suite B-300
Austin, Texas 78703-5399
Telephone: (512) 414-3151
Facsimile: (512) 480-0545
Attn: Mr. Curtis E. Shaw
Director, Department of Construction Management

For the City: City of Austin
Office of the City Manager
301 W. 2nd Street, Box 1088
Austin, Texas 78767-1088
Telephone: (512) 974-2200
Facsimile: (512) 974-2833
Attn: City Manager

However, the parties hereto shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice to the other party.

16. Entire Agreement. This Agreement is the entire agreement of the parties. This Agreement may not be altered or amended except by mutual written agreement.

17. Non-waiver. Failure of a party to exercise any right or remedy in the event of default by the other party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

18. Authority of Signatories. The parties represent that the individuals signing this Agreement on their behalf possess full power and authority to enter into this Agreement from their respective governing boards in compliance with the laws of the State of Texas.

19. Further Assurances. Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

20. Retention of Defenses. The parties hereto agree that this Agreement shall not affect, impair or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated upon premises defects.

21. Attorney's Fees. Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement on the subject matter hereof, shall be entitled to recover court costs and reasonable attorney's fees and other litigation expenses from the non-prevailing party.

22. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. Incorporation of Recitals. The recitals which appear above are found by the City and the District to be true and are incorporated into this Agreement by reference.

24. Warranty of Peaceful Possession. City covenants that the District, upon performing and observing the covenants and agreements herein contained, shall and may peaceably and quietly have, hold, occupy and use and enjoy the Leased Premises during the term hereof, and may exercise all its rights hereunder, subject only to the provisions of this Agreement and applicable governmental laws, rules and regulations.

[Remainder of page left blank; signatures appear on next page]

Executed to be effective as of the date last signed by the parties (the "Effective Date").

CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: Mark J. Williams

Mark J. Williams
President, Board of Trustees

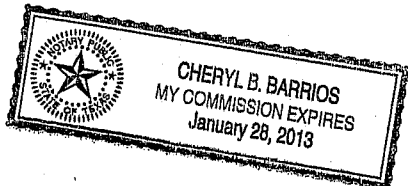
APPROVED AS TO LEGAL FORM
MAY 24 2010

Date: 5/24/10

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me Cheryl Barrios, Notary Public, on this day personally appeared Mark J. Williams, President, Board of Trustees of the Austin Independent School District, on behalf of said school district, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on May 24, 2010.



Cheryl Barrios
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me _____, Notary Public, on this day personally appeared _____ (name), _____ (title) of the City of Austin, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on _____, 2010.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

DISTRICT PROPERTY

The remainder of that certain called 33.44 acre tract of land described in a Deed to the Board of Trustees of the Austin Independent School District, filed February 10, 1960, and recorded in Volume 2142, Page 311, Deed Records of Travis County, Texas.

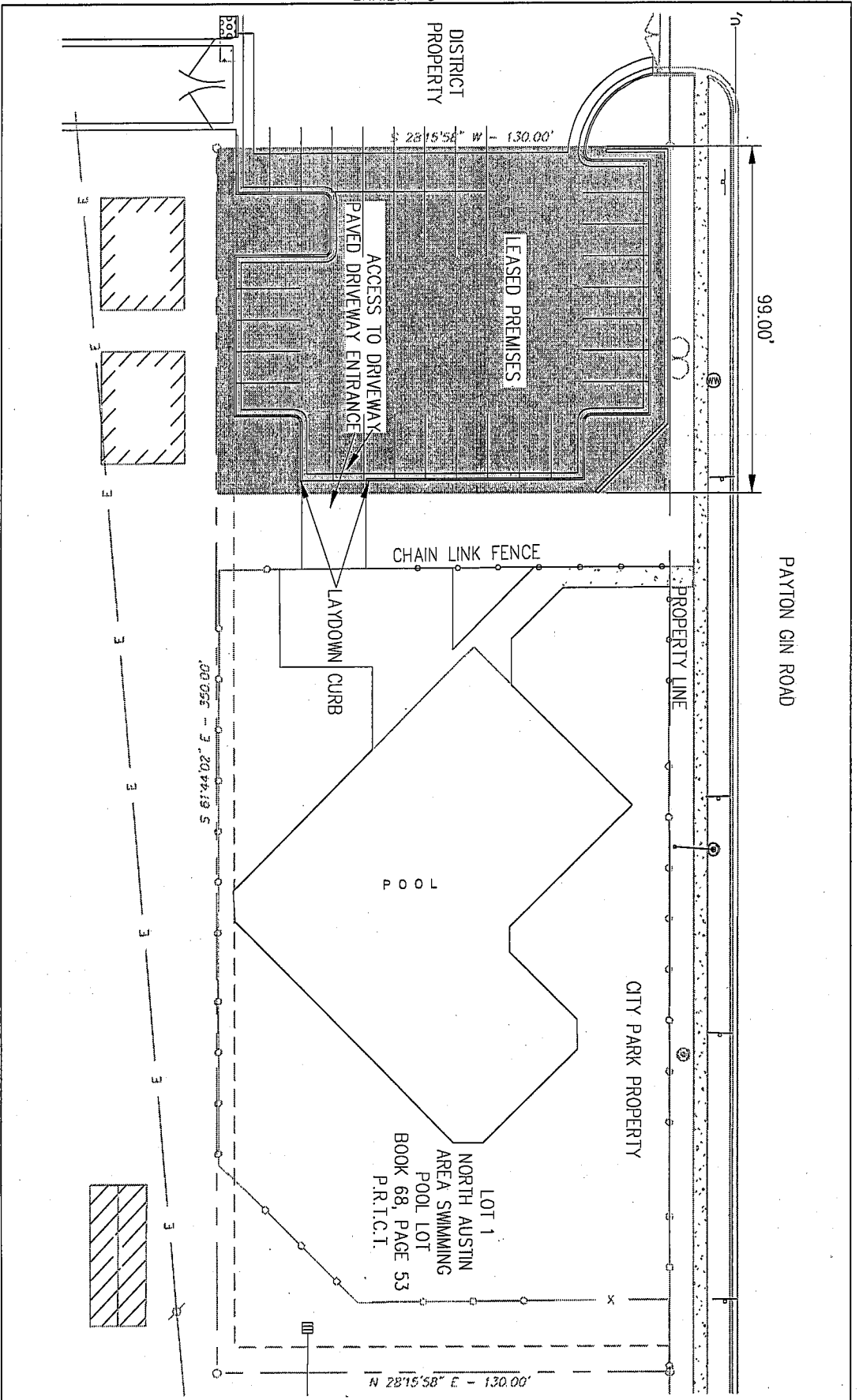
EXHIBIT "A"

PARK PROPERTY

Lot 1, North Austin Area Swimming Pool Lot, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Book 68, Page 53, Plat Records of Travis County, Texas.

EXHIBIT "B"

EXHIBIT "C"



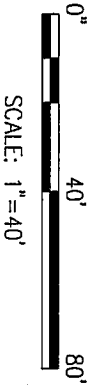
Drawing Title:

**AISD PARKING LOT
LEASED PREMISES**

Project Name:

AISD LANIER HIGH SCHOOL

PSJ Project Number
106062



PageSouthernlandPage

ARCHITECTURAL INTERIORS CONSULTING ENGINEERING

Date: 5/21/08

Scale: 1"=40'-0"

Refers to Issue:

106062

Refers to Drawing Number:

CS101

X-Drawing Number:

CS101-A