DEVELOPMENT TERMS & CONDITIONS

Austin Country Club v. City of Austin
Travis County Dist. Court Cause No. D-1-GN-17-006525

The requirements imposed herein by these Development Terms & Conditions, hereafter "Development Terms," apply to Austin Country Club and the City of Austin ("City") through entry of the final Agreed Judgment & Order on _____, 20__ in the above-referenced cause.

PART 1. General Provisions

A. ***Definitions.*** As used throughout these Development Terms:

i. "Property," with or without qualification (e.g., "Austin Country Club property") refers to Lot 1, Block A, Davenport Ranch, Phase 4, Section 1, which is a 179.67 acre lot located at 4408 Long Champ Dr., Austin, Texas 78746.

ii. "Project," with or without qualification (e.g., "Austin Country Club Project"), refers to any development activity on the property associated with the uses described in the Land Use Element in Part 2, Section J.

iii. "Club District," "Entrance District," "Golf District," and "Marina District," collectively the "development districts," refers to the named district or districts geographically depicted on Exhibit 1, attached hereto and incorporated herein by reference.

iv. "Austin Country Club" means Austin Country Club and any successor owner of all or any portion of the Property.

B. ***Obligations Imposed.*** Austin Country Club and the City shall act in good faith to carry out the activities described throughout these Development Terms, which are generally summarized as follows:

i. Austin Country Club's Obligations. Austin Country Club shall develop its project in compliance with the regulations and review procedures set forth in these Development Terms and ensure that its development activity does not exceed any of the limitations or restrictions imposed herein.

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ii. The City's Obligations. The City shall approve all development applications and site inspections for the project that comply with the regulations imposed herein and shall not seek to impose any requirement that is inconsistent with these Development Terms.

PART 2. Regulatory Provisions.

— ENVIRONMENTAL ELEMENT

A. ***Impervious Cover.***

i. Gross Site Limitation.

a. Overall impervious cover on the Property may not exceed 20% of the Property's gross site area, which equals 35.93 acres.

b. Notwithstanding the impervious cover limitation in Paragraph A.i.a., above, in no case may reductions in site area resulting from condemnation of land for public use reduce the total impervious cover allowed on the Property to below 35.43 acres.

ii. Slope Limitations. In addition to the gross site limitation set forth in Paragraph 2.A.i. above, impervious cover associated with development on slopes may not exceed:

a. 30%, if the slope gradient is less than fifteen percent;

b. 20%, if the slope gradient is between fifteen to twenty-five percent; or

c. 10%, if the slope gradient is over twenty-five percent; provided that, paved surfaces, such as private drives, parking lots, or driveways, are permitted on slopes of over twenty-five percent gradient only for a driveway that is necessary to provide access to areas on slopes of less than twenty-five percent gradient.

iii. Subsurface Parking Facility. The subsurface portion of a parking structure is excluded from the calculation of impervious cover for those portions of the structure that are:

a. Below the grade of the land as it existed prior to construction of the parking structure;

b. Covered by soil with a minimum depth of two feet and an average depth of not less than four feet; and

c. Restored with adaptive and native vegetation, as prescribed by the Environmental Criteria Manual, for areas that are not used for golf course operations, but otherwise restored with grass.

B. ***Water Quality Controls and Storm Water Detention*.**

i. Level of Treatment Required. Construction of the Austin Country Club Project, in accordance with these Development Terms, requires construction of a water quality pond sufficient to treat:

a. 10 acres of storm-water runoff from impervious cover that is untreated as of the effective date of these Development Terms, whether or not that impervious cover is located on or off-site; and

b. Storm-water runoff from untreated impervious cover located on or off-site that is equivalent to new impervious cover added to the Property after the effective date of these Development Terms.

ii. Timing of Treatment Obligation & Capacity Credits.

a. Development resulting in up to 40,000 square feet of new impervious cover may be constructed without triggering the water quality treatment requirement in Subsection B.i., above.

b. However, before certificates of occupancy may be issued for development that would cause the project to exceed 40,000 square feet of new impervious cover, Austin Country Club must construct water quality controls sufficient to treat both 10-acres of existing untreated impervious cover, as required under Paragraph B.i.a., above, and new impervious cover that has been approved for construction as required by Paragraph B.i.b., above.

c. At or before the point where proposed development exceeds the 40,000 square-foot trigger established under Paragraph B.ii.b., above, Austin Country Club may in its discretion construct water quality

control facilities sufficient to treat a higher volume of storm-water runoff than required to meet its treatment obligations under Subsection B.i., above, based on development that has been approved or planned for construction at that time. Any such excess capacity shall be credited against the treatment required under Paragraph B.i.b., above, for new impervious cover associated with subsequently approved development.

iii. Impervious Cover Calculations. For purposes of this Section 1.B., "new impervious cover" does not include: (a) development that utilizes existing impervious cover, including new habitable space or additional stories added to existing structures; or (b) redevelopment that removes impervious cover from one area of the Property and reallocates that impervious cover to another area of the Property.

iv. Treatment Facility Standards.

a. Except as provided in Paragraph B.iv.b., below, the Environmental Criteria Manual in effect on the effective date of these Development Terms shall apply to water quality control facilities approved for construction during the following periods:

- 10 years from the effective date, for water quality controls immediately upstream from the entrance driveway; and
- 15 years from the effective date, for water quality controls outside the area immediately upstream from the entrance drive.

b. Water quality control facilities approved for construction after the time periods specified in Paragraph B.iv.a., above, or after completion of the Project, as provided in Section E of Part 3, below, are subject to the standards in effect at that time; except that the drainage area for water quality control facilities required under this Section 1.B shall be determined based solely on applicable provisions of the Environmental Criteria Manual in effect on the effective date of these

Development Terms until completion of the Project, at which point future development or redevelopment shall be subject to applicable regulations then in effect.

c. Notwithstanding the requirements of Paragraph B.iv.a., above, the City may request that Austin Country Club comply with any enhanced standards for water quality treatment controls adopted after the effective date of these Development Terms. Austin Country Club shall consider such requests, but is not required to comply with standards adopted after the effective date of these Development Terms except as provided under Paragraph B.iv.b,, above.

C. *Tree Protection.*

i. Protected Tree Regulations.

a. Except as provided in Paragraph 2.C.ii., below, the project is subject only to the tree protection and mitigation requirements applicable under Chapter 25-8, Subchapter B, Article 1, Division 2 (*Protected Trees*), and any related administrative rules. These provisions require replanting and mitigation, but do not prohibit Austin Country Club, in its sole discretion, from removing protected or heritage trees.

b. Mitigation fees and requirements for replanting trees shall be determined based on the rules in effect on the date of any site development permit or building application requiring the removal of trees.

ii. Additional Tree Protections.

a. Austin Country Club shall pursue design options that seek to maximize the preservation of existing "heritage trees" as defined in City Code Section 25-8-602(1), but is not prohibited from removing trees except as provided in Paragraph 2.C.ii.b.

b. If, in the sole discretion of Austin Country Club, the project requires removal of two or more heritage trees, the City may require Austin

Country Club to relocate no more than two trees that have been selected for removal to another location on the property. In determining which tree or trees must be relocated, the City Arborist may consider both heritage trees and protected trees based on the feasibility of relocation, but may not require Austin Country Club to relocate more than two trees total.

c. If relocation of trees is required under this Paragraph 2.C.ii., the trees required to be relocated shall be identified on the site development plan and relocation required as a condition of approval. In selecting a site for tree relocation, the City Arborist shall consult with Austin Country Club and may not select a site that would interfere with the golf course or golf course operations.

D. ***Cut & Fill Restrictions.*** Cut or fill on the Property may not exceed four feet, except for construction of:

i. Water quality control or detention facility and appurtenances for conveyance, such as swales, drainage ditches, diversion berms, and structural berms;

ii. Utilities, provided that areas disturbed by cutting associated with utility construction or installation must be restored to natural grade;

iii. Underground parking facilities;

iv. A building foundation, swimming pool, or tennis courts, provided that any fill associated with the construction is placed under foundations with vertical sides;

v. A terraced wall associated with entrance drives may not exceed a height of 12 feet;

vi. A roadway, driveway, or parking area; and

vii. A golf path, provided that the cut or fill is the minimum departure necessary to facilitate a reasonable use and will not create a significant probability of erosion.

— SITE DEVELOPMENT ELEMENT

E. ***Floor-to-Area Ratio (FAR).*** The FAR of a non-residential building located within 1,000 feet of Loop 360, which is a Hill Country Roadway, may not exceed:

i. .25 cumulatively, for all buildings in which any portion of the structure is on a slope gradient of 15 percent or less;

ii. .08 cumulatively, for all buildings in which the entire structure is on a slope gradient of more than 15 percent, but not more than 25 percent; and

iii. .04 cumulatively, for all buildings in which a portion of the structure is on a slope gradient of more than 25 percent, but not more than 35 percent.

F. ***Height.***

i. Austin Country Club may construct buildings that are up to, but not more than, a height of:

a. 25 feet in the Entrance District;

b. 28 feet in the Golf Course District or Marina District; or

c. 50 feet in the Club District, except that this limitation does not apply to netting, poles, and fencing for the golf driving range.

ii. Docks in the Marina District may not exceed the height limit required under City Code Section 25-2-1176(A) (*Site Development Regulations for Docks, Marinas, and Other Lakefront Uses*).

G. ***Transportation & Access.***

i. Transportation Impact Analysis (TIA).

a. Except as provided in Paragraphs G.i.b.-c., below, until the Project is complete, the City may not require Austin Country Club to provide a TIA or mitigate offsite transportation impacts for construction of any use permitted under the base zoning district regulations applicable to the property on the effective date of these Development Terms.

b. For development proposed prior to the completion of the entrance driveway from the Capitol of Texas Highway (Loop 360), a TIA of

limited scope may be required to ensure safe operating conditions if the proposed development:

- Consists of new uses not existing on the Property as of the effective date of these Development Terms; and
- Generates two thousand (2,000) or more additional trips.

c. For development proposed prior to the completion of the entrance driveway from the Capitol of Texas Highway (Loop 360), the Director of the Austin Transportation Department may require a TIA of limited scope to determine the need for traffic signals or turn lanes in the immediate vicinity of the entrance driveway, which may be required as needed to ensure safe operating conditions.

ii. New Access Drives from Capitol of Texas Highway (Loop 360).

a. Except as provided in Paragraph G.ii.b., below, a new private street or drive may not exceed 70 feet in width, which must include the surface of all vehicular drives, sidewalks, bike lanes, medians, and associated landscaping, but excludes retaining walls.

b. Within 300 feet from the property line adjacent to Loop 360, the maximum width of a driveway or bridge is up to 200 feet in order to accommodate a vehicular turnaround, small parking area, signage, planter, landscaping, and entrance/exit gates.

c. To provide access to the Property from Loop 360, Austin Country Club may construct a driveway or bridge that crosses areas identified by the Land Development Code as a creek, tributary, critical water quality zone, or erosion hazard zone, provided that the access is otherwise in compliance with City Code Chapter 25-7 (*Drainage*).

d. To the greatest extent possible, Austin Country Club shall minimize disturbance beyond the limits of construction within the Entrance District as approved under this subsection. Areas disturbed as part of

permitted construction shall be restored in accordance with Appendix A of the Environmental Criteria Manual.

H. ***Signage.*** All signage on the Property must comply with all applicable requirements of City Code Chapter 25-10 (*Sign Regulations*).

I. ***Docks.*** Docks permitted within the Marina District may include:

i. Dry utilities and fuel servicing, provided that any fuel tanks must be located on land;

ii. Covered slips; and

iii. Outdoor entertainment, provided that compliance with all City noise regulations is required.

— LAND USE ELEMENT

J. ***Land Uses.***

i. Allowed Uses. A land use may be constructed, expanded, rebuilt, repaired, and maintained in compliance with these Development Terms only if the use is:

a. Designated under the Land Use Table in Paragraph 2.H.iii., below, for the development district in which the use is proposed; and

b. Permitted under the base zoning district regulations applicable to the property.

ii. Rezone Requests. If a use designated in the Land Use Table is not permitted within the applicable base zoning district, and is therefore prohibited, Austin Country Club may submit an application for rezoning consistent with applicable zoning procedures. However, these Development Terms do not require the City Council to approve a rezone request or otherwise abrogate the rights of the City, Austin Country Club, or other parities in the zoning process.

iii. Land Use Table.

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LAND USE TABLE

Development District	*Designated Uses*
Golf District *Includes the golf course and uses & activities accessory to golfing, as well as compatible utility infrastructure.*	• Golf-Related Uses. Golf course and driving range, with related netting, fencing, and poles; golf cart paths; maintenance facilities, driveways; parking areas; restrooms; and golf course amenities, including drink stations serving alcoholic beverages. • Utilities. Water treatment and storm water quality facilities; conduit and pipes for dry and wet utilities. • Parking Facilities. Surface parking and underground parking garage.
Club District *Includes clubhouse, recreational, and general social uses, in addition to uses common to the Golf District.*	All uses allowed in the Golf District, in addition to: • Social Space. Clubhouses, restaurants, personal improvement services, bed & breakfast, and hotel-motel uses. • Recreation. Outdoor sports and recreation, swimming pools, tennis courts, fitness facilities, spa, and health club facilities, as well as the "Golf-Related Uses" allowed in the Golf District. • Residential & Commercial Uses. Congregate living, multi-family, condominium, townhomes, and bed & breakfast.
Marina District *Lakefront portion of the property emphasizing waterfront uses.*	All uses allowed in the club district, provided that the uses must be located on the land, and boat docks.
Entrance District *Area immediately adjacent to Loop 360.*	• A building that may not exceed 25 feet in height or 1,000 square feet of conditioned space • Parking areas, bridge, driveways, and gates. • Golf course & golf cart paths • Storm water quality facilities, conduit and pipes for dry and wet utilities • Signage
All Districts	Existing structures, buildings, and necessary directional signage.

PART 3. Administration & Enforcement.

A. ***Effective Date***. The effective date of these Development Terms is _____, 20__, which is the date that the Agreed Judgment was entered.

B. ***Citations, References, and Names.***

i. Except where expressly provided herein, a citation or reference to the City Code, including to the Land Development Code, or to an administrative rule or criteria manual, is to the version of the code provision, rule, or criteria manual in effect on the effective date of these Development Terms.

ii. The name of a City department or department director specified herein includes any successor department to which a particular function or responsibility is subsequently assigned.

C. ***Controlling Authority.***

i. These Development Terms supersede any conflicting provisions of the City's Land Development Code, codified at Title 25 of the Austin City Code, and any related administrative rules or technical criteria manuals, including, but not limited to, Chapter 25-8 (*Environmental*), Chapter 25-7 (*Drainage*), Chapter 25-6 (*Transportation*), and Chapter 25-2, Subchapter C, Article 11 (*Hill Country Roadway Requirements*).

ii. Development regulations and review procedures that are not superseded shall be liberally construed to permit development to occur in accordance with the letter and spirit of these Development Terms. Construction on any portion of the Property shall not be prohibited except to the extent specifically provided under these Development Terms.

iii. Except for regulations that are specifically established by or incorporated into these Development Terms, Austin Country Club may take advantage of a change to applicable laws, rules, regulations, or ordinances that enhance or protect the Project. Until the Project is complete, as provided in Section E, below, the City may not apply any change to the applicable laws, rules, regulations, or ordinances that would adversely impact Austin

Country Club's ability to develop the Project in accordance with these Development Terms.

D. ***Development Review Procedures.***

i. The Austin Country Club Project may be permitted and constructed in phases under a master site development permit approved by the City consistent with these Development Terms. Individual construction permits associated each phase may be processed as revisions to the master site development permit and shall expire four years from the date of issuance.

ii. The requirements of these Development Terms apply to the Project as a whole. To facilitate tracking of impervious cover and other applicable requirements, the master site development permit must include a table that shows total additions and subtractions to impervious cover, any removal and reallocation of impervious cover, new impervious cover, and capacity credits, if any, applicable to Austin Country Club's obligations to provide water quality controls as provided under Section 2.B. of Part 2, above.

E. ***Project Completion***.

i. The Austin Country Club Project shall be deemed complete if the total amount of development approved by the City for construction would cause the project to reach or exceed the impervious cover limitation imposed under these Development Terms by Section A of Part 2, above.

ii. Once the Austin Country Club project is complete:

- The approved site development permit expires unless all required building permits have been issued and remain active;
- Any further development or redevelopment shall be subject to regulations in effect at the time of application; and
- Any existing permitted development that does not meet then-current regulations may be maintained, modified, or altered consistent with the requirements generally applicable to legally nonconforming or noncomplying development.