D-1-GN-17-006525

CAUSE NO. _____

Austin Country Club, a Texas Non-Profit Corporation,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	**_____ JUDICIAL DISTRICT**
v.	§	
	§	
CITY OF AUSTIN	§	
Defendant.	§	**TRAVIS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Austin Country Club, a Texas Non-Profit Corporation (the "ACC"), files this original petition complaining of Defendant CITY OF AUSTIN (the "City"), and for cause of action shows the following:

I. DISCOVERY CONTROL PLAN

1. Pursuant to the mandatory requirements of Texas Rule of Civil Procedure 190.1, the ACC designates the "Level 2" discovery control plan set forth in Texas Rule of Civil Procedure 190.3 as the level of discovery applicable to this suit.

II. PARTIES

2. The ACC is a Texas Non-Profit Corporation doing business in Travis County, Texas.

3. Defendant City of Austin, a Texas municipal corporation, may be served by serving the City Clerk, Jannette Goodall, at Austin City Hall, 301 West Second St., Austin, Texas 78701.

III. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this suit, and the relief sought is within the jurisdictional limits of this Court. This suit is brought as an enforcement action under

Section 245.006 of the Texas Local Government Code, seeking non-monetary, declaratory and injunctive relief under Sections 37.001 - .011 of the Texas Civil Practice and Remedies Code, known as the Uniform Declaratory Judgment Act (UDJA). Section 245.006(b) expressly waives the City's sovereign immunity in this suit for both declaratory and injunctive relief. The ACC also seeks recovery of court costs and reasonable and necessary attorney's fees as authorized by Section 245.006(c).

5. Venue is proper in Travis County under Section 15.0115(a) of the Texas Civil Practice and Remedies Code because the real property that is the subject of this suit is located in Travis County, Texas. Alternatively, venue is proper in Travis County under Section 15.002(a) of the Texas Civil Practice and Remedies Code because it is where all or a substantial part of the events giving rise to this action occurred.

IV. NATURE OF THE CASE

6. The ACC seeks relief under Chapter 245 of the Texas Local Government Code, which governs vested property rights in land development projects and requires a city to apply those regulations in effect at the time a development project is commenced.

V. FACTUAL BACKGROUND

7. The Davenport Ranch Country Club and Golf Course, the ACC's predecessor-in-title, commenced a development project ("Project") for its 179.67-acre country club with a preliminary plan and a final plat, both filed on February 16, 1982, with the final plat approved by the City on August 10, 1982 (the "1982 Subdivision Plat").

8. Since the filing and approval of the 1982 Subdivision Plat, the ACC has acquired all rights in the Project, including ownership of the 179.67 acres. Further development of the Project has regularly occurred since the approval of the 1982 Subdivision Plat.

9. The 1982 Subdivision Plat identifies the Project as a country club (Case No. C8-82-08.1 P/F). The 1982 Subdivision Plat specifically references a "golf course," "golf cart bridge[s]," a "club house," and a "golf course maintenance building." The 1982 preliminary plat and 1982 Subdivision Plat represent the first permits in a series approved by the City of Austin. When the final plat was approved in 1982, the controlling watershed ordinance was the Lake Austin Watershed Ordinance (No. 800103-N and No. 800103-P). The ACC has not exceeded the impervious cover limitations and other requirements set forth in Lake Austin Watershed Ordinance for this Project.

10. In addition to the 1982 Subdivision Plat, the ACC is a party to an agreement with the City (the "City Contract") that requires the Lake Austin Watershed Ordinance and other rules and regulations from October 1980 to apply to development of the ACC Project. This City Contract was entered into by and between the City of Austin, Westview Development, Inc. (WDI) and the Davenport Ranch Municipal Utility District (MUD) on October 10, 1980. The City Contract addressed the terms and conditions for development of the Davenport Ranch project, which encompassed approximately 1,280 acres in Travis County, Texas, known as the Davenport Ranch. The ACC's property is within those 1,280 acres and was part of the Davenport Ranch development, which also qualifies as a project within the meaning of Chapter 245. The City Contract sets out the terms and conditions under which the MUD could operate as well as for the termination of the MUD and its contractual obligations when the City annexed the land within the MUD. The City completed annexation of all of the land in 1997 and the MUD's contractual obligations terminated.

11. The City Contract, however, remains in force and effect with respect to its terms and conditions governing the development of the 1,280 acres. The City Contract imposed

numerous obligations on the developer of Davenport Ranch such as building of sidewalks, density limitations, limits on signage, and commercial development. *See* City Contract, Article V.A. Because Davenport Ranch had not been annexed by the City at the time the City Contract was executed in 1980, these requirements would not have applied to Davenport Ranch but for the City Contract. Per the terms of the City Contract, the developer and the City mutually agreed that City Council approval was necessary for all site plans for development. But the City Contract plainly set out the standards the City Council was to apply in reviewing such site plans and, in effect, recognizes the applicability of the vested property rights arising under Chapter 245 and its predecessor, which was in effect in 1980: "In evaluating such site plan the Council shall utilize the criteria set out in *the existing City ordinances* as to commercial development abutting the Capital of Texas Highway or as to commercial development in the Lake Austin Peninsula generally as applicable." City Contract, Article V.A. Thus, the City's Lake Austin Watershed Ordinance is applicable to lands covered by the City Contract. Moreover, because the City Contract is both an approval and an agreed modification of a project protected by Chapter 245, the vested rights arising under the City Contract remain in effect beyond the contract termination, which occurs in October 2020.

12. By an agreement executed as of December 22, 1982 between WDI and the ACC (the WDI/ACC Contract), the ACC purchased the 179.68 acres that is the subject of this suit and that was a part of the Davenport Ranch development project. Pursuant to Section 17 of the WDI/ACC Contract, the ACC was assigned the rights and assumed the obligations under the City Contract with respect to the property it purchased from WDI. In Article XII, the City Contract specifically provides that WDI may assign the City Contract – without approval by the City – and the assignee shall be bound by the City Contract. Prior approval from the City of the

assignment is necessary only if the assignor (WDI) seeks to be released from any obligations under the City Contract. No such release was a condition of the WDI/ACC Contract. Therefore, the City Contract continues to recognize the vested property rights of ACC in the property covered by the contract. And the ACC has continued to abide by its obligations under the City Contract.

13. In December 2012, the ACC sought a determination that the Project remained entitled to protection under Chapter 245. The City's representative, Susan Scallon, denied the request, stating that "current code" would apply because the Project was "complete." *See* attached Exhibit A.

14. In 2015, the ACC created a Development Plan that would further develop the Project. The ACC submitted this Development Plan to the City for a determination that this further development was part of the original Project and was entitled to protection under Chapter 245. In addition, the ACC asserted protection pursuant to the City Contract, which – like Chapter 245 – recognizes the right to continue development of the Project under the laws in existence as of 1980. A copy of these submissions are attached as Exhibit B.

15. On December 4, 2015, the City's representative, Susan Scallon, again denied the request, stating that "current code" would apply because the Project was "complete." *See* attached Exhibit C. On February 24, 2016, the City reaffirmed its denial of the request on the ground that the Project was "Complete" and provided supplemental findings in that regard. *See* attached Exhibit D.

16. ACC's Project is not complete but is, instead, an ongoing development. The ongoing nature of the development is established not only by further development of the Project that has occurred since the 1982 Subdivision Plat was approved but also by the City Contract,

which recognizes that the Davenport Ranch project was an ongoing development that was anticipated to last for at least 40 years.

VI. REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

17. The ACC incorporates by references Paragraphs 7-16.

18. A real and substantial controversy exists between the parties as to the proper interpretation and application of Chapter 245 of the Texas Local Government Code to the Property. The City has improperly denied grandfathering and is requiring that the further development of this Project occur pursuant to "current code". *See* Exhibits A and C. The City has also improperly denied grandfathering under Chapter 245 with respect to the City Contract that approved a development project for the Davenport Ranch and rendered all property subject to that approval entitled to develop under the laws in existence when the City Contract was approved by the City.

19. In addition to the fact that the ACC's Project remains an ongoing development, Chapter 245 does not have a provision that permits the City to deny grandfathering on the ground that a project is "complete." The City's denial of grandfathering on this purported ground effectively imposes an expiration date for the Project, after which Chapter 245 protection ceases with respect to future development of the Project. Section 245.005, the "Dormant Projects" section of Chapter 245, is the only section of Chapter 245 that authorizes regulatory agencies to impose an expiration date for a Project. By concluding that vested rights terminate upon the City's deemed "completion" of a project, the City has acted outside of its authority in crafting its own alternative mechanism for terminating rights accruing under Chapter 245.

20. The ACC brings this lawsuit under Section 245.006 of the Texas Local Government Code. Section 245.006 specifically (1) authorizes an action to enforce Chapter 245

of the Texas Local Government Code as it pertains to enforcing vested rights through declaratory and injunctive relief, and (2) waives the City's sovereign immunity in regard to this enforcement action. *See* Tex. Loc. Gov't Code § 245.006. The ACC requests declaratory relief under the Uniform Declaratory Judgments Act. *See* Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.*

21. Accordingly, the ACC seeks a declaratory judgment pursuant to Section 245.0006 of the Texas Local Government Code and the Uniform Declaratory Judgments Act, Chapter 37 of the Texas Civil Practice and Remedies Code, to determine the following:

(a) the Project remains protected by Chapter 245 of the Texas Local Government Code;

(b) that the Project is not subject to current code, save and except as permitted by the exemptions listed in § 245.004 of Chapter 245; and

(c) that any application for subsequent permits required for further development of this Project are required to be reviewed under "the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time" the Final Plat Application was filed on February 16, 1982.

22. The ACC further seeks an injunction enjoining the City from applying current code to the Project, save and except as permitted by the exemptions listed in § 245.004 of Chapter 245.

VII. ATTORNEYS' FEES

23. Pursuant to Texas Local Government Code Section 245.006(c), the ACC seeks recovery of court costs and reasonable and necessary attorney's fees.

VIII. CONDITIONS PRECEDENT

24. All conditions precedent to the ACC's recovery herein have occurred or have been fulfilled.

WHEREFORE, PREMISES CONSIDERED, the Austin Country Club requests that CITY OF AUSTIN be cited to appear and answer, and that on final trial, the ACC have judgment granting (i) the declaratory and injunctive relief as requested herein, (ii) costs of suit, (iii) attorneys' fees and (iv) such other and further relief to which the ACC may be justly entitled.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5600 (Telephone)
(512) 480-5834 (Telefax)

By: */s/ Michael J. Whellan*
Michael J. Whellan
State Bar No. 21265550
mwhellan@gdhm.com
Mary A. Keeney
State Bar No. 11130700
mkeeney@gdhm.com

ATTORNEYS FOR PLAINTIFF

Exhibit D

PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION

(Chapter 245, Texas Local Government Code)

(This completed form must accompany all subdivision and site plan applications.)

FOR DEPARTMENTAL USE ONLY

File # Assigned: SPC-2012-0405A Date Filed: 12/3/2012

Original Application Date: Current code Signature: [signature] Date: 12/7/2012

Comments: Original project complete

_____ Insufficient Information to establish Chapter 245 rights.

Proposed Project Name: Austin Country Club Master Plan

Address / Location: 4408 Louis Champ Dr., Austin, Tx 78746

Legal Description: Lot 1, Block A, Davenport Ranch Phase 4, Section 1

A. [ ] The proposed application is for a New Project and is submitted under regulations currently in effect.

NOTE: If A is checked above, proceed to signature block below.

B. [ ] The proposed application is for an ongoing project not requesting House Bill 1704 consideration. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. [ ] The proposed application is for a project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: _____

D. [✓] The proposed application is for a project requesting review under a specific agreement, not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: City Council Resolution No. 20090918-10

E. [✓] Original Application Filing Date: 10/21/1981 File #: C14P-81-057

The proposed application is submitted as a Project in Progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state law. **The determination will be based on information submitted on and with this form.**

The following information is required for Chapter 245 Review:

Attach supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals. Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which Chapter 245 vesting is claimed.

Project Application History	File #	Application Date	Approval Date
Annexation/zoning (if applicable to history)	C14-97-0149	11/19/1997	3/26/1998
Preliminary Subdivision	C8-82-08	2/16/1982	8/10/1982
Final Subdivision Plat	C8-82-08.1 P/F	2/16/1982	8/30/1982
Site Plan / Devel. Permit	C14P-81-067	10/21/1981	3/9/1982

Proposed Project Application *(check one)*: Preliminary Subdivision_____ Final Plat_____ Site Plan ✓

Proposed Project Land Use: *Specify acreage in each of the following land use categories:*

Single Family / Duplex _____ Townhouse / Condo / Multi-family _____ Office _____

Commercial _____ Industrial / R&D _____ Other (Specify) RECREATIONAL

Total acreage: 179.67 Watershed LAKE AUSTIN Watershed Classification WATER SUPPLY RURAL

This proposed project application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

Signature - Property Owner or Agent [signature] Date: 11-28-12

Printed Name Michael W. Wilson Phone / Fax 569-5063

Form Date 5/06/2005

City of Austin / Planning and Development Department
505 Barton Springs Road / Fax 974-2934

EXHIBIT
tabbies
A

GRAVES DOUGHERTY HEARON & MOODY
A PROFESSIONAL CORPORATION

Michael J. Whellan
512.480.5734
512.480.5834 (fax)
mwhellan@gdhm.com

MAILING ADDRESS:
P.O. Box 98
Austin, TX 78767

November 23, 2015

Via First Class Mail
Rodney Gonzales, Director
Development Services Department
505 Barton Springs Road
Austin, TX 78704

RE: Austin Country Club; Chapter 245 Vested Right Petition

Dear Rodney:

Pursuant to Section 25-2-531, et. seq., please accept this letter as a Vested Rights Petition for the Austin Country Club ("ACC"). As set forth in more detail below, the original application date for this ongoing project ("Project") is February 16, 1982. In addition, the Contract Concerning Creation and Operation of Davenport Ranch Municipal Utility District entered into on October 10, 1980 by and between the City of Austin, Westview Development, Inc., and Davenport Ranch Municipal Utility District No. 1 (the "City Contract") controls the development of the ACC property until the year 2020.

Since the beginning of the Project, ACC has anticipated and made ongoing improvements to the country club. The attached Part A Site Plan for further and continuing improvements sets forth the Development Plan for the project with a Vesting Date of February 16, 1982.

For your convenience, I have included with this letter a copy of the following documents:

1. Part A Site Plan with the proposed improvements ("Development Plan") (Exhibit 1);

2. The final plat filed on February 16, 1982 and approved by the City on August 10, 1982 that identifies the project as a country club (Case No. C8-82-08.1 P/F) (the "1982 Subdivision Plat") (Exhibit 2);

3. The City Contract, which expires in October 2020 and requires the Lake Austin Watershed Ordinance to apply to development on the site (Exhibit 3);

4. The Purchase and Sale Agreement between Westview Development, Inc. and ACC dated December 22, 1982 in which the City Contract was specifically identified and the ACC undertook "the terms and provision of the [City] Contract, including without limitation, Article V thereof with respect to standards for improvements." (the "Purchase Agreement") (Exhibit 4); and

5. A chronology of the country club Project, including a list of permits for the development of the property (Exhibit 5).

EXHIBIT
tabbies
B

Because new forms have not been published yet, we are also submitting with this letter the "old" Chapter 245 form entitled, "Exhibit D Project Application H.B. 1704/Chapter 245 Determination," and the "Site Plan Fair Notice" form – the ACC does not waive any rights it has by filing these forms since there are no other forms to utilize for this review process at this time.

Request

The ACC, as the owner/applicant, requests a Vesting Rights Determination that the owner may complete the Project as set forth on the attached Development Plan (Exhibit 1) and that the Vesting Date that should be utilized in completing the project is February 16, 1982. The ACC further requests that the City acknowledge that the City Contract also controls development of the property through October 10, 2020 and, therefore, the Lake Austin Watershed Ordinance and other rules in effect at the time the City Contract was entered into apply to the Development Plan, so long as the site plan is filed on or before October 10, 2020.

Background

On February 16, 1982, the application for a final subdivision plat was filed (Case No. C8-82-08.1 P/F). The City's Planning Commission approved the final plat on August 10, 1982, and it was recorded at Book 3, Page 440. See Exhibit 2 (the "1982 Subdivision Plat"). The 1982 Subdivision Plat is for a country club project and specifically references a "golf course," "golf cart bridge[s]," a "club house," and a "golf course maintenance building." The 1982 preliminary plat and 1982 Subdivision Plat represent the first permits in a series approved by the City of Austin. At the time that the final plat was approved in 1982 the controlling watershed ordinance was the Lake Austin Watershed Ordinance (No. 800103-N and No. 800103-P). The ACC has not exceeded the impervious cover limitations and other requirements set forth in Lake Austin Watershed Ordinance for this project.

At the time the Property was platted, a portion of the Property was within the City of Austin; however, the majority of the property was in the City's ETJ. The remaining portion of the property was annexed into the City of Austin on November 9, 1997. Pursuant to Texas Local Government Code Sections 43.002 and 242.001, the City's annexation of the entire country club property does not change the analysis under Chapter 245 of the State Local Government Code.

Since the inception of the Project, the Austin Country Club has undertaken ongoing improvements authorized by the City through either site development exemption permits or site plan permits. A list of prior permits for the country club project is attached as Exhibit 5. On December 7, 2012, the City of Austin representative, Susan Scallon, denied the request that the Lake Austin Watershed Ordinance applied and stated that "current code" would apply and that the project was "complete." Exhibit 6 is a copy of this prior Chapter 245 Determination.

As further support that the Lake Austin Watershed Ordinance and other rules and regulations from October 1980 apply, ACC maintains that the City Contract applies to the development of the property through October 10, 2020. The City Contract includes ACC's property and provides specific standards for "facilities," including density limitations on single

family residential units and "commercial facilities designed to serve local needs." *See* Article V.A, City Contract, Exhibit 3. The City Contract also required that, prior to the sale of any subdivided lot or parcel of land within the limits of the Davenport Ranch, the land would need to be platted and City approval for such plat would be required, which is precisely why the City approved the plat in 1982. *See* Article X, City Contract, Exhibit 3.[1]

Analysis

Pursuant to section 25-1-542 of the City Code, ACC is entitled to those development rights protected by Chapter 245 of the Texas Local Government Code in order to complete the Project that began on February 16, 1982. As you can see from the 1982 Subdivision Plat, the Project for which vested rights are claimed has not changed since it was begun, and, therefore, the Development Plan submitted with this Vested Rights Petition is consistent with, and a continuation of, the original Project.

The Texas Local Government Code has two provisions -- in addition to Chapter 245 -- that further compel a finding that the Vesting Date is February 16, 1982.

Section 43.002 of the Local Government Code allows ACC to continue the country club use after annexation without disruption. Specifically, the City "may not, after annexing an area, prohibit [the ACC] from . . continuing to use land in the area **in the manner in which the land was being used** on the date the annexation proceedings were instituted if the land use was legal at that time." (Emphasis supplied). The country club use was clearly authorized as evidenced by the City Contract and the 1982 Subdivision Plat, which recognized the use at the time. Moreover, since the use was accepted, Section 43.002 makes clear that the City must allow the ACC to continue the use the property in the manner in which the land *was* being used without new restrictions that could limit the ACC's ability to use the land to the fullest extent possible as a country club.

Section 242.001(c) of the Local Government Code provides that those owning land subject to a final plat approved by a county receive rights under Chapter 245, regardless of the expansion or *reduction* of a City's ETJ. Section 245.002 provides that a regulatory agency must consider all future permits under the regulations in effect when the development plan or plat application is filed with a regulatory agency. The 1982 Subdivision Plat was approved by both the City and the County because a portion of the property was in the City and a portion was in the City's ETJ and still subject to County regulation. Although section 242.001(c) of the Local Government Code primarily addresses changes in the ETJ, the provision includes recognition that an owner's rights in approved plats continue to be protected under Chapter 245. The

[1] The City Contract specifically provides that Westview Development may assign the City Contract -- without approval by the City -- and the assignee shall be bound by the City Contract. See Article XII, City Contract, Exhibit 3. Prior approval of the assignment is necessary only if the assignor (Westview Development) seeks to be released from any obligations under the City Contract. In a subsequent purchase and sale agreement between Westview Development, Inc. and the Austin Country Club, the ACC acknowledged that "the purchase of land is subject to all the terms and provisions of the [City] Contract, including without limitation, Article V thereof with respect to standards for improvements." See Section 17, Purchase Agreement, Exhibit 4. Therefore, a valid assignment of the City Contract occurred through the ACC's purchase of the Property.

annexation of the Property in 1997 reduced the City's ETJ and should not have any impact on the Chapter 245 rights that attached to the property as a result of the 1982 Subdivision Plat.

Section 242.001(c) of the Local Government Code states that:

> Any expansion or **reduction** in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter 232 **does not affect any rights accrued under Chapter 245.** The approval of the plat, any permit or plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

§ 242.001(c) (West 2015) (emphasis supplied).

A municipality and county are both considered a regulatory agency under Chapter 245, and once a property owner submits a plan or plat application for review to the municipality or county, the regulations governing that project "freeze." *See Harper Park Two, LP v City of Austin*, 359 S.W.3d 247, 249 (Tex. App.—Austin 2011 pet. denied) (explaining that, when Chapter 245 applies, "the agency's regulations applicable to the 'project' are effectively 'frozen' in their then-current state and the agency is prohibited from enforcing subsequent regulatory changes to further restrict the property's use."). Therefore, the effect of section 242.001(c) is to "freeze" the regulations governing a plat, even if the project comes under a city's ETJ and the city did not approve the plan or plat application. *See Shumaker Enters., Inc. v. City of Austin*, 325 S.W.3d 812, 815 (Tex. App.—Austin 2010, no pet.) (freeze would have applied to permit if permit involved a subdivision plat). Of course, in this case, the City *did* review and approve the plat, which makes this an even more compelling Chapter 245 case for the entire Project.

ACC meets all the requirements to "freeze" the 1982 Travis County regulations governing the project on that portion of the property that was formerly in the City's ETJ.[2] Chapter 242 applies to property that is subject to a final plat. *See* Tex. Loc. Gov't Code § 242.001(c) (West 2015). Since Section 242.001(c) applies to the ACC Property, any changes in the City's ETJ -- including annexation that reduces the ETJ -- cannot affect ACC's Chapter 245 rights. *See* Tex. Loc. Gov't Code § 242.001(c) (West 2015). As you know, Chapter 245 provides that a city must consider approving or denying applications for permits on projects under the regulations and ordinances in effect when the first permit for the project was filed. *Harper Park*, 359 S.W.3d at 256 ("It is the filing of 'the original application for the first permit in that series . . . that triggers the vested rights under the statute."). As the first permit for the country club project was filed in 1982 with Travis County and the City, the City may base its

[2] Section 242.001(c) does not apply (1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more; (2) within fifty-miles of an international border, or when the county approving the subdivision is in economic distress; or (3) to a tract subject to a development agreement. Austin does not have a population larger than 1.9 million, is not within 50 miles of the border, is and was not economically distressed, and, this memo assumes, the plat was not subject to a development agreement in 1982. Therefore, subsection (c) does apply to the plat.

decision to approve or deny the project application for the development of the country club project only on the Travis County regulations in effect in 1982.

The subdivision plat with which the vesting rights are associated does not have an expiration date under applicable regulations. As a result, pursuant to section 25-1-554 of the City's Land Development Code, the owner must establish "progress towards completion" in order to preserve the vesting rights. In this case, there has been an application for a final plat, which serves as a basis for the February 16, 1982 Vesting Date and constitutes, by statute, "progress towards completion."

Conclusion

The first application for a permit was filed on February 16, 1982 in the form of a final subdivision application, which was subsequently approved on August 10, 1982. The Development Plan submitted with this Vesting Rights Petition is the Project set forth in the 1982 Subdivision Plat for which the total amount of allowable impervious cover has not been utilized. The evidence submitted with this letter reflects "progress towards completion" and meets the criteria for grandfathering under Chapter 245 of the State Local Government Code. With your confirmation of the Vesting Date of February 16, 1982, the owner will be able to submit a site plan based on the Development Plan attached hereto as Exhibit 1.

If you have any further questions or need more information, please feel free to contact me.

Very truly yours,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

By: _____
Michael J. Whellan

cc: Austin Country Club

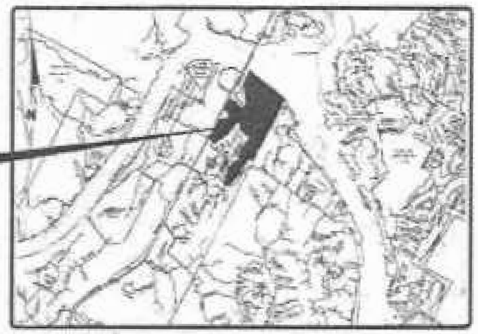
Austin Country Club Development Plan

4408 Long Champ Drive
Austin, Texas 78746

Submittal Date: November 2015

Project Description: This continuing for the furtherance of a growing country club project consists of the construction of a clubhouse expansion, tennis courts, fitness center, golf pro shop, restaurant and parking garages

PROJECT LOCATION



Project Location Map
N.T.S.
Mapsco #623
City of Austin Grid #F28 & 29

GARRETT-IHNEN
CIVIL ENGINEERS
TBPE FIRM #F-630
12007 TECHNOLOGY
SUITE 150
AUSTIN, TEXAS 78727

Revisions/Corrections

No.	Description	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Site Development Data

Owner	Austin Country Club 4408 Long Champ Drive Austin, Texas 78746
Landscape Architect	Thomas D. Brown Associates
Legal Description	[illegible]
Subdivision File No.	[illegible]
Zoning Case No.	[illegible]
Waivers Granted to Project	None
Limits of Construction	[illegible]

Sheet List Table

Sheet Number	Sheet Title
1	Cover Sheet
2	Subdivision Plat
3	Subdivision Plat
4	Notes
5	Overall Site Plan
6	[illegible]
7	Erosion Control Notes
8	Erosion Control Details
9	Phase 1 - Club House
10	Phase 1 - Erosion & Sedimentation
11	Phase 2 - Fitness Addition
12	Phase 2 - Erosion & Sedimentation
13	[illegible]
14	[illegible]
15	[illegible]
16	[illegible]
17	[illegible]
18	[illegible]
19	[illegible]
20	[illegible]
21	[illegible]
22	[illegible]
23	[illegible]
24	[illegible]
25	Construction Details 1
26	Construction Details 2

Reviewed By:

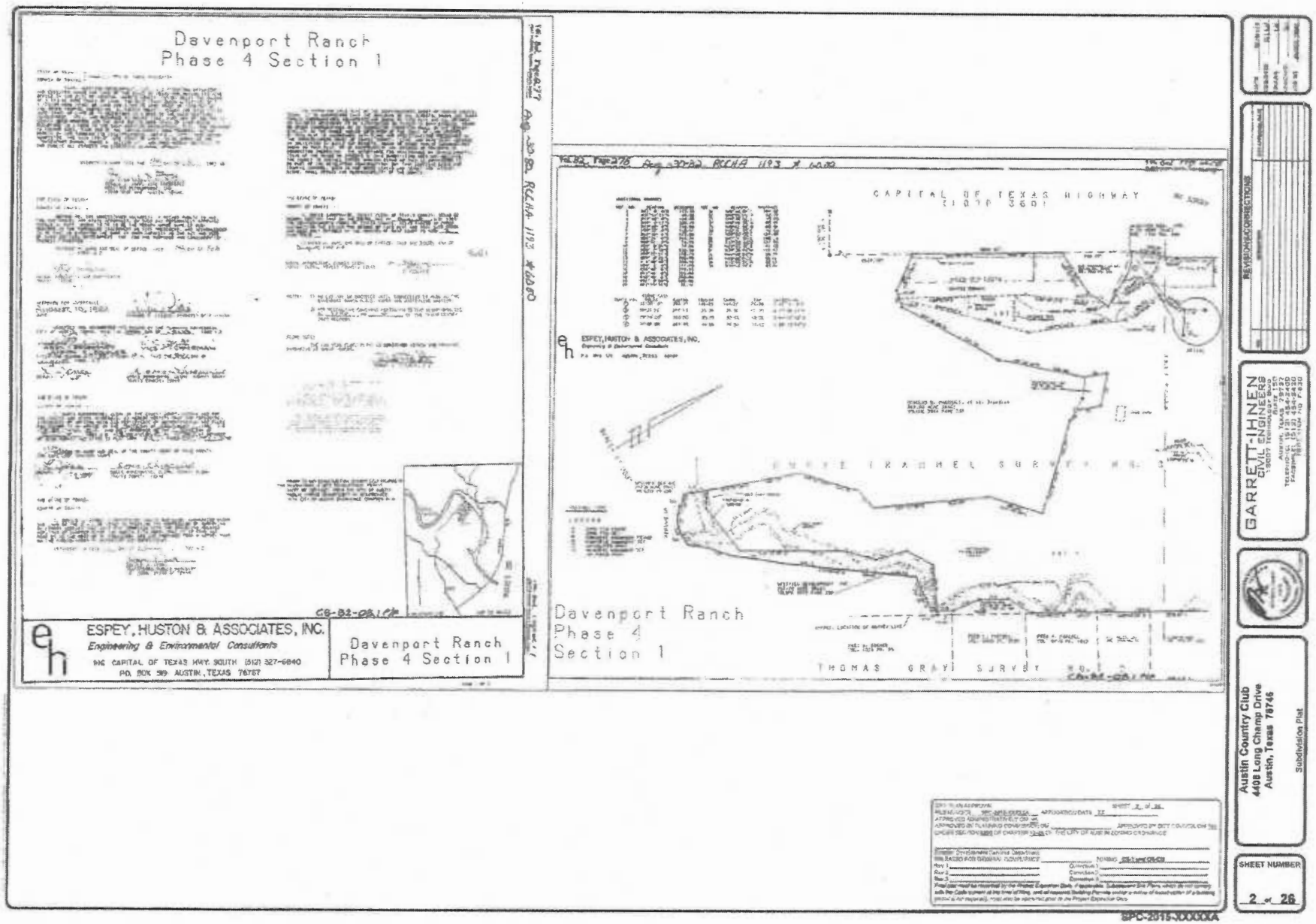
SPC-2015-XXXXA

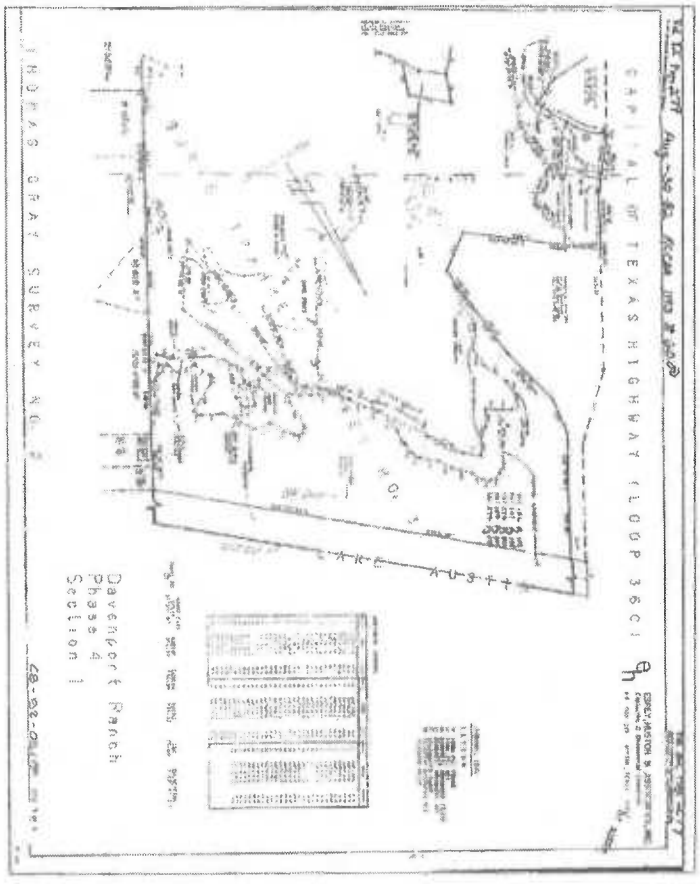
Central

SPC-2015-XXXXA

AUSCC 15047 (AUSTIN COUNTRY CLUB)

EXHIBIT
1

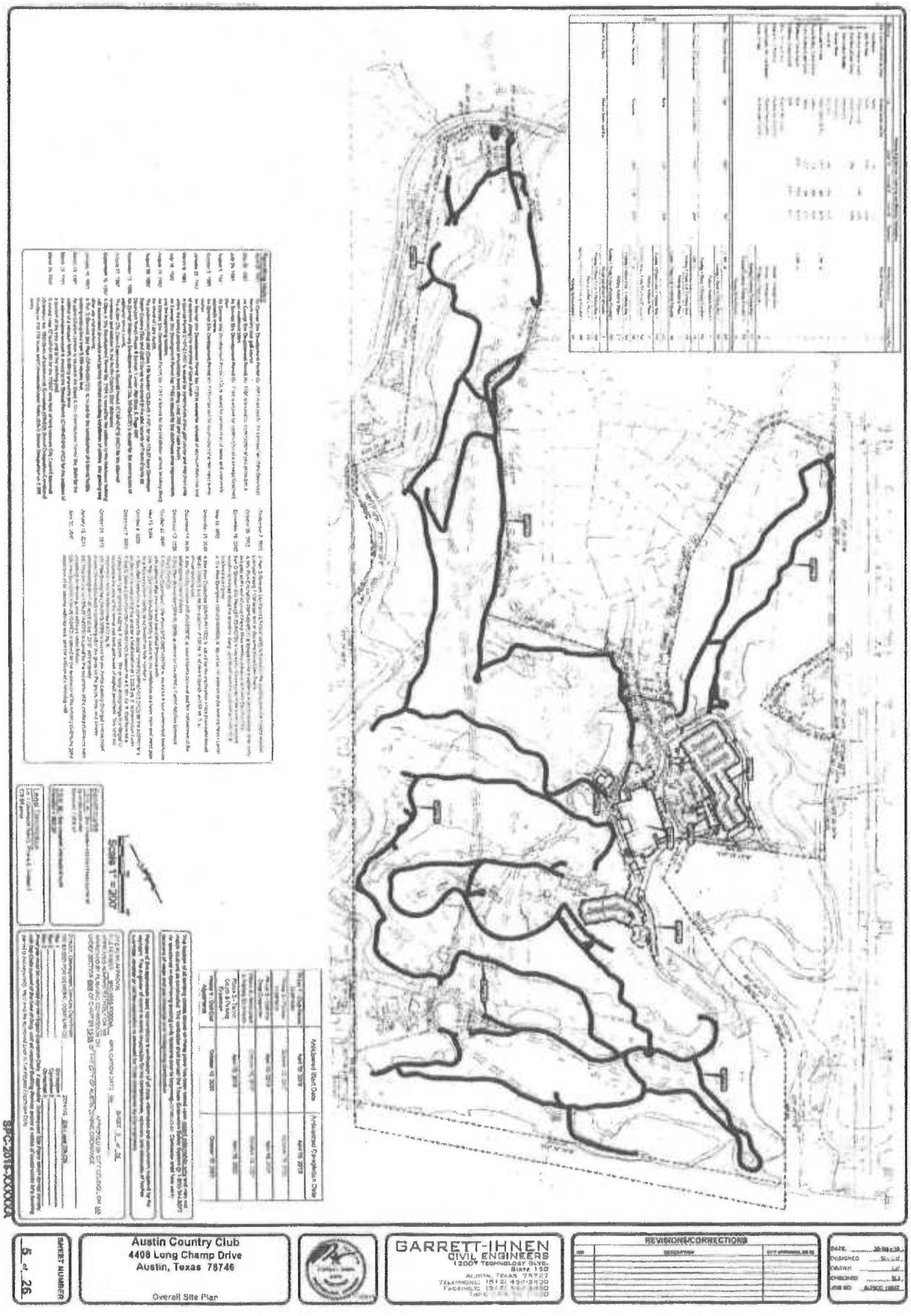

Davenport Ranch
Phase 4 Section 1
ESPEY, HUSTON & ASSOCIATES, INC.
Engineering & Environmental Consultants
Davenport Ranch
Phase 4 Section 1
CAPITAL OF TEXAS HIGHWAY
Davenport Ranch
Phase 4
Section 1
THOMAS GRAY SURVEY
GARRETT-IHNEN
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Subdivision Plat
SHEET NUMBER
2 of 26
SPC-2015-000000A



SPC-2016-XXXXXA

SHEET NUMBER					
3 of 26	Austin Country Club 4406 Long Champ Drive Austin, Texas 78746 Subdivision Plat		GARRETT-IHNEN CIVIL ENGINEERS	REVISIONS/CORRECTIONS	DATE: 10-Nov-15 DESIGNED: M.L.M. DRAWN: LE CHECKED: M.L. JOB NO: AUSCO 1504

Site Plan Release Notes
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Notes
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS / CORRECTIONS
SHEET NUMBER
4 of 26
SPC-2015-XXXXXA



Austin Country Club
4406 Long Champ Drive
Austin, Texas 78746

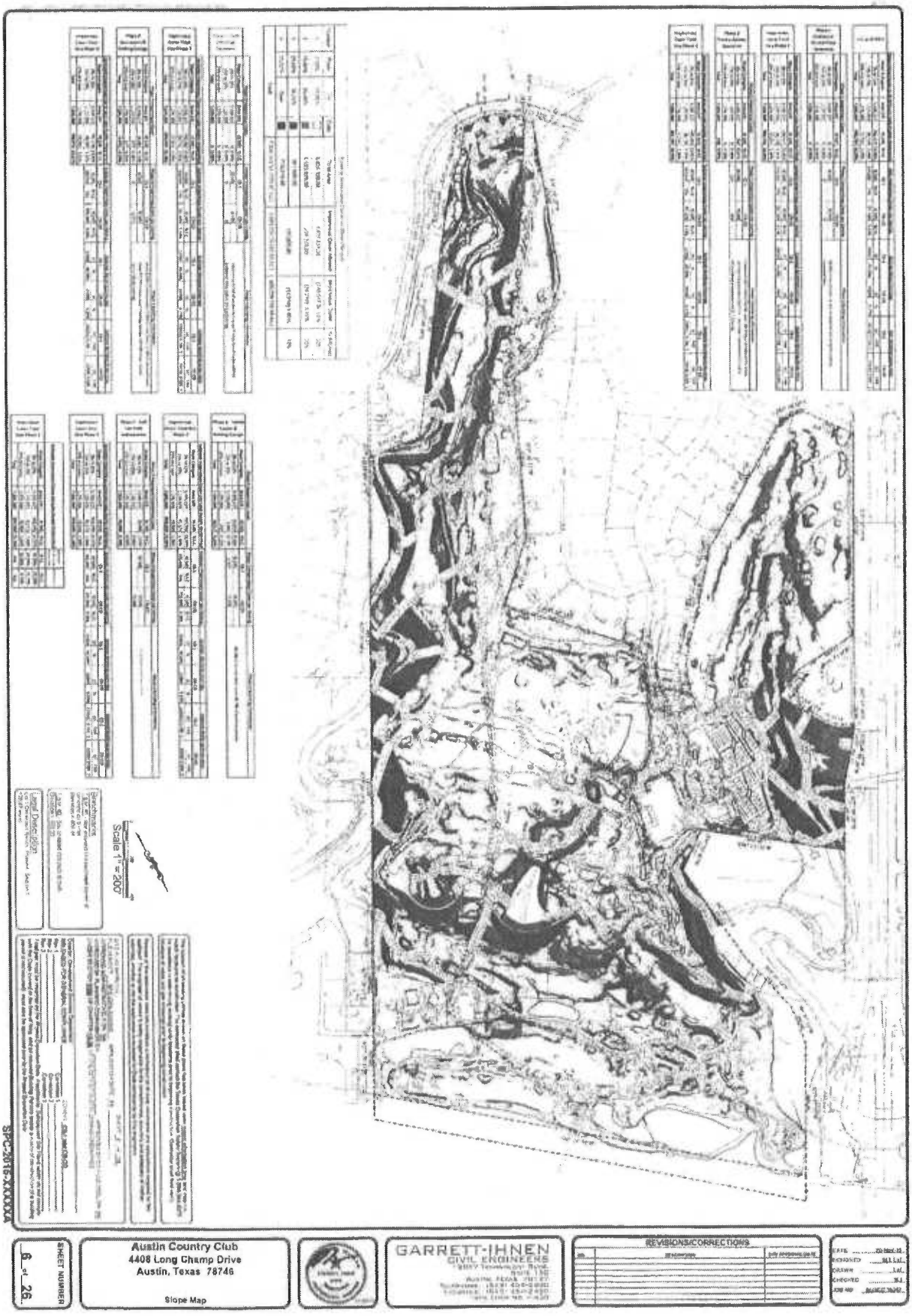
Overall Site Plan

GARRETT-IHNEN
CIVIL ENGINEERS
13809 TECHNOLOGY BLVD.
SUITE 150
AUSTIN, TEXAS 78727
TELEPHONE: (512) 401-2400
FACSIMILE: (512) 401-2500

REVISIONS/CORRECTIONS

SHEET NUMBER 5 of 26

SPC-2016-XXXXXX


Scale 1" = 200'
SPC-2016-XXXXXX
SHEET NUMBER
6 of 26
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Slope Map
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS

Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746

Erosion Control Notes

GARRETT-IHNEN
CIVIL ENGINEERS
13809 Technology Blvd
Suite 150
Austin, Texas 78717
Telephone: (512) 454-2400
Fax: (512) 454-2420

REVISIONS/CORRECTIONS

SHEET NUMBER
7 of 28

SPC-2015-XXXXXA

SHEET NUMBER 8 of 26

Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746

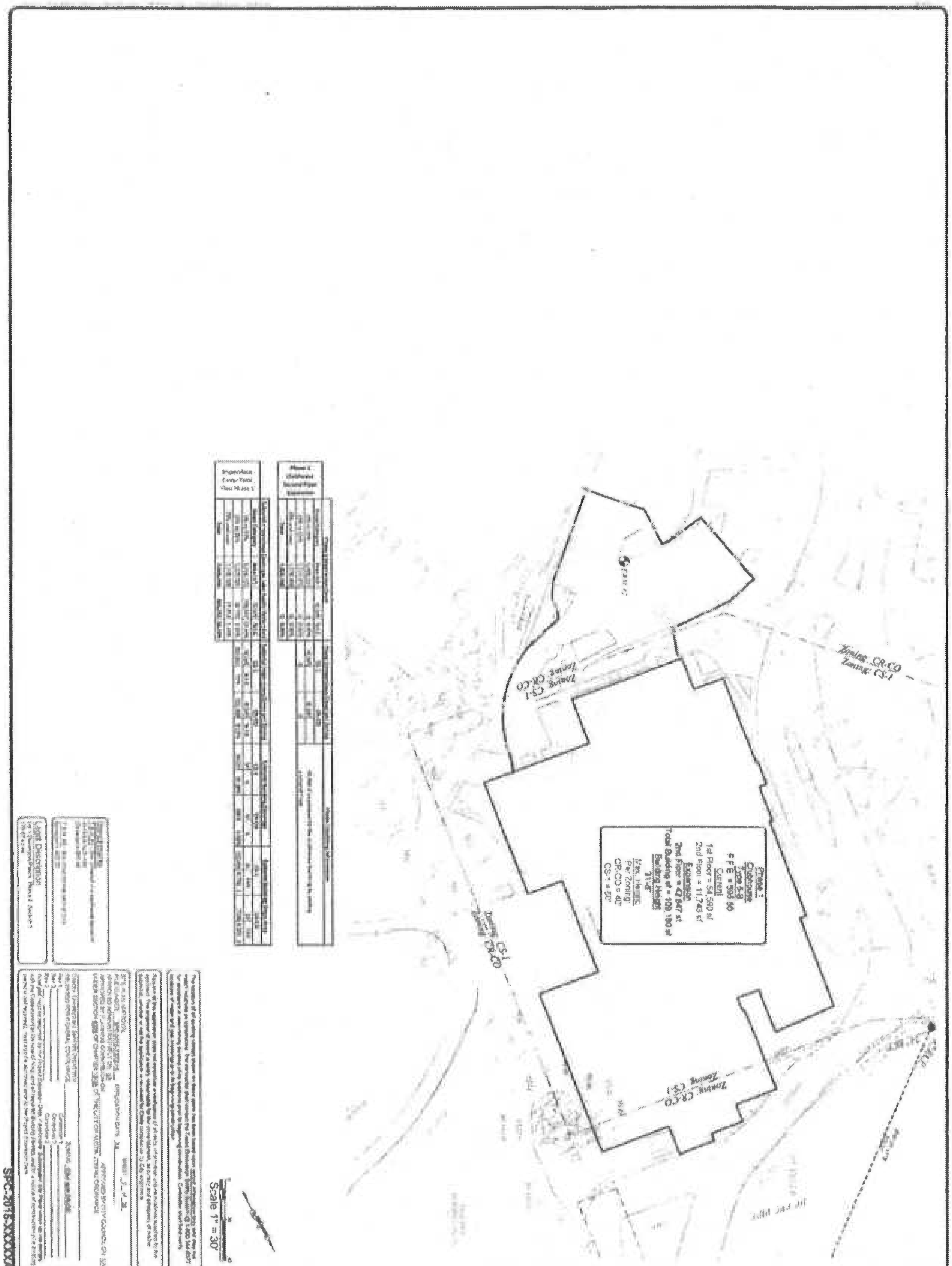
Erosion Control Details

GARRETT-IHNEN
CIVIL ENGINEERS
13727 Thunderbird Blvd
Suite 150
Austin, Texas 78727
TELEPHONE: (512) 454-2430
FACSIMILE: (512) 454-2430
Texas Firm No. F-620

REVISIONS/CORRECTIONS

DATE
DESIGNED
DRAWN
CHECKED
JOB NO

SPC-2015-XXXXXA



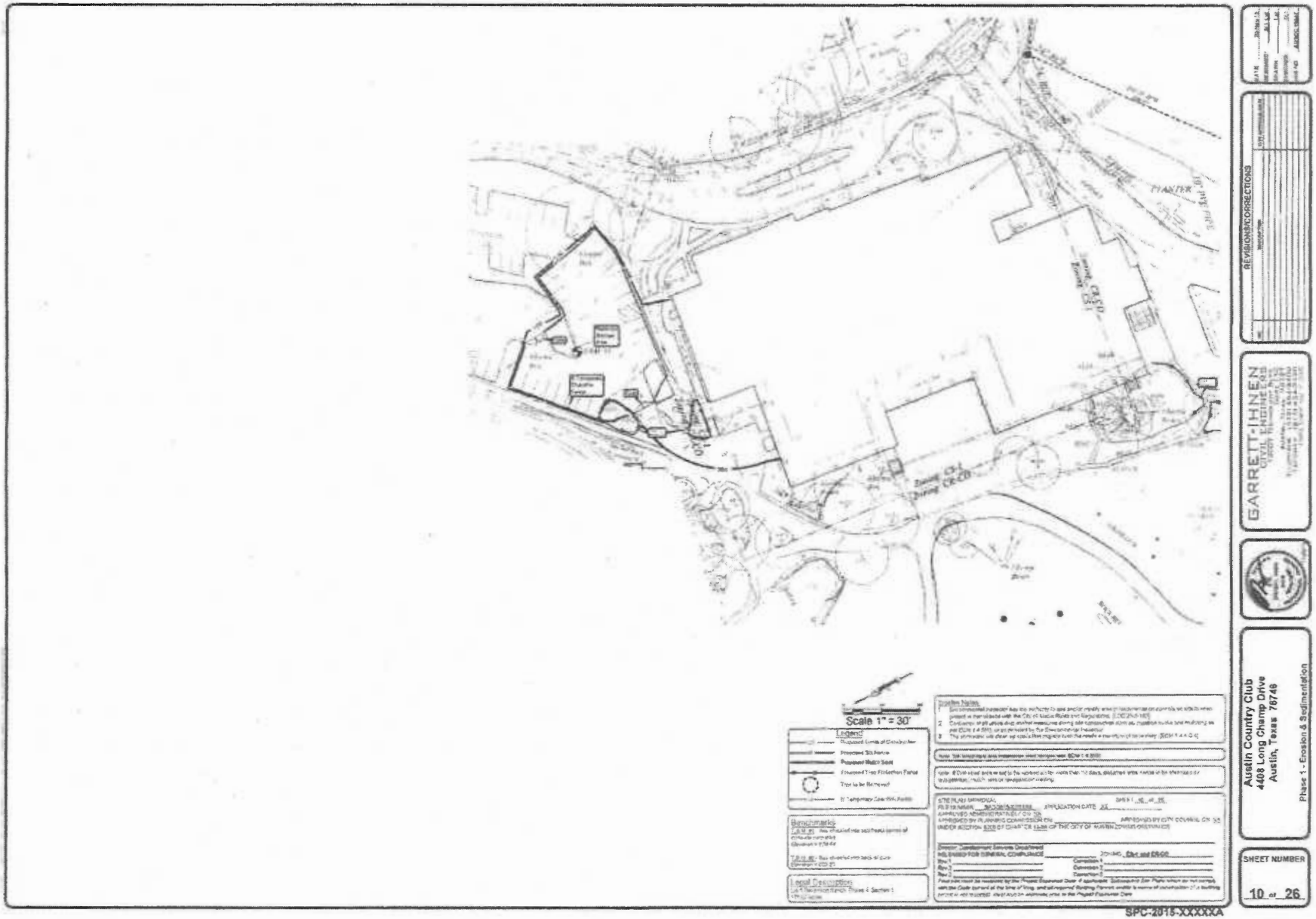
SHEET NUMBER 9 of 26

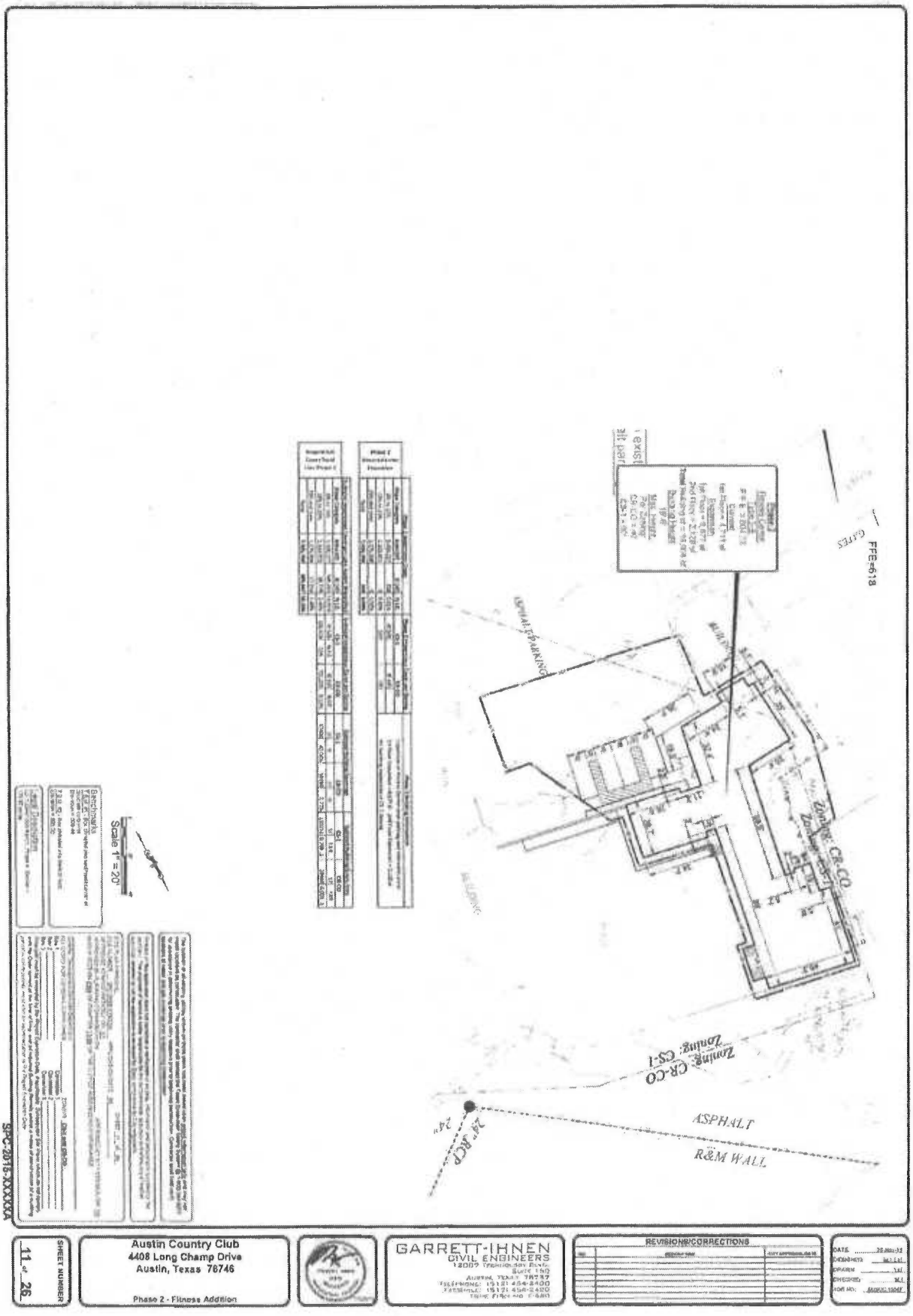
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746

Phase 1 - Club House

GARRETT-IHNEN
CIVIL ENGINEERS

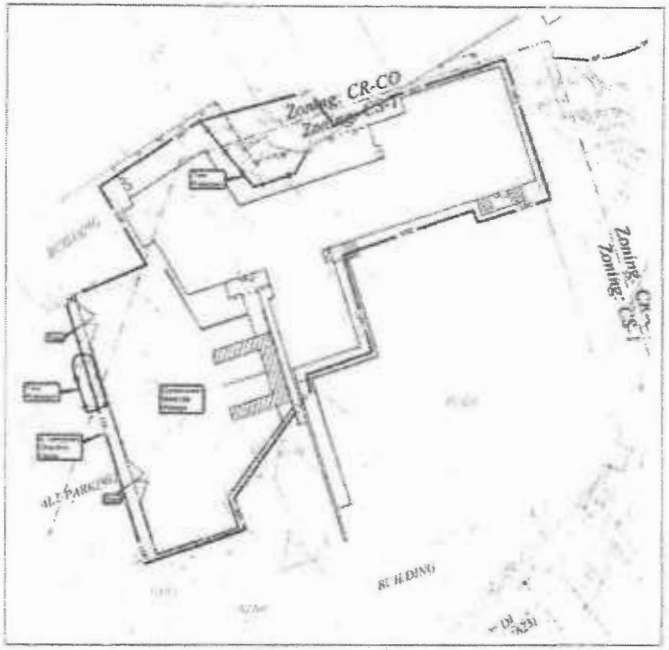
REVISIONS/CORRECTIONS


Scale 1" = 30'
Legend
Benchmarks
Legal Description
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 1 - Erosion & Sedimentation
SHEET NUMBER
10 of 26
GARRETT-IHNEN
REVISIONS/CORRECTIONS
SPC-2015-XXXXXA

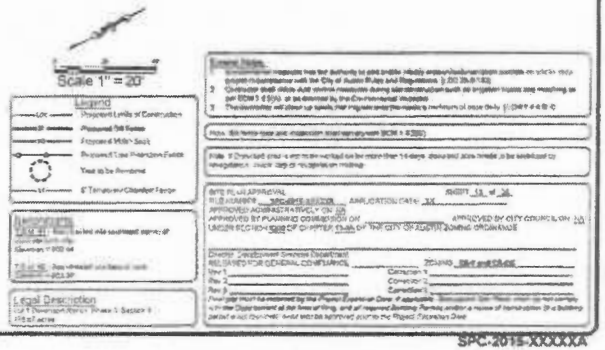


SHEET NUMBER 11 of 26	Austin Country Club 4408 Long Champ Drive Austin, Texas 76746 Phase 2 - Fitness Addition		GARRETT-IHNEN CIVIL ENGINEERS 12000 Technology Blvd. Suite 150 Austin, Texas 78727 Telephone: (512) 454-2400 Facsimile: (512) 454-2420 Texas Firm no. 1461	REVISIONS/CORRECTIONS

Demo Plan



Erosion Control Plan



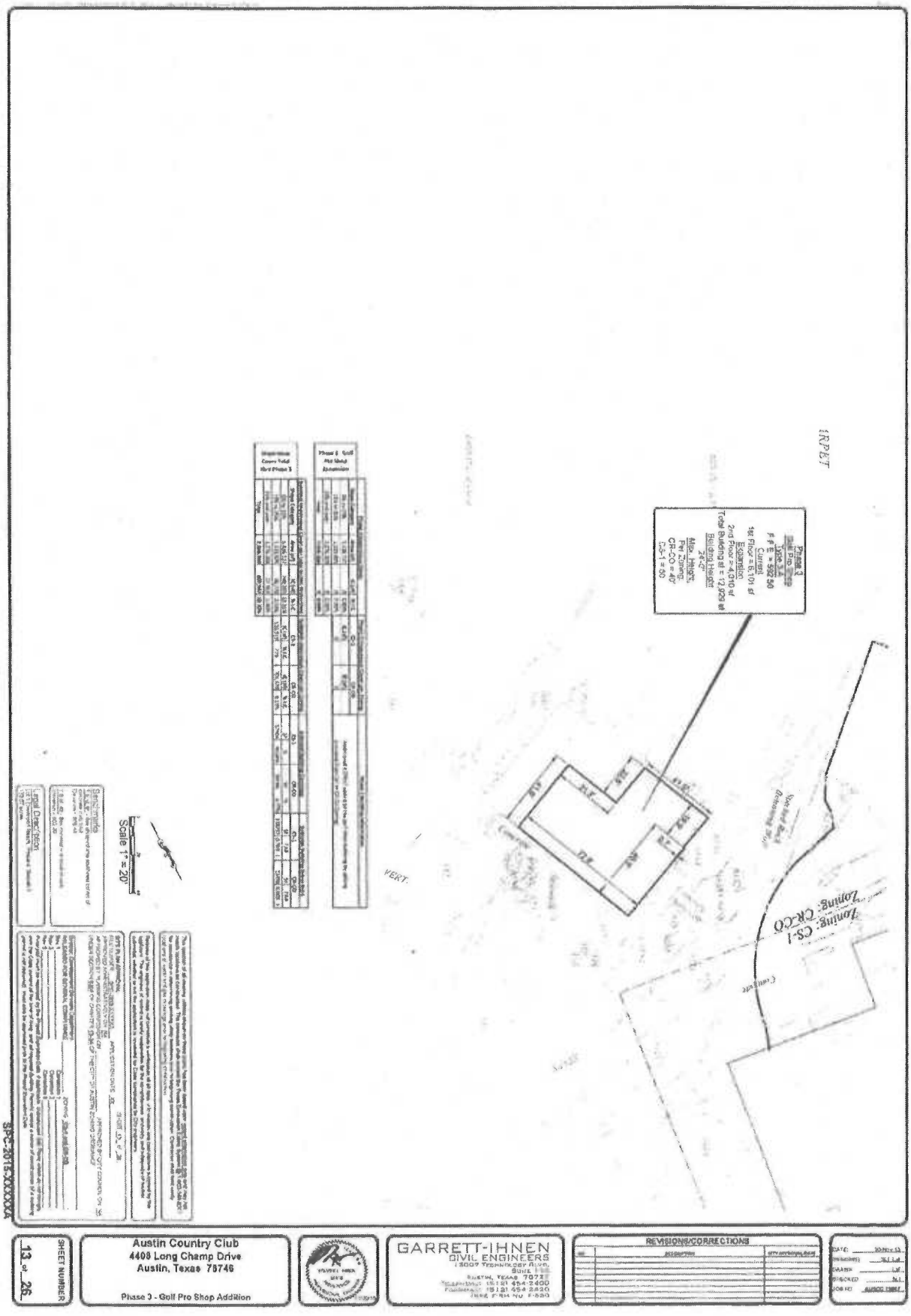
GARRETT-IHNEN

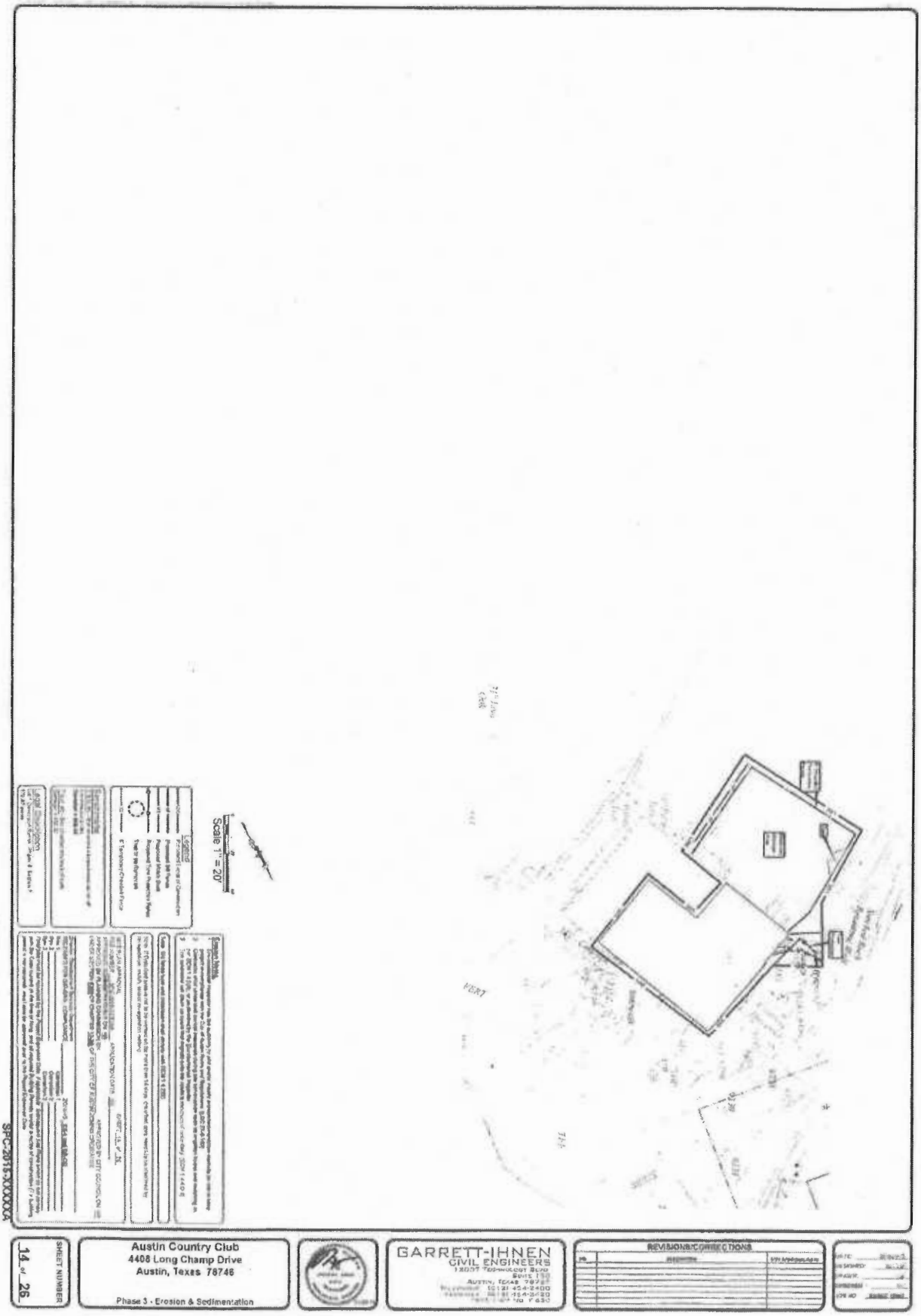
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78748

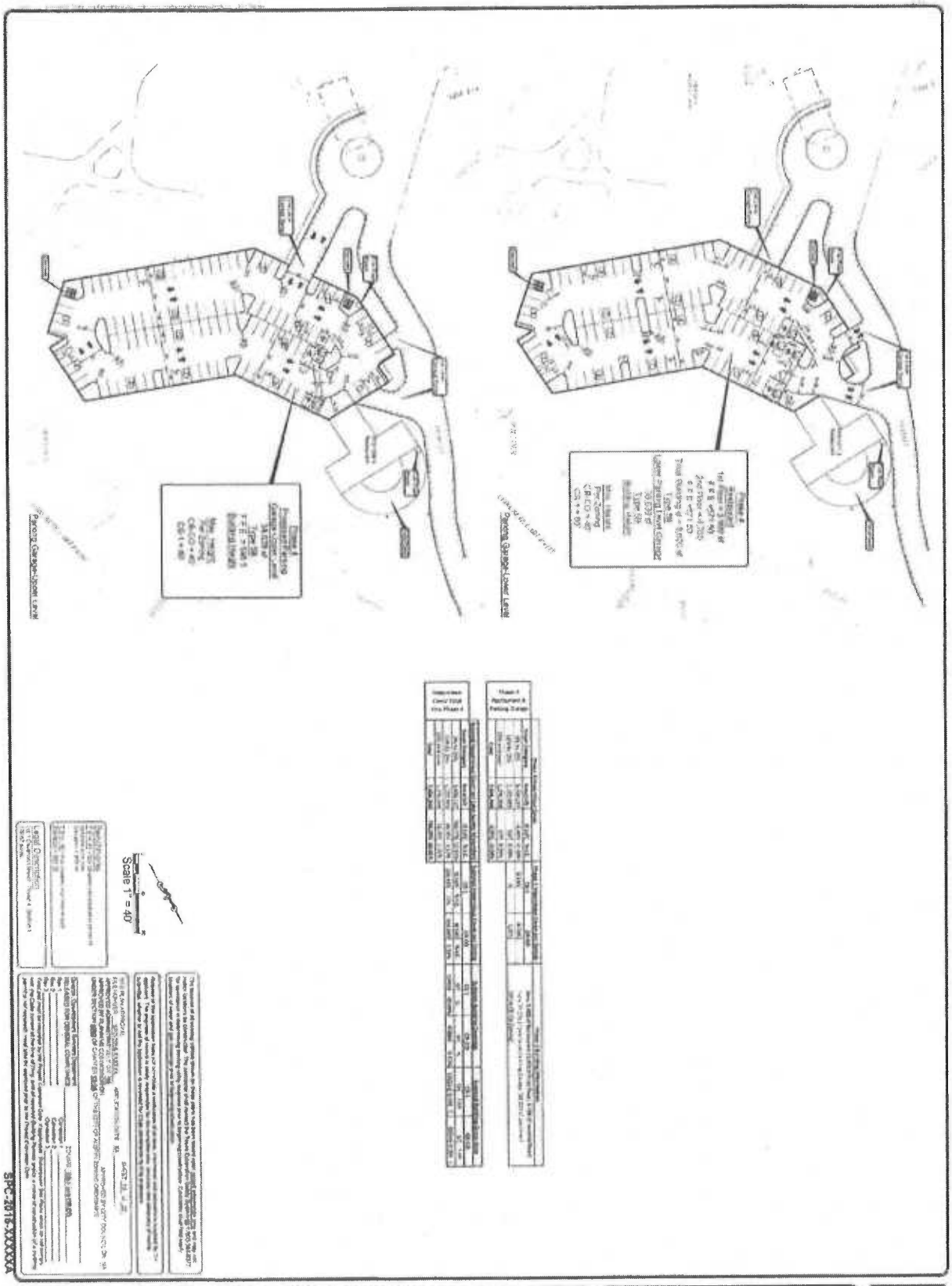
Phase 2 - Erosion & Sedimentation

SHEET NUMBER
12 of 26

SPC-2015-XXXXXA


Scale 1" = 20'
Zoning: CS-1
Zoning: CR-CO
SPC-2015-XXXXXA
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 3 - Golf Pro Shop Addition
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS
SHEET NUMBER
13 of 26


Scale 1" = 20'
SPC-2015-XXXXXA
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 3 - Erosion & Sedimentation
SHEET NUMBER
14 of 26
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS



Austin Country Club
4408 Long Champ Drive
Austin, Texas 78748
Phase 4 - Restaurant & Parking Garage

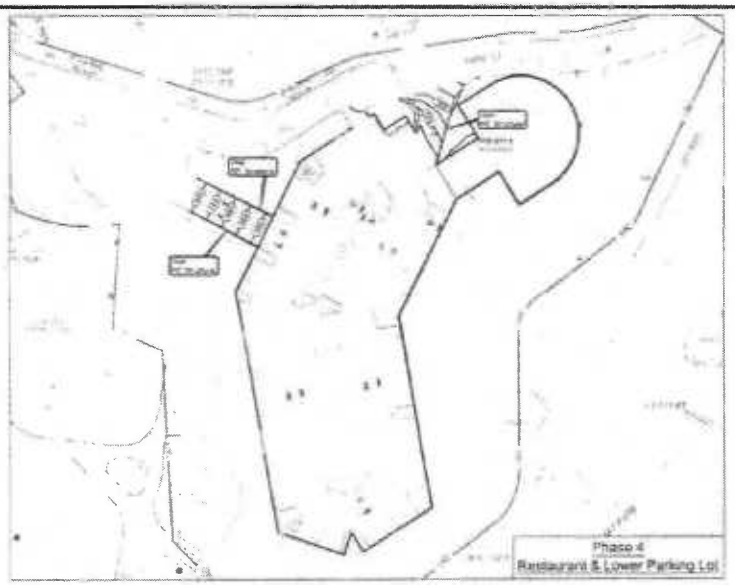
SHEET NUMBER 15 of 26

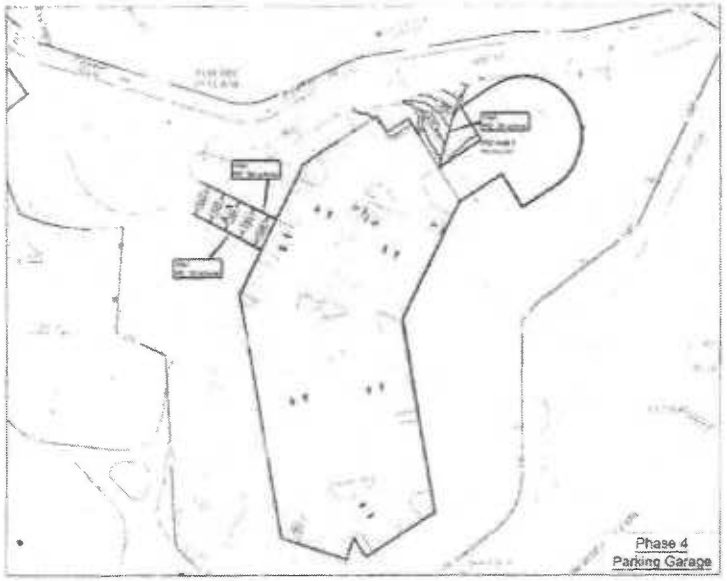
GARRETT-IHNEN
CIVIL ENGINEERS
12007 TECHNOLOGY BLVD
SUITE 150
AUSTIN, TEXAS
TELEPHONE: (512)
FACSIMILE: (512)

REVISIONS/CORRECTIONS

SPC-2016-XXXXXX

Phase 4
Demolition Plan
Phase 4
Restaurant & Lower Parking Lot
Scale 1" = 50'
Legend
Notes
SP-2015-XXXXXA
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 4 - Erosion & Sedimentation and Demolition Plan
SHEET NUMBER
16 of 26
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS





Scale 1" = 40'

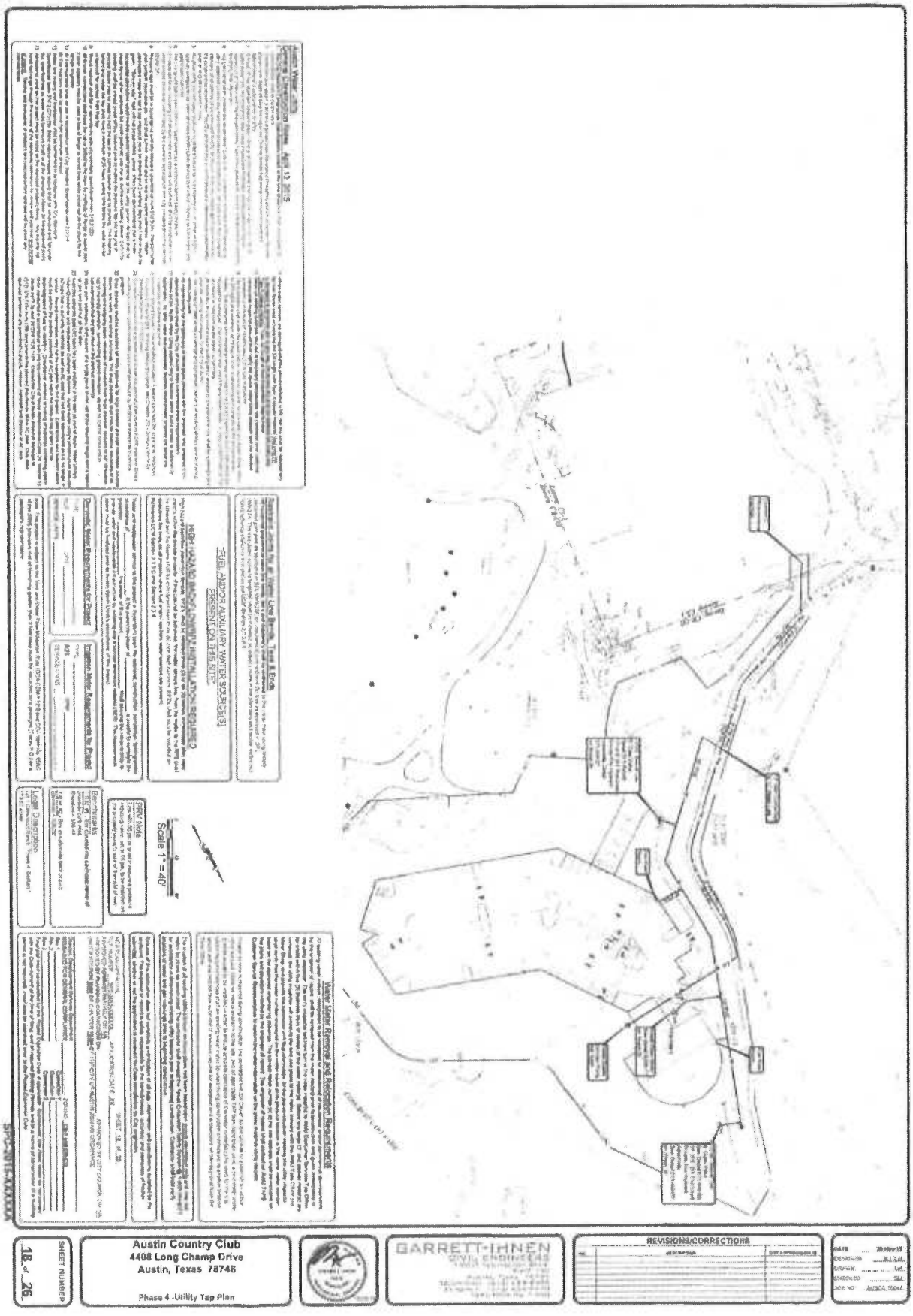
Legend

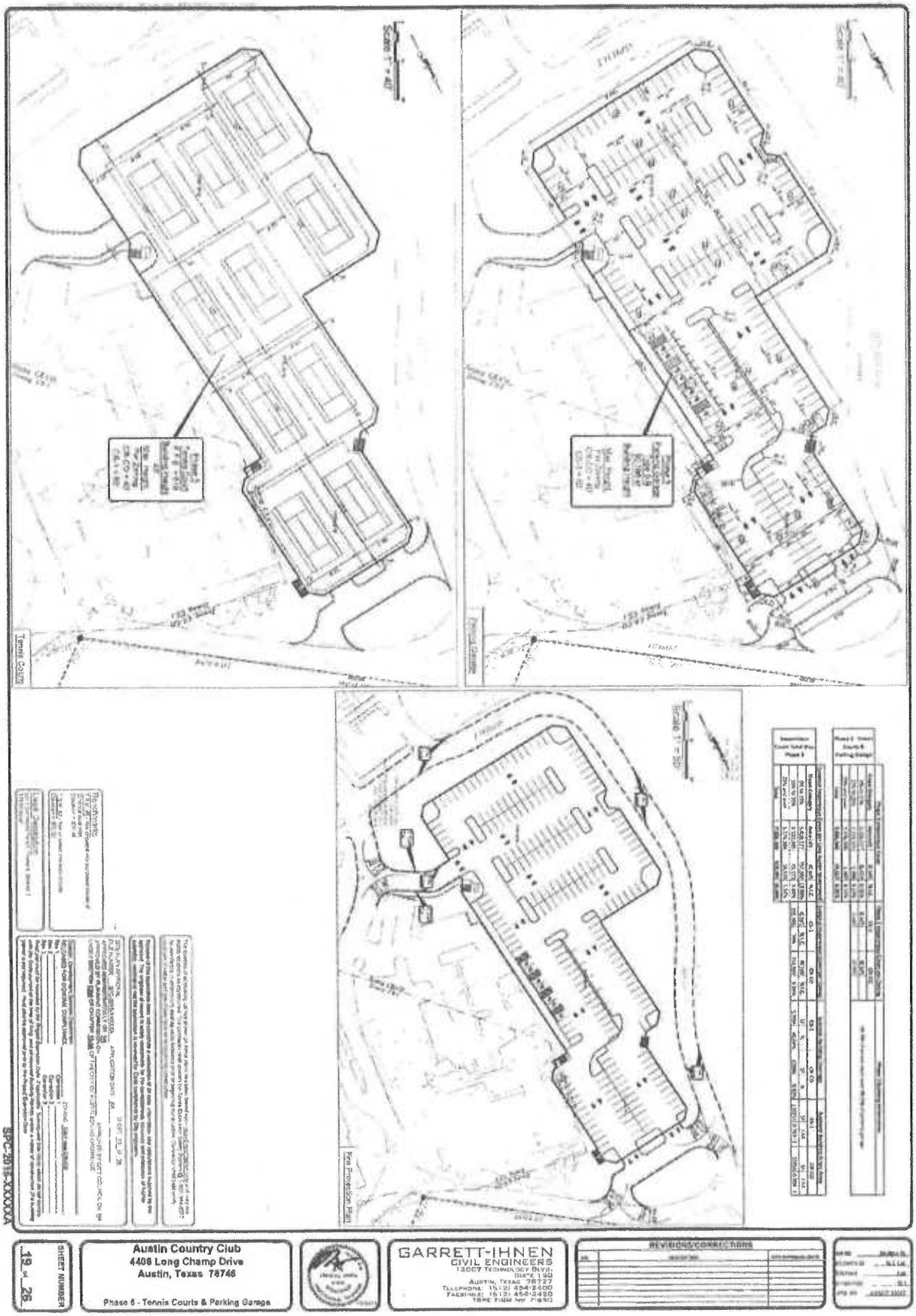
Austin Country Club
4406 Long Champ Drive
Austin, Texas 78746

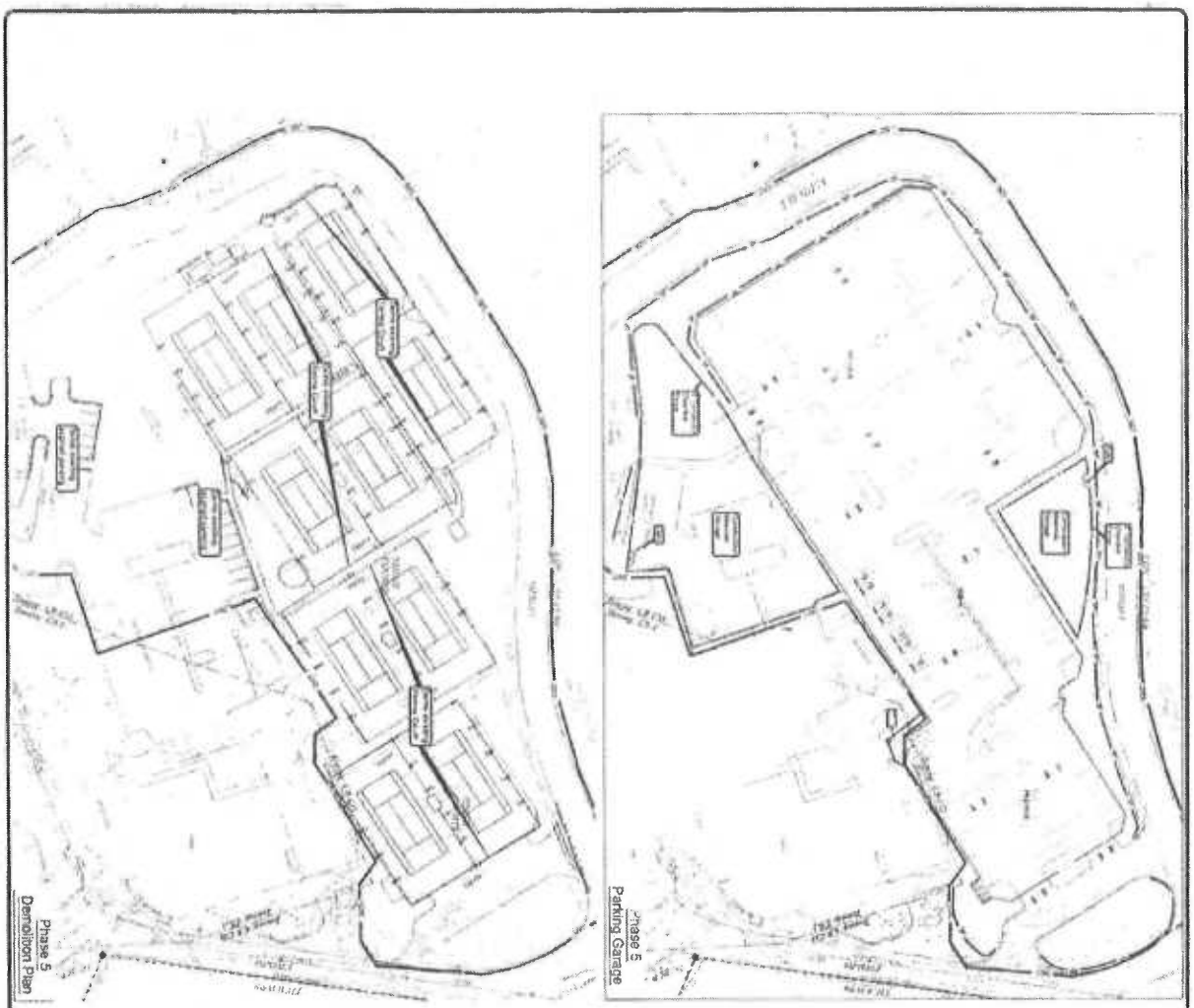
Phase 4 - Grading and Drainage Plan

SHEET NUMBER
17 of 26

SPC-2015-XXXXXA


Scale 1" = 40'
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 4 - Utility Tap Plan
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS
SHEET NUMBER
18 of 26


Tennis Courts
Fire Protection Plan
SPC-2015-XXXXXA
Austin Country Club
4406 Long Champ Drive
Austin, Texas 78746
Phase 6 - Tennis Courts & Parking Garage
19 of 26
SHEET NUMBER
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS



Scale 1" = 40'

SPC-2015-XXXXX

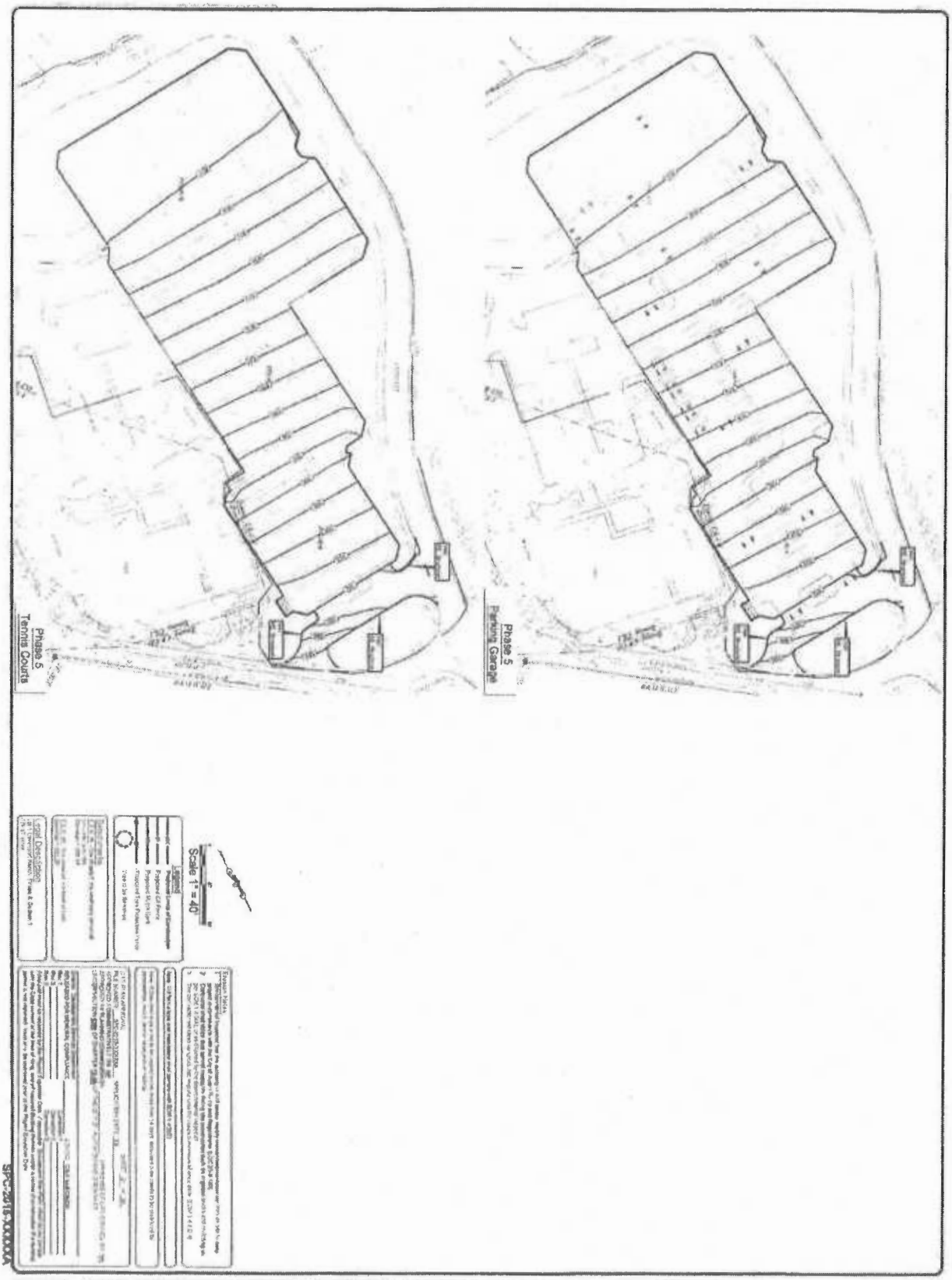
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746

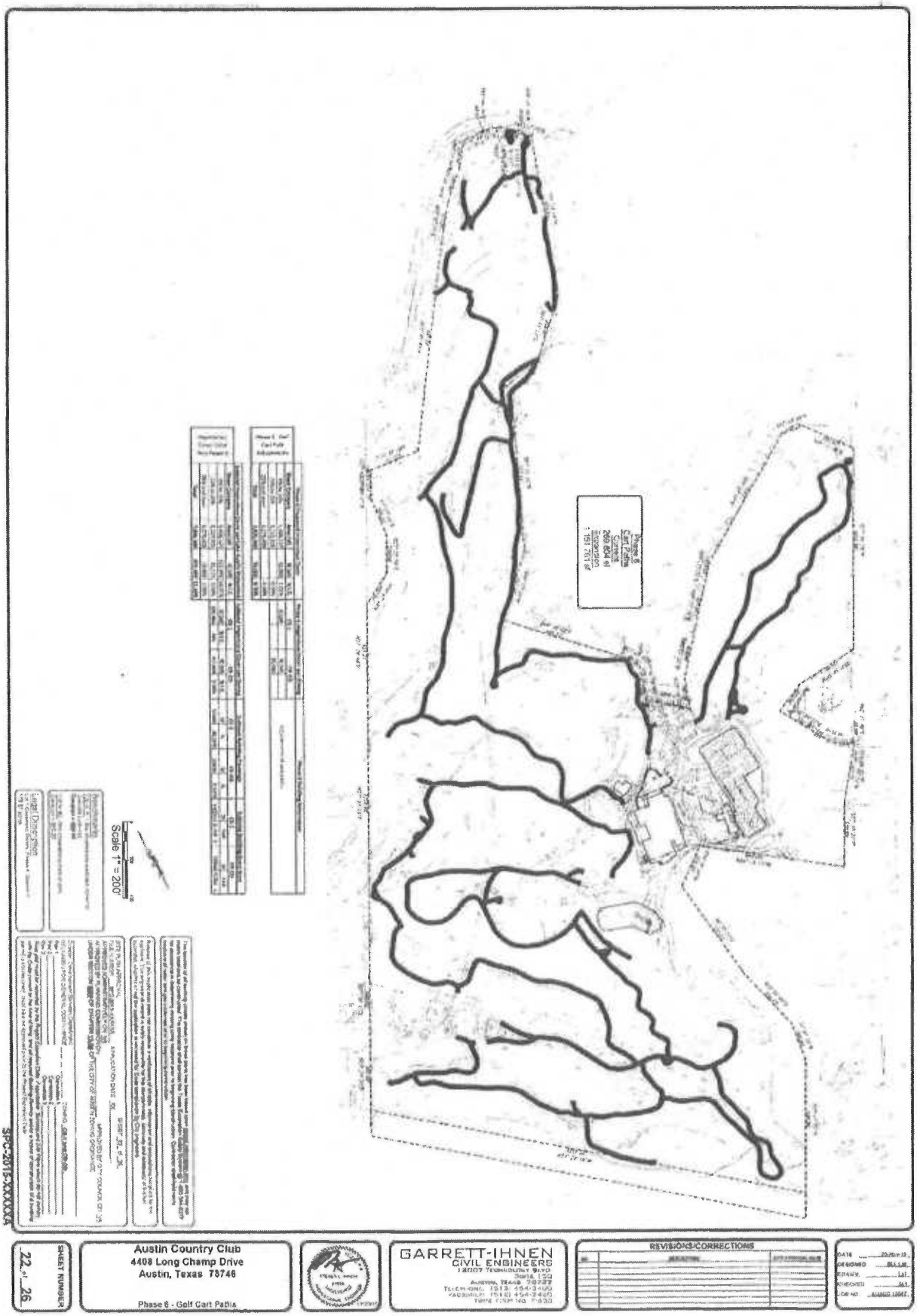
Phase 5 - Erosion & Sedimentation

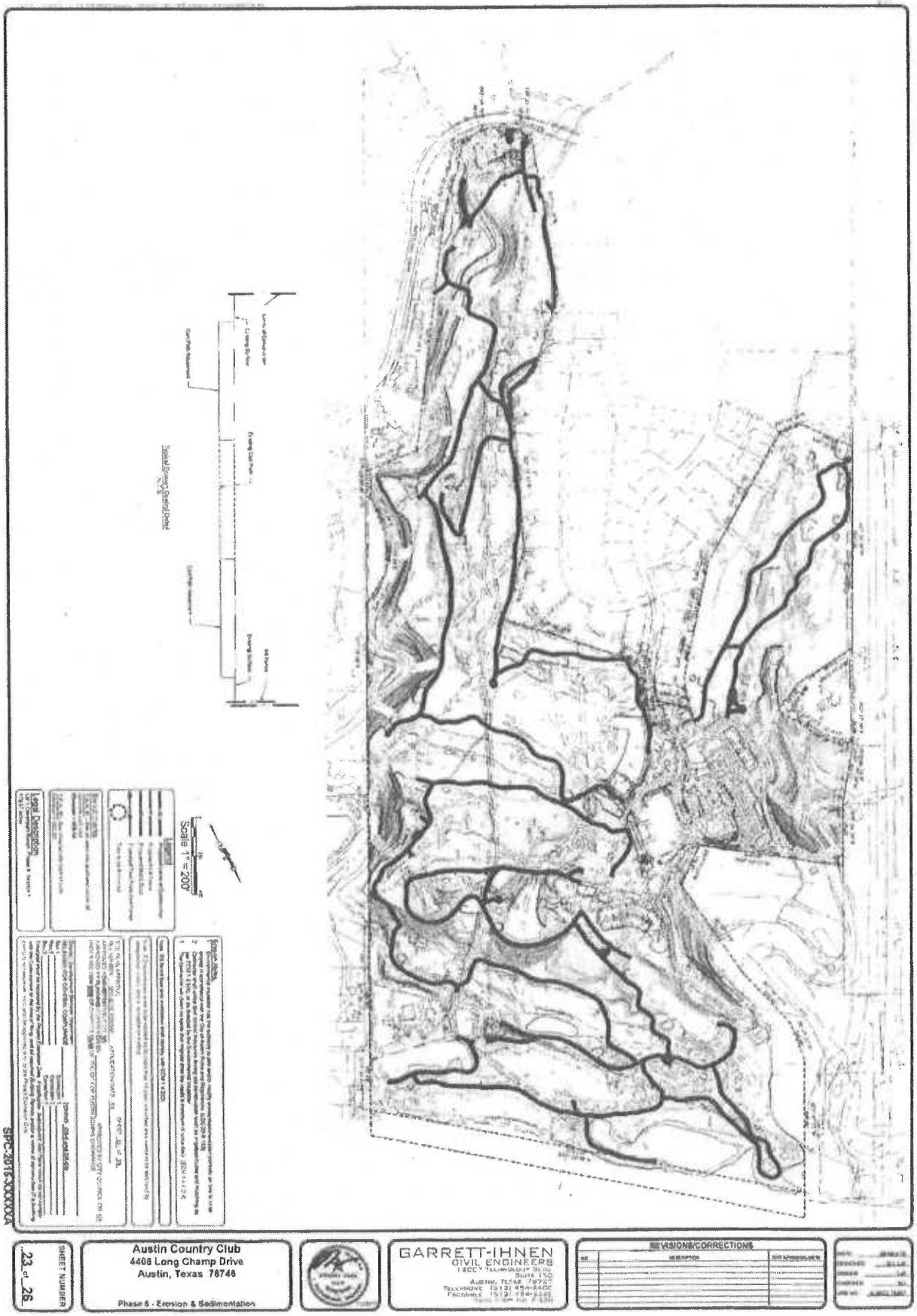
SHEET NUMBER 20 of 26

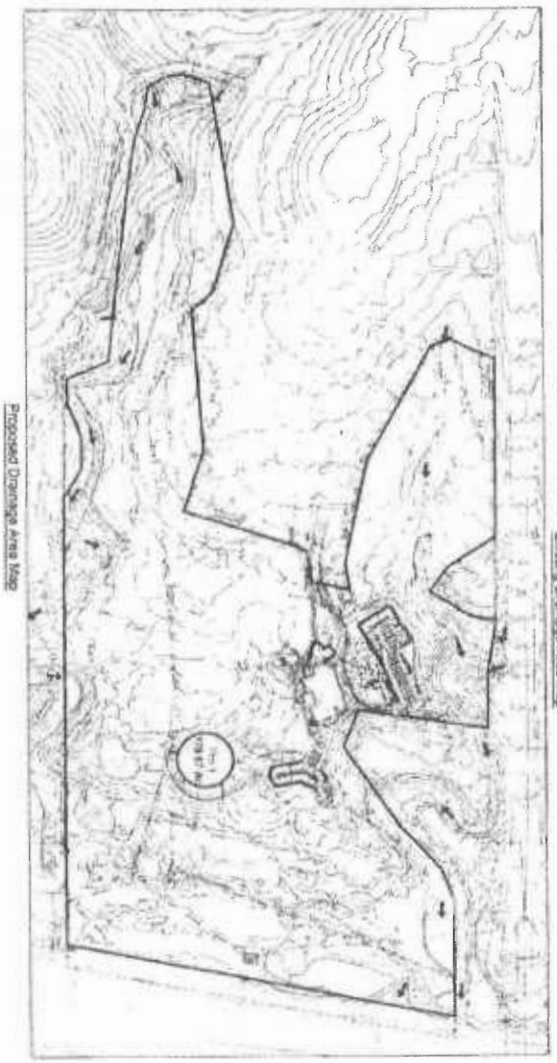
GARRETT-IHNEN
CIVIL ENGINEERS

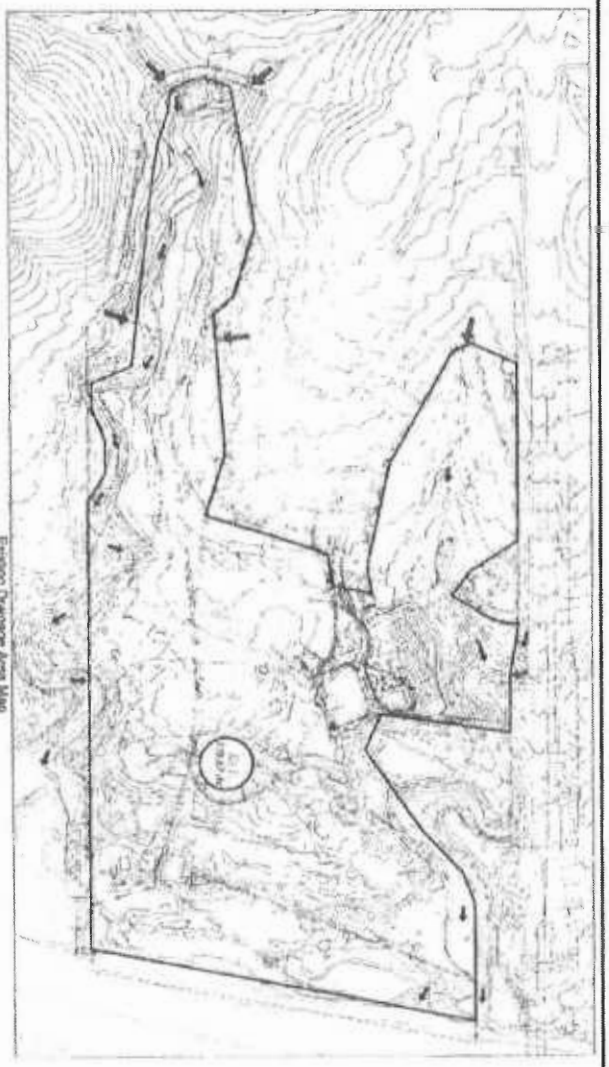
REVISIONS/CORRECTIONS


Phase 5
Tennis Courts
Phase 5
Parking Garage
Scale 1" = 40'
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 5 - Grading and Drainage Plan
GARRETT-IHNEN
CIVIL ENGINEERS
SHEET NUMBER
21 of 26


Scale 1" = 200'
SP-C-2015-XXXXXX
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746
Phase 6 - Golf Cart Paths
SHEET NUMBER
22 of 26
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS


Scale 1" = 200'
SPC-2015-XXXXXX
Austin Country Club
4406 Long Champ Drive
Austin, Texas 78746
Phase 1 - Erosion & Sedimentation
SHEET NUMBER
23 of 26
GARRETT-IHNEN
CIVIL ENGINEERS
REVISIONS/CORRECTIONS





Scale 1" = 300'

SPC-2015-XXXXXX

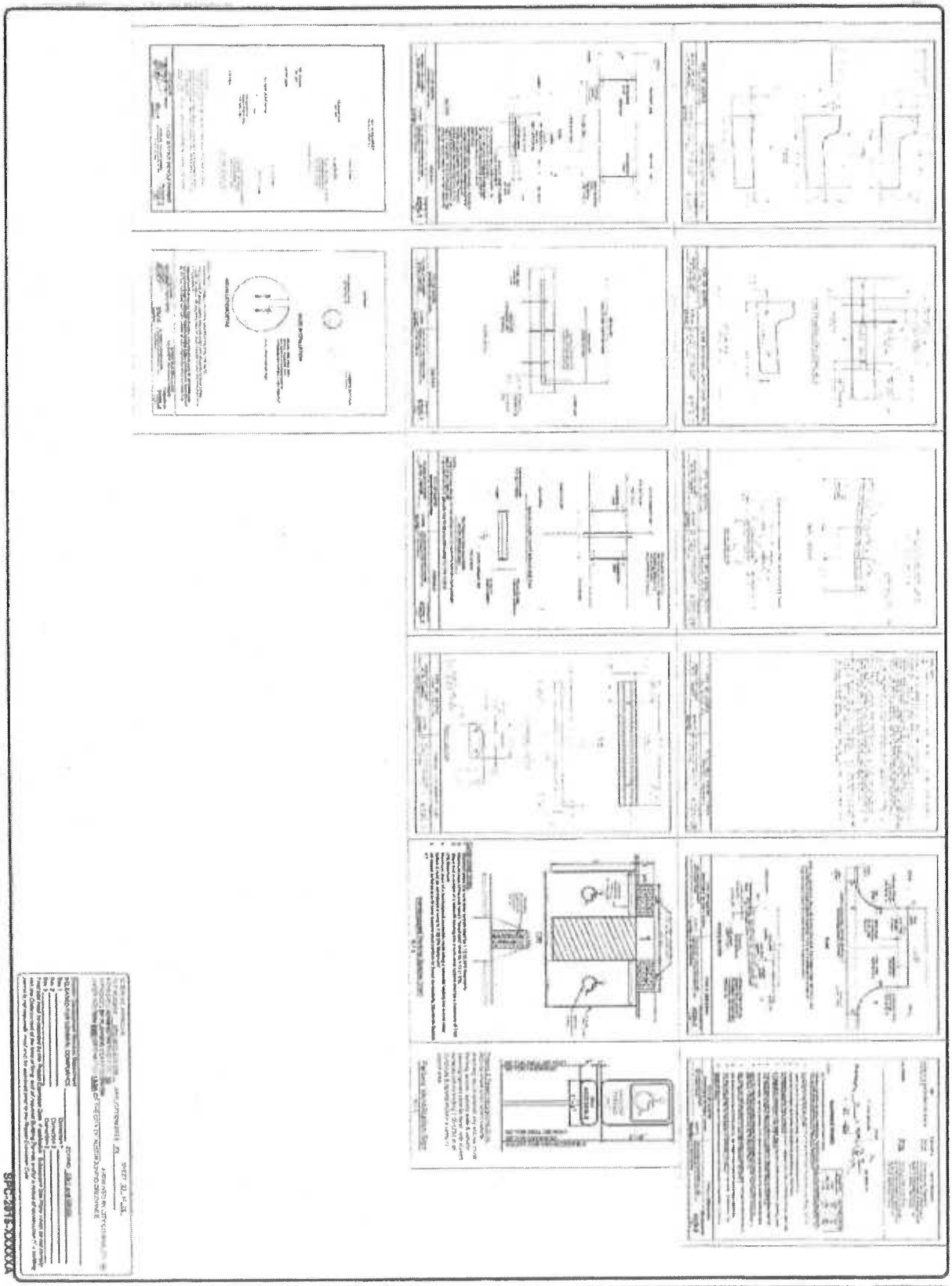
Austin Country Club
4408 Long Champ Drive
Austin, Texas 78746

Drainage Area Map

SHEET NUMBER 24 of 26

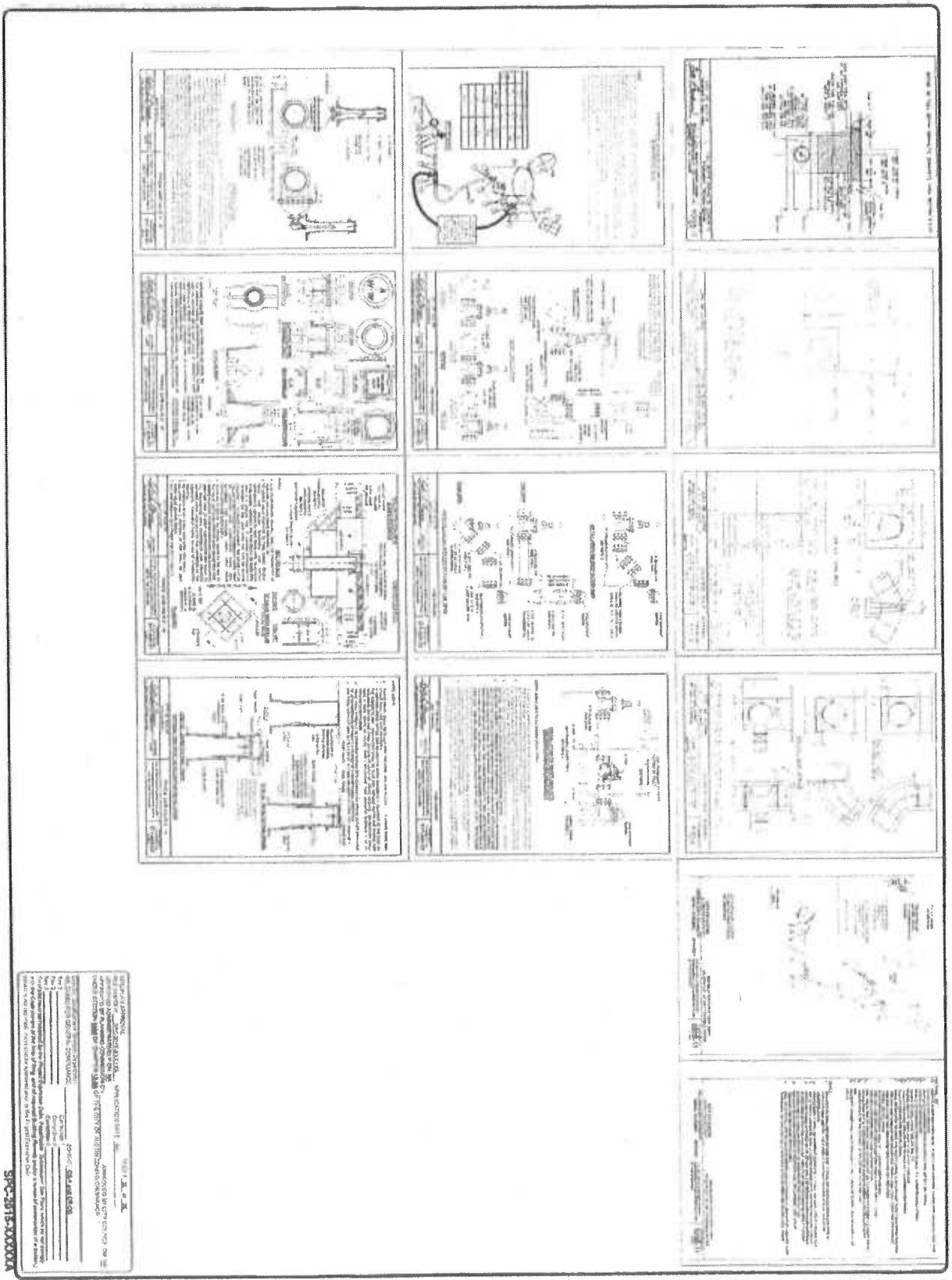
GARRETT-IHNEN CIVIL ENGINEERS

REVISIONS/CORRECTIONS



SP-2016-XXXXXA

SHEET NUMBER					
25 of 26	Austin Country Club 4408 Long Champ Drive Austin, Texas 78746 Construction Details 1		GARRETT-IHNEN CIVIL ENGINEERS	REVISIONS/CORRECTIONS	



SP-2015-0000XX

SHEET NUMBER					
26 of 26	Austin Country Club 4408 Long Champ Drive Austin, Texas 78746 Construction Details 2		GARRETT-IHNEN CIVIL ENGINEERS	REVISIONS/CORRECTIONS	

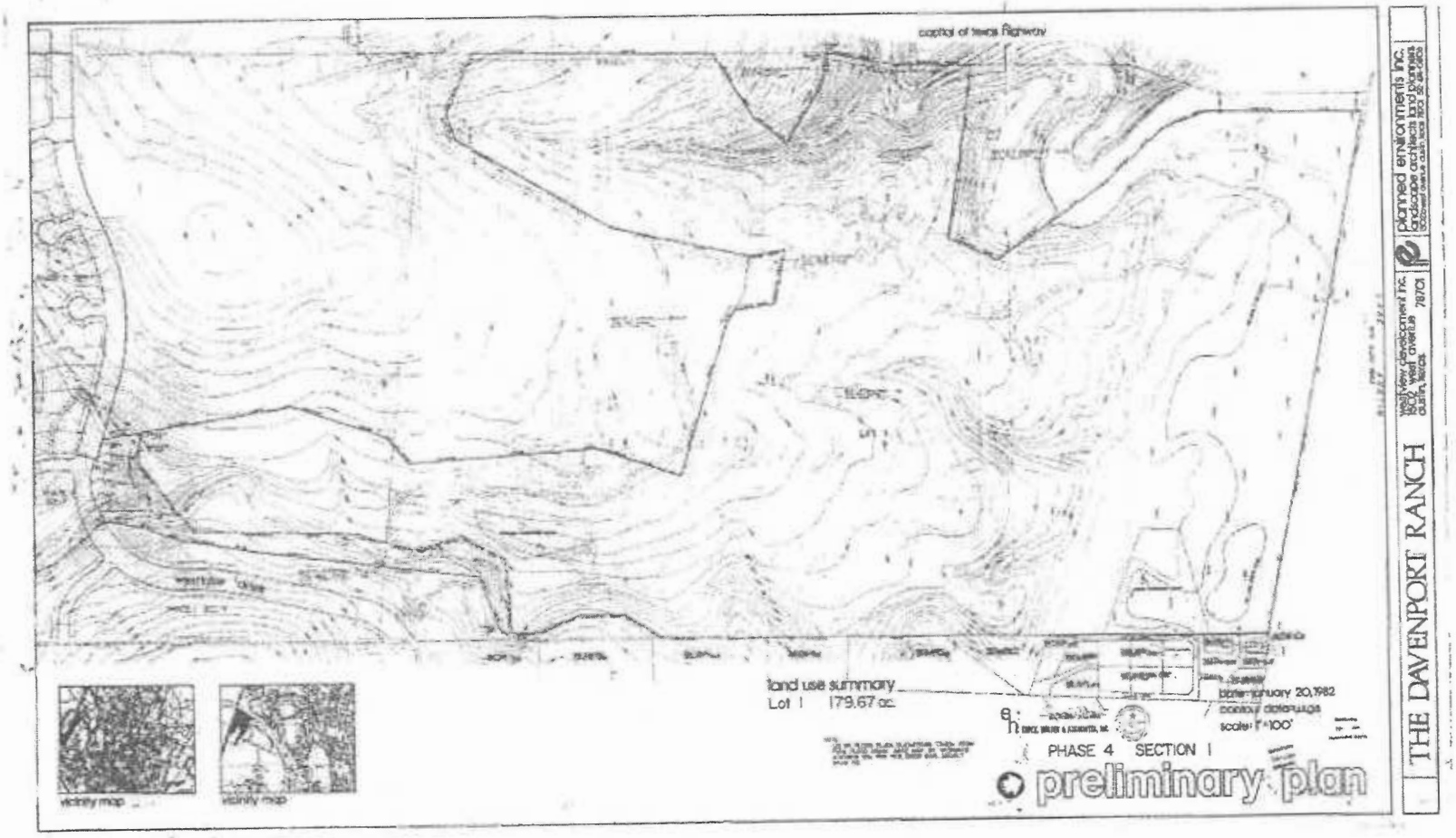
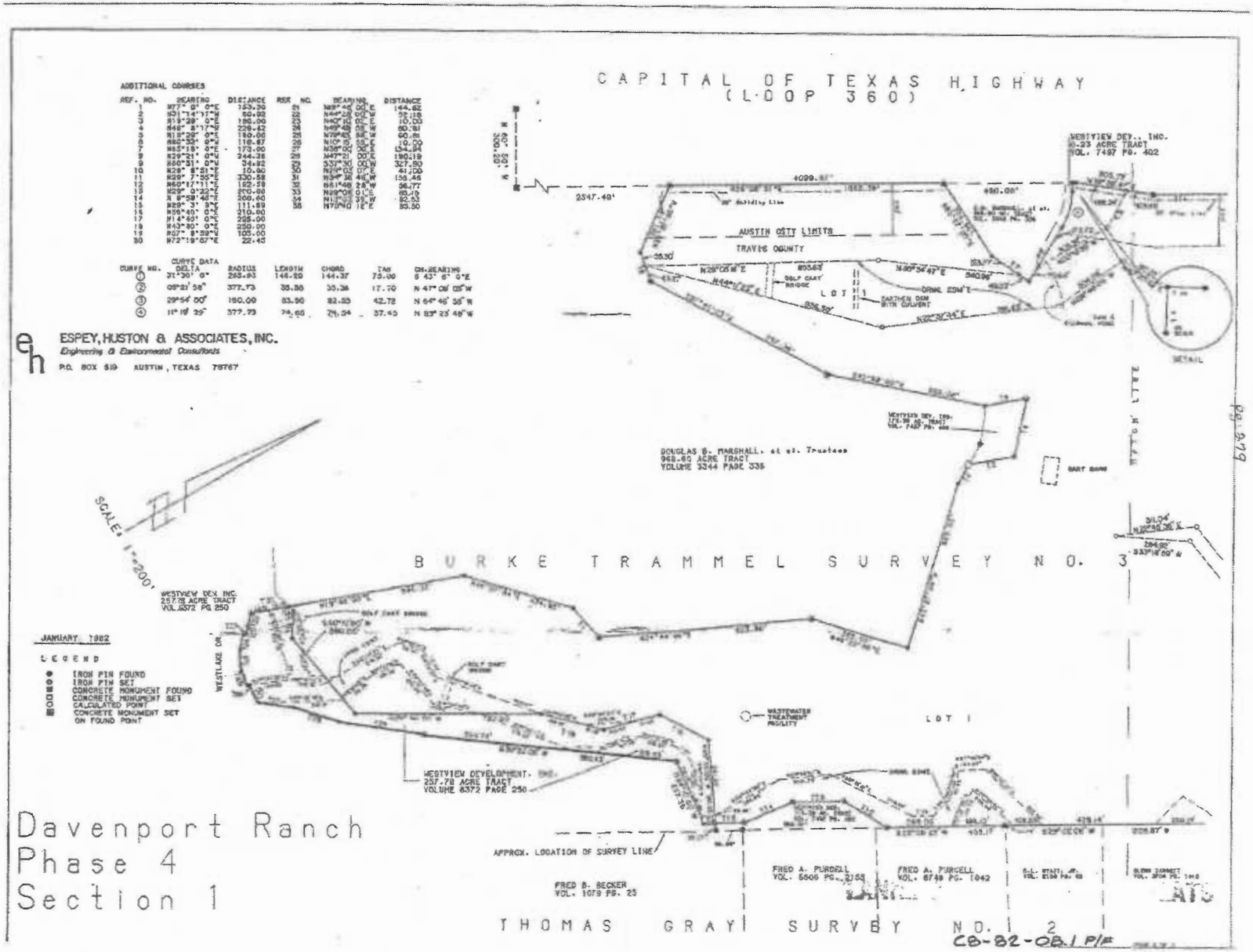
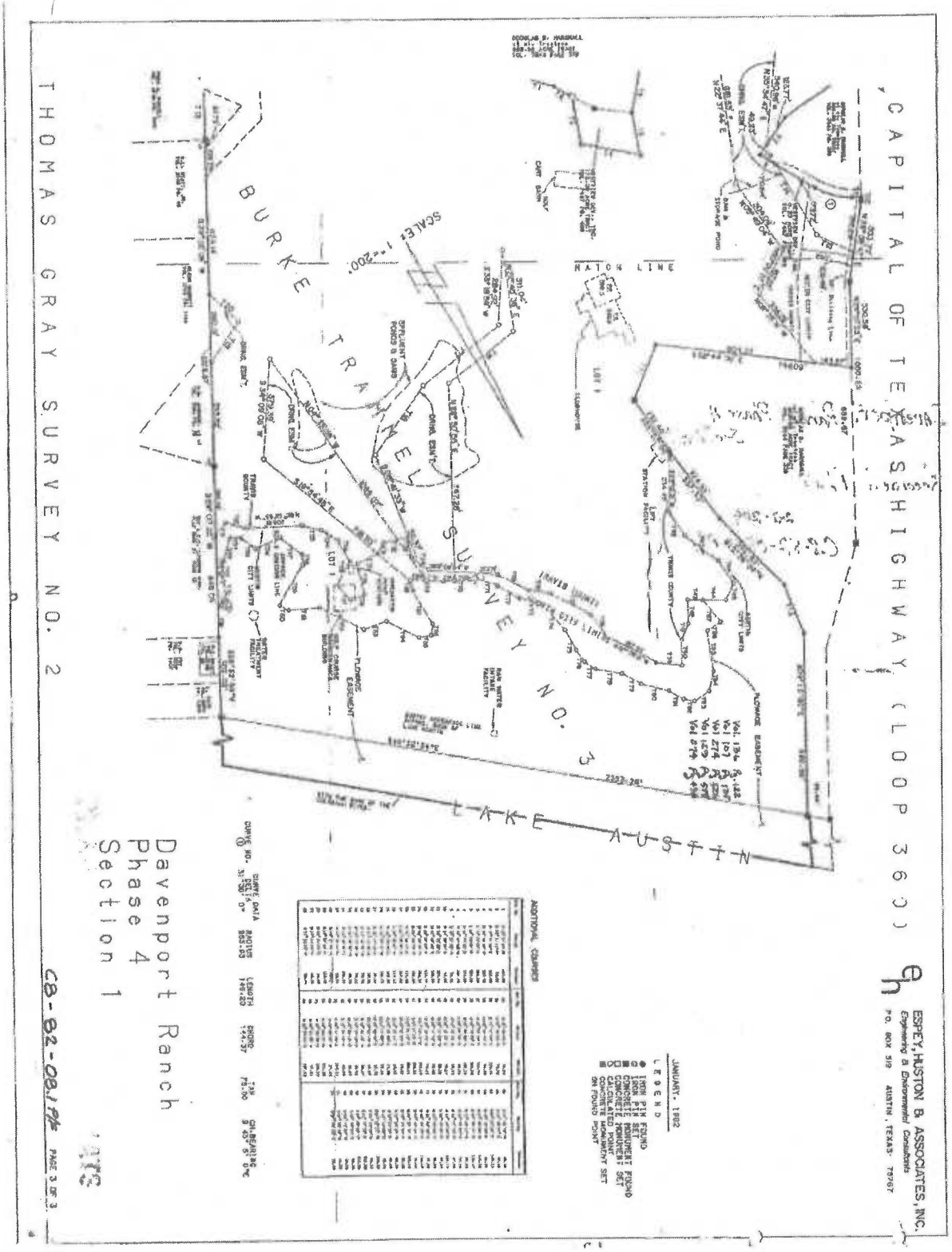

capital of texas highway
land use summary
Lot 1 179.67 ac.
vicinity map
vicinity map
PHASE 4 SECTION 1
preliminary plan
THE DAVENPORT RANCH
planned environments inc.

EXHIBIT
2


CAPITAL OF TEXAS HIGHWAY
(LOOP 360)
ESPEY, HUSTON & ASSOCIATES, INC.
Engineering & Environmental Consultants
P.O. BOX 519 AUSTIN, TEXAS 78767
AUSTIN CITY LIMITS
TRAVIS COUNTY
WESTVIEW DEV., INC.
90.23 ACRE TRACT
VOL. 7497 PG. 402
DOUGLAS B. MARSHALL, et al, Trustees
968.60 ACRE TRACT
VOLUME 3344 PAGE 335
WESTVIEW DEV. INC.
257.78 ACRE TRACT
VOL. 8372 PG. 250
WESTVIEW DEVELOPMENT, INC.
257.78 ACRE TRACT
VOLUME 8372 PAGE 250
WESTLAKE DR.
WASTEWATER TREATMENT FACILITY
LOT 1
LOT 2
DETAIL
SCALE: 1"=200'
JANUARY, 1982
LEGEND
IRON PIN FOUND
IRON PIN SET
CONCRETE MONUMENT FOUND
CONCRETE MONUMENT SET
CALCULATED POINT
CONCRETE MONUMENT SET ON FOUND POINT
APPROX. LOCATION OF SURVEY LINE
FRED B. BECKER
VOL. 1079 PG. 25
FRED A. PURDELL
VOL. 5506 PG. 2358
FRED A. PURDELL
VOL. 6749 PG. 1042
BURKE TRAMMEL SURVEY NO. 3
THOMAS GRAY SURVEY NO. 2
Davenport Ranch
Phase 4
Section 1
C8-82-081 P/F


CAPITAL OF TEXAS HIGHWAY (LOOP 360)
BURKE TRAVIS SURVEY NO. 3
THOMAS GRAY SURVEY NO. 2
LAKE AUSTIN
SCALE: 1"=200'
NATCH LINE
ESPEY, HUSTON & ASSOCIATES, INC.
Engineering & Environmental Consultants
P.O. BOX 519 AUSTIN, TEXAS 78767
JANUARY, 1982
LEGEND
Davenport Ranch
Phase 4
Section 1
C8-82-081

Pg 877

Davenport Ranch
Phase 4 Section 1

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

THAT, WESTVIEW DEVELOPMENT, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS AND HAVING ITS HOME OFFICE IN THE CITY OF HOUSTON, HARRIS COUNTY, TEXAS; BEING THE OWNERS OF A 179.87 ACRE TRACT OF LAND, THE SAID TRACT BEING A PORTION OF A A 175.38 ACRE TRACT OF LAND AND A 257.78 ACRE TRACT OF LAND OUT OF THE BURKE TRAMMEL SURVEY NO. 3, TRAVIS COUNTY, TEXAS; THE SAID 175.38 ACRE TRACT OF LAND BEING DESCRIBED IN A DEED TO THE SAID WESTVIEW DEVELOPMENT, INC., AND RECORDED IN VOLUME 7437, PAGE 402 OF THE TRAVIS COUNTY DEED RECORDS AND THE SAID 257.78 ACRE TRACT OF LAND BEING DESCRIBED IN A DEED TO THE SAID WESTVIEW DEVELOPMENT, INC., AND RECORDED IN VOLUME 6372, PAGE 250 OF THE TRAVIS COUNTY DEED RECORDS; ACTING HEREIN BY AND THROUGH ITS VICE-PRESIDENT, GERALD J. GOFF, DOES HEREBY SUBDIVIDE THE SAID 179.87 ACRE TRACT OF LAND, TO BE KNOWN AS THE "DAVENPORT RANCH, PHASE 4, SECTION 1", AND DOES HEREBY DEDICATE TO THE PUBLIC ALL STREETS AND EASEMENTS AS SHOWN HEREON:

WITNESS MY HAND THIS THE 11th DAY OF Feb., 1982 AD.

GERALD J. GOFF, VICE PRESIDENT
WESTVIEW DEVELOPMENT, INC.
[illegible] WEST AVE, AUSTIN, TEXAS.

THE STATE OF TEXAS:
COUNTY OF TRAVIS :

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE COUNTY AND STATE AFORESAID, ON THIS DAY PERSONNALLY APPEARED GERALD J. GOFF, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AS VICE PRESIDENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN SUCH CAPACITY AS THE ACT AND DEED OF SAID WESTVIEW DEVELOPMENT, INC. FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

WITNESS MY HAND AND SEAL OF OFFICE, THIS 11th DAY OF Feb. ____, 1982, A.D.

NOTARY PUBLIC IN AND FOR TRAVIS COUNTY, TEXAS

APPROVED FOR ACCEPTANCE
AUGUST 10, 1982
DATE

RICHARD R. LILLIE, DIRECTOR OF PLANNING

ACCEPTED AND AUTHORIZED FOR RECORD BY THE PLANNING COMMISSION, CITY OF AUSTIN, TEXAS, THIS THE 10TH DAY OF AUG., 1982 A.D.

ASST. - SECRETARY
JUDITH E. FOWLER

VICE CHAIRMAN
BERNARD SNYDER

FILED FOR RECORD AT ____ O'CLOCK P.M., THIS THE 30th DAY OF August, 1982, A.D.

DEPUTY C.P.

DORIS SHROPSHIRE, CLERK, COUNTY COURT
TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS:
COUNTY OF TRAVIS :

I, DORIS SHROPSHIRE, CLERK OF THE COUNTY COURT, WITHIN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 30th DAY OF ____, 1982, A.D., AT ____ O'CLOCK P.M., AND DULY RECORDED ON ____ DAY OF August, 1982 A.D. AT ____ O'CLOCK ____ M., OF SAID COUNTY AND STATE IN PLAT BOOK 83, PAGE ____.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT OF SAID COUNTY, THE DATE LAST WRITTEN ABOVE.

DEPUTY

DORIS SHROPSHIRE, CLERK, COUNTY CLERK
TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS:
COUNTY OF TRAVIS :

I, DONALD J. KIRBY, A REGISTERED PUBLIC SURVEYOR, AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF SURVEYING, DO HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH THE SURVEYING RELATED PORTIONS OF CHAPTER 13-50F THE AUSTIN CITY CODE; THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE; AND WAS PREPARED FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

CERTIFIED TO THIS 11 DAY OF February, 1982 A.D.

DONALD J. KIRBY
REGISTERED PUBLIC SURVEYOR
NO. 2508, STATE OF TEXAS

IN APPROVING THIS PLAT BY THE COMMISSIONERS COURT OF TRAVIS COUNTY, TEXAS, IT IS UNDERSTOOD THAT THE BUILDING OF ALL STREETS, ROADS AND OTHER PUBLIC THOROUGHFARES DELINEATED AND SHOWN ON THIS PLAT AND ALL BRIDGES OR CULVERTS NECESSARY TO BE CONSTRUCTED OR PLACED IN SUCH STREETS, ROADS OR OTHER THOROUGHFARES OR IN CONNECTION THEREWITH SHALL BE THE RESPONSIBILITY OF THE OWNER AND/OR DEVELOPER OF THE TRACT OF LAND COVERED BY THIS PLAT IN ACCORDANCE WITH PLANS AND SPECIFICATIONS PRESCRIBED BY THE COMMISSIONERS COURT OF TRAVIS COUNTY, TEXAS, AND SAID COUNT ASSUMES NO OBLIGATION TO BUILD THE STREETS, ROADS OR OTHER PUBLIC THOROUGHFARES SHOWN ON THIS PLAT, OR OF CONSTRUCTING ANY BRIDGES OR CULVERTS IN CONNECTION THEREWITH. THE ACCEPTANCE FOR MAINTENANCE BY TRAVIS COUNTY, TEXAS OF THE ROADS OR STREETS IN THIS SUBDIVISION DOES NOT OBLIGATE THE COUNTY TO INSTALL STREET NAME SIGNS AS THIS IS CONSIDERED TO BE PART OF THE DEVELOPERS [illegible] BUT THAT ERECTING SIGNS FOR TRAFFIC CONTROL, SUCH AS [illegible] LIMITS AND STOP [illegible] SIGNS, SHALL REMAIN THE RESPONSIBILITY OF THE COUNTY.

THE STATE OF TEXAS:
COUNTY OF TRAVIS :

I, DORIS SHROPSHIRE, COUNTY CLERK OF TRAVIS COUNTY, TEXAS DO HEREBY CERTIFY THAT ON THE 30th DAY OF August, A.D. 1982, THE COMMISSIONER'S COURT OF TRAVIS COUNTY, TEXAS PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT AND THAT SAID ORDER HAS BEEN DULY ENTERED IN THE MINUTES OF SAID COURT IN BOOK 3 PAGE 440.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE 30th DAY OF August, 1982 A.D.

(SEAL)

DORIS SHROPSHIRE, COUNTY CLERK
COUNTY CLERK, TRAVIS COUNTY, TEXAS

BY: ____ A. Young

NOTES: 1) NO LOT MAY BE OCCUPIED UNTIL CONNECTION IS MADE TO THE DAVENPORT RANCH M.U.D. WATER AND WASTEWATER SYSTEMS.

2) FOR RESTRICTIVE COVENANT PERTAINING TO THIS SUBDIVISION SEE BK. 7740, PG. 4 OF THE TRAVIS COUNTY DEED RECORDS.

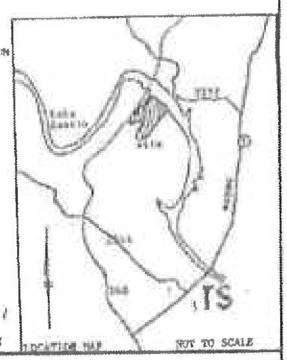
FLOOD NOTE:

THE 100 YEAR FLOOD PLAIN IS CONTAINED WITHIN THE DRAINAGE EASEMENTS AS SHOWN HEREON.

ROBERT T. McCARTY, P.E.

[illegible]

PRIOR TO ANY CONSTRUCTION, EXCEPT GOLF COURSE IN THIS SUBDIVISION, A SITE DEVELOPMENT PERMIT MUST BE OBTAINED FROM THE CITY OF AUSTIN PUBLIC WORKS DEPARTMENT IN ACCORDANCE WITH CITY OF AUSTIN ORDINANCE CHAPTER 9-10



CB-82-08.1 P/F

ESPEY, HUSTON & ASSOCIATES, INC.
Engineering & Environmental Consultants
916 CAPITAL OF TEXAS HWY. SOUTH (512) 327-6840
P.O. BOX 519 AUSTIN, TEXAS 78767

Davenport Ranch
Phase 4 Section 1

#1094

10/10/80

FILE
8184-C

CONTRACT CONCERNING CREATION AND OPERATION
OF DAVENPORT RANCH MUNICIPAL UTILITY DISTRICT

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

THAT FOR and in consideration of the mutual agreements, conditions, covenants and terms contained herein, the City of Austin, Texas (hereinafter called "CITY"), Westview Development, Inc. (hereinafter called "WDI"), and Davenport Ranch Municipal Utility District No. 1 (hereinafter called "District"), mutually covenant and agree as follows:

ARTICLE I
PARTIES

This is a contract among the CITY, acting through Dan H. Davidson, City Manager, as authorized by specific action of the Austin City Council and WDI, being the holder of legal title to and developer of a portion of that land known as the Davenport Ranch situated wholly in Travis County, Texas, consisting of approximately 1,280 acres, all of which lies within the extraterritorial jurisdiction of the CITY, as shown in Exhibit A attached hereto (hereinafter "Davenport Ranch"), and being authorized by all the owners of the land within the boundaries of the Davenport Ranch to enter into this contract restricting the development of all the land within the Davenport Ranch as provided in Article V, VI, and X hereof, and restricting the authority of the District to issue bonds and notes as provided in Article III hereof, and the District, consisting of approximately 500 acres of land located in the Burke Trammel Survey No. 3 and located within the boundaries of the Davenport Ranch.

ARTICLE II
DISTRICT

On the 8th day of March, 1979, the CITY passed a resolution giving its consent to the creation of the District. On the 16th day of July, 1979, the Texas Water Commission created and established the District.

EXHIBIT
3

The consent of the CITY contains numerous terms and conditions under which the District may issue its bonds.

ARTICLE III

COSTS TO BE PAID BY DISTRICT AND WDI

A. Unless authorized by the CITY, the District shall not issue bonds and notes for any purposes except to pay or finance an amount equivalent to:

1. The costs of the water treatment facilities or water approach mains, pumping and storage facilities, and on-site wastewater treatment facilities (including storage ponds, irrigation pump stations, and appurtenances), excluding land used for irrigation purposes, and major internal water and sewer lines (lines larger than eight inches in diameter for service within District);

2. Land costs as authorized by Article IV below;

3. Finance an amount not to exceed $500,000 for the acquisition of a minimum of five percent (5%) of the total area of the District (none of which land may constitute unusable flood plain lands) for the purpose of public park land and its improvements to the extent permitted under state law. If the financing of such amount is permitted under state law, such commitment to park land and its improvements shall be made within two years after the initial bonds are issued by the District.

4. The usual and customary expenses for engineering fees, construction staking, surveying, inspection and normal contingencies;

5. The following costs associated with the purposes described in Paragraphs 1-4 above and with the issuance of bonds for such purposes:

a. Legal and bond counsel fees not to exceed three percent (3%) of the amount of District bond issues;

b. Financial advisory fees not to exceed two percent (2%) of the amount of District bond issues;

c. Interest on construction cost paid prior to bond issuance to the extent permitted by the Texas Department of Water Resources;

d. Capitalized interest on bond issues for a period of not more than two years; and

B. Unless otherwise provided in the preceding Paragraph A, WDI agrees to pay or provide, for the benefit of the District:

1. Costs of wastewater collection systems internal to the subdivisions to be served and the sewer interceptors within the subdivisions, excluding major internal lines; these facilities shall be donated to the District at no cost to the District;

2. Costs of water supply distribution facilities internal to the subdivisions to be served excluding major internal lines and such facilities external to the subdivisions to connect to the water approach main or to lead off of the water approach main if such water approach main is constructed; these facilities shall be donated to the District at no cost to the District;

3. For the initial purchase, construction, acquisition, extension, and improvement of land, easements, works, improvements, facilities, plants, equipment, and the appliances reasonably necessary to gather, conduct, divert and control local storm water or other local harmful excesses of water in the District; these facilities shall be dedicated to the District;

4. Costs of other items related to the matters identified in this Paragraph B but not otherwise specified in this Paragraph B.

C. Should WDI choose to install water approach facilities of additional capacity to serve the remainder of the Davenport Ranch not included within the District, WDI agrees to pay the additional cost incurred by the installation of such water approach facilities.

Should the City Council require any additional capacity to serve areas outside the Davenport Ranch, all incremental costs associated with additional capacity including engineering,

surveying, construction, land, etc. shall be borne entirely by the CITY in accordance with the CITY's policies.

D. The parties hereto acknowledge and agree that this Contract has the effect of restricting the general statutory purposes for which the District may issue bonds and notes. The parties further recognize and agree that nothing in this or any other contract in any way restricts or limits the powers and authority the District may have to operate and maintain the water system, the water treatment system, the sewerage system, the wastewater treatment system, drainage facilities, recreational facilities, solid waste disposal facilities (no on-site facilities are to be permitted), or any other systems, facilities, assets or properties of or serving the District. The District may use funds and assets from any other lawful sources available to it to provide for such maintenance and operation, as well as to accomplish any purpose and exercise any function, act, power or right authorized by law. Such funds and assets shall include, without in any way limiting the generality of the foregoing, revenues from any of the systems, facilities, properties and assets of the District not otherwise committed for the payment of the bonded indebtedness of the District; maintenance taxes; loans, gifts, grants and donations from public or private sources; and revenues from any other sources lawfully available to the District; provided, however, that no part of any such expenses of operation and maintenance shall be paid from the proceeds of bonds issued by the District or from tax or other revenues pledged to the retirement of the bonded indebtedness of the District.

E. All contract obligations and responsibilities of WDI and the District under this Contract shall terminate when the area within the District is annexed to the CITY.

ARTICLE IV
LAND COSTS

The price the District is authorized to pay for land in the District and the remainder of the Davenport Ranch needed to

accommodate those facilities identified in Article III above to be paid for in full by the District, shall not exceed the cost of the land to WDI, plus holding costs. Land and right-of-way in the District needed to accommodate facilities that are not paid for in full by the District shall be donated by WDI to the public or the District at no cost to the District. Land and right-of-way outside the District needed by the District may be acquired by the District in accordance with usual and customary public purchasing standards and procedures as applicable to the District.

ARTICLE V

STANDARDS FOR FACILITIES

A. As to the area within the Davenport Ranch, including the District, the following development standards shall be installed and adhered to:

1. Installation of:

a. Sidewalks in accordance with the CITY's Subdivision Ordinance;

b. Street lights and street signs; and,

c. Underground utilities.

2. Density limitations of one single-family residential unit per acre average based on gross acreage of the Davenport Ranch, allowing for cluster development with the right to plat non-contiguous parcels.

3. Sign provisions as set forth in Chapters 3 and 45 of the 1967 Code of the City of Austin, to specifically include scenic roadway controls developed for the Capital of Texas Highway.

4. Commercial facilities designed to serve local needs may be constructed on land within the Davenport Ranch, provided that the acreage required for such sites cannot be included in the gross acreage of the Davenport Ranch when calculating the residential density. A site plan for all development other than residential must be approved by City Council prior to construction. In evaluating such site plan the Council shall utilize the criteria set out in the existing City ordinances as to commercial development

abutting the Capital of Texas Highway or as to commercial development in the Lake Austin Peninsula generally as applicable.

B. All public facilities constructed within the Davenport Ranch, including without limitation streets, sidewalks, water supply systems, sewerage systems, waste treatment facilities, drainage systems, and park and recreation equipment and improvements, shall be constructed in accordance with the CITY's design criteria and specifications for similar facilities as applicable within the CITY; provided, however, that the Alternative Urban Standards Ordinance as in effect on September 18, 1980, shall govern as to the construction of streets within the Davenport Ranch. All plans and specifications for such facilities shall be submitted to and approved by the CITY prior to their construction. The CITY shall have the right to inspect the construction of the facilities and to require that the facilities be constructed in accordance with the CITY's design standards and specifications.

ARTICLE VI
OWNERSHIP AND CONSTRUCTION OF FACILITIES

All water and wastewater facilities to be constructed in Davenport Ranch shall be designed and constructed in accordance with the requirements of the CITY, the Texas Department of Health, the Texas Department of Water Resources, and other governmental agencies having jurisdiction. WDI or the District shall not commence construction of any facility unless the plans and specifications for such facility have been approved by the CITY, the Texas Department of Health, the Texas Department of Water Resources, and any other governmental agencies having jurisdiction.

The District shall pay WDI the cost of the water and wastewater facilities to the extent the District is authorized to issue bonds under this Contract and under the Rules of the Texas Department of Water Resources. To the extent the District is not permitted to pay WDI for internal water and wastewater lines under this Contract or the Rules of the Texas Department of Water Resources, WDI shall dedicate such lines to the District without compensation.

Upon conveyance or dedication of the water and wastewater facilities to the District, WDI shall have no responsibility for operation and maintenance of such facilities.

WDI or the District shall cause to be designed and constructed a wastewater treatment plant capable of complying with effluent requirements of 10 mg/l BOS and 15 mg/l TSS permit. No discharge of the effluent into Lake Austin or other surface waters of the State will be permitted. Effluent ponding facilities of size, location, and design adequate to prevent the possibility of discharge shall be installed and maintained. Holding ponds shall be designed to accommodate without any discharge maximum wet weather overflow associated with the operation of the facility. CITY agrees to support the "no discharge" permit application filed by WDI or the District with the Texas Department of Water Resources.

WDI or the District agrees to use its best efforts to: (1) obtain a permit from the Texas Department of Water Resources for the withdrawal of water from the Colorado River in sufficient amount to serve the entire Davenport Ranch; (2) obtain a contract with the Lower Colorado River Authority for the withdrawal of such water; and (3) if WDI or the District obtains items (1) and (2) above, to cause to be constructed on-site water treatment and storage facilities sufficient to supply potable water to Davenport Ranch.

The District and/or WDI has the right to impose specifications and requirements for construction and installation which exceed or are more restrictive than those established by CITY and other governmental agencies.

CITY shall assist WDI or the District in securing necessary rights-of-way, permits and approvals for all facilities described in this Contract.

The CITY shall have no obligation to construct or install water or wastewater facilities within the District or the remainder of Davenport Ranch.

This Contract expressly prohibits WDI or the District from operating and/or owning a private utility system within the boundaries of Davenport Ranch.

ARTICLE VII
ALTERNATE WATER SUPPLY

A. In the event WDI or the District is unable to secure above-mentioned permits and approvals for on-site water treatment facilities to provide an adequate water supply for all users within Davenport Ranch from an on-site water treatment system during the term of this Contract CITY agrees to sell to WDI or the District, subject to the limitations hereafter expressed, all water reasonably required by all users within the Davenport Ranch for domestic and commercial uses, such water to be supplied from CITY's water distribution system and delivered at a point or points adjacent to the Davis Water Treatment Plant. The sale and purchase of water shall be nondiscriminatory and shall be uniform with the policy or policies established by the Austin City Council for the provision of utilities outside the city limits of the City of Austin. Water as used in this Article VII means potable water meeting the requirement of the Texas Department of Health for human consumption and other domestic uses.

B. CITY shall deliver water to WDI or the District at a minimum pressure of twenty (20) pounds per square inch at each master meter or point of delivery.

C. CITY shall furnish such supply of water as will be adequate to care for the needs of WDI or the District and all those domestic and commercial uses within the boundaries of the Davenport Ranch, subject at all times to the capacity of CITY's facilities to furnish water to WDI or the District and those in the Davenport Ranch after supplying water for all municipal, domestic, commercial, recreational and industrial uses within the city limits, and after meeting all obligations of the CITY to supply water, resulting from contracts heretofore executed between the CITY and other water and municipal utility districts prior to May 1, 1979;

provided, however, whenever at any time or from time to time it is reasonably determined by WDI or the District that CITY is not able for any reason to furnish a supply adequate to care for the needs of WDI or the District and users within Davenport Ranch, WDI or the District may at its discretion obtain an alternate water supply from any source available to WDI or the District. If the WDI or the District obtains such an alternate or supplemental water supply, WDI or the District shall install an air gap between the WDI's system and the CITY's system, subject to the CITY's approval.

D. CITY shall furnish, install, operate, and maintain at its expense at each existing point of delivery to WDI or the District, the necessary metering equipment to measure the water delivered to WDI or the District under this Contract, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to WDI or the District. CITY shall calibrate the metering equipment whenever requested by WDI or the District, but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless CITY, WDI and the District agree on a different amount. The metering equipment shall be read once each calendar month.

E. Rates for individual customers for all water delivered pursuant to this Article VII shall not be lower than those normally charged for a comparable customer outside of the CITY, as established from time to time by the Austin City Council.

F. Billings and payments will be rendered to customers in substantial compliance with the procedures established in the City of Austin Utility Service Regulations, as now in effect or

hereafter amended; provided, however, the District may vary the procedures to the extent required by law.

ARTICLE VIII

OPERATION, MAINTENANCE AND MANAGEMENT

WDI or the District shall operate the water and sewer system, unless the CITY, WDI and the District enter into a contract for the CITY to operate the system; provided, however, WDI, CITY and the District acknowledge that WDI shall have no further responsibility to operate the water and sewer system when the District either (1) acquires title to the system or various parts thereof or (2) enters into contract with WDI for operation of the system. CITY shall have the right to inspect all water and wastewater connections made in the Davenport Ranch, and all water meters shall be purchased from the CITY's Water and Wastewater Department at cost. CITY shall have the right to inspect all new treatment facilities and irrigation systems at any time.

ARTICLE IX

AREA OF AND LIMITATIONS ON SERVICE

A. WDI or the District may not construct or install water and wastewater facilities to serve areas outside the limits of the Davenport Ranch, nor may WDI or the District sell or deliver CITY water to areas outside the limits of the Davenport Ranch, without the prior approval of the City Council.

B. WDI or the District shall not furnish water services to any customer in a subdivision without prior approval of the City Council at its sole discretion. Such prior approval shall not be granted, however, unless the subdivision complies with the provisions of Article 974a, V.T.C.S., and with the regulations of the CITY concerning subdivisions.

ARTICLE X

PLAT APPROVAL

Prior to the sale of any subdivided lot or parcel of land within the limits of the Davenport Ranch the person owning or

developing the land will be required to obtain the approval of the CITY of a plat or plats which will be duly recorded in the map and plat records of Travis County, Texas, and will otherwise be required to comply with the rules and regulations of the CITY.

ARTICLE XI
INDEMNIFICATION

CITY shall not be liable to WDI or the District or any of its customers or others for the failure of the CITY to provide water service where the failure results from the impairment of facilities by strikes or conditions beyond the CITY's control.

ARTICLE XII
ASSIGNMENT OF CONTRACT

WDI from time to time may transfer, convey or assign this Contract with respect to all or any part of the land owned by it and the assignee or assignees shall be bound by this Contract as provided in Article XVI hereof. Upon prior approval by the CITY of the assignee or assignees (which approval will not be unreasonably withheld), and only upon the condition that the assignee or assignees assume the liabilities, responsibilities and obligations of this Contract, the party assigning this Contract shall be released from the liabilities, responsibilities and obligations under this Contract with respect to the obligations involved in the assignment or assignments, or as may be otherwise approved by CITY; provided, however, no prior approval shall be required for any assignment to the District related to water and wastewater facilities and services. The CITY shall not transfer, convey or assign this Contract without the written consent of WDI or the District.

ARTICLE XIII
DISSOLUTION

The CITY shall take no action which will result in the dissolution of the District for a period of five years from the date of this Contract; provided, however, the CITY may annex the

area within the District and dissolve the District when (1) there are more than 600 inhabitants (or the minimum number of the inhabitants required by law for incorporation of a municipality) within the District, and (2) there is a serious effort to incorporate a municipality within all or part of the area within the District.

ARTICLE XIV
TERM OF CONTRACT

This Contract shall be effective from the date of execution hereof and shall continue in effect for a period of forty (40) years.

ARTICLE XV
REFERENCE TO OTHER AGREEMENTS

This Contract represents the entire agreement between the parties and shall supersede the "Agreement Concerning Creation of Davenport Ranch Municipal Utility District" and the "Water and Wastewater Contract" dated July 3, 1979. Both such agreements are hereby declared to be null and void.

ARTICLE XVI
RATIFICATION

A. All the stipulations, promises, undertakings and agreements herein contained by or on behalf of CITY, WDI, the District or any other owner of any of the land and subject hereto, shall bind the successors and assigns of any such party, whether so expressed or not.

B. Any party may waive any default on the part of another party with respect to any provision of this Contract without affecting any other provision of the Contract. A waiver of any one default shall not be deemed a waiver of any other or subsequent default or defaults. No delay by any party in enforcing any of its rights under this Contract shall be deemed a waiver of such rights.

C. In the event any party fails to diligently and punctually perform and comply with any of its obligations under this

Contract, within the time and in the manner herein provided, the non-defaulting party may terminate this Contract if the default continues after giving notice of the default to the other parties and a reasonable opportunity to cure the default.

D. WDI and the District agree to be responsible for and to indemnify and hold harmless the CITY, its agents and employees, from all loss or damage and any or all claims, suits and actions of any kind and description, arising by reason of accident, injuries or damage to persons or property, caused by or resulting from acts or omissions by third parties, WDI, the District, or any of their agents, employees or servants, acting individually or jointly, arising out of or resulting from the performance of the work provided for in this Contract or occurring in connection therewith; provided, however, this indemnity agreement does not apply to or include any such damages, claims, suits or actions that may arise through wanton or willful misconduct of the CITY of any of its officers, agents, or servants.

IN TESTIMONY WHEREOF, CITY has executed these presents by its City Manager, authorized hereunto by the City Council, attested with the CITY's seal by the City Clerk, and the WDI, and the District have executed the same by their duly authorized representatives, all as of the 10th day of October, 1980.

CITY OF AUSTIN

BY: _____
Dan H. Davidson, City Manager

ATTEST:

_____
Grace Monroe, City Clerk

WESTVIEW DEVELOPMENT, INC.

BY: Wilhelmina R. Geiselman
Wilhelmina R. Geiselman
Vice President

ATTEST:

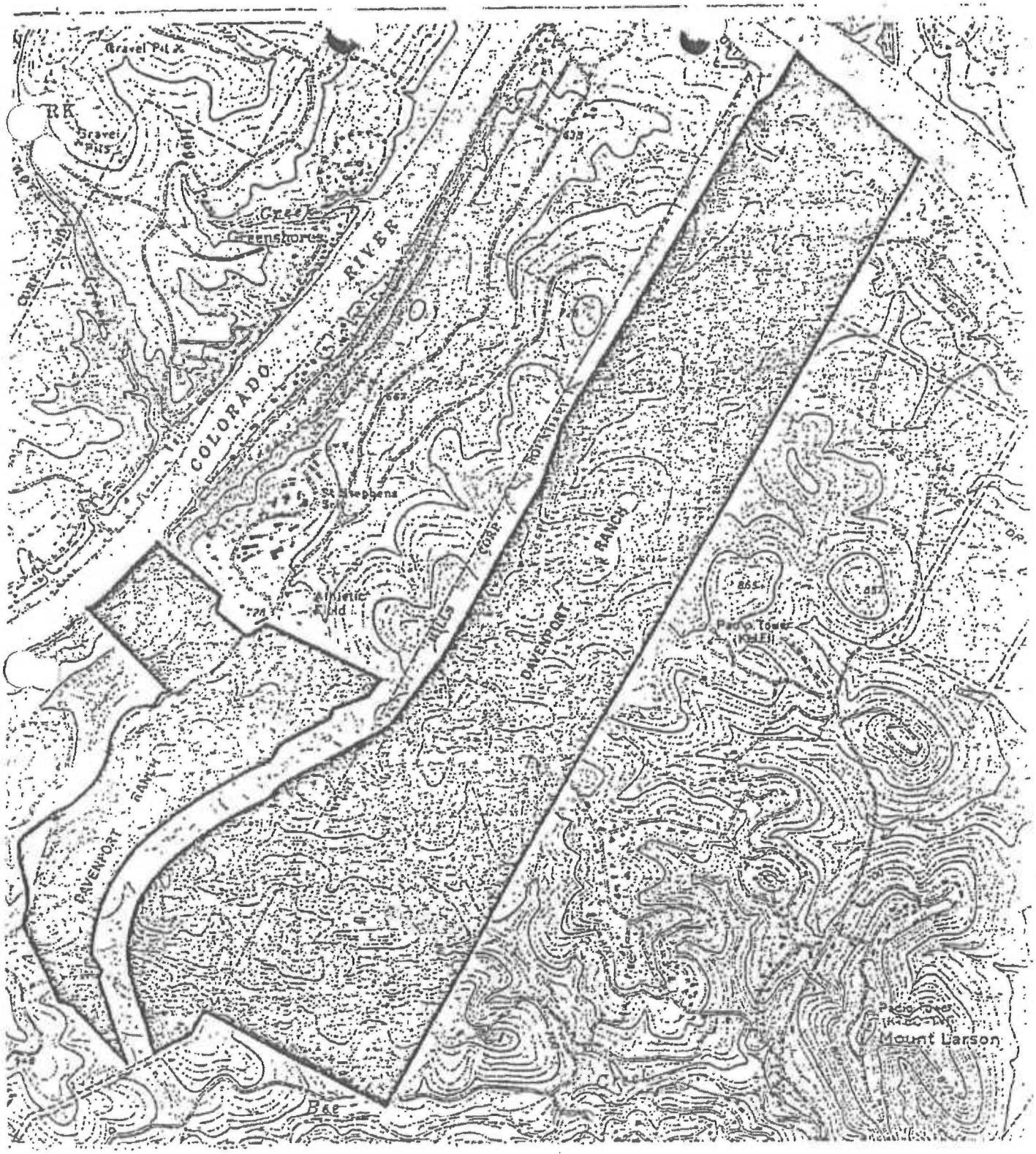
F. B. Cochran, III, Secretary

DAVENPORT RANCH MUNICIPAL
UTILITY DISTRICT NO. 1

BY:
Anne Perlitz, President

ATTEST:

Clarence Glass, Secretary



DAVENPORT RANCH

EXHIBIT A

12/22/82

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EXHIBIT 4

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into as of the date set forth below on the signature page hereof between WESTVIEW DEVELOPMENT, INC., a Texas corporation ("Seller") and COUNTRY CLUB OF AUSTIN, a Texas non-profit corporation ("Purchaser").

W I T N E S S E T H:

In consideration of the mutual covenants set forth herein, the parties hereto hereby agree as follows:

Section 1. Sale and Purchase. Seller hereby agrees to sell, convey, and assign to Purchaser and Purchaser hereby agrees to purchase and accept from Seller, for the Purchase Price (hereinafter defined) and on and subject to the terms and conditions herein set forth, the Property and the Allowance Items (said terms being hereinafter defined).

(A) The Property is hereby defined to mean (i) that certain land (the "Land") situated in Travis County, Texas described in Exhibit "A" hereto and containing approximately 179.68 acres together with (ii) all improvements now located thereon (the "Existing Improvements"), together with (iii) the "Golfcourse Improvements" and the "Clubhouse Improvements" as defined in Section 4 hereof. It is agreed and understood that prior to Closing (hereinafter defined) the existing house or houses now located on the Land may be demolished, at Seller's election, in which case same shall not be included within the definition of Existing Improvements. All of the Property shall be conveyed, assigned, and transferred to Purchaser at Closing (hereinafter defined)

free and clear of all liens, claims, and encumbrances except for those matters herein referred to, or approved by Purchaser as herein provided.

(B) Without limitation, the Property shall not include any of the items set out on Exhibit "L" hereto, said items being herein called the "Allowance Items". Seller agrees to sell to Purchaser the Allowance Items for the consideration and on the terms and provisions herein set out. Prior to Closing Seller shall present for Purchaser's approval plans and specifications or appropriate detailed descriptions of each item listed as an Allowance Item. Purchaser shall not be obligated to spend more than the dollar amount shown for each of the Allowance Items set out in Exhibit "L". If the cost of one or more Allowance Items exceeds the allowance for such item set out in Exhibit "L", the extra cost over allowance shall be offset against the amount by which, if any, the cost of other Allowance Items is less than the allowance for such other items so that the amount which Purchaser pays shall not be raised unless the total spent for Allowance Items exceeds the $1,921,000 total for all Allowance Items. If because of mutually agreed increases in the amount to be spent for the Allowance Items the total cost of the Allowance Items exceeds $1,921,000, Purchaser shall be responsible for payment to Seller of the excess above $1,921,000, and payment of said excess shall be in addition to the payment of the Purchase Price set out in Section 3 hereof. Such excess shall be paid by Purchaser on demand of Seller from time to time as incurred by Seller after Seller has expended $1,921,000 for Allowance Items. Provided however, if Seller and Purchaser agree to Allowance Items the cost of which are reasonably anticipated by Seller to exceed in the aggregate $1,921,000, then to the extent of the excess above $1,921,000, Purchaser shall be obligated to

deposit with a mutually agreeable escrow agent the amount of such excess, which deposit shall secure the performance by Purchaser of its obligation to pay such excess in accordance with this Agreement. If requested by Seller, Purchaser shall grant Seller a security interest in such deposit, in form and substance satisfactory to Seller, and the escrow agent shall hold such deposit for Seller's benefit in a manner so as to perfect Seller's security interest. Seller shall not be obligated to spend any amounts in excess of $1,921,000 for Allowance Items unless the deposit has been made as hereinabove provided. The said $1,921,000 is included in the Purchase Price; accordingly, if the total spent for all Allowance Items is less than $1,921,000, an adjustment shall be made in the Purchase Price as provided in Section 3(F). If Seller and Purchaser are unable to reach agreement as to any item or items listed on Exhibit "L" Seller shall not be obligated to purchase or to install such items or items, and Purchaser shall not be obligated to pay for such item or items, as provided in Section 3(F). If Seller has requested approval of any Allowance Item and agreement to same has not been reached within thirty (30) days from the original request for same, for purposes of the foregoing it shall deemed Seller and Purchaser are unable to reach agreement as to same. It is recognized and agreed that a portion of the Allowance Items are maintenance equipment items (the "Maintenance Equipment") to be used in connection with the Golfcourse Improvements. The Maintenance Equipment shall be purchased in the name of Purchaser, with Seller retaining a security interest in same to secure payment for same at Closing. Alternatively, Seller may purchase the Maintenance Equipment in its own name or some other party's name, rather than in the name of Purchaser, if said procedure that is used can result in avoidance of payment of sales tax twice. Notwithstanding any of the foregoing, Seller has already

purchased some of the Maintenance Equipment items, said items and the cost of same being indicated on Exhibit "C". Purchaser hereby approves the purchase of said items.

Section 2. Purchase Price. The price ("Purchase Price") for which Seller agrees to sell, assign, and convey the Property and Allowance Items to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms hereof, is the amount of $10,298,000, to be paid in accordance with Section 3 hereof, subject to possible reduction or increase in accordance with Section 3(F) hereof.

Section 3. Payment of Purchase Price. The Purchase Price shall be payable in accordance with the provisions of Section 3(A), (B), (C), (D), (E) and (F).

(A) Upon the later of (i) the execution of this Agreement or (ii) December 1, 1982, Purchaser shall pay to Seller the sum of $2,550,000.

(B) Between the date of the execution of this Agreement and the Closing Purchaser shall pay to Seller the sum of $700,000. The source of said $700,000 shall be the collections by Purchaser from those certain accounts receivable described in Exhibit "O" hereto (the "Accounts Receivable"). Purchaser hereby represents and warrants to Seller that it is the owner and holder of the Accounts Receivable and that the Accounts Receivable have not been pledged or otherwise encumbered and same shall not be pledged or otherwise encumbered except with the prior written consent of Seller. From and after the date hereof, from time to time as Purchaser receives payments under the Accounts Receivable, Purchaser shall forthwith transmit said payments to Seller, until Purchaser has paid to Seller from said source $700,000. If

by the Closing Purchaser has not paid to Seller from said source the sum of $700,000, at Closing Purchaser shall pay to Seller, in addition to all other sums to be paid under this Agreement, the difference between $700,000 and the sums theretofore paid by Purchaser to Seller pursuant to this Section 3(B) derived from collection of the Accounts Receivable. At Seller's request at any time prior to payment of said $700,000, Purchaser will grant Seller a security interest in the Accounts Receivable and will execute financing statements to Seller regarding same and, if requested, deliver same to Seller.

(C) At Closing Purchaser shall pay to Seller the sum of $1,500,000 plus $225,000.

(D) From time to time as hereafter requested by Seller, Purchaser shall deliver to Seller or to an employee, agent or entity designated by Seller (collectively, the "Agent") memberships in Purchaser aggregating 100 full resident memberships, 25 non-resident memberships, 208 social memberships, and 74 racquet memberships. Alternatively, at the election of Seller, instead of delivery of said memberships, said memberships shall be reserved by Purchaser for Seller or the Agent in accordance with this Section 3(D). (Said Country Club memberships whether delivered or reserved in accordance with the foregoing are herein called the "Seller Memberships".) In consideration of the Seller Memberships, Purchaser shall receive a credit of $2,880,000 on the Purchase Price. No initiation fees shall ever be due or payable to Purchaser with respect to the Seller Memberships, nor shall the Seller Memberships ever be liable for dues, assessments, or other charges imposed by Purchaser, except, however, at such time as each individual membership is transferred to or issued in the name of an individual or other entity other than Seller

or the Agent, the regular dues, assessments, and charges, imposed and becoming due and payable after the date of such issuance or transfer, shall be payable by each such member, on a nondiscriminatory basis as with all other memberships in Purchaser of the same category. Notwithstanding the foregoing, however, Seller or the Agent, shall be entitled to charge such sums for the sale of the Seller Memberships as Seller or the Agent, shall deem appropriate from time to time. All sales by the Agent or Seller shall be for the account of Seller or its assigns and not for the account of Purchaser. Seller shall be entitled to keep all the proceeds from sales of Seller Memberships notwithstanding that said proceeds may exceed $2,880,000. Any such proceeds shall not apply on the Note (hereinafter defined) or any other obligation, if any, of Purchaser to Seller. The original issuance to any such individual (other than Seller or the Agent), or the transfer from Seller or the Agent to same, as the case may be, shall be in accordance with Purchaser's regular admission approval policies, applied in a nondiscriminatory manner as the same is applied to any other prospective applicant for membership. Any of the Seller Memberships that become available for resale within three years after their original issuance to an individual other than Seller or the Agent shall be sold by Purchaser to applicants if any, on a waiting list in the same membership category and the proceeds from such sale shall be paid to Seller, net of any sums that are paid to the selling member for his membership pursuant to the Bylaws of Purchaser. This obligation shall survive the Closing and shall be secured by the deed of trust (the "Deed of Trust") to be delivered by Purchaser to Seller at Closing, but shall in addition survive the extinguishment of said Deed of Trust if same is extinguished prior to three years after the initial issuance of the last Seller Membership to a person other than Seller or the Agent.

The foregoing provision with respect to the payment by Purchaser to Seller of the net proceeds of resale of Seller Memberships shall apply with respect to only one such resale for each such membership and said provision shall not apply with respect to any such membership that is resold more than three years after its original issuance to a person that is a dues paying member. Any of the Seller Memberships that have not been issued to a person other than Seller or the Agent within twelve years after the full payment of the Note (hereinafter defined) may be repurchased by Purchaser within a one year period following the twelfth anniversary of the full payment of the Note, said repurchase to be at a price equal to the greater of (i) the market value of said membership as measured by the average of the five most recent bona fide sales of Seller Memberships by Seller or Agent and the five most recent bona fide sales of memberships in Purchaser which have been sold by Purchaser; for example, if the average of the five most recent bona fide sales of full resident memberships by Seller or Agent was $14,000 per membership, and the average of the five most recent bona fide sales of full resident memberships by Purchaser was $12,000 per membership, then the market value for purposes of this item (i) shall be $13,000, which is the average of $14,000 and $12,000; or (ii) the cost of such memberships to Seller which shall be agreed to be $12,000 for full resident memberships, $5,221.15 for social memberships, and $6,000 for any other type of membership. The payments received by Seller under this Section 3(D) shall not be a credit on the Note or on any other sum owing by Purchaser to Seller. All the matters contemplated by this Section 3(D), including the issuance to or reservation for Seller or the Agent of the Seller Memberships, shall be in accordance with a procedure approved by Seller and in compliance with applicable state and federal securities laws. The performance of Purchaser's obligation hereunder shall be secured by the Deed of Trust. Purchaser

shall fully cooperate with Seller in connection with the provisions of this Section 3(D) so as to enable Seller or the Agent to receive and sell the Seller Memberships and to otherwise enjoy the full benefits of this Section 3(D) including, without limitation, the filing (if required by applicable law) of an application of Purchaser (together with any amendment or supplement thereto) for registration of the Seller Memberships under applicable state securities laws for sale by Seller or the Agent. (Any such filing or registration shall be at Seller's expense).

(E) At Closing Purchaser shall deliver to Seller a promissory note (the "Note") to be executed by Purchaser in the principal amount of the Purchase Price (as finally determined in accordance with Section 3(F)) less $7,855,000, said $7,855,000 being the sums to be paid to Seller under Section 3(A), (B), and (C), plus the sum to be credited to Purchaser pursuant to Section 3(D). The Note shall be in the form attached hereto as Exhibit "M".

(F) The Purchase Price shall be subject to possible increase or reduction in accordance with the terms and provisions of this Section 3(F).

(1) Reference is here made to the fact that Seller has budgeted $774,000 ("Interest Budget") for interest expense in connection with the expenditures already made or to be made by Seller in connection with the construction of and purchase of the Golf Course Improvements, Clubhouse Improvements, Allowance Items, and related soft and hard costs. The Interest Budget provides for sums heretofore and hereafter to be expended by Seller in payments of points, loan fees, interest and other like charges and expenses incurred in connection with loans from third parties to Seller, and in addition imputed interest on sums expended by Seller from

its own resources at a rate of interest of 15% per annum. Through November 15, 1982 $382,078 of the Interest Budget has already been expended (including both amounts paid to third parties and the imputed amount referred to above). The interest spent or imputed through November 15, 1982 is subject to audit and verification by Purchaser, at Purchaser's sole cost. If by the Closing Date (hereinafter defined) not all of the Interest Budget has been expended, the difference between $774,000 and the amount expended for interest (both to third parties and imputed as set out above) shall be herein called the "Interest Budget Surplus". The Interest Budget Surplus shall be for the sole benefit of Seller and shall not reduce the Purchase Price or otherwise be for the use or benefit of Purchaser. If Seller exceeds the Interest Budget (including both sums paid to third parties and imputed as set out above) then the amount of the excess above $774,000, but in no event greater than $57,000, is herein called the "Interest Budget Deficit".

(2) If Seller expends less than $1,921,000 for the Allowance Items, either because of cost savings to Seller or because certain of the Allowance Items are not purchased or constructed in accordance with Section 1(B), then the difference between $1,921,000 and the amount actually expended by Seller for the Allowance Items shall be herein defined as the "Allowance Surplus".

(3) Reference is here made to the fact that Seller has budgeted $88,000 as a contingency in connection with the expenditures already made or to be made by Seller in connection with the construction of and purchase of the Golf Course Improvements, Clubhouse Improvements, and Allowance Items. Said $88,000 is herein called the "Contingency". If not all of the Contingency has been expended by Closing, the dif-

ference between $88,000 and the amount actually expended, shall be herein called the "Contingency Surplus". In connection with the use of the Contingency, it is agreed that Seller has budgeted $4,583,000 for the Golfcourse Improvements, $2,462,000 for the Clubhouse Improvements, and $1,921,000 for the Allowance Items. It is further agreed and understood that as of the date hereof Seller has already expended $47,339 of the Contingency. It is agreed that hereafter the remainder of the Contingency will be expended only for change orders with regard to the Golfcourse Improvements, Clubhouse Improvements, or Allowance Items, which change orders have been mutually agreed upon by Seller and Purchaser. Reference is here made to that certain Standard Form of Agreement Between Owner and Contractor dated July 1, 1982 between Seller herein, as owner and J. C. Evans Construction Co., Inc., as contractor (herein called the "Construction Contract"). Reference is further made to Article 5.2 of the Construstion Contract wherein Seller under certain circumstances will be entitled to 50% of certain cost savings, all as more fully provided in said Article 5.2 (herein called "Westview Cost Savings"). If it shall be determined under the Construction Contract that Seller is entitled to any Westview Cost Savings, then to the extent of same, if any, the dollar amount of the Westview Cost Savings shall in all instances be added to the $88,000.00 figure referred to hereinabove in this Section 3(F)(3).

(4) At Closing the amount of the Purchase Price set out in Section 2 shall be increased by the amount of the Interest Budget Deficit, if any, and decreased by the Allowance Surplus, if any, and the Contingency Surplus, if any. In order to determine whether any increase or decrease in the Purchase Price is required, Seller shall deliver to Purchaser on or before Closing a statement certified by an

officer of Seller setting out the Interest Budget Deficit, if any, the Allowance Surplus, if any, and the Contingency Surplus, if any. Accompanying such statement shall be such copies of contracts, invoices, checks, and other appropriate backup information as may reasonably be necessary to show how all of said amounts were calculated. Said certification and backup documentation shall be conclusive for purposes of determining the Interest Budget Deficit, the Allowance Surplus, the Contingency Surplus, if any, and calculating any increase or decrease in the Purchase Price, if any, unless Purchaser can show the same is incorrect. If there is a dispute between Seller and Purchaser with respect to the amount of the Interest Budget Deficit, the Allowance Surplus, or the Contingency Surplus that could result in a potential increase or decrease in the Purchase Price, and if said dispute cannot be resolved by the time of the Closing as provided for in this Agreement, then, nonetheless, the Closing shall occur at the time and in accordance with this Agreement and Seller's figures for the Interest Budget Deficit, the Allowance Surplus, and the Contingency Surplus shall be used for all purposes, including any increase or decrease in the Purchase Price. If thereafter it is determined by agreement between the Purchaser and Seller or it is determined judicially that Seller's figures were incorrect, then any resulting change that should be made in the Purchase Price shall be accomplished by making an appropriate addition or reduction in the principal amount of the Note referred to in Section 3(E) and Section 6(B)(1)(ii).

Section 4. Construction of Golf Course Improvements, Clubhouse Improvements, and Allowance Items.

(A) Subject to the force majeure provisions contained in Section 4(D) hereof, on or before December 31, 1983, Seller agrees to construct or cause to be constructed on the

Land an eighteen (18) hole golf course as described in this Section 4(A) (the "Golf Course Improvements"), essentially in the configuration prepared by Mr. Pete Dye as shown in Exhibit "A" hereto and in accordance with the criteria set out in Exhibit "E" hereto. To this end, as required to construct same, Seller shall supply and cause to be done the following: clearing and grubbing; rough excavation, supplying, hauling and spreading, as required, of six inches of topsoil; supplying and installing sand, gravel and drain tile for greens and tees; planting of grass; bulkheading on certain cut and fill areas; supplying and installation of bunker sand; final preparation and contouring of greens and tees; and supplying of professional design assistance as required, all as set out on Exhibit "E". The date on which Mr. Pete Dye certifies in writing that the Golf Course Improvements are "playable" and substantially complete in accordance with the provisions of Exhibit "E" shall be herein called the "Certification Date of the Golf Course Improvements". Also included in said Golf Course Improvements are: (a) maintenance barn of approximately 8,200 square feet and of metal construction and; (b) cart paths of approximately 16,700 linear feet in length as designed by Mr. Pete Dye. The maintenance barn and cart paths shall be built in accordance with the specifications described in Exhibit "F" hereto.

(B) Subject to the force majeure provisions contained in Section 4(D) hereof, on or before December 31, 1983, Seller additionally agrees to construct or cause to be constructed on the Land a clubhouse with approximately 30,000 square feet of interior space (said improvements being herein called the "Clubhouse Improvements"). The Clubhouse Improvements, essentially in the configuration prepared by Mr. Bill Hoff as shown on the site plan (Exhibit "I" hereto) and clubhouse floor plan (Exhibit "J" hereto) will be con-

structed in accordance with the plans and specifications described in Exhibit "K" hereto. To this end, as required to construct same, Seller shall supply and cause to be done all coordination and administration of labor and materials to complete the Clubhouse Improvements and connect same to electric, water, and sewer and ~~gas~~ NATURAL GAS utilities. Water service shall be enough to service an automatic sprinkler system approved by the State Board of Insurance for fire protection in the clubhouse. The date on which the Clubhouse Improvements are certified by Bill Hoff to be substantially complete in accordance with the provisions of Exhibit "K" shall be herein called the "Certification Date of the Clubhouse Improvements".

(C) Subject to the force majeure provisions contained in Section 4(D), the Allowance Items, including the Maintenance Equipment, shall be completed by the Closing Date, which date is defined hereinafter.

(D) The time periods provided in Section 4(A), 4(B), and 4(C) for the completion of the Golf Course Improvements, Clubhouse Improvements, and the Allowance Items, respectively, shall be extended to the same extent that Seller is delayed in completing same because of strikes, lockouts, embargoes, fire, casualties, delays in transportation or delivery of raw materials, national emergency, weather, or by any other cause or causes whatsoever beyond the reasonable control of Seller. If because of any of the causes referred to in this Section 4(D) Seller is unable to complete the Golfcourse Improvements or the Clubhouse Improvements by December 31, 1983, then either Seller or Purchaser by written notice to the other may terminate this Agreement and Section 12(D) shall apply. If, however, the Golf Course Improvements and Clubhouse Improvements are completed by December 31, 1983 but, for whatever reason, the Allowance Items that have been agreed upon in accordance with Section

1(B) are not, the Closing shall proceed in accordance with this Agreement with no reduction in Purchase Price or other sums to be paid by Purchaser to Seller, but at Purchaser's option (i) Seller shall be responsible to complete the Allowance Items that have been agreed upon in accordance with Section 1(B), or (ii) Purchaser shall be responsible to complete the Allowance Items that have been agreed upon in accordance with Section 1 (B), in which case Seller shall deliver to Purchaser an amount of cash equal to the then unspent amounts in Seller's budget for the unfinished Allowance Items that have been agreed upon in accordance with Section 1(B). If alternative (i) hereinabove is selected, then after Closing, Purchaser shall remain liable in accordance with Section 4(F) for payment to Seller for Change Order Costs, if any, incurred after Closing and excess costs of Allowance Items above $1,921,000, in accordance with Section 1(B) (taking into account sums spent for Allowance Items before and after Closing); in addition, to the extent construction of Allowance Items would impact on the calculations already made pursuant to Section 3(F) at the time of Closing, then the calculations under Section 3(F) shall be recomputed at the time the Allowance Items agreed to in Section 1(B) are completed after Closing, and appropriate changes, if required, shall be made in the principal sum of the Note.

(E) Without the written consent of Seller and Purchaser, there shall be no material changes made in:

(1) the Golf Course Improvements, the configuration for and criteria for which are set out respectively in Exhibits "A" and "E" hereto;

(2) the maintenance barn and cart paths, the specifications for which are provided in Exhibit "F" hereto;

(3) the Clubhouse Improvements, the site plan, floor plan, and plans and specifications for which are set out in Exhibit "I", "J", and "K" hereto, respectively;

(4) once agreed to in accordance with Section 1(B) hereto, the Allowance Items.

Notwithstanding any of the foregoing, or any other provision of this Agreement, Seller shall have the right to make non-material changes in the foregoing items listed in this Section 4(E) so long as such changes are not inconsistent with the intent of Exhibits "A", "E", "F", "I", "J", "K", or "L" to the extent applicable, respectively.

(F) If both Seller and Purchaser agree to changes in any of the foregoing items listed in Section 4(E), if such changes are made at the request of Purchaser, in addition to the Purchase Price and all other sums to be paid to Seller under this Agreement, Purchaser shall in addition pay to Seller the net cost to Seller occasioned by such changes, plus a fee of 15% of the net cost of such change (the aggregate of such net costs plus said 15% fee are herein called the "Change Order Costs"). Change Order Costs shall be paid by Purchaser to Seller upon demand; at Seller's election, if Purchaser requests such changes, Purchaser shall deposit with Seller an estimate of Change Order Costs from time to time to secure payment of same when incurred. For purposes of calculating net costs of changes hereunder, such costs shall include not only the actual costs to Seller for same less the amounts that would have been spent without such change, but shall include all associated costs in connection therewith, including without limitation such soft costs as architectural fees, and other costs related to such changes. It is agreed and understood that if Purchaser requests a change to correct the negligence of an architect, engineer,

or contractor, and if such change is agreed to by both Seller and Purchaser as provided by this Section 4(F), then as to such change the Change Order Costs shall not include the 15% fee referred to above.

Section 5. Title Commitment, Survey.

(A) Within one hundred twenty (120) days after the date of this Agreement, Seller at its sole cost and expense, shall deliver or cause to be delivered to Purchaser a title commitment ("Title Commitment") from Stewart Title Company, Austin, Texas ("Title Company"), which Title Commitment shall set forth the status of the title of the Land and Existing Improvements. Without limitation, the Title Commitment shall have the printed exception with respect to restrictions marked "None of Record" or "None of Record, except ...." and then list a specific list of restrictions, if any, that the Title Company may find to exist with respect to the Land; if any restrictions are listed, Purchaser may object to same as hereinafter provided.

(B) Within one hundred eighty (180) days after the date of this Agreement, Seller, at its sole cost and expense, shall deliver to Purchaser a survey ("Survey") prepared by Espey, Huston & Associates, Inc., which shall be sufficient to cause the Title Company to delete (except for "shortages in area") the printed exception for "Discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" in the Owner's Title Policy (hereinafter defined) to be delivered pursuant to Section 6(B)(2)(iii) hereof. For purposes of the property description to be included in the warranty deed to be delivered pursuant to Section 6(B)(2)(i) hereof, the field notes prepared by the surveyor shall control any conflicts or inconsistencies with Exhibit "A" hereto. The Survey

shall also show the location and width of all the easements shown on Exhibit "D" hereto, together with all those matters set out on Exhibit "B" hereto which are amenable to being shown on a survey. The Survey shall not show the location of improvements on the Land, except for the foundation of the Clubhouse. In addition, however, the Survey shall show, if any, where improvements located on the Land encroach beyond the boundary of the Land, and, if any, where improvements on land adjacent to the Land encroach over the boundary of the Land.

(C) Purchaser shall have twenty (20) days from receipt of the Title Commitment and Survey to examine same, and to object in writing to any matters reflected thereby, other than the Underlying Lien defined in Section 14(B), and those matters described in Section 15, 17, 18, 19, and 20 hereof (the Underlying Lien defined in Section 14(B), the matters in Section 15, 17, 18, 19, and 20 and any other matters approved or waived by Purchaser pursuant to this Agreement, or pursuant to this Agreement deemed approved or waived by Purchaser, being herein called the "Permitted Encumbrances") and other than liens which will be released at Closing, which Permitted Encumbrances and liens shall not be objections to title to the Property. The exception relating to restrictions shall be endorsed "None of Record" except those included within the Permitted Encumbrances and except any additional approved in writing by Purchaser. If Purchaser makes any objection within the time and as permitted by this Section 5(C) then Seller, within a reasonable period of time not to exceed thirty (30) days from the date of receipt of such objection, may (but Seller shall in no way be obligated to do so) cure such objection and have the Title Commitment updated to reflect such cure, whereupon it will be deemed that title is satisfactory to Purchaser, unless Purchaser further objects in writing within ten (10) days after receipt

of the updated Title Commitment. If Purchaser makes any objection to title within the time and as permitted by this Section 5(C) and Seller elects not to cure same, or is unable to do so, Seller shall so notify Purchaser, and Purchaser's remedies shall be limited solely to those set forth in Section 5(D) hereof. If Purchaser fails to notify Seller timely of any objections to title, it shall be deemed that Purchaser has found the Title Commitment, Survey, and all matters reflected thereby acceptable (other than liens which will be released at Closing), and Purchaser may not thereafter refuse to consummate the sale contemplated hereby or claim any failure of Seller's obligations hereunder because of any matters so reflected thereby.

(D) If Seller fails or elects not to cure an objection to title timely raised by Purchaser as set out in Section 5(C) hereof, then Purchaser, as its sole and exclusive remedy, shall have the right to either:

(1) Waive such objection and purchase the Property and Allowance Items subject thereto without reduction in the Purchase Price or other sums to be paid by Purchaser pursuant to this Agreement; or

(2) Terminate this Agreement by notifying Seller thereof within fifteen (15) days after Seller notifies Purchaser of Seller's inability or election not to cure such objection to title; if Purchaser does not so timely elect to terminate this Agreement, Purchaser shall be deemed to have waived its objection to title. If Purchaser terminates under this Section 5(D), then the provisions of Section 12(D) shall apply.

Section 6. Closing.

(A) The closing ("Closing") of the sale of the Property and Allowance Items by Seller to Purchaser shall occur on a date ("Closing Date") thirty (30) days after the last to occur of (i) the Certification Date of the Golf Course Improvements or (ii) the Certification Date of the Clubhouse Improvements, or on an earlier date as may be mutually agreed by Seller and Purchaser. Time is of the essence with regard to the Closing Date. The Closing shall occur in the office of the Title Company.

(B) At the Closing, the following shall occur:

(1) Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller the following:

(i) A sum of money in the form of cash, a title company check, or other means of payment satisfactory to Seller, in the amount of $1,725,000 (which amount is the aggregate of the amounts referred to in Section 3(C)) above, PLUS any portion of the $700,000 not theretofore paid by Purchaser to Seller pursuant to Section 3(B).

(ii) The Note, together with a Deed of Trust and Security Agreement securing said Note, in form attached hereto as Exhibits "M" and "N", respectively, said Deed of Trust to be in favor of Seller's trustee and evidencing a mortgage lien on and a security interest in the Property and Allowance Items, securing the repayment of the Note; the form of Deed of Trust attached hereto as Exhibit "N" shall be with respect to the Property, the Allowance Items, the list of accounts to be attached to the Note, and any other property interests to be covered as provided by this Agree-

ment, and shall be completed in accordance with the terms of this Agreement.

(iii) Evidence satisfactory to Seller and the Title Company that the person or persons executing the closing documents on behalf of Purchaser have full right, power, and authority to do so.

(iv) Financing Statements as to the Allowance Items, the accounts receivable to be listed on the list to be attached to the Note, and Seller's rights in Seller Membership resales referred to in Section 3(D).

(v) A Mortgagee Title Policy issued by the Title Company in the amount of the Note, subject only to the matters set out in the Owner's Title Policy.

(vi) the accounts receivable, transferred to Seller, that are described on the list to be attached to the Note.

(vii) All other documents to be executed by Purchaser pursuant to this Agreement.

(2) Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

(i) General Warranty Deed ("Deed"), with vendor's lien retained, and with reservation of all oil, gas and other minerals but with full surface waiver, including without limitation, waiver of the right to explore or produce oil, gas, or other minerals from the surface of the Land, fully executed and acknowledged by Seller, conveying to Purchaser the Land and improvements thereon, subject only to the Permitted Encumbrances; EXCEPT FOR WARRANTIES OF TITLE,

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE DEED SHALL DISCLAIM EXPRESS OR IMPLIED WARRANTIES AS TO CONDITION, FITNESS FOR PURPOSE, OR MERCHANTIBILITY OF THE PROPERTY AND ALLOWANCE ITEMS, but by separate agreement Seller shall, to the full extent assignable, assign to Purchaser all warranties and guarantees, if any, Seller may have received from its contractors, subcontractors, and suppliers. All existing contracts shall be submitted to Purchaser within ten (10) days from the date hereof. Purchaser shall have thirty (30) days to examine and object thereto either as to the warranty provisions in the contracts or the refusal of such contractors to grant such warranties to Purchaser. All contracts entered into after the date hereof shall likewise be submitted to Purchaser within ten (10) days from the date the same are entered into by Seller, and Purchaser shall have thirty (30) days to examine the same and object thereto. If Purchaser gives written objection to Seller in accordance with the foregoing, then Purchaser's sole remedy shall be to terminate this Agreement within the applicable thirty (30) day period with the results set out in Section 12(D). If Purchaser fails to approve or disapprove in writing the warranty provisions and their assignability in any contract submitted by Seller to Purchaser, within thirty (30) days after submission by Seller to Purchaser, then it shall be deemed that said provisions have been approved by Purchaser;

(ii) If title to the Allowance Items is not already in Purchaser, to the extent same are personalty, a bill of sale fully executed and acknowledged by Seller, assigning, conveying, and transferring to Purchaser all of the Allowance Items, to the extent same are personalty, subject to no liens other than the Underlying Lien and other than any liens bonded by Seller pursuant to its right to bond set out in this Agreement, purchased by Seller, and

NEGATING ANY WARRANTIES AS TO CONDITION, FITNESS FOR PURPOSES, OR MERCHANTIBILITY, but including, to the full extent assignable, an assignment of any then existing warranties of manufacturers as to the Allowance Items; (The actual content of Allowance Items, including Maintenance Equipment, shall be as determined pursuant to Section 1(B)).

(iii) Owner's Policy of Title Insurance in the amount of the Purchase Price issued by the Title Company insuring that Purchaser is the owner of the Land and improvements thereon, subject only to any Permitted Encumbrances, and the standard printed exceptions included in the then standard Texas standard form Owner Policy of Title Insurance; provided, however, the survey exception shall be deleted, at Purchaser's expense, to the extent same may be deleted pursuant to state insurance law regulations; and provided further that the printed exception with respect to restrictions shall be endorsed "none of record" except those restrictions included among the Permitted Encumbrances or previously approved in writing by Purchaser. The Owners' Policy of Title Insurance shall not contain any exception with respect to rights of parties in possession, unless such exception is required by changes in the State Insurance Regulations between the date hereof and Closing.

(iv) Evidence satisfactory to Purchaser and the Title Company that the person or persons executing the closing documents on behalf of Seller have full right, power and authority to do so.

(C) All normal and customarily proratable items, including without limitation real estate and personal property taxes, utility bills, and insurance premiums shall be prorated in cash as of the Closing Date, Seller being charged and credited for all of same up to such date and Purchaser

being charged and credited for all of the same on and after such date. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of the best evidence then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser. The provisions of this Section 6(C) shall survive the Closing. Any taxes, if any, which become due because of a change from agricultural use shall be Seller's obligation.

(D) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property and Allowance Items free and clear of all tenancies of every kind and parties in possession, except for the Permitted Encumbrances.

(E) Reference is here made to the fact that to the extent of $1,500,000, the $1,725,000 to be delivered at Closing pursuant to Section 6(B)(1)(i) is to be derived by Purchaser through the sale of the present Country Club of Austin property to Headway Corporation (the contractual arrangement whereby said sale shall occur to Headway Corporation is herein called the "Headway Contract"). If the Headway Contract does not close in time to supply Purchaser with said $1,500,000 in time for the Closing as provided by Section 6(A) hereof, and Purchaser does not otherwise have the $1,500,000 available, then Purchaser shall give notice of said fact to Seller, in which event thereafter either Purchaser or Seller may terminate this Agreement and Section 12(D) shall apply.

(F) If at the time of Closing there are mechanics or materialmen liens filed against the Property or Allowance Items, the validity of which are being contested by Seller, then Seller shall be entitled to bond same, rather than pay

same, so long as Seller delivers the deed and title policy to Purchaser as required hereunder; in connection therewith Purchaser will sign the customary letter for the Title Company agreeing to the bonding.

Section 7. Notices. Any notice, consent, or approval provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; or by prepaid telegram or telex. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to:	Westview Development, Inc. 40th Floor Dresser Tower 601 Jefferson Street Houston, Texas 77002
	Westview Development, Inc. 1502B West Avenue Austin, Texas 78701
With copy to:	Frank F. Smith, Jr. 2638 First City Tower Houston, Texas 77002
If to Purchaser, to:	Country Club of Austin 5712 East Riverside Austin, Texas 78741
With copy to:	Howell Finch 1700 Austin National Bank Tower Austin, Texas 78701

Section 8. Commission. Seller hereby agrees to defend, indemnify, and hold harmless Purchaser, and Purchaser hereby agrees to defend, indemnify, and hold harmless Seller, from and against any claim by third parties for brokerage, commission, finders or other fees relative to this Agreement or the sale of the Property and Allowance Items, and any court costs, attorneys' fees or other costs or expenses arising

therefrom, and alleged to be due by, through or under the indemnifying party.

Section 9. Assigns. Neither Purchaser nor Seller may assign its rights or delegate its duties hereunder without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns. Provided, however, nothing in this Section 9 shall prohibit Seller from contracting with third parties for construction of the Golf Course Improvements, Clubhouse Improvements, and Allowance Items.

Section 10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Section 11. Purchaser and Seller Representations and Warranties. Purchaser hereby represents and warrants to Seller as follows:

(A) As of the date hereof ~~Seller~~ Purchaser has the following number of members: 550 resident, 75 junior, 25 non-resident, 76 racquet, 42 social, 21 senior, and 1 honorary, (all of the foregoing being dues paying except the honorary member and 20 of the senior members), and further that the present ByLaws of Purchaser authorized the following total number of memberships including both the foregoing number of members and the memberships referred to in Section 3(D) hereof: resident - 650, junior - 75, non-resident - 50, racquet - 150, social - 250, senior - 65, and honorary - 1.

(B) Without Seller's written consent no changes will be made in Purchaser's ByLaws if such changes would have the effect of adversely affecting Purchaser's ability to pay the Note or adversely affect the value of the Seller Memberships, provided however notwithstanding the foregoing Purchaser shall be entitled to conduct the normal operations of the Club without obtaining prior written consent from Seller including By-Law changes.

(C) Purchaser is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Texas, has requisite corporate power to own its properties and conduct its business as it is currently being conducted and is duly qualified as a foreign corporation to do business and is in good standing in all jurisdictions in which the nature of its business, as currently conducted, requires it to be so qualified, if any.

(D) Purchaser has all necessary corporate power and authority to enter into this Agreement and to perform all of the obligations to be performed by it hereunder. This Agreement has been duly approved and adopted by all necessary corporate action of Purchaser. This Agreement has been duly executed and delivered by Purchaser and is binding upon and enforceable against Purchaser in accordance with its terms, subject to laws relating to creditors' rights generally. The Seller Memberships to be delivered to or reserved for Seller in accordance with Section 3(D) of this Agreement are duly authorized for issuance under the Articles of Incorporation or Bylaws of Purchaser and have been duly reserved or authorized to be issued by all necessary corporate action of Purchaser, and each Seller Membership, when issued as contemplated in Section 3(D) hereof, shall have all of the

rights and benefits of memberships of that class then outstanding.

(E) The execution and delivery of this Agreement by Purchaser and the performance of the obligations imposed on Purchaser hereunder and the issuance of or reservation of Seller Memberships of Purchaser contemplated by Section 3(D) of this Agreement (1) will not violate any provision of, result in any breach of, constitute a default under, or accelerate the performance provided by, the terms of (i) any law or any order, writ, injunction or decree of any court or other governmental agency, (ii) any contract, agreement or instrument to which Purchaser is a party or by which Purchaser is bound or (iii) the Articles of Incorporation or Bylaws of Purchaser, and (2) will not constitute an event which, with lapse of time or action by a third party, could result in default under or a breach of any of the foregoing or result in the creation of any lien or adverse claim on any of the Seller Memberships of Purchaser to be issued or reserved as contemplated by Section 3(D) of this Agreement.

(F) The representations and warranties of Purchaser contained in this Agreement shall survive the Closing hereunder and any investigation by Seller. Purchaser agrees to indemnify and hold Seller harmless from all loss, cost and expense, including, without limitation, attorneys' fees and reasonable litigation costs, that Seller may incur as a result of any inaccuracy in or breach of any such representations and warranties, and the amount of any such loss, cost and expense shall be additional sums to be secured by the Deed of Trust and Security Agreement delivered in accordance with Section 6 of this Agreement as security for the Note.

Seller hereby represents and warrants to Purchaser as follows:

(A) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, has requisite corporate power to own its properties and conduct its business as it is currently being conducted and is duly qualified as a foreign corporation to do business and is in good standing in all jurisdictions in which the nature of its business, as currently conducted, requires it to be so qualified, if any.

(B) Seller has all necessary corporate power and authority to enter into this Agreement and to perform all of the obligations to be performed by it hereunder. This Agreement has been duly approved and adopted by all necessary corporate action of Seller. This Agreement has been duly executed and delivered by Seller and is binding upon and enforceable against Seller in accordance with its terms, subject to laws relating to creditors' rights generally.

(C) The execution and delivery of this Agreement by Seller and the performance of the obligations imposed on Seller hereunder will not violate any provision of, result in any breach of, constitute a default under, or accelerate the performance provided by, the terms of (i) any law or any order, writ, injunction or decree of any court or other governmental agency, (ii) any contract, agreement or instrument to which Seller is a party or by which Seller is bound or (iii) the Articles of Incorporation or Bylaws of Seller, and (2) will not constitute an event which, with lapse of time or action by a third party, could result in default under or a breach of any of the foregoing.

(D) The representations and warranties of Seller contained in this Agreement shall survive the Closing hereunder and any investigation by Purchaser. Seller agrees to indemnify and hold Purchaser harmless from all loss, cost and expense, including, without limitation, attorneys' fees and reasonable litigation costs, that Purchaser may incur as a result of any inaccuracy in or breach of any such representations and warranties.

Section 12. Remedies.

(A) If prior to Closing a lawsuit is filed to set aside the Agreement, or for damages as a result of the Agreement or otherwise contesting the authority of the Board of Directors of the Purchaser to enter into the Agreement, performance of the Agreement shall be delayed until the suit is resolved or until Seller elects to terminate as provided herein. If such suit is finally resolved that the Agreement is not within the authority granted by the March 25, 1980 resolution of Purchaser's members and by the November 11, 1982 resolutions of Purchaser's Board, or other resolution of the Board or membership, or other appropriate authorization, or judgment is entered for the Plaintiff otherwise, then the Agreement will automatically terminate and Section 12(D) shall apply. If any such suit is dismissed or it is determined that such Agreement is within the authority of Purchaser, and judgment is not otherwise entered for Plaintiff, then the Agreement shall close in accordance with its terms. In the event of such suit, Purchaser reserves the right to settle such suit in any way it may deem appropriate, so long as the terms of this Agreement are not affected. If however Closing is delayed under this Section 12(A) beyond December 31, 1983, or such longer time provided by Section

6(A), then at Seller's option this Agreement may be terminated and Section 12(D) shall apply. Purchaser agrees to indemnify and hold Seller harmless from all damages or loss, cost, and expense, including without limitation, attorneys fees as invoiced to Seller by attorneys of Seller's choosing that Seller may incur on account of or arising out of any lawsuit, judicial proceeding, or other proceeding described in this Section 12(A).

(B) If Purchaser fails to perform any of its obligations under this Agreement for any reason other than Seller's failure to tender performance of its obligations under this Agreement, or other than termination hereof pursuant to a party's right to terminate expressly set out in this Agreement, Seller, as its sole remedy, may either (i) terminate this Agreement by notifying Purchaser thereof, and Section 12(D) shall apply, or (ii) enforce specific performance of the obligations of Purchaser under this Agreement.

(C) If Seller fails to perform any of its obligations under this Agreement for any reason other than Purchaser's failure to tender performance of its obligations under this Agreement, or other than termination hereof pursuant to a party's right to terminate expressly set out in this Agreement, Purchaser, as its sole remedy, may either (i) terminate this Agreement by notifying Seller thereof, and Section 12(D) shall apply, or (ii) enforce specific performance of the obligations of Seller under this Agreement.

(D) If Purchaser or Seller terminates this Agreement pursuant to its rights to do so expressly set out herein, then neither party hereto shall have any further rights, duties, or obligations hereunder except the indemnification

and hold harmless obligations of Purchaser set out in Section 12(A), and all funds advanced pursuant to this Agreement by Purchaser to Seller shall be refunded within 180 days after termination of this Agreement, and all Seller Memberships shall be returned by Seller or Agent to Purchaser within 45 days after termination of this Agreement. Provided however, if termination of this Agreement is under Section 5(D), 12(C), or 27, then the time period for return of funds advanced shall be 30 days rather than 180; and if termination of this Agreement is under Section 4(D), then the time period for return of funds advanced shall be 60 days rather than 180. In order to facilitate the return of said Seller Memberships, Seller agrees that prior to the Closing any sales of the Seller Memberships by Seller or Agent shall be conditional upon the Closing of this Agreement and shall provide for a return of said Seller Memberships if this Agreement does not close.

(E) In the event of a breach of this Agreement by either Purchaser or Seller, neither party shall have the right to terminate this Agreement based upon such breach unless the defaulting party has been given written notice thereof and said breach has continued thereafter for 90 days.

Section 13. Destruction, Damage Or Condemnation Prior to Closing.

(A) If, prior to Closing, all or substantially all of the Land, or such part thereof to make it not reasonably possible to construct and operate a country club and eighteen hole golf course on the part of the Land remaining, is taken by condemnation, deed in lieu of condemnation, or other similar proceedings, either party hereto may terminate this

Agreement by delivery to the other party of written notice of termination at any time within ninety (90) days after such party becomes aware of any of the same and if either party so terminates this Agreement Section 12(D) shall apply.

(B) If, prior to Closing, damage or destruction occurs to the Clubhouse Improvements, Golfcourse Improvements, or the Allowance Items, (i) Closing shall be postponed until said damage has been repaired, or (ii) at the election of Purchaser, the Closing shall occur as scheduled and insurance proceeds with respect to said damage shall be assigned by Seller to Purchaser and Seller shall have no obligation to repair same. If, however, said repairs shall take more than 60 days and Purchaser and Seller fail to close under (ii), then either Purchaser or Seller can elect to terminate the Agreement, and Section 12(D) shall apply.

Section 14. Financing Matters.

(A) It is recognized and agreed that Seller shall obtain financing, as it deems appropriate, for the construction of the Golf Course Improvements, Clubhouse Improvements, and Allowance Items. The financing to be obtained by Seller shall be from a bank or other lending entity approved by Purchaser, which approval shall not be unreasonably withheld. It is agreed at this time that any of the following lending entities would be satisfactory: First City National Bank of Houston, First City National Bank of Austin, Texas Commerce Bank Austin, and Austin National Bank (said lending entities being herein called "Approved Lenders"). With respect to the loan or loans to be obtained by Seller, it is agreed by Seller that the proceeds of said loan shall only be used for the construction of the Golf Course Improvements, Clubhouse Improvements, and Allowance Items and related costs, (and refinancing of same) including without limitation

the cost of title insurance, interest, architect's fees, insurance, bonding fees, legal fees, and other similar costs reasonably incurred in connection with same, and that draws under said loan shall be made only from time to time as required to pay for same. Such loan or loans may be secured by a lien on the Property, so long as such lien is released by Closing (except for the Underlying Lien, defined below, that will not be released at Closing).

(B) In addition to the sums referred to in Section 14(A), it is recognized and agreed that Seller may borrow up to an additional $2,500,000 in connection with the financing of its obligations under this Agreement. Said borrowing (the "Underlying Note") shall be secured by a lien and security interest on the Property and Allowance Items, which lien is herein referred to as the "Underlying Lien". Seller shall have no obligation to release the Underlying Lien until such time as the Note (defined in Section 3(E))is paid in full. So long as Purchaser is not in default under the Note or Deed of Trust to be delivered by Purchaser to Seller at the Closing, then Seller shall be obligated to Purchaser to prevent any default from occurring under the Underlying Note and the Underlying Lien, said obligation to survive the Closing. Seller agrees to obtain from the lender under the Underlying Note and Underlying Lien a provision in the Underlying Lien that in the event of fire or other casualty that the insurance proceeds may be used for payment of restoration of the damage, provided that the restoration is done in a manner satisfactory to said lender, Seller, and Purchaser. The Deed of Trust to be delivered by Purchaser to Seller at the Closing shall likewise contain a similar provision allowing application of insurance proceeds as hereinabove described.

Section 15. Restrictions, Tenancy and Easements.

(A) Subject to the rights of modification, amendment and termination set out in this Section 15(A), it is agreed that restrictions shall be placed in the Deed to be delivered at Closing as follows: the Land may be used solely for the operation of a first class private country club facility, including clubhouse, golf course, tennis courts, swimming pool, other structures and improvements customarily used in connection with a private first class country club, and the aquatic improvements described in Section 15(B); provided, however, in no event shall there ever be located on the Land any dwelling units, commercial facilities or other structures, improvements or development, which would be in violation of the requirements of Section 17 hereof. No fence or screen, whether constructed or created by plants, that would block the view of or access to or from the golf course from the adjoining tracts now or hereafter owned by Seller or its successors in title shall be constructed, other than a masonry wall no greater than four feet in height, it being understood that Seller or its successors in title may hereafter sell land that would adjoin the proposed golf course, which land would be sold as "golf course view" sites. The document imposing the restrictions provided for by this Section 15(A) and (B) shall further provide that the restrictions provided for by this Section 15(A) and (B) shall terminate thirty (30) years from the date of the Closing. If after Closing substantially all of the Land, or so much thereof as to make it not reasonably possible to operate a private Country Club and eighteen hold golf course on the land remaining is taken by condemnation, deed in lieu of condemnation or other similar proceeding, then all restrictions imposed in this Section 15 shall terminate effective the date of the deed or other taking.

(B) The following restrictions shall apply with respect to dock, boat slip, or other similar aquatic facilities that may be constructed on or adjacent to the Land: there shall be no sale of gasoline or other boating products to the general public, but such sale shall be permissible to the members of the Country Club of Austin and to owners of the Condo Tract, hereinafter defined; no dock, boat slip or other improvements shall protrude from the shoreline more than thirty (30) feet, nor shall be higher than twenty (20) feet above the average water level; docks, boat slips, and other improvements in or adjacent to Lake Austin or inlets thereof will be constructed primarily of wood, with No. 1 Perfection (or equivalent) wood shingles or tile roofs, if covered, residential looking in character, and in accordance with plans and specifications approved in advance in writing by Seller, which consent will not be unreasonably withheld. Moreover, no docks, boat slips, or other improvements in or adjacent to Lake Austin or inlets thereof shall be constructed within 622 feet of number 3 green, nor shall any covered boat slip be constructed within 700 feet of number 3 green, or as may be mutually agreed between Purchaser and Seller.

(C) Subject to the rights of modification, amendment, and termination set out in Section 15(A) hereof, the restrictions set out in Section 15(A) and (B) shall be for the benefit of and enforceable by Seller and the owners from time to time of the land described in Exhibit "G" hereto, or any part thereof. If for any reason whatsoever, the restrictions set out herein are breached, and Purchaser fails to correct said breach within ninety (90) days after receipt of a written notice as to the breach, then Seller and its successors shall be entitled to all rights and remedies provided by law or in equity. Provided however, any person or

entity (other than Seller and its successors) entitled to enforce the restrictions set out in Section 15(A) and (B) shall only be entitled to sue for injunctive relief and shall not be entitled to sue for damages. In addition to any other rights that may be provided by law with respect to attorneys' fees, (i) if Seller brings suit against Purchaser in a suit seeking damages based on an alleged violation of the restrictions provided in Section 15(A) or Section 15(B) and if damages are denied by final judgment of any court, then Seller shall be obligated to pay Purchaser the reasonable attorneys' fees that Purchaser may have incurred in connection with the defense of such lawsuit as determined by the trial court; (ii) if, however, Seller brings suit seeking an injunction with respect to the restrictions set out in Section 15(A) or Section 15(B) and an injunction is issued against Purchaser by the final judgment of any court, then Purchaser shall be obligated to pay the reasonable attorneys' fees incurred by Seller in connection with such lawsuit as determined by the trial court.

(D) Seller shall retain in the Deed to be delivered at Closing the easements identified on Exhibit "D" hereto. Said easements and rights of access thereto shall be assignable to Davenport Ranch Municipal Utility District No. 1 after Closing, or prior to Closing, Seller may grant said easements, or any of them, to said District, in which case, the Deed to be delivered at Closing shall be subject to same. Moreover, in the Deed to be delivered at Closing, Seller shall retain rights of reasonable access over the Land for use of said easements. Any or all of said easements and rights of access shall likewise be assignable to the Davenport Ranch Municipal Utility District No. 1, or its successor. In connection with such water, sewer, and storm

sewer line easements, Seller agrees that the work in connection with installing any such utility lines in said easements and the maintenance of same shall be done, so as to minimize interference with the use of the Land by Purchaser, and Seller agrees that the Land shall be restored to its condition prior to the installation or maintenance of any of same by Seller. To the extent and only to the extent that the terms of this Section 15(D) are not already included within the Water Supply and Waste Disposal Agreement attached hereto as Exhibit "H", prior to Closing Seller shall furnish Purchaser with an agreement executed by the Davenport Ranch Municipal Utility District No. 1 agreeing to the terms of this Section 15(D).

(E) In order to enter the Land, it will be necessary to construct a road from Loop 360 to the golf course and clubhouse facilities. This road leading to the clubhouse facilities will be designed, constructed and paid for by Seller. Seller shall retain a tract of land (the "Condo Tract") between the Land and the shore of Lake Austin. Seller desires to obtain access and exit to the Condo Tract by using the road which Seller will construct to connect Loop 360 with the golf course and clubhouse facilities. Exhibit "D" attached hereto shows the approximate location of the course of the road. Such road is and shall remain a private road and Purchaser and Seller shall cooperate to prevent excess or unauthorized vehicular traffic. A permanent access easement over and across said road to provide access between Loop 360 and the Condo Tract shall be retained in the Deed delivered at Closing in favor of Seller and subsequent owners of the Condo Tract. Seller agrees to be responsible for maintenance of the Clubhouse road until completion of construction on the Condo Tract.

Section 16. Death, Disability, or Resignation of Pete Dye or Bill Hoff.

(A) In the event of the death, disability of, or resignation of or other termination from time to time of Mr. Pete Dye, or any replacement for him, from work in connection with the Golf Course Improvements, Purchaser and Seller shall mutually agree to a new party as a replacement for purposes of performing the certification referred to in Section 4(A) hereof and establishing the standards as set out in Exhibit "E" to the extent not already established by Pete Dye. If Purchaser and Seller are unable to so mutually agree within a 30 day period, then Seller may present a list of three suggested names to Purchaser, all of which three names shall be of persons experienced in the design of golf courses. Without limitation, the following three persons are agreed to be so experienced: Lee Schmidt, John Gray, and David Postlewaite. Within fifteen (15) days after the delivery of said list, Purchaser shall designate in writing to Seller the name from the list it approves for purposes of performing the certification provided for in Section 4(A) hereof and establishing the standards as set out in Exhibit "E" to the extent not already established by Pete Dye. If Purchaser does not respond by designating one of the three names within such time period, then Seller shall be free to pick any one of said names for purposes of performing said certification and establishing the standards as set out in Exhibit "E" to the extent not already established by Pete Dye, all of which shall be binding on Purchaser. If required, successors of substitutes for Pete Dye shall be selected by the same procedure set out in this Section 16(A).

(B) In the event of the death, disability of, or resignation of or other termination from time to time of Mr. Bill Hoff, or any replacement for him, from work in connection with the Clubhouse Improvements, Purchaser and Seller shall mutually agree to a new party as a replacement for purposes of performing the certification referred to in Section 4(B) hereof and establishing the standards as set out in Exhibit "K" to the extent not already established. If Purchaser and Seller are unable to so mutually agree within a thirty (30) day period, then Seller may present a list of three suggested names to Purchaser, all of which three names will be of persons experienced in the design of improvements similar to the Clubhouse Improvements. Without limitation, the following three persons are agreed to be so experienced: Tom Cooper, Tim McCoy and Gary Sinclair. Within fifteen (15) days after the delivery of said list, Purchaser shall designate in writing to Seller the name from the list it approves for purposes of performing the certification provided for in Section 4(B) hereof and establishing the standards set out in Exhibit "K" to the extent not already established. If Purchaser does not respond by designating one of the three names within such time period, then Seller shall be free to pick any one of said names for purposes of performing said certification and establishing standards for the Clubhouse Improvements to the extent not already established, all of which shall be binding on Purchaser. If required, successors of substitutes for Bill Hoff shall be selected by the same procedure set out in this Section 16(B).

Section 17. City of Austin Contract. Reference is here made to that certain Contract Concerning Creation and Operation of Davenport Ranch Municipal Utility District (the "Contract") by and among the City of Austin, Texas, Westview

Development, Inc., and Davenport Ranch Municipal Utility District No. 1 (the "District") dated October 10, 1980. Purchaser recognizes that the purchase of the Land is subject to all the terms and provisions of the Contract, including without limitation, Article V thereof with respect to standards for improvements. Reference is particularly made to Article V(A)(2) with respect to density limitations with respect to the Davenport Ranch, the Land being a part of the Davenport Ranch. Purchaser agrees that the limitations on the amount of and the uses to which the Land may be developed are part of the consideration of this transaction, and that all of the Land shall be deemed the property of Seller or Seller's assigns for the limited purpose of computing the number of single-family residential units allowed within that portion of the Davenport Ranch other than the Land, as described in Article V(A)(2). Only the Golf Course Improvements and Clubhouse Improvements, replacements thereof, and other improvements contemplated by this Agreement may be constructed on the Land, and Purchaser agrees to join in documents, plats or other instruments as may be requested by Seller to assure Seller or third parties that, Purchaser has no right to construct dwelling units, commercial facilities or other structures, improvements or development on the Land which would affect Seller's right to include the number of acres comprising the Land as part of the gross acreage of the Davenport Ranch, to compute the number of single-family residential units permitted within that portion of the Davenport Ranch other than the Land. Purchaser agrees to cooperate in all reasonable ways with Seller, if requested by Seller, in obtaining assurances from the City of Austin in order to maximize the number of single family residential units that will be allowed to be constructed within that portion of the Davenport Ranch other than the Land, taking

into account the limitation on improvements provided by this Agreement that are allowed to be constructed on the Land. Thirty years from the date of the Closing (or at such earlier time, if any, as the restrictions terminate in accordance with their terms), Seller shall have no further rights to enforce the provisions of this Section 17, however the Land shall remain subject to the provisions of the Contract to the extent, if any, that the City of Austin still has rights thereunder. The provisions of this Section 17 shall survive the Closing and shall be contained in the deed or other recordable document to be executed at Closing if requested by Seller.

Section 18. Right of First Refusal. If from time to time after the Closing, Purchaser or its successor, shall wish to sell or otherwise dispose of the Property and Allowance Items or any part of same, Purchaser or its successors shall give notice of same to Seller. The notice shall state the price and terms acceptable to Purchaser or its successor, which shall be stated in terms of cash or cash and a promissory note. Within ninety (90) days after receipt of said notice, Seller shall give notice to Purchaser or its successor of its election to purchase or its election not to purchase on the terms and conditions set out in the notice. If Seller elects to purchase the Property and the Allowance Items, or the part of same offered for sale in the notice, the closing for same shall be within ninety (90) days after Purchaser receives Seller's acceptance notice. If Seller fails to give any notice within thirty (30) days after receipt of Purchaser's notice, it shall be deemed that Seller has elected not to purchase. If Seller elects not to purchase, or is deemed not to have elected to purchase pursuant hereto, then Purchaser shall be free for a period of ninety (90)

days to sell the Property and Allowance Items, or the portion therof offered in the original notice, but only on the terms and provisions set out in the notice to Seller." If no sale on those terms has occurred within said ninety (90) day period, no sale or disposition of the Property and Allowance Items, or the portion thereof subject to the notice, may be made without first again giving notice to Seller giving it another opportunity to purchase the Property, Allowance Items, or a portion thereof, in accordance with the right of first refusal herein set out. The right of first refusal herein provided for shall be binding upon the parties hereto and their respective successors and assigns. The rights set out in this Section 18 shall be contained in the Deed to be delivered at the Closing or in a separate document, which shall be recorded at the time of the Closing.

Section 19. Seller Obligations. Prior to Closing, Seller will at its expense reroute to a location not on the Land all existing power lines on the Land that cross what is to be golf course fairways, tees, or greens; provided however it is agreed and understood that aerial power lines shall be permissible along the perimeter of the Land even though same may cross a portion of tees number eight and eleven. In addition, prior to the Closing, Seller will cause to be constructed a two inch water line for domestic use and a four inch sanitary sewer line to the proposed location of the clubhouse. The fees to be charged in connection with the tap on and use of said lines will be set by the District. At Seller's option, said water and sewer lines will either be owned by Purchaser or by the District; if they are to be owned by the District, at or before Closing, easements for said lines on the Land shall be granted to the District.

Section 20. Water Supply and Waste Disposal Agreement. At Closing, Purchaser and the District shall enter into the Water Supply and Waste Disposal Agreement, attached hereto as Exhibit "H", under the terms and conditions of which the District agrees to provide water and sewer service to the Land and Purchaser agrees to accept delivery and dispose of treated sewage water discharged from the District's Sewage Treatment Plant as provided by said Water Supply and Disposal Agreement.

Section 21. Non-Interference with Certain Activities. Except to the extent permitted by Exhibit "H", Purchaser hereby agrees that neither it, nor any party or entity representing it or under its direction, shall directly or indirectly appear before or communicate with any governmental entity concerning any permit, license, or other authorization or any regulations, heretofore or hereafter issued, adopted or otherwise required by any such governmental entity, applicable to the discharge, disposal, or use of "Effluent," the construction, maintenance or operation of the "Wastewater Treatment Facilities" or the "District's Supply System," or the use of "Raw Water" or "Stored Water," as such terms are defined in the Water Supply and Waste Disposal Contract attached hereto as Exhibit "H".

Section 22. Entire Agreement. This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Property and Allowance Items and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound. Subject to all the provisions hereof, time shall be of the essence in the performance of this Agreement.

Section 23. Exhibits. Exhibits "A" through "O" inclusive, attached hereto are incorporated herein by this reference for all purposes.

Section 24. Evidence of Authority. Concurrently with the execution hereof, Purchaser and Seller shall deliver to each other corporate resolutions and incumbency certificates evidencing their authority to enter into this Agreement and to perform its provisions, which evidence shall be in form and substance satisfactory to Purchaser and Seller, respectively.

Section 25. Severability. If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of said specific provisions herein shall not be held to invalidate any other provisions herein which shall remain in full force and effect.

Section 26. Rights to Audit and Certification. So long as Purchaser owes any funds to Seller under this Agreement, including the Note, Seller shall have the right, at its expense, annually to audit the books and records of Purchaser to verify that payments have been made correctly in accordance with this Agreement and the Note. Moreover, annually on the anniversary date of the Note, Purchaser shall deliver to Seller a statement certified by an officer of Purchaser certifying that the payments that have been made by Purchaser to Seller during the preceding year have been in accordance with the terms and provisions of this Agreement, including the Note, and summarizing the total memberships Purchaser sold or resold during the preceding year, the number of members in various categories during

each of the preceding 12 months, the amount of accounts receivable collected by Purchaser during each of the preceding 12 months and any other financial information reasonably requested by Seller to verify the accuracy of funds paid to Seller by Purchaser during the preceding 12-month period. The rights set out in this Section 26 shall survive the Closing and shall be provided for in the Deed of Trust.

Section 27. Right to Examine Exhibits and Approve. Purchaser shall have thirty (30) days from the date of this Agreement to examine the Exhibits A-O attached hereto and approve the same. If within said 30 day period Purchaser gives Seller written disapproval of some or all of such Exhibits A-O, then this Agreement shall terminate and Section 12(D) shall apply. If Seller receives no such writing from Purchaser within said 30 day period, it shall be deemed that Exhibits A-O attached hereto are approved, and thereafter Purchaser shall have no right to terminate this Agreement under the provisions of this Section 27.

EXECUTED as of the 22 day of December, 1982.

WESTVIEW DEVELOPMENT, INC.

By: _____
President

"SELLER"

COUNTRY CLUB OF AUSTIN

By: _____
(Title)

"PURCHASER"

Attest:

J. H. Templeton

W A Carter

Ben Miller

J. I. Brown

EXHIBITS TO BE ADDED

Exhibit "A"	-	Property Description to be exclusive of sites for water treatment plant and waste water treatment plant. This Exhibit shall include Identification of Golf Course, configuration, and location of maintenance building.
Exhibit "B"	-	Permitted Encumbrances
Exhibit "C"	-	Description of all items of Maintenance Equipment already purchased and the cost of same.
Exhibit "D"	-	Description and location of specific easements to be retained by Westview
Exhibit "E"	-	Certain Golf Course construction criteria
Exhibit "F"	-	Description of specifications for maintenance barn and cart paths
Exhibit "G"	-	Description of Land, the owners of which shall be entitled to enforce the restrictions
Exhibit "H"	-	Form of Water Supply and Waste Disposal Agreement
Exhibit "I"	-	Site Plan for Clubhouse Improvements
Exhibit "J"	-	Clubhouse Floor Plan
Exhibit "K"	-	Description of Clubhouse Plans and Specifications
Exhibit "L"	-	Allowance Items
Exhibit "M"	-	Promissory Note
Exhibit "N"	-	Deed of Trust and Security Agreement
Exhibit "O"	-	List of Purchaser Accounts Receivable

EXHIBIT "E"

RESTRICTIONS

Section I. The Property may be used solely for the operation of a first class private country club facility, including clubhouse, golf course, tennis courts, swimming pool, other structures and improvements customarily used in connection with a private first class country club, the aquatic improvements described in Section II hereof, and municipal utility plants and service facilities, including water treatment plants, wastewater treatment plants, raw water intake structures, and other municipal utility facilities or uses; provided, however, in no event shall there ever be located on the Property any dwelling units, commercial facilities or other structures, improvements or development, which would be in violation of the requirements of that certain Contract Concerning Creation and Operation of Davenport Ranch Municipal Utility District by and among the City of Austin, Texas, Westview Development, Inc., and Davenport Ranch Municipal Utility District No. 1, dated October 10, 1980, and that certain agreement concerning same executed of even date herewith by and between Grantor and Grantee, reference to which is here made for all purposes. No fence or screen, whether constructed or created by plants, that would block the view of or access to or from the golf course from the adjoining tracts now or hereafter owned by Grantor or its successors in title shall be constructed, other than a masonry wall no greater than four feet in height, it being understood that Grantor or its successors in title may hereafter sell land that would adjoin the proposed golf course, which land would be sold as "golf course view" sites. The restrictions provided for herein in Sections I and II shall terminate thirty (30) years from even date hereof. If after the date hereof, substantially all of the Land, or so much thereof as to make it not reasonably possible to operate a private Country Club and eighteen hole golf course on the land remaining is taken by condemnation, deed in lieu of condemnation or other similar proceeding, then all restrictions imposed herein in Sections I, II, and III shall terminate effective the date of the deed or other taking.

Section II. The following restrictions shall apply with respect to dock, boat slip, or other similar aquatic facilities that may be constructed on or adjacent to the Land: there shall be no sale of gasoline or other boating products to the general public, but such sale shall be permissible to the members of the Country Club of Austin and to owners of the Retained Tract; no dock, boat slip or other improvements shall protrude from the shoreline more than thirty (30) feet, nor shall be higher than twenty (20) feet above the average water level; docks, boat slips, and other improvements in or adjacent to Lake Austin or inlets thereof will be constructed primarily of wood, with No. 1 Perfection (or equivalent) wood shingles or tile roofs, if covered, residential looking in character, and in accordance with plans and specifications approved in advance in writing by Grantor, which consent will not be unreasonably withheld. Moreover, no docks, boat slips, or other improvements in or adjacent to Lake Austin or inlets thereof shall be constructed within 622 feet of number 3 green, nor shall any covered boat slip be constructed within 700 feet of number 3 green, or as may be mutually agreed between Grantee and Grantor.

Section III. Subject to the rights of termination set out in Section I hereof, the restrictions set out in Sections I and II shall be for the benefit of and enforceable by Grantor and the owners from time to time of the land described in Exhibit "F" hereto, or any part thereof. If for any reason whatsoever, the restrictions set out herein are breached, and Grantee fails to correct said breach within ninety (90) days after receipt of a written notice as to the breach, then Grantor and its successors shall be entitled to all rights and remedies provided by law or in equity. Provided, however, any person or entity (other than Grantor and its successors) entitled to enforce the restrictions set out in Sections I and II shall only be entitled to sue for injunctive relief and shall not be entitled to sue for damages. In addition to any other rights that may be provided by law with respect to attorneys' fees, (i) if Grantor brings suit against Grantee in a suit seeking damages based on an alleged violation of the restrictions provided in Section I or Section II and if damages are denied by final judgment of any court, then Grantor shall be obligated to pay Grantee the reasonable attorneys' fees that Grantee may have incurred in connection with the defense of such lawsuit as determined by the trial court; (ii) if, however, Grantor brings suit seeking an injunction with respect to the restrictions set out in Section I or Section II and an injunction is issued against Grantee by the final judgment of any court, then Grantee shall be obligated to pay the reasonable attorneys' fees incurred by Grantor in connection with such lawsuit as determined by the trial court.

April 23, 1981	An Exempt Site Development Permit No. 7091 is issued for the construction of the Davenport Ranch country club golf course.
May 30, 1981	An Exempt Site Development Permit No. 7094 is issued for construction of two dams and a water treatment plant.
July 24, 1981	An Exempt Site Development Permit No. 7106 is issued for construction of a sewage treatment plant.
August 4, 1981	An Exempt Site Development Permit 7108 is issued for construction of water and wastewater approach mains.
October 5, 1981	An Exempt Site Development Permit No. 7115 is issued for construction of a raw water pump station.
January 26, 1982	An Exempt Site Development Permit No. 7139 is issued for removal of approximately four feet of sediment along the shoreline of Lake Austin.
March 9, 1982	A Special Permit C14P-81-057 is issued for construction of the golf course and improvements within the limited purpose annexation areas along Loop 360 and Lake Austin.
July 18, 1982	An Exempt Site Development Permit No. 7182 is issued for the clubhouse area improvements and the supporting facilities.
August 10, 1982	An Exempt Site Development Permit No. 7191 is issued for the installation of bulk heading along the shore of Lake Austin.
August 30, 1982	The preliminary/final plat (Case File Number C8-82-08.1 P/F) for the 179.67 acre Davenport Ranch Country Club and Golf Course is recorded at the plat records of Travis County as Davenport Ranch Phase 4 Section 1 under Plat Book 3, Page 440.
November 13, 1986	An Exempt Waterway Development Permit (No. 86-09-0338) is issued for the construction of additional tennis courts.
August 27, 1987	The Austin City Council approves a Special Permit (C14P-87-016 (HC)) for the planned renovation and addition to the Austin Country Club clubhouse.
September 16, 1987	A Class A Site Development Permit No. 8084 is issued for the addition to the clubhouse building with associated driveways and parking facilities including installation of utilities, site grading and other site improvements.

January 16, 1990	A Part D Element Site Plan (SP-89-0241DS) is issued for the construction of a tennis facility building totaling less than 5,000 square feet.
March 13, 1991	An administrative revision is issued to the Class A Site Development Permit No. 8084 for the addition of a banquet facility building and entry drive.
March 28, 1991	An administrative revision is issued to the Special Permit (C14P-87-016 (HC)) for the addition of a pavilion at the east end of the existing pool.
March 26, 1998	A zoning case (C14-97-0149) for the 179.67 acre tract of land receives City Council approval (Ordinance No. 980326-H) of Commercial Recreation (CR-CO) District Designation-Conditional Overlay on 176.378 acres and Commercial-Liquor Sales (CS-1) District Designation on 3.292 acres.
September 7, 2000	A Part D Element Site Plan (SP-00-2109D) is issued for the construction of a treated wooden bulkhead along 1,100 linear feet of shoreline along Lake Austin.
October 28, 2002	A Site Plan Exemption (SPX-02-0617) is issued for the installation and construction of an entry exit gate at the end of Long Champ Drive and the entrance to Austin Country Club.
December 16, 2002	Part D Element Site Plan (SP-02-0427D) is issued for the removal of the existing treated wooden bulkhead along the shoreline along Lake Austin and the replacement with vinyl bulkhead and rip-rap.
May 12, 2003	A Site Plan Exemption (SP-03-0308EX) is issued for the addition to the existing fitness center.
December 31, 2003	A Site Plan Exemption (SP-03-0311EX) is issued for the clarification of the previously issued SP-03-0308EX and for the addition of 130 sq. ft. of new sidewalk and 50 sq. ft. of air-conditioning pad.
December 14, 2005	A Site Plan Exemption (SP-05-0505EX) is issued for the removal and the replacement of the existing play pool and deck.
December 13, 2006	A Site Plan Exemption (SPX-06-0898) is issued for the Athletic Center Addition (previous SP-03-0308EX).

October 22, 2007	A Planning Commission Site Plan (SPC-2007-0287D) is issued for a new commercial boathouse with eighteen slips (marina and associated improvements.
May 15, 2008	Site Plan Exemption (DA-2008-0459) is issued for the installation of a force main and water pipe for a future restroom facility to be located on hole number 6.
October 8, 2008	A Site Plan Correction is approved for Special Permit (C14P-87-016 (HC)) for the addition of a pavilion at the east end of the pool for a total addition of 1,228.5 sq. ft. of impervious cover.
December 7, 2009	A Part C Element Site Plan (SP-2009-0211C) is issued for a 6,101 Sq. ft. Cart Barn as a replacement to an existing 6,632 sq. ft. cart barn. The existing driving range is enlarged to incorporate the area of the former cart barn and areas of asphalt pavement. The total site impervious cover is reduced by 6,612 sq. ft.
October 24, 2013	Site Plan Exemption (DA-2013-1091) is issued for the Austin Country Club golf course returf project. The project involved replacing all of the grass on the greens, tees, and fairways encompassing about 40 acres of the 179.67 acre property.
January 16, 2014	Site Plan Exemption (DA-2014-0035) is issued for the expansion of the existing clubhouse patio, increasing landscaping, and adding a water feature.
June 23, 2015	Site Plan Exemption (DA-2015-0493) is issued for the expansion of the existing clubhouse patio, expansion of an existing walkway area, and the addition of a retaining wall.

Exhibit D

PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION

(Chapter 245, Texas Local Government Code)

(This completed form must accompany all subdivision and site plan applications.)

FOR DEPARTMENTAL USE ONLY

File # Assigned: SPC-2012-0485A Date Filed: 12/3/2012

Original Application Date: Currentcode Signature: _____ Date: 12/7/2012

Comments: Original project complete

_____ Insufficient Information to establish Chapter 245 rights.

Proposed Project Name: Austin Country Club Master Plan

Address / Location: 4408 Long Champ Dr., Austin, Tx 78746

Legal Description: Lot 1, Block A, Davenport Ranch Phase 4, Section 1

A. [ ] The proposed application is for a New Project and is submitted under regulations currently in effect.

NOTE: If A is checked above, proceed to signature block below.

B. [ ] The proposed application is for an ongoing project not requesting House Bill 1704 consideration. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. [ ] The proposed application is for a project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: _____

D. [✓] The proposed application is for a project requesting review under a specific agreement, not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: City Council Resolution No. 800918-10

E. [✓] Original Application Filing Date: 10/21/1981 File #: C14P-81-057

The proposed application is submitted as a Project in Progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state law. **The determination will be based on information submitted on and with this form.**

The following information is required for Chapter 245 Review:

Attach supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals.

Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which Chapter 245 vesting is claimed.

Project Application History	File #	Application Date	Approval Date
Annexation/zoning (if applicable to history)	C14-97-0149	11/19/1997	3/26/1998
Preliminary Subdivision	C8-82-08	2/16/1982	8/10/1982
Final Subdivision Plat	C8-82-08.1 P/F	2/16/1982	8/30/1982
Site Plan / Devel. Permit	C14P-81-057	10/21/1981	3/9/1982

Proposed Project Application *(check one)*: Preliminary Subdivision_____ Final Plat_____ Site Plan ✓

Proposed Project Land Use: *Specify acreage in each of the following land use categories:*

Single Family / Duplex _____ Townhouse / Condo / Multi-family _____ Office _____

Commercial _____ Industrial / R&D _____ Other (Specify) Recreational

Total acreage: 179.67 Watershed Lake Austin Watershed Classification Water Supply Rural

This proposed project application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

Signature - Property Owner or Agent _____ Date: 11-28-12

Printed Name Michael W. Wilson Phone / Fax 569-5063

Form Date 5/06/2005

EXHIBIT 6

Exhibit D
PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION

(Chapter 245, Texas Local Government Code)

(This completed form must accompany all subdivision and site plan applications)

FOR DEPARTMENTAL USE ONLY

File # Assigned: SP-2015-0533C Date Filed: 11/23/2015

Original Application Date: Current code Signature: [signature] Date: 12/4/2015

Comments:

Insufficient Information to establish Chapter 245 rights.

Proposed Project Name: Austin Country Club – Development Plan

Address/Location: 4408 Long Champ Dr.

Legal Description: Lot 1 Davenport Ranch, Phase 4, Section 1

A. The proposed application is for a **New Project** and is submitted under regulations in effect.

NOTE: If A is checked above, proceed to signature block below.

B. The proposed application is for an **ongoing project not requesting House Bill 1704 consideration**. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. The proposed application is for a **project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704**. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: _____

D. The proposed application is for a project requesting **review under a specific agreement, not on the basis of House Bill 1704**. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: _____

E. Original Application Filing Date: Feb. 16, 1982 File #: C8-82-08.1 P/F

The propose application is submitted as a Project In progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state laws. The determination will be based on information submitted on and with this form.

The following Information is required for Chapter 245 Review:

Attached supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals. Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which chapter 245 vesting is claimed.

Project Application History	File #	Application date	Approval Date
Annexation/zoning (if applicable to history)			
Preliminary Subdivision			
Final Subdivision	C8-82-08.1 P/F	Fe b. 16, 1982	
Site Plan/Development Permit			

Proposed Project Application *(check one):* **Preliminary** **Subdivision** **Final Plat** **Site Plan**

Proposed Project Land Use. *Specify acreage in each of the following land use categories:*

Single family/Duplex _____ **Townhouse/Condo/Multi-family** _____ **Office** _____

Commercial X **Industrial/R&D** _____ **Other (Specify)** _____

Total acreage: 179.67 **Watershed:** Lake Austin **Watershed Classification:** WS R

This proposed project application will still be reviewed under those rules and regulations that are not subject to chapter 245, such as those to prevent imminent destruction of property or injury to person, including regulation dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

Signature Property - owner or agent [signature] Date: 11/20/15

Printed Name NICHOLAS SMITH Phone/Fax: 512-550-7050

512-328-3586 fax

EXHIBIT
tabbies
C

City of Austin
Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78676

VESTED RIGHTS DETERMINATION

Findings

This determination is made under City Code 25-1-541 in response to a claim that the project identified below is vested to earlier regulations and entitled to be reviewed under those regulations. The determination may be reconsidered once at the request of the applicant.

Project Name: Austin County Club
Address: 4408 Longchamp
Case No. SP-2015-0533C
Date of Application: 11/23/2015
Date of Determination: 12/4/2015

Signature: _____ **Date:** 12/4/2015

See "Grounds for Determination" (reverse) for a summary of the most common grounds for approval or denial. Additional grounds may also apply.

(X) DENIED

Primary Grounds: Project Complete (see attached for general summary)

Findings: Project initiated by filing of 1982 plat application has long been completed, as evidenced by Austin Country Club's several decades of operation and build-out under current regulations. The most recent site application (SP-2009-0211C), for example, was submitted and reviewed under current (2009) regulations. Consistent with the City's prior 2012 vested rights determination, further redevelopment or expansion of the facility constitutes a new project for purposes of the Local Government Code, Chapter 245 or Section 43.002.

GROUNDS FOR DETERMINATION

In general, the evaluation of a vested rights claim is based on comparing (1) the development that is now being proposed, and (2) an original project for which fair notice was provided to the City of Austin, usually in the form of a permit application. If these two are linked together as a single and continuous project, then all permits for the project are vested (i.e., "grandfathered") to the older regulations in effect on the date that the first application for the project was submitted. A permit may not be entitled to vested rights, however, if it is for a different project or if the original project has expired or become dormant. The following is a summary of the most common grounds for approval or denial of vested rights claims.

APPROVAL:

ONGOING PROJECT: *Development now being proposed would initiate, continue, or complete a project for which vested rights are claimed and for which fair notice was provided to the City of Austin. The project remains active and has not expired or become dormant.*

OTHER: *Development now being proposed is subject to earlier regulations based on other grounds, such as entitlements under common law, a development agreement, or a special city enactment unique to the project.*

DISAPPROVAL:

NEW PROJECT: *Development now being proposed is not an initiation, continuation, or completion of the original project for which vested rights are claimed. Not every deviation will prevent subsequent vesting, but significant changes in use or in the scale or intensity of a project may result in a New Project determination.*

CHANGE OF PROJECT: *Development has already occurred which differs from the original application to such an extent that it would constitute a New Project if proposed today. Not every deviation is sufficient to change a project. However, a prevalence of actual build-out that materially differs from an original project breaks the "series of permits" required to establish vested rights to an initial application and will result in a Change of Project determination.*

PROJECT COMPLETE: *Development has already occurred that is sufficient to establish the uses shown on the original application for the project. Once a project is complete, further development must comply with current regulations and cannot vest back to the original application.*

NO FAIR NOTICE: *The original application for which vested rights are claimed does not provide "fair notice" of a project or was not submitted to the City of Austin.*

DORMANT PROJECT: *The project is vested to a permit that doesn't have an expiration date and for which no progress towards completion has been made as specified under City Code 25-1-554 (Dormant Projects).*

PROJECT EXPIRATION: *Either: (1) all permits for the project have expired; or (2) for a project begun after June 23, 2014, the project was not completed or kept active prior to the expiration dates established under City Code 25-1-552 (Expiration of Projects Begun on or After June 23, 2014).*

INSUFFICIENT INFORMATION: *Vested Rights Petition submitted by applicant does not include required information necessary to determine whether project is entitled to vested rights*

City of Austin
Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78676

VESTED RIGHTS DETERMINATION

Supplemental Findings in Response to Reconsideration Request

This determination is made under City Code 25-1-541 in response to a claim that the project identified below is vested to earlier regulations and entitled to be reviewed under those regulations. The determination may be reconsidered once at the request of the applicant.

Project Name: Austin County Club
Address: 4408 Longchamp
Case No.: SP-2015-0533C
Date of Application: 11/23/2015
Date of Determination: 2/23/2016

Signature: _____ **Date:** FEB 24, 2016

See "Grounds for Determination" (at page 3) for a summary of the most common grounds for approval or denial. Additional grounds may also apply.

(X) DENIED

Primary Grounds: Project Complete (see attached for general summary)

Findings:

- Director reaffirms the prior determination, dated December 4, 2015, which states that:
  "Project initiated by filing of 1982 plat application has long been completed, as evidenced by Austin Country Club's several decades of operation and build-out under current regulations. The most recent site application (SP-2009-0211C), for example, was submitted and reviewed under current (2009) regulations. Consistent with the City's prior 2012 vested rights determination, further redevelopment or expansion of the facility constitutes a new project for purposes of the Local Government Code, Chapter 245 or Section 43.002."
- In response to additional information provided on reconsideration, the Director further finds that:
  - The project initiated by the MUD Consent Agreement, which was executed on or about October 4, 1980, is complete for the same reasons (see above) that the project initiated by the 1982 plat is complete.

EXHIBIT D

- Additionally, following dissolution of the MUD and the subsequent annexation of Davenport Ranch, it is unclear what continuing effect the MUD Agreement would have with respect to use or development of land previously included within the MUD. There is no indication that the MUD Agreement was intended as an unconditional 40-year moratorium on the imposition of new development standards. On the contrary, its substantive provisions are related primarily to utility service/financing and appear directed at circumstances which have since changed significantly—i.e., sale of the land from the original contracting party; the annexation and subsequent zoning of the area; dissolution of the District; and completion of initially permitted projects.
- To the extent the MUD Agreement initiated a land development project for purposes of Chapter 245, the nature and scope of that project under Article V provided for "commercial development to serve local needs," subject to Council approval. The Austin Country Club, by contrast, is classified as a "Community Recreational" use, not a commercial use, and operates on regional or citywide scale. Further expansions of the Club, while not prohibited by the MUD Agreement, constitute new projects and must be reviewed under current regulations rather than those in effect on either the date of the MUD Agreement (1980) or the plat application (1982).

GROUNDS FOR DETERMINATION

In general, the evaluation of a vested rights claim is based on comparing (1) the development that is now being proposed, and (2) an original project for which fair notice was provided to the City of Austin, usually in the form of a permit application. If these two are linked together as a single and continuous project, then all permits for the project are vested (i.e., "grandfathered") to the older regulations in effect on the date that the first application for the project was submitted. A permit may not be entitled to vested rights, however, if it is for a different project or if the original project has expired or become dormant. The following is a summary of the most common grounds for approval or denial of vested rights claims.

APPROVAL:

ONGOING PROJECT: *Development now being proposed would initiate, continue, or complete a project for which vested rights are claimed and for which fair notice was provided to the City of Austin. The project remains active and has not expired or become dormant.*

OTHER: *Development now being proposed is subject to earlier regulations based on other grounds, such as entitlements under common law, a development agreement, or a special city enactment unique to the project.*

DISAPPROVAL:

NEW PROJECT: *Development now being proposed is not an initiation, continuation, or completion of the original project for which vested rights are claimed. Not every deviation will prevent subsequent vesting, but significant changes in use or in the scale or intensity of a project may result in a New Project determination.*

CHANGE OF PROJECT: *Development has already occurred which differs from the original application to such an extent that it would constitute a New Project if proposed today. Not every deviation is sufficient to change a project. However, a prevalence of actual build-out that materially differs from an original project breaks the "series of permits" required to establish vested rights to an initial application and will result in a Change of Project determination.*

PROJECT COMPLETE: *Development has already occurred that is sufficient to establish the uses shown on the original application for the project. Once a project is complete, further development must comply with current regulations and cannot vest back to the original application.*

NO FAIR NOTICE: *The original application for which vested rights are claimed does not provide "fair notice" of a project or was not submitted to the City of Austin.*

DORMANT PROJECT: *The project is vested to a permit that doesn't have an expiration date and for which no progress towards completion has been made as specified under City Code 25-1-554 (Dormant Projects).*

PROJECT EXPIRATION: *Either: (1) all permits for the project have expired; or (2) for a project begun after June 23, 2014, the project was not completed or kept active prior to the expiration dates established under City Code 25-1-552 (Expiration of Projects Begun on or After June 23, 2014).*

INSUFFICIENT INFORMATION: *Vested Rights Petition submitted by applicant does not include required information necessary to determine whether project is entitled to vested rights*