

AGENDA ITEM 22

Consider approving license agreement between Avery Ranch and Williamson County to install lighting and landscaping along Avery Ranch Blvd.

Charles Crossfield discussed the agreement and answered all questions.

Moved: **Commissioner Limmer**

Seconded: **Judge Doerfler**

Motion: To approve license agreement between Avery Ranch and Williamson County to install lighting and landscaping along Avery Ranch Blvd. **with the stipulation that the project does not cost the county anything and that the county does not have to maintain it in the future.**

Vote: **3 - 0** with Commissioner Boatright absent from the dais.

< Attachment >

WILLIAMSON COUNTY
LICENSE AGREEMENT

WILLIAMSON COUNTY, a political subdivision of the State of Texas ("*County*"), and **Avery Ranch Owners Association, Inc.**, a Texas non-profit corporation ("*AROA*"), **Pebble Creek Joint Venture**, a Texas joint venture ("*PCJV*"), **Continental Homes of Texas, L.P.**, a Texas limited partnership doing business as **Milburn Homes** ("*CHT*"), **Developers of Avery Ranch, Ltd.**, a Texas limited partnership ("*DAR*"), **Rathgeber Investment Company, Ltd.**, a Texas limited partnership ("*RIC*"), and **The Golf Club at Avery Ranch, Ltd.**, a Texas limited partnership ("*GCAR*", and collectively with **AROA**, **PCJV**, **CHT**, **DAR**, and **RIC**, "*Licensee*"), enter into this License Agreement (this "*Agreement*") on this ____ day of November, 2000, upon the terms and conditions set forth below.

I. PURPOSE OF LICENSE AGREEMENT

The County grants to Licensee, its successor and assigns, the exclusive right to use the Licensed Property (as defined in the attached Exhibit "A") for the following purposes only:

To allow the installation of landscaping, lighting, fencing, entryway monuments, marketing signage, sidewalks, and irrigation within the Licensed Property.

The County makes this grant solely to the extent of its right, title, and interest in the Licensed Property, without any express or implied warranties.

Licensee agrees that all construction and maintenance permitted by this Agreement shall be done in compliance with all applicable County, State, and/or Federal police, traffic, building, health, and safety ordinances, laws, and regulations existing at the time said construction and maintenance is performed.

II. ANNUAL FEE

The County, its governing body, and its respective successors and assigns agree that no annual fee shall be assessed for the license and permission herein granted to Licensee.

III. COUNTY'S RIGHTS TO LICENSED PROPERTY

This Agreement is expressly subject and subordinate to the present and future right of the County, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate and renew any public utilities facilities, franchised public utilities, roadways or streets on, beneath, or above the surface of the Licensed Property.

Nothing in this Agreement shall be construed to limit, in any way, the power of the County, to widen, alter, or improve the Licensed Property subject to this Agreement pursuant to official action by the governing body of the County or its successors. The County does, however, agree to give Licensee at least thirty-(30) days' written notice of such action and shall cooperate with Licensee to effect the relocation of Licensee's installations and improvements in the event of such widening, altering, or improvement of such street areas and, further, to cooperate with Licensee wherever possible, to effect such widening, altering, or improving of such street areas so that Licensee's operating and improvements on the Licensed Property will not be materially affected thereby.

The County retains the right to enter upon the Licensed Property, at any time and without notice, where providing the 30-day notice is impractical, to remove any of the licensed improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the County's rights or duties with respect to the Licensed Property; (b) protecting persons or property or (c) the public health or safety with respect to the Licensed Property.

IV. INSURANCE

Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the County and licensed to do business in Texas, with a combined single limit of not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the County as co-insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, directors, employees, agents or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each instrument effecting such coverage shall be delivered to the County on or before the date Licensee begins construction of Licensee's improvements contemplated in this Agreement.

So long as Licensee is using the Licensed Property, Licensee shall not cause such insurance to be cancelled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be cancelled, reduced, restricted, or otherwise limited until thirty (30) days after the County has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY AND ITS OFFICER, AGENTS, AND EMPLOYEES AGAINST ALL CLAIMS, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY'S FEES, OR OTHER LIABILITY FOR PERSONAL INJURY, DEATH, OR DAMAGE TO ANY PERSON OR PROPERTY WHICH IS PROXIMATELY CAUSED BY LICENSEE'S CONSTRUCTION AND LOCATION OF THE LANDSCAPE IMPROVEMENTS AND THE IRRIGATION SYSTEM, OR LICENSEE'S ACTIONS OR INACTIONS IN MAINTAINING THE LANDSCAPE IMPROVEMENTS AND IRRIGATION SYSTEM LOCATED ON THE LICENSED PROPERTY. This indemnification provision, however, shall not apply to any claims, suits, damages, costs, losses, or expenses (i) for which the County shall have been, or is entitled to be

compensated by insurance provided under Article IV above, or (ii) which are proximately caused by the negligent or willful acts of the County, its agents, employees, or contractors; provided, however, that for the purpose of the foregoing, the County's act of entering into this Agreement shall not be deemed to be a "negligent or willful act".

VI. CONDITIONS

A. Licensee's Responsibilities. Licensee will be responsible for any damage to or relocation of existing facilities. Further, Licensee shall reimburse the County for all costs of replacing or repairing any property of the County or of others which was damaged or destroyed as a result of activities authorized under this Agreement by, or on behalf of, Licensee.

B. Maintenance. Licensee shall maintain the Licensed Property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense, as required by the County; such removal shall be completed within thirty (30) days following receipt of a written request by the County to do so.

C. Removal or Modification. Licensee agrees that removal or modification of any improvements now existing or to be later replaced shall be at Licensee's expense. Said removal or modification shall be at Licensee's sole discretion, except where otherwise provided by this Agreement.

D. Default. In the event that Licensee fails to maintain the Licensed Property or otherwise comply with the terms or conditions as set forth herein, then the County shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of and, if Licensee does not satisfactorily remedy the same within the 30-day period, the County may perform the work or contract for the completion of the work. Licensee agrees to pay, within thirty (30) days of written demand by the County, all costs and expenses incurred in completing the work.

VII. COMMENCEMENT; TERMINATION BY ABANDONMENT

This Agreement shall begin with the date set forth in the introductory paragraph of this Agreement, and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the Licensed Property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days' written notice to the Licensee if such abandonment has not been remedied by Licensee within such period; the County shall thereafter have the same complete title to the Licensed Property so abandoned as though this Agreement had never been made and shall have the right to enter on the Licensed Property and terminate the rights of Licensee, its successors and assigns hereunder. All installations of Licensee not removed shall be deemed property of the County as of the time abandoned.

VIII. TERMINATION

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the County not later than thirty (30) days before the effective date of termination. If Licensee so terminates, then it may remove installations that it made from the Licensed Property within the 30-day notice period. Any installations not removed within said period are agreed to be the property of the County.

B. Termination by County. This Agreement may be revoked at any time by resolution of the Williamson County Commissioners Court if such revocation is reasonably required by the public interest (as hereinafter set forth), after providing one hundred eighty (180)-days' written notice to the Licensee.

Subject to prior written notification to Licensee or its successors-in-interest, this Agreement is revocable by the County and deemed to be in the public interest if:

1. the licensed improvements, or a portion of them, interfere with County's necessary use of the right-of-way;
2. use of the Licensed Property becomes necessary for a public purpose;
3. the licensed improvements, or a portion of them, constitute a danger to the public which the County deems not to be remediable by alteration or maintenance of such improvements;
4. despite thirty (30) days' written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. Licensee fails to comply with the terms and conditions of this Agreement, including, but not limited to, any insurance requirements specified herein.

IX. APPLICATION OF LAW

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidence by this Agreement.

X. VENUE

Venue for all lawsuits concerning this Agreement will be in Williamson County, Texas.

XI. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT

This License Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successor and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XII. ASSIGNMENT

Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the County, which consent shall not be unreasonably withheld. For purposes of this paragraph, an assignment to the Subdivision homeowner's association shall not require the consent of the County, so long as the association complies with the insurance requirements in this Agreement. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the County a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, date, address and contact person.

XIII. NOTICES

All notices, demands and requests for delivery of documents or information hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as of the time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage prepaid, or as of the time of delivery to Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed.

County:

County of Williamson
Judge John Doerfler
Williamson County Courthouse
Georgetown, Texas 78626
Att.: County Judge
Phone: (512) 930-3652
Fax: (512) 930-3659

Licensee:

If to AROA:

Avery Ranch Owners Association, Inc.
2414 Exposition Blvd., Suite 280
Austin, Texas 78703
Phone: 512.381.1282
Fax: 512.381.1280

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If to PCJV: Pebble Creek Joint Venture
2711 Hillview Green Lane
Austin, Texas 78703
Phone: 512.472.0590
Fax: 512.835.9865

With copy to: Mr. Matt Harriss
10300 Metropolitan
Austin, Texas 78758
Phone: 512.837.6550
Fax: 512.837.6953

If to CHT: Continental Homes of Texas, L.P.
Attn: Mr. Terry Mitchell
4515 Seton Center Parkway, Suite 200
Austin, Texas 78759
Phone: 512.345.4663
Fax: 512.345.6080

With copy to: Timothy C. Taylor, Esq.
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Phone: 512.236.2390
Fax: 512.236.2002

If to DAR: Developers of Avery Ranch, Ltd.
c/o Robert D. Wunsch
2414 Exposition Blvd., Suite 280
Austin, Texas 78703
Phone: 512.381.1282
Fax: 512.381.1280

If to GCAR: The Golf Club at Avery Ranch, Ltd.
c/o Robert D. Wunsch
2414 Exposition Blvd., Suite 280
Austin, Texas 78703
Phone: 512.381.1282
Fax: 512.381.1280

With copy to: J. Winston Chapman, Esq.
Rash Chapman Schreiber & Porter, L.L.P.
2112 Rio Grande Street
Austin, Texas 78705-5526
Phone: 512.477.7543
Fax: 512.474.0954

If to RIC: c/o Dick Rathgeber
2711 Hillview Green Lane
Austin, Texas 78703
Phone: 512.472.0590
Fax: 512.835.9865

XIII. MISCELLANEOUS

13.1 No Partnership. AROA, PCJV, CHT, DAR, RIC, and GCAR are not partners or joint venturers. In no event will any of the parties comprising Licensee be liable or responsible for any contractual, tortuous, or other liability, obligation, or debt of any other party, whether a party to this Agreement or otherwise.

13.2 Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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Executed this ____ day of November, 2000.

COUNTY:

Williamson County

By: John C. Daeffler . 11-7-00
Name: John C. Daeffler - County Judge
Title: County Judge

LICENSEE:

Avery Ranch Owners Association, Inc.
(a Texas non-profit corporation)

By: _____
Name: _____
Title: _____

Pebble Creek Joint Venture
(a Texas joint venture partnership)

By: **Rathgeber Investment Company, Ltd.**
(a Texas limited partnership)
Managing Partner

By: **Rathgeber Investment GP, Inc.**
(a Texas corporation)
Its General Partner

By: _____
Edward R. Rathgeber, Jr.
President

Continental Homes of Texas, L. P.
(a Texas limited partnership)

By: CHTEX of Texas, Inc.
(a Delaware corporation)
Its General Partner

By: _____
Terry E. Mitchell, Vice President

Rathgeber Investment Company, Ltd.
(a Texas limited partnership)

By: Rathgeber Investment GP, Inc.
(a Texas corporation)
Its General Partner

By: _____
Edward R. Rathgeber, Jr., President

Developers of Avery Ranch, Ltd.
(a Texas limited partnership)

By: RWR Development Company, L.L.C.
(a Texas limited liability company)
Its General Partner

By: _____
Robert D. Wunsch, President

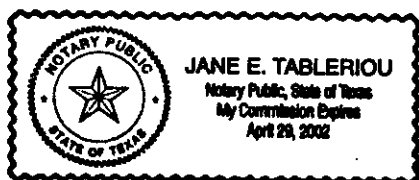
The Golf Club at Avery Ranch, Ltd.
(a Texas limited partnership)

By: A.R. Golf Management Co., L.L.C.
(a Texas limited liability company)
Its General Partner

By: _____
Robert D. Wunsch, President

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me this 7 day of November, 2000, by
John C. Doeberler, County Judge of Williamson County, a
political subdivision of the State of Texas, upon behalf of Williamson County.



Jane E. Tableriou
Notary Public - State of Texas
Name: JANE E. TABLERIOU
My Commission Expires: 4-29-02

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of November, 2000, by Edward R. Rathgeber, Jr., President of Rathgeber Investment GP, Inc., a Texas corporation, General Partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, the Managing Partner of Pebble Creek Joint Venture, a Texas joint venture, on behalf of said corporation, partnership, and joint venture.

Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of November, 2000, by Terry E. Mitchell, Vice President of CHTEX of Texas, Inc., a Delaware corporation, General Partner of Continental Homes of Texas, L.P., a Texas limited partnership, on behalf of said corporation and said limited partnership.

Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of November, 2000, by Edward R. Rathgeber, Jr., President of Rathgeber Investment GP, Inc., a Texas corporation, General Partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, on behalf of said corporation and said limited partnership.

Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of November, 2000, by Robert D. Wunsch, President of RWR Development Company, L.L.C., a Texas limited liability company, General Partner of Developers of Avery Ranch, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

Notary Public - State of Texas

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STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me this ____ day of November, 2000, by Robert D. Wunsch, President of A.R. Golf Management Co., L.L.C., a Texas limited liability company, General Partner of The Golf Club at Avery Ranch, Ltd., a Texas limited partnership, on behalf of said limited liability company and said limited partnership.

Notary Public - State of Texas

STATE OF TEXAS

§

COUNTY OF TRAVIS

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This instrument was acknowledged before me this ____ day of November, 2000, by _____, _____ President of Avery Ranch Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

Notary Public - State of Texas

Name: _____

My Commission Expires: _____

After Recording, Please Return To:

Timothy C. Taylor, Esq.
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701-4099

AGENDA ITEM 23

Discuss and take any appropriate action on revised CAMPO resolution.

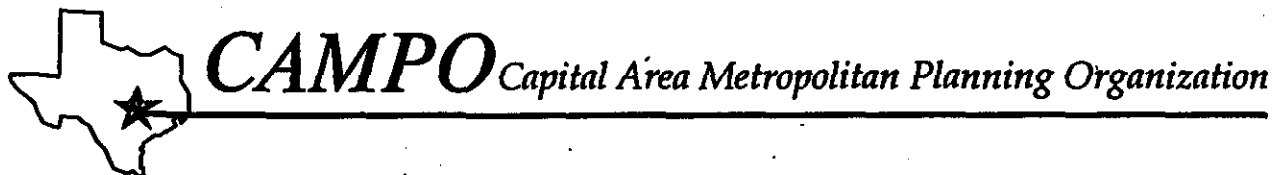
Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To authorize the County Judge to sign the revised CAMPO resolution endorsing the 20/25 plan, but also to include the roadways that are going to affect Williamson County, and to take into consideration the demographics of Williamson County outside the CAMPO plan.

Vote: 4 - 0

< Attachment >



To: Cities and Counties within the CAMPO metropolitan area
 From: Michael Aulick, Executive Director
 Subject: **CAMPO 2025 Transportation Plan Adoption & Request for Adoption by Jurisdictions**
 Date: October 18, 2000

A copy of the CAMPO 2025 Transportation Plan (*CAMPO Plan*) adopted by the CAMPO Policy Advisory Committee on June 12, 2000 and modified on August 7th was sent to you in late August. It is a transportation planning guide for the next 25 years (to the year 2025). The Plan contains policies and projects for congestion/demand management, transit, bicycles and pedestrians, roadways and freight movement. The *CAMPO Plan's* primary use is as a regional long-range plan for federally funded projects, and it also serves as a comprehensive, coordinated transportation plan for all governmental jurisdictions within the CAMPO area. Its adoption was required by the federal Transportation Equity Act for the 21st Century (TEA 21).

The CAMPO Policy Advisory Committee requests that your jurisdiction adopt the *CAMPO Plan* as its own transportation plan. Plan Policy A-1 on page 10-1 states:

Policy A-1: CAMPO will work with member jurisdictions to achieve compatibility of the *CAMPO 2025 Transportation Plan (CAMPO 2025 Plan)* with local plans and TxDOT's functional classification system. Adoption of *CAMPO Plan* by member jurisdictions is a necessary condition to be eligible for CAMPO approval of federal funds to that jurisdiction.

CAMPO will be adopting our Transportation Improvement Program for FY 2002-2004 in December of this year. If you have submitted projects for federal funding consideration, I request that you consider adoption of the CAMPO Plan prior to the CAMPO PAC consideration of those requests at the December 11th meeting.

Thank you for your consideration and please call me at 499-6441 if you have any questions or need any assistance. If you need another copy of the CAMPO Plan please call Elizabeth at 499-2275 or, you can download the Plan from our web site at: www.ci.austin.tx.us/ats/

Sincerely,

Michael R. Aulick
 Executive Director