



Travis County Commissioners Court Agenda Request

Meeting Date: March 20, 2012

Prepared By: Steve Sun, P.E., Engineering Div. Manager **Phone #:** 854-4660

Division Director/Manager: Steve Sun, P.E., Engineering Division Manager

Department Head/Title: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Eckhardt, Precinct Two

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests:

- A) Approve the acceptance and improving of 950 feet of Michael's Cove in River Cove Subdivision in Precinct Two; and
- B) Approve a License Agreement with River Cove Home Owners Association, in Precinct Two.

BACKGROUND/SUMMARY OF REQUEST:

The River Cove Home Owners Association (the "Association") entered into a Participation Agreement with the county wherein they will provide funds to be used with county funds to improve Michael's Cove in their subdivision. Improvements required to bring the roadway into compliance with minimum standards set forth in Travis County Chapter 84, Unaccepted substandard roadway specifications include re-surfacing of existing pavement, relocation of subdivision entrance sign/landscaping away from clear zone and construction of a section of concrete curb and gutter. The estimated construction cost of pavement re-surfacing and concrete curb and gutter is \$12,000.00. The Association will be providing \$2,400.00 cash as their participation amount and will also be responsible for the relocation of the subdivision entrance sign and landscaping.

Now that The Association has removed the subdivision entrance sign and landscaping away from the clear zone, at an expense of more than \$2,000, and has deposited their cost share of \$2,400.00 with the county, TNR recommends acceptance of this roadway into county system so to allow for the needed road improvement work to be performed on this accepted roadway. Acceptance of this roadway will add 0.18 miles into county's road system. A portion of subdivision entrance sign/landscaping will remain within the right-of-way but is away from the clear zone. The Association agrees to enter into a license agreement with the county to allow for the remaining subdivision entrance sign/landscaping to stay within the right-of-way. The Association has made the security deposit of \$100 and has included the appropriate insurance certificate as required by the license agreement.

STAFF RECOMMENDATIONS:

TNR recommends acceptance of this roadway and approving the license agreement.

ISSUES AND OPPORTUNITIES:

Inefficiencies are introduced into these projects when all residents are not supportive of either the project or the project design requirements. Most notably, program participants are totally responsible for dedicating all required right-of-way and removing all private property, such as fences, walls, and buildings that encroach into the dedicated right-of-way. In the past TNR has expended significant surveying, engineering, and right-of-way resources only to have projects delayed or indefinitely postponed because some residents did not want to dedicate easements, or did not like the impacts the construction would have upon their specific property. Inefficient re-design to accommodate residents was common. To address this issue TNR recommended using Public-Private Participation Agreements. Under the terms of these agreements cost are shared between the county and the property owners. This should provide an impetus for property owners to work with the county to minimize “custom” design or redesign.

Travis County Chapter 82 establishes the standard for new street and drainage construction. Many substandard roads were constructed or partially constructed prior to Travis County’s adoption of roadway standards and to bring them up to today’s standards would be cost prohibitive, in most cases, and drastically alter the character of some neighborhoods. As such, the standards in Chapter 84 are lower than those in Chapter 82. county responsibility for maintenance and liability will increase as roads are accepted onto the county system. The acceptance of roads could result in additional home building in older neighborhoods, which could increase the county’s tax base.

In regards to the proposed license agreement, “...The Association agrees to and shall indemnify, defend and hold harmless the COUNTY and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney’s fees, or other liability for personal injury, death, or damage to any person or property, which arises from or is in any manner connected to or caused in whole or in part by The Association’s construction, maintenance or use of the licensed property.” The Association has provided insurance that adds Travis County as an additional insured for the improvements as described in the attached agreement.

FISCAL IMPACT AND SOURCE OF FUNDING:

The Court approved \$500,000.00 to fund the Substandard Road Program in the FY 07 budget process. The voters also approved additional amount of \$1,654,279.00 in the 2011 Bond Referendum for the Substandard Road Program. TNR's preliminary estimate of the total cost of the project is \$12,000.00. Per the terms of the Participation Agreement, The Association has provided \$2,400.00 in cash to help pay the costs of improving 950 feet of Michael's Cove in the River Cove Subdivision. The Association has also removed the subdivision entrance sign/landscaping away from the clear zone at an expense of more than \$2,000.

If the project is completed under the estimated amount The Association will be reimbursed its pro-rata share of the savings based upon its financial contribution. In this case, the total estimated amount is \$12,000.00, The Association's financial contribution is \$2,400.00, so The Association's pro-rata share of any savings will be 20%. The county will not reimburse the Association for costs related to the removal of the subdivision entrance sign and landscaping. The county's funds are in account 506-4931-808-8164 and The Association's funds are in account 475-4994-750-8164. The \$12,000.00 has been encumbered on requisition number 534395 and the commodity/sub-commodity codes are 968/054.

EXHIBITS/ATTACHMENTS:

- Road Acceptance Form
- License Agreement
- Location Map

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Don Ward	Division Director	TNR	854-9317
Christopher Gilmore	Attorney	Attorney's Office	854-9455

CC:

Steve Sun	Engineering Div Mgr	TNR	854-4660
Donna Williams-Jones	Financial Analyst Sr	TNR	854-7677
Teresa Calkins	Senior Engineer	TNR	854-7569
Lee Turner	Senior Engineer	TNR	8547598

: :
0101 - Administrative Svs-

ACCEPTANCE OF DEDICATION OF STREETS AND DRAINAGE



SUBDIVISION/STREET
Mapsco No. 554 E, F

RIVER COVE/Michaels Cove

Pct.# 2
Atlas No. K07

CONTAINS 1 STREET AS LISTED BELOW:

#	STREET NAME	FROM - TO	L.F.	MILES	ROW	TYPE OF PVMNT	WIDTH OF PVMNT	CURB & GUTTER
1	Michaels Cove	Westlake Drive to End of 60' R cul-de-sac	950	0.18	50'	HMAC	20'	Laydown Curb
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								


N/A ADDITIONAL LOTS SOLD FOR DEVELOPMENT

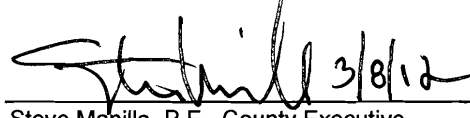
CONSTRUCTION OF STREETS AND DRAINAGE EXCEEDS MINIMUM COUNTY STANDARD FOR STREETS NUMBERED 1

IT IS RECOMMENDED THAT MAINTENANCE OF STREETS NUMBERED 1 TOTALING **0.18** MILES BE ACCEPTED BY THE TRAVIS COUNTY COMMISSIONERS' COURT IN PRECINCT 2.

DATE

- DP = DOUBLE PENETRATION
- HMAC = HOT MIX ASPHALT
- C = CONCRETE
- UPP = UNPAVED, PIT RUN
- UPS = UNPAVED, SELECT


 Don Ward, P.E., Director of Road Maintenance and Fleet Service
 TRANSPORTATION AND NATURAL RESOURCES


 Steve Manilla, P.E., County Executive
 TRANSPORTATION AND NATURAL RESOURCES

APPROVED BY COMMISSIONERS' COURT DATE

LICENSE AGREEMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

This Agreement is made and entered into by and between Travis County, Texas, (the "COUNTY") and the RIVER COVE HOME OWNERS ASSOCIATION (the "ASSOCIATION"), hereinafter collectively referred to as the "Parties", for the purposes and consideration described herein.

WITNESSETH:

WHEREAS, the COUNTY has accepted the dedication of the roads in RIVER COVE, a subdivision located in Travis County, being more particularly described in that certain plat recorded at [Book 89, Page 332-334, of the Plat] OR [Doc# _____, of the Official Public] Records of Travis County, Texas) (the "Subdivision"); and

WHEREAS, the ASSOCIATION plans to install, pay expenses, and maintain certain landscaping and improvements in portions of the right-of-way of MICHAEL'S COVE in the Subdivision; and

WHEREAS, the landscaping and improvements include, but are not limited to, an irrigation system, lighting, trees and shrubs (the "Improvements") within portions of the right-of-way of the Subdivision roads, which are not intended or used for vehicular traffic; and

WHEREAS, the area of the right-of-way within which the Improvements are to be installed and/or maintained (the "Licensed Property") is described in the Exhibit "A", which is attached hereto and incorporated herein for all purposes;

NOW, THEREFORE, the COUNTY and the ASSOCIATION agree as follows:

I. Grant

Subject to the conditions in this Agreement and to the extent of the right, title and interest of the COUNTY in and to the Licensed Property and without any express or implied warranties, the COUNTY grants to the ASSOCIATION permission to use the Licensed Property to construct, maintain and repair the Improvements existing in the Licensed Property as of the date of this Agreement.

II. Consideration

The COUNTY and the ASSOCIATION each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- 1. The beautification to be afforded to the community by the Improvements; and

2. The agreement by the ASSOCIATION to provide the below-specified insurance and indemnification in favor of the COUNTY.

III. County's Rights to Licensed Property

A. 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 utility facilities, franchised public facilities, roadways or streets on, beneath or above the surface of the Licensed Property. The COUNTY shall take reasonable measures to prevent damage to any Improvements on the Licensed Property, however, any damage to or destruction of the ASSOCIATION's property by the COUNTY in the exercise of the above-described rights shall be at no charge, cost, claim or liability to the COUNTY, its agents, contractors, officers or employees. 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 pursuant to official action by the governing body of the COUNTY or its successors; provided, however, that the COUNTY shall provide the ASSOCIATION with at least thirty (30) days prior written notice of any such contemplated action.

B. NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, THE COUNTY RETAINS THE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE, ASSUMING NO OBLIGATION TO THE ASSOCIATION, TO REMOVE ANY OF THE 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

A. The ASSOCIATION shall, at its sole expense, provide extended public liability insurance coverage, written by a company acceptable to the County, licensed to do business in Texas, in the amounts of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence and ONE MILLION DOLLARS (\$1,000,000.00) in the aggregate for property damage and personal injury and death, 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 OF TRAVIS as co-insured or as an additional insured. This insurance coverage shall cover all perils arising out or connected in any way to the activities of the ASSOCIATION, its officers, employees, agents or contractors, relative to this Agreement. The ASSOCIATION shall be responsible for any deductibles stated in the policy. A true copy of each instrument affecting such additional coverage shall be delivered to the COUNTY'S Executive Manager of Transportation & Natural Resources Department within twenty-one (21) days of the effective date of this Agreement.

B. The ASSOCIATION shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, 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

To the extent permitted by Texas law, the ASSOCIATION agrees to and shall indemnify, defend and hold harmless the COUNTY and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property, which arises from or is in any manner connected to or caused in whole or in part by the ASSOCIATION's construction, maintenance or use of 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 compensated by insurance provided under Paragraph IV, above, or (ii) arising solely from the negligent or willful acts of the COUNTY, provided that for the purposes 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. Compliance with Regulations. The ASSOCIATION agrees that all construction, maintenance and repair permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal policies, traffic, building, health and safety ordinances, laws and regulations.

B. ASSOCIATION's Responsibilities. The ASSOCIATION will be responsible for any damage to or relocation of existing facilities required by the construction of the improvements. Further, the ASSOCIATION shall reimburse the COUNTY for all reasonable costs incurred by the COUNTY in replacing or repairing any property of the COUNTY or of others which was damaged or destroyed as a result of activities under this Agreement by or on behalf of the ASSOCIATION.

C. Maintenance. The ASSOCIATION shall maintain the Licensed Property by keeping the area free of debris and litter. The removal of dead, or dying, plants shall also be handled by the ASSOCIATION at its expense.

D. Removal or Modification. The ASSOCIATION agrees that removal or modification of any improvements now existing or to be later replaced shall be at the ASSOCIATION's sole discretion, except where otherwise provided by this Agreement. This Agreement, until its expiration or revocation, shall run as a covenant on the land on the above-described real property, and the terms and conditions of this Agreement shall be binding on any successors and assigns in interest to the ASSOCIATION or the COUNTY. A written memorandum of this agreement shall be filed in the Official Public Records of Travis County, Texas.

E. Security Deposit. The ASSOCIATION shall provide the COUNTY with cash in a cashier's check in the amount of One hundred AND NO/100 DOLLARS (\$ 100.00). Cash provided to the COUNTY will be deposited with the County Treasurer and interest, on the amount, will be paid to the ASSOCIATION, on an annual basis upon the receipt by the Treasurer of a letter requesting such interest. The only condition to a draft on the cash security shall be a letter from the Travis County Judge indicating that the ASSOCIATION has not fulfilled its obligations under this Agreement and that the COUNTY has incurred or will incur expenses with regard to the Improvements located on, upon or in the Licensed Property.

F. Default. In the event that the ASSOCIATION fails to maintain the Licensed Property, then the COUNTY shall give the ASSOCIATION written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below. The ASSOCIATION shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of and, if the ASSOCIATION does not satisfactorily remedy the same within the thirty (30) day period, the COUNTY may, at the COUNTY'S option, perform the work or contract for the completion of the work. In addition, the ASSOCIATION agrees to pay, within thirty (30) days of written demand by the COUNTY, all reasonable costs and expenses incurred by the COUNTY in completing the work.

VII. Commencement; Termination by Abandonment

This Agreement shall begin on the date of full execution and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein, unless terminated under other provisions of this Agreement. If the ASSOCIATION 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 by the COUNTY to the ASSOCIATION, if such abandonment has not been remedied by the ASSOCIATION within such period. The COUNTY shall thereafter have the same 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 the ASSOCIATION, its successors and assigns hereunder. All installations of the ASSOCIATION not removed shall be deemed property of the COUNTY as of the time abandoned.

VIII. Termination

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

B. Termination by County. The COUNTY may revoke this Agreement at any time, if such revocation is reasonably required by the public interest, after providing at least thirty (30) days prior written notice to the ASSOCIATION. Subject to prior written

notification to the ASSOCIATION or its successors in interest, this Agreement is revocable by the COUNTY if:

1. The Improvements, or a portion of them, interfere with the COUNTY'S use of the Licensed Property;
2. Use of the Licensed Property becomes necessary for a public purpose;
3. The 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 the ASSOCIATION, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. The ASSOCIATION fails to comply with the terms and conditions of this Agreement, including, but not limited to, the insurance requirements specified herein.

If the ASSOCIATION abandons or fails to maintain the Licensed Property, and the COUNTY receives no substantive response within thirty (30) days following written notification to the ASSOCIATION, then this Agreement shall terminate and the COUNTY may remove and/or replace all Improvements or a portion thereof and collect from ASSOCIATION the COUNTY'S actual expenses incurred in connection therewith.

IX. Eminent Domain

If eminent domain is exerted on the Licensed Property by paramount authority, then the COUNTY will, to the extent permitted by law, cooperate with the ASSOCIATION to effect the relocation of the ASSOCIATION's affected installations at the ASSOCIATION's sole expense. The ASSOCIATION shall be entitled to retain all monies paid by the condemning authority for its installations taken, if any.

X. Interpretation

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

XI. Application of Law

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

XII. Venue

TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.

XIII. Covenant Running with Land

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 successors and assigns.

XIV. Assignment

The ASSOCIATION shall not assign, sublet or transfer its interest in this Agreement without the written consent of the COUNTY. If such consent is granted, it shall then be the duty of the ASSOCIATION, its successors and assigns, to give prompt written notice to the COUNTY of any assignment or transfer of any of the ASSOCIATION's rights in this Agreement, giving name, date, address and contact person.

XV. Notice

Any notice and/or statement, required or permitted hereunder, shall be deemed to be given and delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such other addresses specified by written notice delivered in accordance herewith:

ASSOCIATION:

Brenda Witwer (or successor)
President, HOA
4405 Michaels CV
AUSTIN, TX 78746
phone (512) 306-0440

COUNTY:

Honorable Samuel T. Biscoe (or successor)
Travis County Judge
P.O. Box 1748
Austin, Texas 78767

COPY TO:

Steven M. Manilla, P.E., County Executive (or successor)
Travis County Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

COPY TO:

Honorable David A. Escamilla (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 83.____

XVI. Annexation by the City

A. If the total area within the Licensed Property is annexed for full purposes by the City of Austin or other incorporated municipality (the "CITY"), then all references in this Agreement to "the COUNTY" shall be construed to mean "the CITY"; all references to "the Executive Manager of the COUNTY Transportation and Natural Resources Department" shall be construed to mean "the Director of the CITY Department of Public Works & Transportation"; all references to "the Commissioners Court" shall be construed to mean "the CITY Council". Any other references to COUNTY employees shall be construed to mean the analogous CITY employee or officer.

EXECUTED AS OF THE DATES SET FORTH BELOW:

TRAVIS COUNTY, TEXAS

Judge's Signature
←

By: _____
Samuel T. Biscoe, County Judge

Date: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ___ day of _____, 2011, by Samuel T. Biscoe, County Judge of Travis County, Texas, a duly organized County and political subdivision of the State of Texas, on behalf of said County.

Notary Public in and for the State of Texas

Printed/Typed Name

My commission expires

TERMS AND CONDITIONS ACCEPTED, this the __ day of _____, 2011.

THE ASSOCIATION:

RIVER COVE SUBDIVISION

By: Brenda A. Witwer
signature

Name: Brenda A WITWER
printed name

Title: President
Authorized Representative

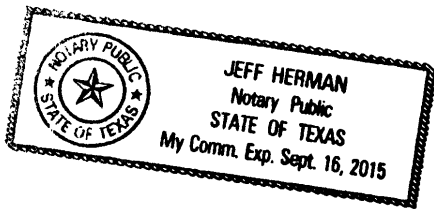
ACKNOWLEDGEMENT

THE STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 26 day of Oct, 2011, by as Brenda Witwer of the River Cove Subdivision, a Texas corporation, on behalf of said corporation.



[Signature]
Notary Public in and for the State of Texas

Jeff Herman
Printed/Typed Name

9-16-15
My commission expires

ADDRESS OF ASSOCIATION:

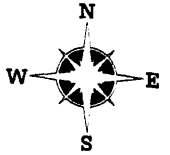
4300 1/2 MICHAELS CV

Austin, Texas 78746
(512) 306-0440
phone

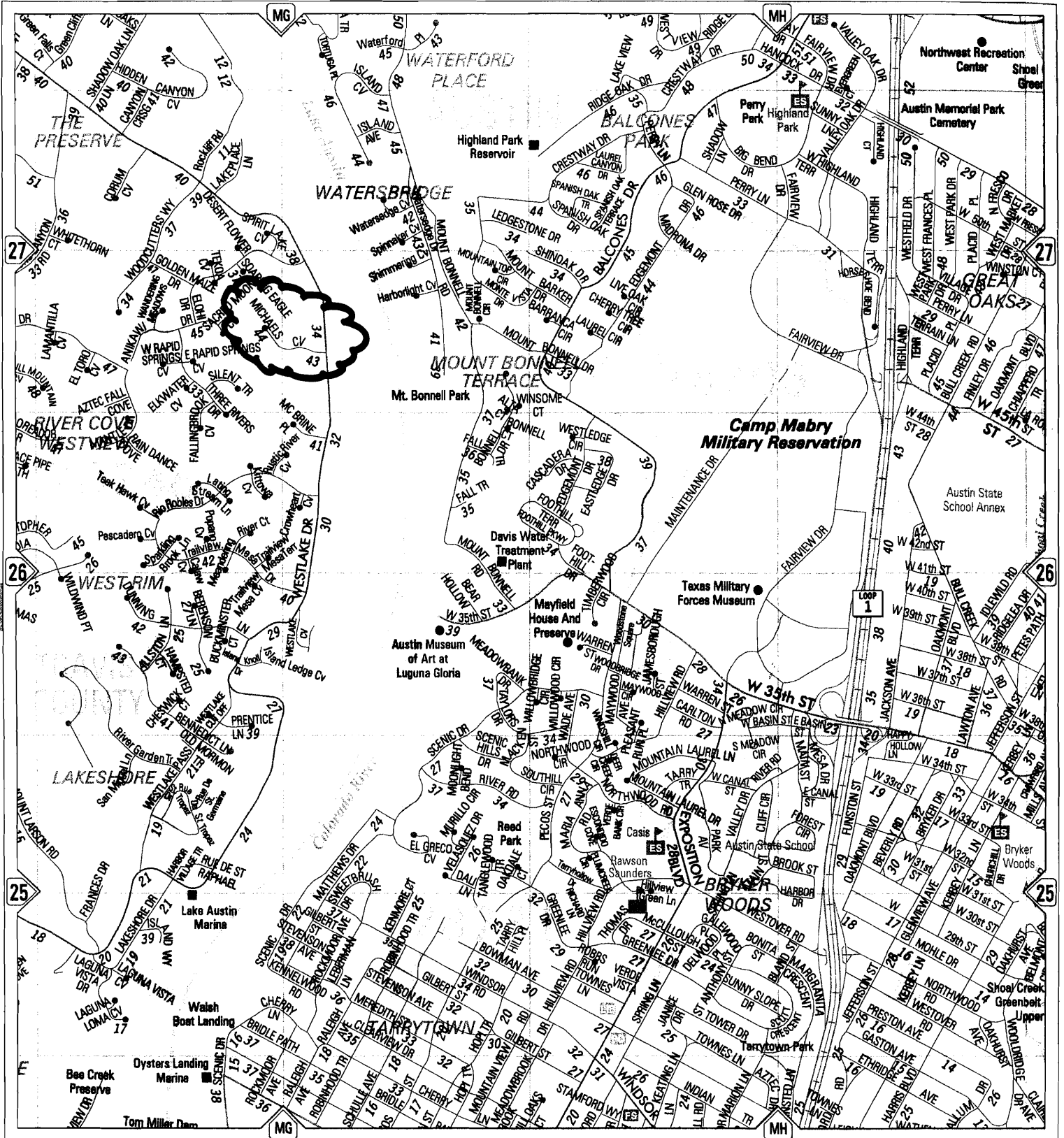
ASSOCIATION'S MANAGEMENT CO.

BRENDA WITWER
4405 Michaels Cove
AUSTIN TX 78746
Attn: HOA - President
(512) 306-0440
phone

Location Map



CONTINUED ON MAP 524



CONTINUED ON MAP 553

CONTINUED ON MAP 584

CONTINUED ON MAP 555

