

GF# 11-125203-AL

## STORMWATER DRAINAGE EASEMENT

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF TRAVIS

§

This Stormwater Drainage Easement (this "Easement") is entered into as of the Effective Date of this instrument by and between TIMOTHY P. SKAGGS and spouse, BRENDA F. SKAGGS (herein referred to as "Grantor") and JSJMCL, LLC, a Texas limited liability company (herein referred to as "Grantee").

WHEREAS, Grantor is the owner in fee simple of that certain real property described as that certain property described as "Tracts One, Two and Three" in Deed from Nancy Anne Whitaker to Tim Skaggs and wife, Brenda Skaggs, dated July 1, 1993, recorded in/under Volume 12007, Page 1764, of the Real Property Records of Travis County, Texas; SAVE AND EXCEPT that certain 2.737 acres of land conveyed in Right of Way Deed by Tim Skaggs and wife, Brenda Skaggs, to the City of Bee Cave, dated January 29, 2009, and recorded in Doc. No. 2009014077 and being corrected in Doc. No. 2009036806, of the Official Public Records of Travis County, Texas; and SAVE AND EXCEPT the Grantee Tract herein described and defined (collectively, the "Grantor Property");

WHEREAS, Grantee is the owner (or will become the owner on or about the date hereof) in fee simple of that certain real property described as Lot 1, Block A, HILL COUNTRY INDOOR SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof recorded on or about the date hereof in the Official Public Records of Travis County, Texas (the "Grantee Property");

WHEREAS, Grantor desires to grant and convey, and Grantee desires to accept, a non-exclusive stormwater drainage easement for the conveyance of stormwater whether naturally accumulated on the Grantee Property or otherwise (the "Easement Purpose") across and over that portion of the Grantor Property which is part of the easement areas described by metes and bounds in Exhibit "A-1" and as depicted in the renderings in Exhibit "A-2", both attached hereto and incorporated herein for all purposes (collectively, the "Easement Area") for the benefit of the Grantee Property on the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the payment of TEN and NO/100 DOLLARS, and other good and valuable consideration, Grantor hereby has GRANTED, GIVEN and CONVEYED and by these presents does GRANT, GIVE, and CONVEY unto Grantee, its successors and assigns, all those certain limited rights and interests in the nature of a limited, non-exclusive and perpetual easement for the Easement Purpose, over, across, and under the Easement Area on the following terms and conditions:

1. Non-Exclusive Nature of Easement. This Easement shall not create any additional rights of access or use of the Grantor Property other than those rights described in this Easement. It is expressly understood that the Easement rights herein conveyed are non-exclusive, and Grantor or future owners of any portion of the Grantor Property reserve the right to (i) use the Easement Area for all purposes which do not materially interfere with or prevent the use thereof by Grantee for the Easement Purpose; and (ii) convey to others the right to use all or part of the Easement Area in conjunction with Grantee and its successors and assigns, as long as such further conveyance is subject to the terms of this Easement.

2. Indemnity and Hold Harmless Agreement. Grantee covenants and agrees to indemnify and hold harmless Grantor and Grantor's heirs, personal representatives, successors and assigns from any and all claims, liability and damages resulting directly or indirectly from failure to perform Grantee's obligations hereunder, which damages shall include reasonable attorney's fees and costs of court.

3. No Dedication. No provision of this Easement shall ever be construed to grant or create any rights whatsoever in or to any portion of the Grantor Property other than the easements, covenants, conditions and restrictions specifically set forth herein. Nothing in this Easement shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever, and no lien is intended to be created in this instrument.

4. Modification and Termination. Except as provided in Section 8(l) below, this Easement may be modified, extended, amended or terminated only by written agreement approved by all of the owners of the Grantor Property and the Grantee Property, or their respective successors and assigns, as long as they have any interest as owner of any portion of the Grantor Property or the Grantee Property, respectively. Notwithstanding any provision of this Easement to the contrary, prior to the issuance of a building permit for improvements on either the Grantee Property or the Grantor Property, Grantor and Grantee, and their respective successors and assigns, agree to amend and incorporate the terms of this Easement into a Declaration of Covenants, Conditions and Restrictions ("CC&Rs") herein so called) which shall, among other things, provide that upon a building permit being issued for improvements on the Grantor Property, the maintenance obligations set forth above shall be shared on a pro-rata basis between the owner of the Grantee Property and the owner(s) of the Grantor Property. The CC&Rs shall also provide for Grantor's right to relocate the Easement Area upon Grantee's prior written approval, not to be unreasonably withheld, conditioned or delayed. To the extent of a conflict between the terms of this Easement and the CC&Rs, the CC&Rs shall control.

5. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land underlying the Grantor Property and Grantee Property. This Easement shall bind and inure to the benefit of Grantor, Grantee, and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

6. No Merger. It is expressly understood and agreed that the parties hereto do not intend that there be, and there shall in no event be, a merger of the dominant and servient tenements represented by the Grantee Property and the Grantor Property, respectively, by virtue of the present

or future ownership of any portion of said tenements being vested in the same person(s) or entity, but instead intend that the easement servitudes shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

7. **Estoppel Certificates.** Grantor (or any mortgagee holding a first lien security interest in any portion of the Grantor Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of the Grantor Property, or in connection with the financing or refinancing of the Grantor Property by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to Grantee requesting Grantee to execute a certificate certifying that, to the best of Grantee's knowledge, (i) Grantor is not in default in the performance of its obligations under this Easement, or, if in default, describing the nature and amount or degree of such default and (ii) such other information regarding the status of the obligations under this Easement as may be reasonably requested. Grantee (or any mortgagee holding a first lien security interest in any portion of the Grantee Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of the Grantee Property, or in connection with the financing or refinancing of the Grantee Property by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to Grantor requesting Grantor to execute a certificate certifying that, to the best of Grantor's knowledge, (i) Grantee is not in default in the performance of its obligations under this Easement, or, if in default, describing the nature and amount or degree of such default and (ii) such other information regarding the status of the obligations under this Easement as may be reasonably requested. Grantor or Grantee, as the case may be, shall execute and return such certificate within fifteen (15) days following its receipt of a request therefor.

8. **Miscellaneous:**

(a) **Equitable Rights of Enforcement.** This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Easement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

(b) **Attorney's Fees.** If either party retains an attorney to enforce this Easement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

(c) **Binding Effect.** This Easement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

(d) **Choice of Law.** This Easement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Area is located.

(e) **Counterparts.** This Easement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

(f) **Waiver of Default.** It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Easement does not preclude pursuit of other remedies in this Easement or provided by law.

(g) **Further Assurances.** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform

the terms, provisions, and conditions of this Easement and all transactions contemplated by this Easement.

(h) **Integration.** This Easement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Easement.

(i) **Legal Construction.** If any provision in this Easement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Easement will be construed as if the unenforceable provision had never been a part of the Easement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Easement agreement are for reference only and are not intended to restrict or define the text of any section. This Easement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

(j) **Notices.** Any notice required or permitted under this Easement agreement must be in writing. Any notice required by this Easement will be deemed to be delivered (whether actually received or not) upon three (3) calendar days after the date upon which such notice is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Easement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

(k) **Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

(l) **Right of Reversion.** In the event Grantee (i) has not acquired fee simple title to the Grantee Property or (ii) a final Plat covering the Grantee Property has not been recorded within thirty (30) days of the date of this Easement, Grantee's rights and interest in this Easement shall automatically revert back to Grantor and Grantee shall have no further rights under this Easement.

*[signature pages follow]*

EXECUTED on the dates witnessed below, to become effective as of the 28<sup>th</sup> day of January, 2013 (the "Effective Date" of this Easement).

GRANTOR:

By: Timothy P. Skaggs  
Timothy P. Skaggs

Date executed: 1/28, 2013

By: Brenda F. Skaggs  
Brenda F. Skaggs

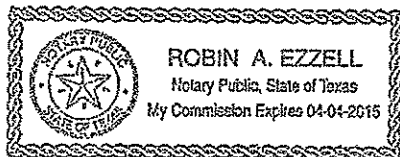
Date executed: 1/28, 2013

Grantor's Address for Notice Purposes:  
13618 West Highway 71  
Bee Cave, Texas 78738

ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

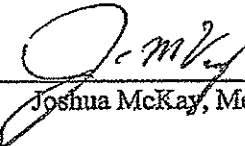
This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013, by Timothy P. Skaggs, and Brenda F. Skaggs.



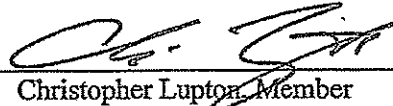
Robin A. Ezzell  
NOTARY PUBLIC, STATE OF TEXAS

GRANTEE:

JSJMCL, LLC, a Texas limited liability company

By:   
Joshua McKay, Member

Date executed: 1-28, 2013

By:   
Christopher Lupton, Member

Date executed: 1-28, 2013

By:   
Jeffrey Spillar, Member

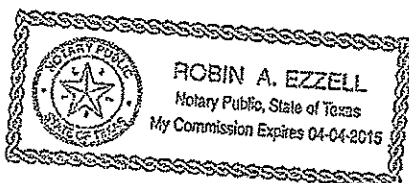
Date executed: 1-28, 2013

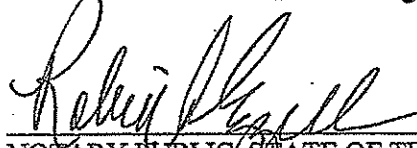
Grantee's Address for Notice Purposes:  
c/o Hill County Indoor, L.P.  
11715 Bee Caves Road, Suite 300  
Austin, Texas 78738

ACKNOWLEDGMENTS

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

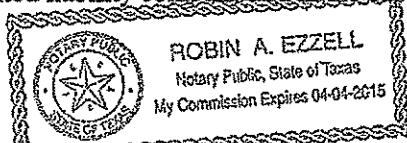
This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013, by Joshua C. McKay, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said limited liability company and in the capacity stated.

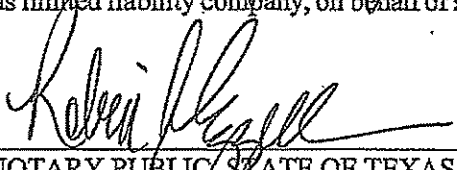


  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

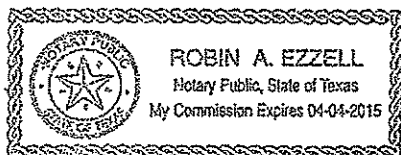
This instrument was acknowledged before me on the 28th day of January, 2013,  
by Jeffrey P. Spillar, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said  
limited liability company and in the capacity stated.

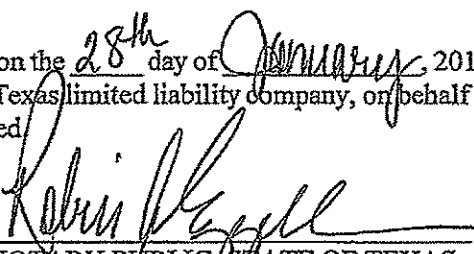


  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 28th day of January, 2013,  
by Christopher Lupton, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of  
said limited liability company and in the capacity stated.



  
NOTARY PUBLIC, STATE OF TEXAS

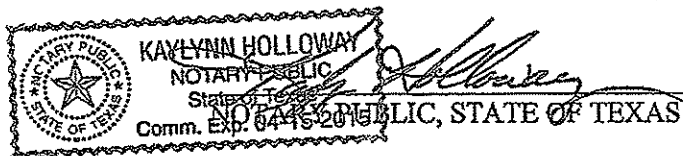
APPROVED AS TO FORM  
AND SUBSTANCE:

THE CITY OF BEE CAVE, TEXAS

By: Caroline Murphy  
Print Name: Caroline Murphy  
Title: Mayor

STATE OF TEXAS       §  
                                  §  
COUNTY OF Travis   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of January, 2013,  
by Caroline Murphy, Mayor of the City of Bee Cave, Texas, a  
Texas municipal corporation, on behalf of said corporation and in the capacity stated.



AFTER RECORDING RETURN TO:  
Capital Title Company  
Attn: Monica Middleton  
GF#:11-125203-AM  
6805 Austin Centre Blvd, Suite 127  
Austin, Texas 78731



## Exhibit A-1



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-389-0943

3500 McCall Lane  
Austin, Texas 78744

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**0.202 ACRES DRAINAGE EASEMENT  
CITY OF BEE CAVE  
TRAVIS COUNTY, TEXAS**

A DESCRIPTION OF 0.202 ACRES (APPROX. 8,794 SQ. FT.) IN THE I.G.&N. R.R. CO. SURVEY NO. 56, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 44.611 ACRE TRACT (TRACT ONE) CONVEYED TO TIM SKAGGS AND WIFE, BRENDA SKAGGS, BY WARRANTY DEED WITH VENDOR'S LIEN DATED JULY 1, 1993 AND RECORDED IN VOLUME 12007, PAGE 1764 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.202 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2" rebar with "Chaparral" cap set in the south right-of-way line of Bee Cave Parkway (right-of-way width varies), described in Document No. 2009036806 of the Official Public Records of Travis County, Texas, same being the northwest termination of proposed Skaggs Drive (60' right-of-way width private street) and also being the northwest corner of proposed Lot 2, Block A, HCI subdivision, from which a cotton spindle found in the south right-of-way line of Bee Cave Parkway, being the west line of said 44.611 acre tract, same being the east line of a 1.36 acre road easement described in Volume 3715, Page 544 of the Deed Records of Travis County, Texas and Document No. 2011095482 of the Official Public Records of Travis County, Texas, bears South 77°46'22" West, a distance of 942.24 feet;

THENCE with the west right-of-way of proposed Skaggs Drive, same being the west line of proposed Lot 2, across said 44.611 acre tract, the following five (5) courses and distances:

1. With a curve to the right, an arc distance of 39.28 feet, a delta angle of 90°01'31", having a radius of 25.00 feet and chord which bears South 57°14'24" East, a distance of 35.36 feet to a 1/2" rebar with "Chaparral" cap set;
2. South 12°13'56" East, a distance of 224.71 feet to a 1/2" rebar with "Chaparral" cap set;
3. With a curve to the right, an arc distance of 229.74 feet, a delta angle of 48°44'47", having a radius of 270.03 feet and a chord which bears South 12°08'28" West, a distance of 22.87 feet to a 1/2" rebar with "Chaparral" cap set;
4. South 36°30'52" West, a distance of 38.51 feet to a 1/2" rebar with "Chaparral" cap set;

5. South  $53^{\circ}29'08''$  East, a distance of 22.50 feet to a calculated point for the **POINT OF BEGINNING**;

**THENCE** continuing across said 46.111 acre tract, the following seventeen (17) courses and distances:

1. North  $36^{\circ}30'52''$  East, a distance of 38.51 feet to a calculated point;
2. With a curve to the left, an arc distance of 248.88 feet, a delta angle of  $48^{\circ}44'47''$ , having a radius of 292.53 feet and a chord which bears North  $12^{\circ}08'28''$  East, a distance of 241.44 feet to a calculated point;
3. North  $12^{\circ}13'56''$  West, a distance of 25.60 feet to a calculated point;
4. North  $77^{\circ}46'04''$  East, a distance of 15.00 feet to a calculated point;
5. South  $12^{\circ}13'56''$  East, a distance of 25.60 feet to a calculated point;
6. With a curve to the right, an arc distance of 7.91 feet, a delta angle of  $01^{\circ}28'25''$ , having a radius of 307.53 feet and a chord which bears South  $11^{\circ}29'43''$  East, a distance of 7.91 feet to a calculated point;
7. North  $32^{\circ}46'05''$  East, a distance of 17.61 feet to a calculated point;
8. South  $57^{\circ}13'55''$  East, a distance of 15.00 feet to a calculated point;
9. South  $32^{\circ}46'05''$  West, a distance of 34.62 feet to a calculated point;
10. With a curve to the right, an arc distance of 231.05 feet, a delta angle of  $43^{\circ}02'49''$ , having a radius of 307.53 feet and a chord which bears South  $14^{\circ}59'28''$  West, a distance of 225.65 feet to a calculated point;
11. South  $36^{\circ}30'48''$  West, a distance of 207.70 feet to a calculated point;
12. South  $59^{\circ}42'25''$  East, a distance of 23.22 feet to a calculated point;
13. South  $38^{\circ}26'28''$  East, a distance of 31.93 feet to a calculated point;
14. South  $31^{\circ}35'53''$  West, a distance of 15.96 feet to a calculated point;
15. North  $38^{\circ}26'28''$  West, a distance of 34.56 feet to a calculated point;
16. North  $59^{\circ}42'25''$  West, a distance of 37.13 feet to a calculated point;
17. North  $36^{\circ}30'46''$  East, a distance of 185.91 feet to the **POINT OF BEGINNING**,

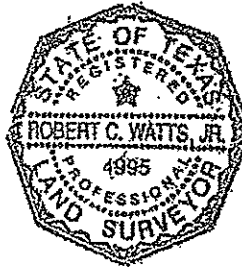
Page 3

containing 0.202 acres of land, more or less.

Surveyed on the ground in February, 2012. Bearing Basis: Grid azimuth for Texas Central Zone state plane coordinates, NAD 1983, based on GPS solutions from The National Geodetic Survey (NGS) On-line Positioning User Service (OPUS).  
Attachments: Survey Drawing No. 844-001-DE3.

*mw* 5 12-10-12

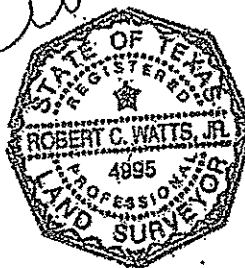
Robert C. Watts, Jr.      Date  
Registered Professional Land Surveyor  
State of Texas No. 4995



SKETCH TO ACCOMPANY A DESCRIPTION OF 0.202 ACRES (APPROX. 8,794 SQ. FT.) IN THE I.G.&N. R.R. CO. SURVEY NO. 56, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 44.611 ACRE TRACT (TRACT ONE) CONVEYED TO TIM SKAGGS AND WIFE, BRENDA SKAGGS, BY WARRANTY DEED WITH VENDOR'S LIEN DATED JULY 1, 1993 AND RECORDED IN VOLUME 12007, PAGE 1764 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS.

LEGEND

- ⊙ 1/2" REBAR FOUND
- \* COTTON SPINDLE FOUND
- 1/2" REBAR WITH "CHAPARRAL" CAP SET
- △ CALCULATED POINT



12-10-12

LINE TABLE

No.	BEARING	LENGTH
L1	S36°30'52"W	38.51'
L2	S53°29'08"E	22.50'
L3	N36°30'52"E	38.51'
L4	N12°13'56"W	25.60'
L5	N77°46'04"E	15.00'
L6	S12°13'56"E	25.60'
L7	N32°46'05"E	17.61'
L8	S57°13'55"E	15.00'
L9	S32°46'05"W	34.62'
L10	S36°30'48"W	207.70'
L11	S59°42'25"E	23.22'
L12	S38°26'28"E	31.93'
L13	S31°35'53"W	15.96'
L14	N38°26'28"W	34.56'
L15	N59°42'25"W	37.13'
L16	N36°30'46"E	185.91'

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD	TANGENT
C1	25.00'	90°01'31"	39.28'	S57°14'24"E	35.36'	25.01'
C2	270.03'	48°44'47"	229.74'	S12°08'28"W	222.87'	122.34'
C3	292.53'	48°44'47"	248.86'	N12°08'28"E	241.44'	132.53'
C4	307.53'	1°28'25"	7.91'	S11°29'43"E	7.91'	3.95'
C5	307.53'	43°02'49"	231.05'	S14°59'28"W	225.65'	121.28'

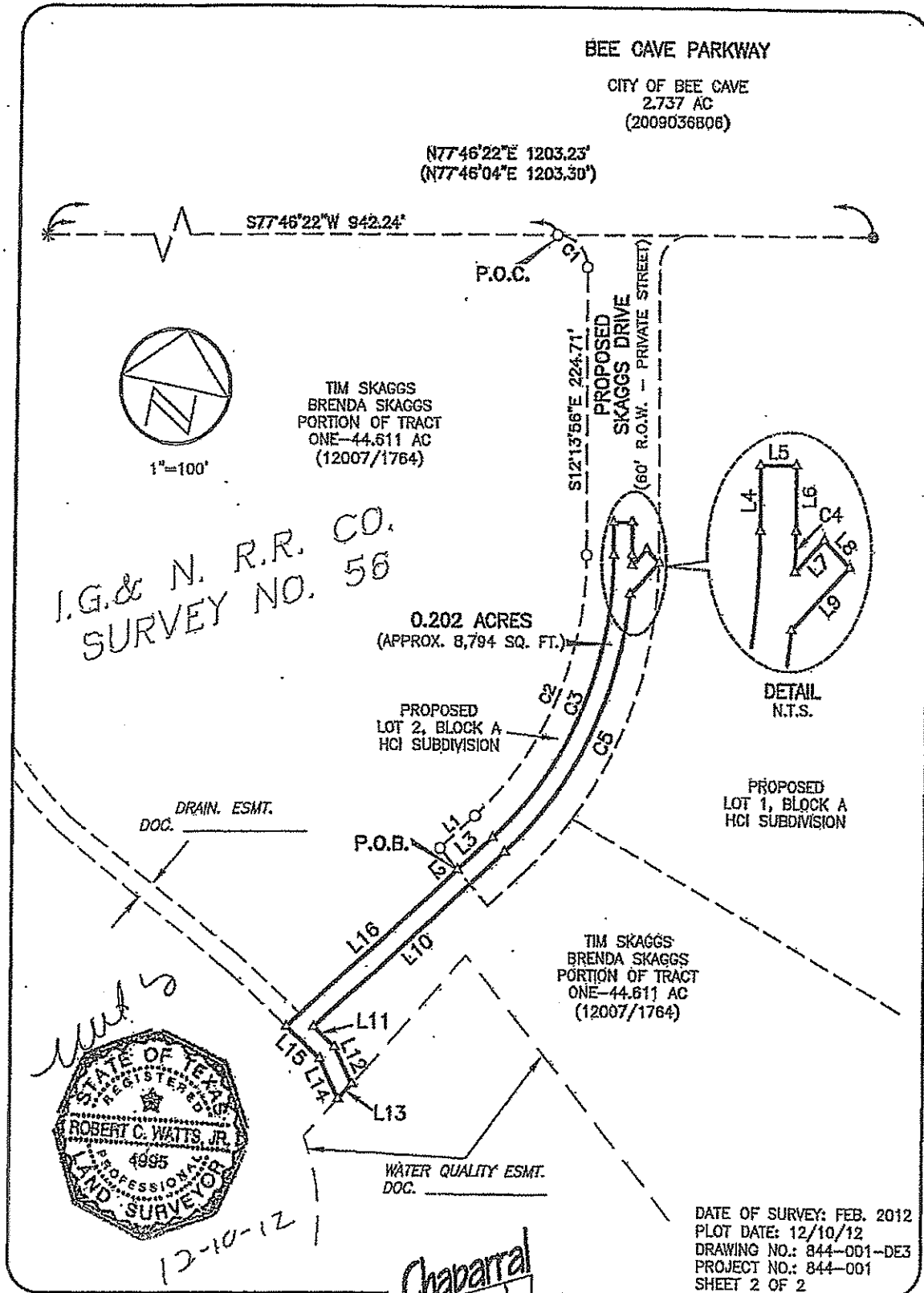
BEARING BASIS: GRID AZIMUTH FOR TEXAS  
CENTRAL ZONE STATE PLANE COORDINATES,  
1983/93 HARN, BASED ON GPS SOLUTIONS  
FROM THE NATIONAL GEODETIC SURVEY (NGS)  
ON-LINE POSITIONING USER SERVICE (OPUS).

ATTACHMENTS: METES AND BOUNDS  
DESCRIPTION 844-001-DE3

Chaparral

DATE OF SURVEY: FEB. 2012  
PLOT DATE: 12/10/12  
DRAWING NO.: 844-001-DE3  
PROJECT NO.: 844-001  
SHEET 1 OF 2

# Exhibit A-2





**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS**

*Dana Debeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

January 30 2013 01:41 PM

FEE: \$ 68.00 2013017833