

GF# 11-125203-AL

JOINT ACCESS EASEMENT AND DRIVEWAY CONSTRUCTION AGREEMENT

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

§

This Joint Access Easement and Driveway Construction Agreement (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, Grantee intends to construct an indoor and outdoor sports recreation facility on, over and across the Grantee Property subject to subdivision, site plan and construction plans and specifications approved therefore by the City of Bee Cave, Texas (collectively the "Grantee's Project")

WHEREAS, Grantor desires to grant and convey, and Grantee desires to accept, a non-exclusive joint access easement for the benefit of the Grantee Property (the "Easement Purpose") across and under that portion of the Grantor Property which is part of the easement area as described by metes and bounds in Exhibit "A-1" attached hereto and incorporated herein for all purposes, and as depicted in the rendering in Exhibit "A-2", attached hereto and incorporated herein for all purposes (the "Easement Area") 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. Construction of Joint Access Easement Driveway. Within eighteen (18) months of obtaining a site permit for development of Grantee's Project on Grantee's Property, Grantee agrees to construct, at its sole cost and expense, a joint access driveway ("Driveway") in, over and across the Easement Area. Grantee shall: (a) perform all such construction and work in such a way as to minimize interference with the operation of the Grantor Property, or occupants or licensees thereof; (b) obtain, prior to the commencement of any construction and work for the Driveway, all necessary federal, state and municipal permits, licenses and approvals. In the event Grantee has not constructed the Driveway within eighteen (18) months of obtaining site plan approval therefor, all of Grantee's rights and interests under this Easement shall automatically revert to Grantor and Grantee shall have no further rights under this Easement. A written affidavit by Grantor filed in the Official Public Records of Travis County certifying that Grantee failed to construct the Driveway within the aforementioned period shall suffice as proof of the failure of such condition and the reversion of Grantee's rights and interests under this Easement. Grantee shall keep the Easement Area and Grantor's Property free of mechanics liens and claims resulting from Grantee's construction of the Driveway or any other actions taken by Grantee within the Easement Area.

2. Maintenance, Repairs and Replacement. If and only after construction of the Driveway has been completed by Grantee, Grantee shall solely be responsible for maintaining the Driveway in good repair and condition. In the event Grantor believes the Driveway, or any portion thereof, is in need of repair, maintenance, or replacement, Grantor shall give notice to Grantee to such effect which notice shall describe the maintenance, repair, or replacement activity required. Grantee shall then have ten (10) days to advise Grantor in writing if it contests the claims of Grantor, such contest to be substantiated and accompanied by a written professional opinion of a licensed civil engineer. Grantor and Grantee shall use good faith efforts to agree upon the maintenance, repair or replacement activity required. Grantee's failure to provide such notice timely shall constitute Grantee's agreement to make or perform the repair, maintenance, or replacement (at Grantee's sole cost and expense), which shall commence within thirty (30) days of receipt of notice from Grantor and shall be completed within ninety (90) days thereafter.

3. No Barrier Agreement. Each party agrees, on behalf of itself and its successors and assigns, that it will not erect, construct, or install any signage, buildings, barriers or other improvements on any portion of the Driveway that obstruct or diminish the access of the other party and its successors, assigns, mortgagees, employees, agents, customers, licensees, invitees and lessees on, over or across the Driveway to and from nearby public thoroughfares, private roadways, driveways, intersections and rights of way. No parking shall be allowed in the Driveway.

4. Insurance. The owner of the Grantee Property, as applicable, shall at all times after final completion of construction of the Driveway maintain, or cause to be maintained, in full force and effect, comprehensive general liability insurance underwritten by an insurance company or companies licensed to do business in the State of Texas and insuring the Easement. Coverage limits of such commercial general liability insurance shall be at least One Million and No/100 Dollars (\$1,000,000.00), combined single limits for bodily injury, death, and property damage per occurrence. Such liability insurance shall name the owner of the Grantor Property as an additional

insured and shall include a waiver of subrogation in favor of the owner of the Grantor Property. The owner of the Grantee Property shall furnish to the owner of the Grantor Property from time to time evidence that the insurance referred to herein is in full force and effect and that the premiums therefore have been paid. Such insurance shall provide that the same may not be canceled, reduced, or materially amended without at least ten (10) days prior written notice being given by the insurer to the owner of the Grantor Property.

5. 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.

6. 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. In the event of a breach or threatened breach of this Easement, only the owners of the Grantor Property and the Grantee Property shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach.

7. Entire Agreement. This Easement constitutes the entire agreement between the parties hereto as to the Driveway. The parties do not rely upon any statement, promise or representation not herein expressed, and this Easement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this Easement.

8. Modification and Termination. Except as provided in Section 1 above, 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 the issuance of a building permit 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.

9. Severability. If any provision of this Easement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

10. 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.

11. 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.

12. 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.

13. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this document nor in any way affect the terms and provisions hereof.

14. Easement Not Exclusive. The easements granted herein are not exclusive and Grantor shall have the right to grant such other easements, rights or privileges on, over, under or across Grantor's Property to such persons and for such purposes as Grantor may determine in its sole discretion, provided expressly, however, that such easements, rights, privileges or purposes do not unreasonably interfere with the easements granted herein.

15. 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.

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

(c) *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.

(d) *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.

(e) *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.

(f) *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.

[signature page follows]

EXECUTED on the dates witnessed below, to become effective as of the 28th 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

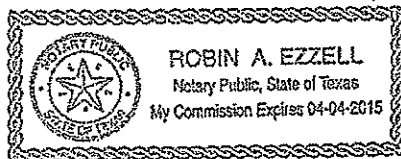
Date executed: 1/28, 2013

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 28th 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: [Signature]
Joshua McKay, Member

Date executed: 1-28, 2013

By: [Signature]
Christopher Lupton, Member

Date executed: 1-28, 2013

By: [Signature]
Jeffrey Spillar, Member

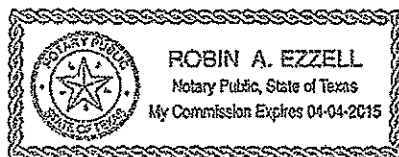
Date executed: 1-28, 2013

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 §

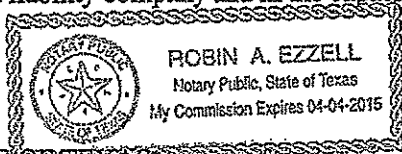
This instrument was acknowledged before me on the 28th day of January, 2013, by Joshua C. McKay, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said limited liability company and in the capacity stated.

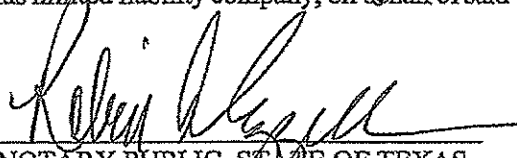


[Signature]
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
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COUNTY OF TRAVIS §.

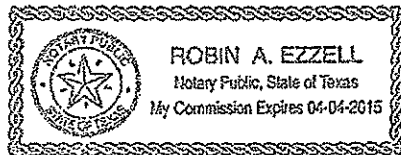
This instrument was acknowledged before me on the 28th day of January, 2013, by Jeffrey P. Spillar, Member of JSJMCL, LLC, a Texas limited liability company, on behalf of said limited liability company and in the capacity stated.

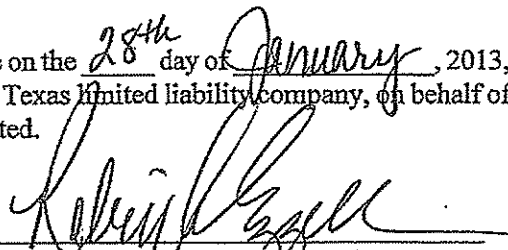



NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
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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

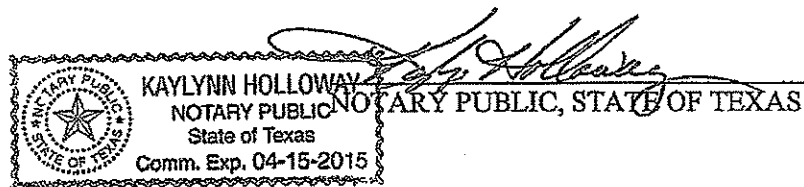
APPROVED AS TO FORM
AND SUBSTANCE:

THE CITY OF BEE CAVE, TEXAS

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

STATE OF TEXAS §
 §
COUNTY OF Texas §

This instrument was acknowledged before me on the 29th 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

**0.812 ACRES JOINT USE AND ACCESS EASEMENT
CITY OF BEE CAVE
TRAVIS COUNTY, TEXAS**

A DESCRIPTION OF 0.812 ACRES (APPROX. 35,375 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 0.812 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 northeast termination of proposed Skaggs Drive (60' right-of-way width private street) and also being in the north line of proposed Lot 1, 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 1052.56 feet;

THENCE crossing said 44.611 acre tract, with the east right-of-way line of proposed Skaggs Drive, same being the west line of said proposed Lot 1, the following three (3) courses and distances:

1. With a curve to the left, an arc distance of 39.27 feet, a delta angle of 90°00'19", having a radius of 25.00 feet and a chord which bears South 32°46'14" West, 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 221.12 feet, a delta angle of 38°23'17", having a radius of 330.03 feet and a chord which bears South 06°57'43" West, a distance of 217.01 feet to a 1/2" rebar with "Chaparral" cap set for the southwest corner of said proposed Lot 1 and the POINT OF BEGINNING:

THENCE South 73°16'14" East, crossing said 44.611 acre tract, with the south line of said proposed Lot 1, a distance of 413.21 feet to a calculated point, from which a 1/2"

rebar with "Chaparral" cap set for an angle point in the south line of said proposed Lot 1, bears South 73°16'14" East, a distance of 104.43 feet;


THENCE continuing across said 44.611 acre tract, the following four (4) courses and distances,

- 1 South 13°40'25" West, a distance of 68.97 feet to a calculated point;
2. South 48°45'52" West, a distance of 65.54 feet to a calculated point;
3. With a curve to the left, an arc distance of 126.03 feet, a delta angle of 30°01'01", having a radius of 240.56 feet and a chord which bears North 50°48'09" West, a distance of 124.59 feet to a calculated point;
4. North 73°15'57" West, a distance of 288.89 feet to a calculated point in the east right-of-way line of proposed Skaggs Drive, from which a 1/2" rebar with "Chaparral" cap set for the southeast termination of proposed Skaggs Drive, bears South 36°30'52" West, a distance of 18.18 feet;

THENCE continuing across said 44.611 acre tract, with the east right-of-way line of proposed Skaggs Drive, the following two (2) courses and distances:

1. North 36°30'52" East, a distance of 20.34 feet to a 1/2" rebar with "Chaparral" cap set;
2. With a curve to the left, an arc distance of 59.67 feet, a delta angle of 10°21'30", having a radius 330.03 feet and a chord which bears North 31°20'07" East, a distance of 59.58 feet to the POINT OF BEGINNING, containing 0.812 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-JUAE.

 08/10/2012
Paul L. Easley Date
Registered Professional Land Surveyor
State of Texas No. 4432

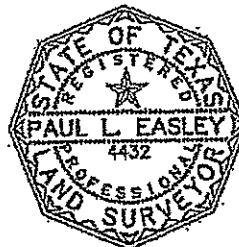
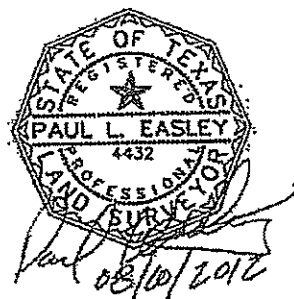


Exhibit A-2

SKETCH TO ACCOMPANY A DESCRIPTION OF 0.812 ACRES (APPROX. 35,375 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.

LINE TABLE		
No.	BEARING	LENGTH
L1	S13°40'25"W	68.97'
L2	S48°45'52"W	65.54'
L3	N36°30'52"E	20.34'
L4	S36°30'52"W	18.18'



CURVE TABLE						
NO.	DELTA	RADIUS	TAN	ARC	CHORD	BEARING
C1	90°00'19"	25.00'	25.00'	39.27'	35.36'	S32°46'14"W
C2	38°23'17"	330.03'	114.89'	221.12'	217.01'	S06°57'43"W
C3	30°01'01"	240.56'	64.50'	126.03'	124.59'	N50°48'09"W
C4	10°21'30"	330.03'	29.91'	59.67'	59.58'	N31°20'07"E

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-JUAE

DATE OF SURVEY: FEB. 2012
PLOT DATE: 08/09/2012
DRAWING NO.: 844-001-JUAE
PROJECT NO.: 844-001
SHEET: 1 OF 2

Chaparral

BEE CAVE PARKWAY

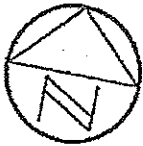
CITY OF BEE CAVE
2.737 AC
(2009036806)

N77°48'22"E 1203.23'
(N77°46'04"E 1203.30')

P.O.C.

S77°48'22"W 1052.26'

150.97'



1"=100'

PROPOSED SKAGGS DRIVE
(60' R.O.W. - PRIVATE STREET)

S12°13'56"E 224.71'

LEGEND

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

PROPOSED
LOT 1, BLOCK A
HCI SUBDIVISION

TIM SKAGGS
BRENDA SKAGGS
PORTION OF TRACT
ONE-44.611 AC
(12007/1764)

P.O.B.

CA
44.13

S73°16'14"E 413.21'
APPROX. 35,375 SQ. FT.
0.812 ACRES
N73°15'57"W 288.89'

S73°16'14"E 517.83'

104.43'

DATE OF SURVEY: FEB. 2012
PLOT DATE: 08/09/2012
DRAWING NO.: 844-001-JUAE
PROJECT NO.: 844-001
SHEET: 2 OF 2

Chaparral



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana Debeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

January 30 2013 01:41 PM

FEE: \$ 68.00 2013017835