

ITEM 15

Travis County Commissioners Court Agenda Request

Meeting Date: November 13, 2012

Prepared By: John Ellis **Phone #:** 854-9805

Division Director/Manager: Anna Bowlin, Division Director, Development Services and Long Range Planning

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

Sponsoring Court Member: Commissioner Huber, Precinct Three

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests in Precinct Three:

- A) An exemption from platting requirements for Southwest Hills Condominiums – Seven (7) commercial units; and
- B) A Condominium Construction Agreement.

BACKGROUND/SUMMARY OF REQUEST:

The proposed condominium project includes 7 commercial units. Each unit will require a separate basic development permit in order to develop. The condominium regime is structured to allow access between units and will allow the entire development to take access from U.S. 71 and Rimrock Trail. Units 3 through 7 are part of the condominium construction agreement which details the construction of future access drives to serve these Units. Units 1 and 2 have not been included in the agreement since adequate access can be provided for each unit independent of the development of the other units.

Fire Marshal's Office review will be required for each unit as they develop as part of the basic development permit application process.

Water will be provided to each commercial unit by an existing approved public water system. Each unit will also be required to provide on-site sewerage facilities permitted by Travis County. Detention facilities will be provided for each unit; however, the condominium regime, as well as the drainage easement recorded for Units 3 through 7, allow for units to share a stormwater facility.

STAFF RECOMMENDATIONS:

Since the condominium construction agreement, drainage easement document and condominium regime provide for the orderly development of the site, TNR staff supports granting an exemption to platting for the proposed condominium project.

ISSUES AND OPPORTUNITIES:

None.

FISCAL IMPACT AND SOURCE OF FUNDING:

None.

EXHIBITS/ATTACHMENTS:

Site location map

Condo Regime Exhibits

Construction agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Anna Bowlin	Division Director	TNR	854-7561

CC:

JE:JE:

1101 - Development Svs- Southwest Hills Condominiums

T R A V I S

Austin Zoo
D Morgan Rd

Blue Hill Dr

Barton Creek 4

Escala Ct

South West Pkwy

71

Rialto Blvd

Old Bee Caves Rd

Circle Dr

Pitter Pat Ln

WEST OAK HILL

OAK H Forest Oaks Memorial Park

Poncha Pass

290

290

Baxter Ln

1826

Southwest Hills Condo Site

Reckert Rd

Rim Rock Trail

Young Ln

W Slaughter Ln

Fleenor Dr

Zyle Rd

1826

CIRCLE C RANCH

Loop 1

Mopac Blvd

45

45

Wolfr

Belterra Ct

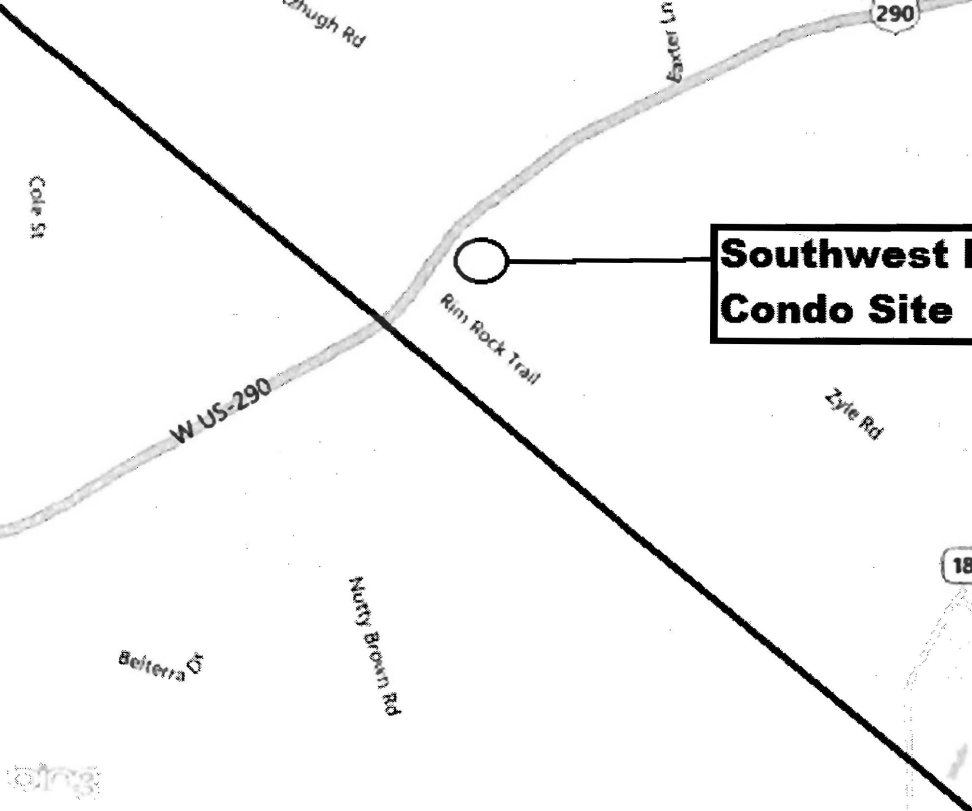
Nutty Brown Rd

Long Branch Dr

Fitzhugh Rd

Cole St

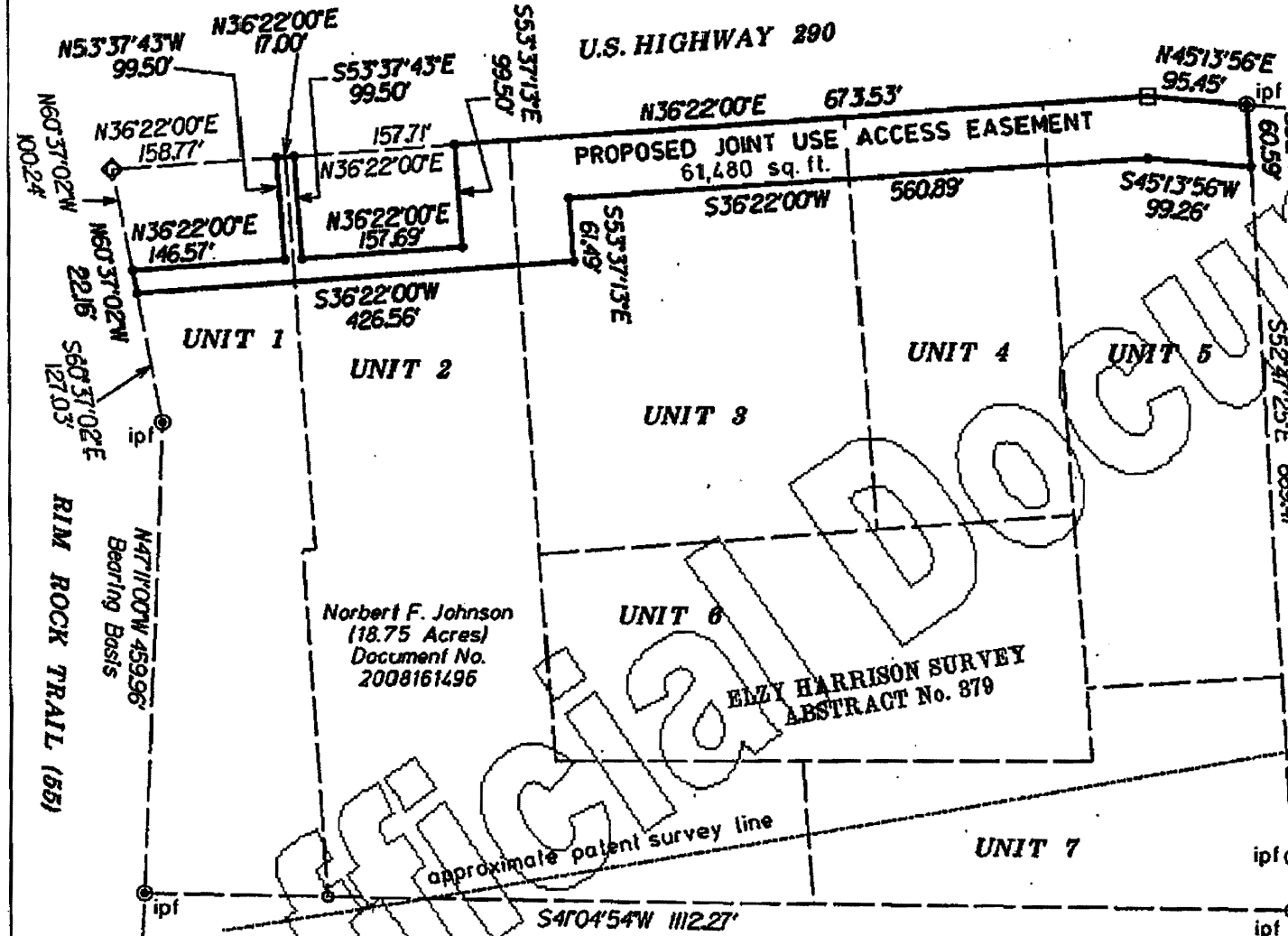
W US-290



SCALE: 1"=150'

LEGEND

- ipl 1/2" Iron Pipe Found
- 1/2" Iron Rod Found
- Concrete Monument Found
- 1/2" Iron Rod Found with Cap Marked Holt Carson, Inc.
- Calculated Point



Norbert F. Johnson
(18.75 Acres)
Document No.
2008161496

ELZY HARRISON SURVEY
ABSTRACT No. 879

Armstrong, Holden Family, L.C.
18.285 Acres/
Volume 12083 Page 352



PREPARED: November 24, 2010
BY:

Anne Thayer
Registered Professional
Land Surveyor No. 5850

HOLT CARSON, INC.
1904 FORTVIEW ROAD
AUSTIN, TX 78704
(512) 442-0990

818130

EXHIBIT G

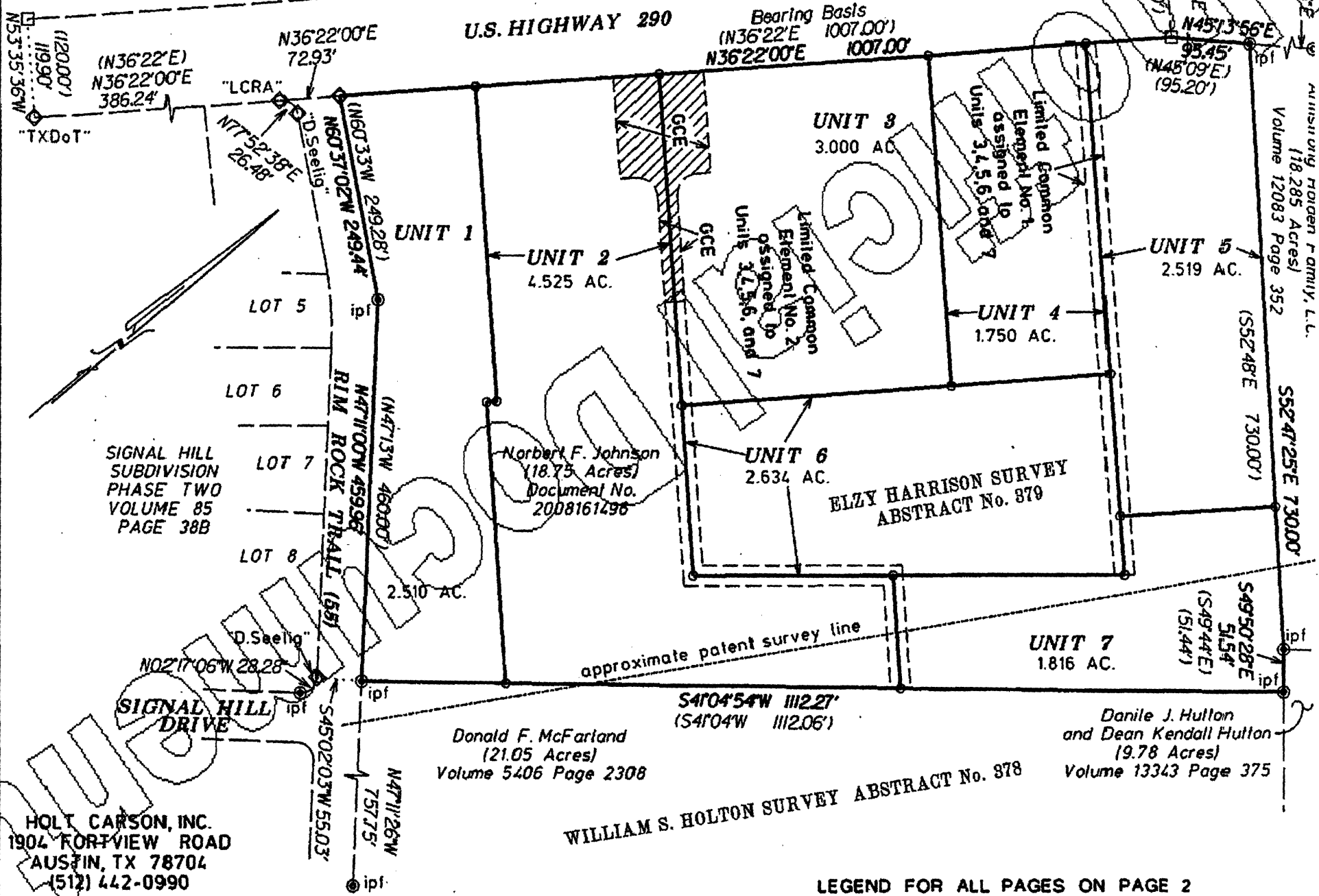
Page 1 of 3

SKETCH TO ACCOMPANY FIELD NOTE DESCRIPTION OF A JOINT USE ACCESS EASEMENT OVER AND ACROSS A PORTION OF THAT CERTAIN (18.75 ACRE) TRACT OF LAND OUT OF THE ELZY HARRISON SURVEY, ABSTRACT NO. 379 AND THE WILLIAM S. HOLTON SURVEY, ABSTRACT NO. 378 IN TRAVIS COUNTY, TEXAS, WHICH WAS CONVEYED TO NORBERT F. JOHNSON AS RECORDED IN DOCUMENT NO. 2008161496 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

Plat of
SOUTHWEST HILLS

page 1 of 6

SCALE: 1"=150'



HOLT CARSON, INC.
1904 FORTVIEW ROAD
AUSTIN, TX 78704
(512) 442-0990

Donald F. McFarland
(21.05 Acres)
Volume 5406 Page 2308

Danile J. Hutton
and Dean Kendall Hutton
(9.78 Acres)
Volume 13343 Page 375

WILLIAM S. HOLTON SURVEY ABSTRACT No. 878

LEGEND FOR ALL PAGES ON PAGE 2

**SOUTHWEST HILLS CONDOMINIUM
CONDOMINIUM CONSTRUCTION AGREEMENT**

Travis County, Texas

THIS CONDOMINIUM CONSTRUCTION AGREEMENT (this “**Agreement**”) is made and entered into by and between Norbert Johnson, 4424 Gaines Ranch Loop, Apt 330, Austin, Texas 78735 (“**Developer**”), and Travis County, Texas, P.O. Box 1748, Austin, Texas 78767 (the “**County**”), hereinafter collectively referred to as the “**Parties**”, for the purposes and consideration stated.

A. Johnson is the owner of that certain real property in Travis County, Texas being more particularly described on **Exhibit “A”** attached hereto and made a part hereof for all purposes (“the “**Property**”).

B. The Property is proposed for commercial development only, and residential use of the Property or any part thereof is expressly prohibited;

C. The Developer and the County desire to provide for the orderly development of the Property, in multiple phases, including the completion of a private drive (the “**Private Drive**”) that is necessary to provide ingress, egress and access to and from each Unit of the Property and adjacent public rights-of-way, and the creation of drainage easements (the “**Drainage Easement**”) to provide for the discharge and conveyance of storm water runoff from each Unit.

D. The Private Drive is described and indicated on the condominium plat for the Property (the “**Plat**”) which Plat is defined in that certain Condominium Declaration recorded in Document No. 2010176545, Official Public Records of Travis County, Texas.

E. The Drainage Easement is described and indicated in that certain Declaration of Drainage Easement, a copy of which is attached as **Exhibit “B”** hereto and incorporated herein for all purposes, and which will be recorded concurrently with execution of this Agreement in the Official Public Records of Travis County, Texas.

F. The Developer and the County desire to establish a process to coordinate the improvement of the Private Drive with the proposed development of the Property;

NOW, THEREFORE, in consideration of these premises and the promises contained herein, the Developer and the County agrees as follows:

1. Subject to the terms in this Agreement, Travis County hereby grants the Developer an exemption from the requirement that the Developer prepare, obtain County approval for, and file in the official public records of the County a subdivision plat for the Property.

2. Subject to the conditions contained in this paragraph, and upon approval by the County of construction plans for the development of the initial Unit within the Property, the County will issue a development permit to Developer for construction of that portion of the Private Drive that would allow ingress, egress and access from the adjacent public right-of-way to the particular Unit proposed for development. From time to time thereafter, Developer will make application for the issuance of a development permit for construction of any additional portion of the Private Drive necessary to serve a subsequent Unit proposed for development, and will provide construction plans acceptable to the County to depict such additional development. Prior to the occupancy of any improvements on any Unit in the Property (each, a "Developed Unit"), Developer will be required to complete that portion of the Private Drive necessary to serve such Developed Unit, in accordance with construction plans approved by the County. Completion of the applicable portion of the Private Drive will be evidenced by a letter of concurrence (the "Concurrence Letter") from a licensed professional engineer certifying that such portion of the Private Drive necessary to serve a Developed Unit has been completed in accordance with the construction plans approved by the County. Upon delivery to and approval by the County of the Concurrence Letter, the County shall execute, acknowledge and deliver to then current owner of such Developed Unit, an instrument in the form of **Exhibit "C"** for recordation in the Official Public Records of Travis County, Texas, thereby releasing the Developed Unit (and only such Developed Unit) from all of the terms, provisions and requirements of this Condominium Construction Agreement. All Units not expressly released by the County, shall remain subject to the terms, provisions and requirements of this Condominium Construction Agreement, until released by the County in the manner specified herein.

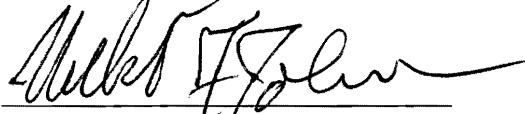
3. If the Developer makes any revision to the construction plans for a particular phase of the development which modify the Private Drive or the phasing plan reflected on such construction plans, and such revision is revised and approved, the County and the Developer will, to the extent required, either amend this Agreement or enter into an additional or supplemental agreement(s) to coordinate the phasing process and the future improvements of the Private Drive.

4. Miscellaneous Provisions. All rights, privileges, and remedies afforded the Parties are cumulative and not exclusive and the exercise of any remedy will not be deemed a waiver of any other right, remedy, or privilege. The Parties agree that the granting of equitable remedies may, and probably will, be necessary in the event of a violation of the restriction. If any provision of this Agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain between the Parties, this agreement will construed as if the unenforceable provision had never been a part of this agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXECUTED to be effective on the date fully executed by the parties.

JOHNSON:



Norbert F. Johnson

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this 15th day of Oct, 2012, by **Norbert Johnson,**



Notary Public Signature



TRAVIS COUNTY, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

The instrument was acknowledged before me on the day of _____, 2012, by _____, _____ of Travis County, Texas in the capacity stated.

Notary Public, State of Texas

After Recording Return to:

EXHIBIT A

DESCRIPTION OF THE JOHNSON PROPERTY

Units 3, 4, 5, 6 and 7, SOUTHWEST HILLS CONDOMINIUM, a Condominium Project in Travis County, Texas, together with the limited common elements and an undivided interest in and to the general common elements, as defined in that Condominium Declaration recorded in Document No. 2010176545, Official Public Records of Travis County, Texas (each a “Unit” and collectively, the “Property”).

EXHIBIT "B"

DECLARATION OF DRAINAGE EASEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Declaration (this "Declaration") is made to be effective the ___ day of _____, 2012 by **NORBERT F. JOHNSON**, an individual of Travis County, Texas ("Declarant").

W I T N E S S E T H:

A. WHEREAS, Declarant owns certain property situated in Travis County, Texas described as:

Units 3, 4, 5, 6 and 7, SOUTHWEST HILLS CONDOMINIUM, a Condominium Project in Travis County, Texas, together with the limited common elements appurtenant to such units and an undivided interest in and to the general common elements, as defined in that Declaration of Condominium Regime for Southwest Hills Condominium recorded in Document No. 2010176545, Official Public Records of Travis County, Texas (each a "Unit" and collectively, the "Property");

B. WHEREAS, Declarant desires to grants and convey to the Owner of each Unit a drainage easement over the Property, for the purpose of the discharge and conveyance of storm water runoff from each Unit.

NOW THEREFORE, for good and valuable consideration, Declarant hereby declares that the Property shall be impressed with the following easement, which shall run with the Property and be binding upon all parties having any right, title or interest in said Property or any part thereof, and their respective successors and assigns.

AGREEMENTS:

1. **Recitals Incorporated.** The above Recitals and all terms defined therein are incorporated into this Declaration for all purposes.

2. **Definitions.** For the purpose of this Declaration, the following terms shall have the meanings hereinafter specified:

a. **Owner:** The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of a Unit and their respective successors and assigns.

3. **Easement to the Owners.** Declarant hereby GRANTS AND CONVEYS and by these presents does GRANT AND CONVEY unto each Owner, a non-exclusive, permanent easement over and across the Property, for the purpose of the discharge and conveyance of storm water runoff from each Unit (the “Easement”); TO HAVE AND TO HOLD the same perpetually unto to the Owners and their successors and assigns. Declarant does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted unto each Owner against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Declarant, but not otherwise, subject however to the matters set forth herein.

4. **Term.** The Easement granted in this Declaration shall be perpetual.

5. **Amendment.** This Declaration may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (a) the Director of the Department of Transportation and Natural Resources of Travis County, Texas; (b) the Owners of all Units affected by such modification, amendment or termination of this Declaration; and (c) any mortgagees holding first lien security interests on any such affected Units.

6. **Notices.** Any notice, request, demand, approval, consent or election required or permitted to be given under this Declaration shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid. Notices to an Owner shall be sent to such Owner’s address as reflected in the tax collector’s office of Travis County, Texas, or to such other address as an Owner may specify by instrument recorded in the Official Public Records of Travis County, Texas.

7. **Not a Public Dedication.** The Owners agree that no part of the Property is, or during the term of this Declaration shall be, in the public domain, and that nothing contained herein shall be deemed to be a gift or dedication of any portion of the Property to the general public or for use of the general public or any persons for any public purpose whatsoever. It is the intention of the Owners that the Property and this Declaration shall be strictly limited to use as a private development, for such purposes as may herein be expressed or as any Owner may lawfully elect.

8. **Applicable Law.** This Declaration shall be construed under the laws of the State of Texas.

9. **Easement Appurtenant; General Exceptions.** The Easement granted in this Declaration is appurtenant to the Property and shall run with the land. This Declaration is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Property.

10. **Binding Effect.** This Declaration shall be binding upon and shall inure to the benefit of each Owner, and their respective successors and assigns


IN WITNESS WHEREOF, Declarant has executed this Declaration intending it to be effective as of the date first above written.

DECLARANT:

By: 
NORBERT F. JOHNSON

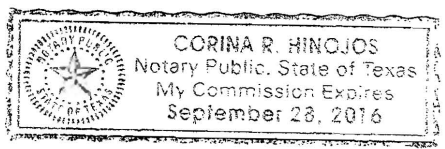
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on Oct 15, 2012, by **NORBERT F. JOHNSON**.


NOTARY PUBLIC, State of Texas

My Commission Expires:

Print Name _____



After Recording, Return to:
Susan J. Savage
Hurst, Savage & Vanderburg
1401 West Ave, Suite B
Austin, Texas 78701

**LIENHOLDER CONSENT TO GRANT OF DECLARATION
OF DRAINAGE EASEMENT**

STATE OF TEXAS §

COUNTY OF TRAVIS §

Recitals:

NORBERT F. JOHNSON, an individual of Travis County, Texas (“Owner”) is the fee simple title owner of the following property:

Units 3, 4, 5, 6 and 7, SOUTHWEST HILLS CONDOMINIUM, a Condominium Project in Travis County, Texas, together with the limited common elements appurtenant to such units and an undivided interest in and to the general common elements, as defined in that Declaration of Condominium Regime for Southwest Hills Condominium recorded in Document No. 2010176545, Official Public Records of Travis County, Texas (each a “Unit” and collectively, the “Property”);

Pioneer Bank, SSB (“Lienholder”) holds a lien against the Property under the following described documents:

Deed of Trust from **NORBERT F. JOHNSON**, to Thomas F. Vettors, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$731,250.00, payable to Pioneer Bank, SSB, of record in Document Number 2008161497, of the Official Public Records of Travis County, Texas.

NORBERT F. JOHNSON desires to record a Declaration of Drainage Easement against and running with the Property (the “Declaration”).

Agreement

In consideration of \$10.00, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

1. Lienholder consents to the grant of the Declaration and the easement against and running with the Property, which is executed contemporaneously herewith.
2. Lienholder subordinates all of its liens on this Property to the rights and interests of the Owners in the easement created pursuant to the Declaration.
3. Lienholder affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on October 15, 2012.

PIONEER BANK, SSB

By: Brian Kelly
Name: Brian Kelly
Title: Vice President

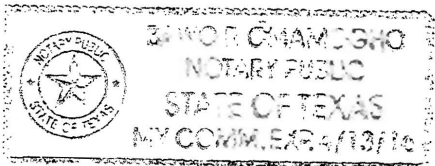
ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Bawo Omaniogho (Notary name), Notary Public, on this day personally appeared Brian Kelly, vice president of **Pioneer Bank, SSB** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 15 day of October, 2012.



Bawo Omaniogho
Notary Public, State of Texas

EXHIBIT "C"

Partial Release of Condominium Construction Agreement

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

THAT Travis County, Texas, the beneficiary of that certain "Condominium Construction Agreement" dated _____ by and between _____ and Travis County, Texas, [which is filed of record as Document No. _____ in the Official Public Records of Travis County, Texas] (the "**Construction Agreement**") for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby release that certain real property in Travis County, Texas, which is described on Exhibit " " attached hereto and incorporated herein by reference (the "**Released Property**") from all of the terms, provisions and requirements of the Construction Agreement. From and after the date of this instrument, the Construction Agreement shall no longer affect or encumber the Released Property in any way.

This is a partial release and affects only the Released Property. As to the remainder of the Property, the Condominium Construction Agreement remains in full force and effect and is not released.

Executed by the undersigned on the date set forth hereinbelow.

TRAVIS COUNTY, TEXAS

By: _____
Printed Name: _____
Title: _____

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledge before me on the ____ day of _____, 20__ by _____, _____ of Travis County, Texas, a political subdivision of the State of Texas, on behalf of said County.

Notary Public Signature