



Travis County Commissioners Court Agenda Request

Meeting Date: October 7, 2014

Prepared By: Sarah Sumner **Phone #:** (512) 854-7687

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

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

Sponsoring Court Member: Commissioner Daugherty, Precinct Three

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests:

- A) Approval of the Destiny Hills Section Two Final Plat (Final Plat - 24 single family lots on 54.151 acres - Destiny Hills Drive - County of Travis); and
- B) Approval of the Subdivision Construction Ageement for Destiny Hills Section Two in Precinct Three.

BACKGROUND/SUMMARY OF REQUEST:

A) The Destiny Hills Section Two consists of 24 single family lots and 4,824 linear feet of proposed public roadway on 54.151 acres. Water will be provided by individual wells and wastewater provided by on site septic systems. Parkland fees of \$2,686.00 have been satisfied. Fiscal of \$405,822.78 has been posted with Travis County.

B) The applicant, Matt Worrell of Destiny Hills Development, Inc. wishes to enter into a standard subdivision construction agreement with Travis County

STAFF RECOMMENDATIONS:

This application meets Travis County standards and TNR staff recommends approval of these requests.

ISSUES AND OPPORTUNITIES:

The original Destiny Hills Section Two application was filed with Travis County February 20, 2002 and approved for Alternate Fiscal in Commissioners Court on April 26, 2005. However, no actual construction was completed on the project and it was purchased this year. The new owner wishes to complete the project and has voluntarily complied with the Consumer Protection Notice and current Groundwater Availability Certification showing there is groundwater of sufficient quality to meet the intended use of the platted subdivision.

FISCAL IMPACT AND SOURCE OF FUNDING:

NA

EXHIBITS/ATTACHMENTS:

Final Plat, Location Map, Construction Agreement, Precinct Map

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Anna Bowlin	Division Director Planning and Long Range Development	TNR	(512) 854-7561

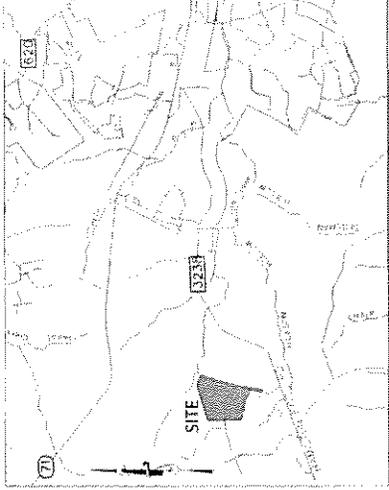
CC:

Sarah Sumner	Planner	TNR	(512) 854-7561

CD:AB:ss

1101 - Development Services Long Range Planning- Destiny Hills Section Two

**FINAL PLAT
DESTINY HILLS SECTION TWO**



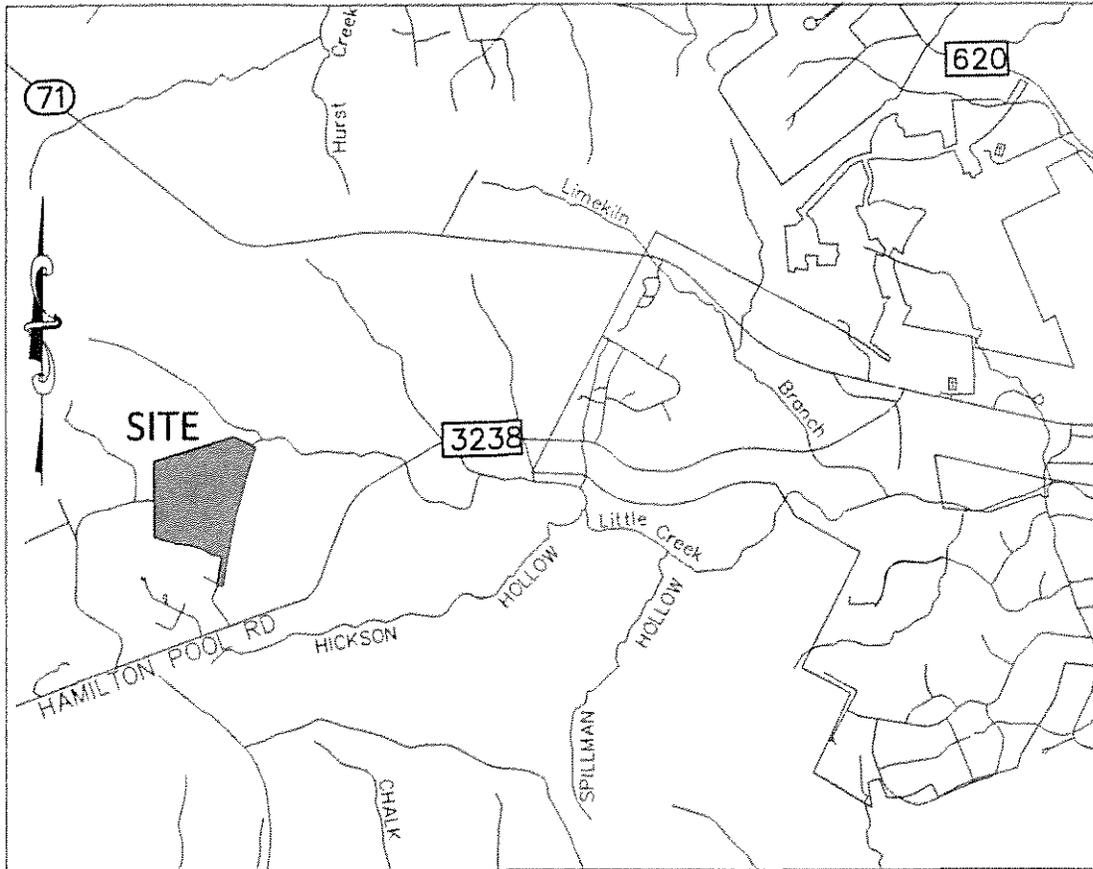
LOCATION MAP
(NOT TO SCALE)

TRAVIS COUNTY CONSUMER PROTECTION NOTICE FOR HOMEBUYERS
IF YOU ARE BUYING A LOT OR HOME, YOU SHOULD DETERMINE
WHETHER IT IS INSIDE OR OUTSIDE THE CITY LIMITS. DEPENDING ON
STATE LAW AND OTHER FACTORS, LAND OUTSIDE THE CITY LIMITS
MAY BE SUBJECT TO FEWER LOCAL GOVERNMENT CONTROLS OVER
THE DEVELOPMENT AND USE OF LAND THAN INSIDE THE CITY LIMITS.
BECAUSE OF THIS, LOCAL GOVERNMENT MAY NOT BE ABLE TO
RESTRICT THE NATURE OR EXTENT OF DEVELOPMENT NEAR THE LOT
OR HOME NOR PROHIBIT NEARBY LAND USES THAT ARE
INCOMPATIBLE WITH A RESIDENTIAL NEIGHBORHOOD. THIS CAN
AFFECT THE VALUE OF YOUR PROPERTY. TRAVIS COUNTY REQUIRES
THIS NOTICE TO BE PLACED ON SUBDIVISION PLATS. IT IS NOT A
STATEMENT OR REPRESENTATION OF THE OWNER OF
THE PROPERTY, THE SUBDIVIDER, OR
THEIR REPRESENTATIVES.

DATE OF PLAT: 07/29/2014



FINAL PLAT DESTINY HILLS SECTION TWO



**LOCATION MAP
(NOT TO SCALE)**

EXHIBIT 82.401 (E) SUBDIVISION CONSTRUCTION AGREEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

This Agreement is made and entered into by and between DESTINY HILLS DEVELOPMENT, INC., (the "Subdivider") and Travis County, Texas, (the "County"), hereinafter collectively referred to as the "Parties".

WHEREAS, the Subdivider owns the tract of real property described in Exhibit "A", which is attached hereto and made a part hereof, (the "Property"); and

WHEREAS, the Subdivider desires to subdivide the Property, pursuant to the proposed final plat of "DESTINY HILLS, SECTION II" (the "Subdivision"); and

WHEREAS, the County desires to set forth the Subdivider's responsibility for the construction of the Subdivision's roads and drainage facilities (the "Improvements"); and

WHEREAS, the Subdivider desires to set forth the County's responsibility to accept the constructed Improvements for maintenance;

NOW, THEREFORE, the Parties agree as follows:

1. Subdivider's Obligations

A. Improvements. The Subdivider shall construct the Improvements required to comply with the County's Standards for the Construction of Streets and Drainage in Subdivisions (the "Standards"). The Improvements will conform to the construction plans, permits, and specifications approved by the County prior to commencement of construction.

B. Security. To secure the Subdivider's obligations, the Subdivider will provide a financial guarantee of performance in the amount of the estimated cost of constructing the Improvements (the "Security"), which has been determined by a professional engineer and approved by the County's Transportation and Natural Resources Department ("TNR"). The Security must be in a form approved for use in the Standards or otherwise approved by the County Attorney's Office.

C. Alternative Fiscal. Notwithstanding any other provisions of this Agreement, the Subdivider may request the Commissioners Court to hold the administratively approved plat in abeyance until all streets, alleys, sidewalks, and drainage improvements in the Subdivision. The Subdivider must post fiscal security to secure restoration of disturbed areas should construction not be completed. Upon satisfactory completion, the submitted plat shall be forwarded to the Commissioners Court for approval and recording, provided adequate fiscal security has been posted to secure the one year Construction Performance Period described below.

D. Completion. The Improvements must be constructed no later than three (3) years after the effective date of this Agreement. This period may be extended by the delivery to the County at least forty five (45) days prior to the expiration of the Security of an extension of the Security in a form approved by the County. Upon completion of the Improvements, the Subdivider will provide the County with a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

E. Warranty. The Subdivider warrants the public Improvements will be free from defects for a period of one (1) year from the date the County accepts the construction of the public Improvements (the "Performance Period"). The Subdivider shall correct and repair any defects in materials or workmanship, including design inadequacies and damage to or deterioration of the public Improvements that occur before and during this Performance Period due to any cause. As a condition of the County's acceptance of dedication of any of the public Improvements, the Subdivider must post fiscal security in the form of cash, a performance bond, or other approved form and in the amount of ten percent (10%) of the cost of constructing the public Improvements, to secure the warranty established by this Agreement. It is expressly acknowledged that the public Improvements must meet County Standards at the end of the one year Construction Performance Period in order for the County to release the construction performance fiscal security.

F. Increase in Security. If the County determines the cost of constructing the Improvements exceeds the posted Security, within thirty (30) days after notice and demand, the Subdivider shall provide additional Security in an amount equal to the additional estimated cost.

G. Reduction in Security. During the construction of the Improvements, the Security may be reduced in accordance with the percentage of completion of the construction. The Executive Manager of TNR will execute Statements of Partial Reductions in the Amount of Security, when provided with the following documentation:

- 1) a professional engineer's certification of quantities of work completed;
- 2) a contractor's invoice for work completed; and
- 3) a TNR inspection report, indicating the completion of the portion of the work represented by the contractor's invoice.

After the approval and acceptance of the construction of the Improvements, the Security for the public Improvements may be reduced by ninety percent (90%) of the cost of the approved construction and held for the one-year Performance Period. After the approval of the construction of the private Improvements, the Security posted for the private Improvements will be fully released. In addition, the County agrees to release or reduce, as appropriate, the Security provided by the Subdivider, if the County accepts a substitute Security for all or any portion of the Improvements.

H. Covenant, Restriction, and Condition. In the event that the Improvements are not constructed to County Standards and the required Security has expired, the Subdivider shall not sell, transfer, or convey any of the lots in the Subdivision until sufficient Security has been posted with the County for the completion of the construction.

II. County's Obligations

A. Inspection and Approval. The County will inspect the Improvements during and at the completion of construction. If the Improvements are completed in accordance with the Standards, the County will approve the Improvements and accept the public Improvements.

B. Notice of Defect. The County will notify the Subdivider, if an inspection reveals that any portion of the Improvements is not constructed in accordance with the Standards or is otherwise defective. However, the County is not responsible for the construction of the Improvements, the quality of the material, or the construction methods utilized. In addition, the County is not responsible for making continuous on-site inspections of the construction work and the County has no privity with or responsibility for the construction contractor or any subcontractors. The Subdivider will have thirty (30) days from such notice to cure the defect. It is an event of default under this Agreement, if the defect is not cured prior to the expiration of the time to cure.

C. Performance Period Security Release. Upon the expiration of the one-year Performance Period with no damages or defects which the Executive Manager notifies the Subdivider must be corrected, the Executive Manager will release the Performance Period Security.

D. Conditions to Draw on Security. The County may draw upon any Security posted under this Agreement upon the occurrence of one or more of the following events:

- a. The failure of the Subdivider to construct the Improvements to the applicable County Standards;
- b. The Subdivider's failure to renew or replace the Security at least forty-five (45) days prior to its expiration;
- c. The acquisition of the Property or a portion of the Property by the issuer of the Security or other creditor through foreclosure or an assignment or conveyance in lieu of foreclosure;
- d. The arrangement by the Commissioners Court for the completion of one or more of the Improvements; or
- e. The determination by the Commissioners Court that the completion of one or more of the public Improvements is in the public Interest.

E. Notice of Intent to Draw. The County shall provide ten (10) days written notice of the occurrence of such an event to the Subdivider with a copy provided to any fiscal surety, lender, or escrow agent. The notice will include a statement that the County intends to provide for the performance of some or all of Subdivider's obligations hereunder for the construction of the Improvements, if the failure is not cured. The County shall be entitled to draw the amount it considers necessary to perform the Subdivider's obligations under this Agreement up to the total amount allocated for the Improvements. In lieu of a drawing based on an event described in subparagraphs (b) or (c), above, the County may accept a substitute Security.

F. Use of Proceeds.

1) The County must utilize the proceeds of any posted security solely for the purpose of completing the Improvements to the County's Standards or to correct defects in or failures of the Improvements.

2) The County may in its sole discretion complete some or all of the unfinished Improvements at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, without incurring any obligation to complete any of the unfinished Improvements. If the County uses the proceeds to complete, repair, or reconstruct the Improvements, it will do so as a public trustee of the development process in order to protect purchasers and taxpayers from the adverse consequences of a subdivider default or to protect the public interest by completing the Improvements.

3) The County is not a private subdivision developer and its draft on the Security and utilization of the proceeds to complete, repair, or reconstruct the Improvements is not an acceptance of the dedication of the Improvements. The acceptance of the Improvements is specifically contingent upon the delivery to the County of Improvements, which have been constructed to County Standards or the express order of acceptance by the County's Commissioners Court.

4) The Subdivider has no claim or rights under this Agreement to funds drawn under the Security or any accrued interest earned on the funds to the extent the same are used by the County hereunder.

5) All funds obtained by the County pursuant to one or more draws under the Security shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the "Escrowed Funds"), are disbursed by the County.

6) The County shall disperse all or portions of the Escrowed Funds as Improvements are completed by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of the Improvements.

7) Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with any interest accrued thereon, shall be paid by the County to the Issuer of the Security or, if the Security was originally in the form of cash, to the Subdivider, no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvements using Escrowed Funds, whichever date is earlier.

G. Releases. The Executive Manager will, subject to the performance of the Subdivider of its obligations under this agreement and the Travis County Standards for Construction of Streets & Drainage in Subdivisions, execute such releases of this Agreement as are necessary and reasonable upon the request of the Subdivider or a purchaser of a portion of the Property.

III. MISCELLANEOUS

A. Covenants, Restrictions, and Conditions. These Covenants, Restrictions, and Conditions will operate as covenants running with the land and will be binding upon the Subdivider and the Subdivider's legal representatives, successors and assigns.

B. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the actual cost of completing the Improvements in conformance with the County's Standards, including without limitation its associated administrative expenses.

C. Remedies. The remedies available to the County and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

D. Third Party Rights. No non-party shall have any right of action under this Agreement, nor shall any such non-party, including without limitation a trustee in bankruptcy, have any interest in or claim to funds drawn on the posted Security and held in escrow by the County in accordance with this Agreement.

E. Indemnification. The Subdivider shall indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees, for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County, if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements.

F. No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The County's failure to enforce any provision will not constitute a waiver or estoppel of the right to do so.

G. Attorney's Fees. The prevailing party in any litigation hereunder is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs.

H. Successors and Assigns. This Agreement is binding on the Subdivider and the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the written approval of the County; provided the County's approval shall not be unreasonably withheld if the Subdivider's assignee expressly assumes all obligations of the Subdivider under this Agreement. An assignment shall not be construed as releasing the Subdivider from Subdivider's obligations under this Agreement and Subdivider's obligations hereunder shall continue notwithstanding any assignment approved pursuant to this Paragraph unless and until the County executes and delivers to the Subdivider a written release. The County agrees to release the Subdivider, if the Subdivider's assignee expressly assumes the Subdivider's obligations under this Agreement and has posted the Security required by this Agreement. The County in its sole discretion may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Subdivider.

I. Expiration. This Agreement will terminate upon the vacation of the Subdivision by the Subdivider or the completion of the Subdivider's obligations under this Agreement, whichever occurs first.

J. Notice. Any notice under this Agreement must be in writing and will be effective when personally delivered or three (3) days after deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed as follows:

Subdivider: DESTINY HILLS DEVELOPMENT, INC
6821 KENOSHA PASS
AUSTIN, TEXAS 78749

County: Transportation & Natural Resources Department
P.O. Box 1748
Austin, Texas 78767
Attn: County Executive

Copy to: Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

The parties may change their respective addresses for notice to any other location in the United States in accordance with the provisions of this Paragraph.

K. Severability. If any provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other provision and the rights of the parties will be construed as if such provision was never part of this Agreement.

L. Jurisdiction and Venue. This Agreement concerns real property located in Travis County, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Travis County, Texas.

M. Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

N. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect, except a subsequent written modification executed by both parties. NO OFFICIAL, EMPLOYEE, OR AGENT OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, MODIFY, OR OTHERWISE CHANGE THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

This Agreement is executed as of the dates set forth below and is effective upon approval by the County of the final plat for the Subdivision or upon approval of Alternative Fiscal in accordance with County regulations.

TRAVIS COUNTY, TEXAS

SUBDIVIDER:

DESTINY HILLS DEVELOPMENT, INC
6821 KENOSHA PASS
AUSTIN, TEXAS 78749

Samuel T. Biscoe, County Judge

Date:

By: 
Name: ROBERT M. WORRALL
Title: PRESIDENT
Authorized Representative
Date: 9-16-2014

ACKNOWLEDGEMENT

Travis County, Texas:
STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the _____ day of _____, by _____, in the capacity stated herein.

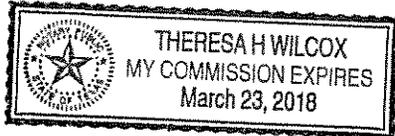
Signature of Notary

Subdivider:
STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 16 day of Sept 2014 by ROBERT M. WOODRALL, PRESIDENT in the capacity stated herein.
* OF DESTINY HILLS DEVELOPMENT, INC., A TEXAS CORPORATION

Signature of Notary



After Approval Return to:
Transportation and Natural Resources
P.O. Box 1748
Attn: Sarah Sumner
Austin, Texas 78767

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY

**JAMES E. GARON
& ASSOCIATES, INC.**
PROFESSIONAL LAND SURVEYORS

P.O. Box 1917
Bastrop, Texas 78602
512-303-4185
Fax 512-321-2107
jgaron@austin.rr.com

November 5, 2013

LEGAL DESCRIPTION: BEING 60.848 ACRES OF LAND LYING IN AND SITUATED OUT OF THE S. WILDY SURVEY, ABSTRACT 799; W. FAWCETT SURVEY, ABSTRACT 298; E. HALLMAN SURVEY, ABSTRACT 2245 AND THE J. PALMER SURVEY, ABSTRACT 644; ALL IN TRAVIS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO HENRY R. HEFFINGTON AND WIFE, RUTH HEFFINGTON BY DEED RECORDED IN VOLUME 5246, PAGE 2045 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 60.848 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES, INC. IN MAY, 2005;

BEGINNING at an iron rod set on the easterly line of that certain 333.609 acre tract of land conveyed to JPH Capital, LTD by deed recorded in Document #2004153390 Official Records, Travis County, Texas for the westerly or northwesterly corner of Lot 11, Block "A"; Destiny Hills Section One as recorded by plat in Book 100, Page 97 plat records, Travis County, Texas;

THENCE N 00°26'53" W a distance of 1320.95 feet to an iron rod found for the northwesterly corner hereof, a westerly corner of said Heffington 238.530 acre tract and an ell corner of said JPH Capital, LTD 333.609 acre tract;

THENCE N 73°10'29" E a distance of 836.79 feet to an iron rod found for a corner of said JPH Capital, LTD 333.609 acre tract and that certain 799.1064 acre tract of land conveyed to WSI-COS, LTD. by deed recorded in Document #2011102858 of said official records;

THENCE with said WSI-COS, LTD. 799.1064 acre tract, N 72°16'40" E a distance of 643.35 feet to an iron rod set for angle point and S 62°53'03" E a distance of 400.37 feet to an iron rod set for the northeasterly corner hereof;

THENCE a distance of 2501.75 feet along the arc of a curve to the left having a radius of 14037.34 feet and a chord bearing S 13°24'01" W a distance of 2498.44 feet to an iron rod set for the northeasterly endpoint of Destiny Hills Drive as dedicated by plat of Destiny Hills Section One;

THENCE N 81°41'51" W a distance of 59.90 feet to an iron rod set for a point of reverse curve on the westerly line of Lot 14, Block "A"; Destiny Hills Section One and the northwesterly endpoint of Destiny Hills Drive;

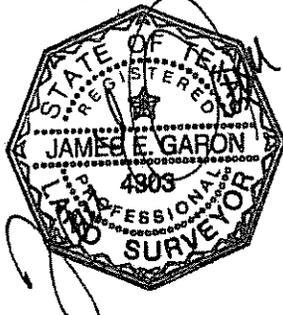
THENCE a distance of 539.17 feet along the arc of a curve to the right having a radius of 14097.38 feet and a chord bearing N 09°23'34" E a distance of 539.14 feet to point in Little Barton Creek for the northeasterly corner of said Lot 14, Block "A";

THENCE along the northerly line of Block "A" and centerline of Little Barton Creek the following calls:

1. S 82°42'48" W a distance of 55.53 feet;
2. N 82°45'19" W a distance of 140.74 feet;
3. N 59°29'15" W a distance of 184.76 feet;
4. N 71°39'35" W a distance of 90.40 feet;
5. N 74°35'44" W a distance of 108.93 feet;
6. N 75°20'59" W a distance of 119.24 feet;
7. N 87°42'37" W a distance of 189.37 feet;
8. N 65°20'34" W a distance of 120.64 feet;
9. N 79°27'10" W a distance of 154.76 feet;
10. N 49°36'00" W a distance of 50.18 feet;
11. N 87°32'17" W a distance of 60.29 feet

to the **POINT OF BEGINNING**, containing 60.848 acres of land, more or less, and as shown by survey map prepared herewith. Said 60.848 acres also being Destiny Hills Section Two as proposed by plat prepared, submitted to and approved by Travis County,

Surveyed by:



James E. Garon
Registered Professional Land Surveyor
Server; c:\Travis\subd\Destiny Hills\Destiny2