

ORDINANCE NO. 2017-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, GRANTING A TYPE 1 SPECIAL USE PERMIT TO RESTRICT THE MAXIMUM HEIGHT AND TO ELIMINATE ALLOWED USES IN THE "MU-AR82" LOW INTENSITY MIXED USE DISTRICT ON APPROXIMATELY 10 ACRES LOCATED ON THE WEST SIDE OF THE 1900 BLOCK OF INDEPENDENCE DRIVE (PROPERTY A) AND TO RESTRICT THE MAXIMUM HEIGHT AND TO ALLOW UP TO 240 RESIDENTIAL UNITS IN THE "C-1BR81" GENERAL BUSINESS DISTRICT ON APPROXIMATELY 13.6 ACRES LOCATED EAST OF THE INTERSECTION OF OAK RUN PARKWAY AND INDEPENDENCE DRIVE (PROPERTY B); REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

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**WHEREAS**, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of New Braunfels; and

**WHEREAS**, in keeping with the spirit and objectives of a Special Use Permit, the City Council has given due consideration to all components of said permit; and

**WHEREAS**, the City also recognizes that granting such a permit is possible while promoting the health, safety, and general welfare of the public, by providing harmony between existing zoning districts and land uses; and

**WHEREAS**, it is the intent of the City to ensure for the health, safety and general welfare of the public by providing compatibility and orderly development, which may be suitable only in certain locations in a zoning district through the implementation of a Special Use Permit meeting those requirements cited in Sections 3.6-2 and 3.6-3, Chapter 144, of the New Braunfels Code of Ordinances; and

**WHEREAS**, the property is located in an area suitable for the proposed uses and restrictions; and

**WHEREAS**, the City Council desires to grant a Type 1 Special Use Permit to restrict the maximum height and to eliminate allowed uses on Property A and to restrict the maximum height and to allow up to 240 residential units on Property B;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

### **SECTION 1**

**THAT** Sections 3.6-2 and 3.6-3, Chapter 144 of the New Braunfels Code of Ordinances and particularly the Zoning Map of the City of New Braunfels, are revised by adding the following described tract of land as a "Type 1 Special Use Permit" for the use and conditions herein described:

"Property A being 9.978 acres located on the west side of the 1900 block of Independence Drive, as described in Exhibit 'A' and delineated on Exhibit 'B' attached, to add multifamily and assisted living facility/retirement home uses to the list of uses prohibited and to restrict the maximum height to 960 feet above mean sea level."

### **SECTION 2**

**THAT** Sections 3.6-2 and 3.6-3, Chapter 144 of the New Braunfels Code of Ordinances and particularly the Zoning Map of the City of New Braunfels, are revised by adding the following described tract of land as a "Type 1 Special Use Permit" for the use and conditions herein described:

"Property B being 13.647 acres located east of the intersection of Oak Run Parkway and Independence Drive, as described in Exhibit 'C' and delineated on Exhibit 'D' attached, to add multifamily, townhouse, and duplex/two-family dwelling/duplex condominium uses to the list of uses allowed and to restrict the maximum height to 965 feet above mean sea level. In addition, no more than 240 dwelling units are allowed to be developed."

### **SECTION 3**

**THAT** The Special Use Permit be subject to the following additional restrictions:

1. Any townhouse(attached) or duplex/two-family dwelling/duplex condominium development shall not be permitted to exceed one story for Property A. Height limitations for said uses on Property B are provided in Section 4.
2. The maximum height restriction for Property A is not limited to building height and will apply to all property improvements and rooftop equipment and appurtenances.

3. Rooftop equipment and ancillary appurtenances on Property B may extend up to 7 feet above the maximum height of 965 feet above mean sea level.
4. Vehicular and pedestrian access from Property B to the access drive that is located along the southeast property boundary of Property B is guaranteed by a separately recorded access easement.
5. A pedestrian sidewalk connection to the adjacent shopping and retail uses in compliance with city standards is provided along the access drive that is located along the southeast property boundary of Property B.

## SECTION 4

**THAT** the development standards for duplexes, multifamily or townhouse use on Property B shall be as follows:

(1) Duplexes.

- (i) *Height.* One story or 35 feet.
- (ii) *Front building setback.* 25 feet.
- (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
- (v) *Rear building setback.* 20 feet.
- (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.
- (vii) *Lot area per family.* Two-family dwellings (duplexes) hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall not prohibit the erection of a one-family residence, but shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.
- (viii) *Lot depth.* 100 feet.
- (ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit.



(2) Multifamily dwelling.

- (i) *Height.* 35 feet; 50 feet when a pitched roof is used (minimum 4:12 slope) with a maximum height not to exceed 960 feet above mean sea level.
- (ii) *Front building setback.* 25 feet.
- (iii) *Side building setback.* A side building setback of 20 feet shall be provided adjacent to property zoned "R-1", "R-1A-43.5", "R-1A-12", "R-1A-8", "R-1A-6.6", "R-2", "R-2A", "TH", "TH-A", "ZH", "ZH-A", "MU-A", "B-1", "B-1A" and "B-1B". A side building setback of only six feet shall be provided adjacent to multifamily, commercially and industrially zoned property. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lines of the corner lots coincide with the side lot lines of the adjacent lots.
- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
- (v) *Rear building setback.* The depth of the rear building setback shall be at least 25 percent of the depth of the lot, but such depth need not be more than 25 feet.
- (vi) *Accessory uses.* Accessory uses such as swimming pools, tennis courts and playgrounds will not be permitted within any required yard.
- (vii) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet.
- (viii) *Lot area.* 15,000 square feet.
- (ix) *Lot coverage.* The combined area of all yards shall not be less than 50 percent of the total lot or tract; provided however, that in the event enclosed or covered parking is provided, the minimum total yard area requirement shall be 40 percent of the total lot or tract.
- (x) *Distance between structures.* There shall be a minimum of 12 feet between structures side by side; a minimum of 30 feet between structures side by front or rear; a minimum of 50 feet between structures front to front; and a minimum of 20 feet between structures backing rear to rear; and a minimum of 20 feet between structures front to rear. (See Illustration 2)
- (xi) *Lot depth.* 100 feet.
- (xii) *Parking.*  
For apartments, apartment hotel units and other multifamily dwellings, off-street parking spaces shall be provided in accord with the following schedule:
  - 1. One-bedroom apartment or unit . . . 1 1/2 spaces
  - 2. Two-bedroom apartment or unit . . . 2 spaces
  - 3. Each Additional bedroom . . . 1/2 space
  - 4. Each dwelling unit provided exclusively for low income elderly occupancy . . . 3/4 space ("Low income elderly" is defined as any person 55 years of age or older with low or moderate income, according to HUD standards.)

(3) Townhouses.

- (i) *Height.* One story or 35 feet.

- (ii) *Front building setback.* 10 feet. If front entry garages/carports are provided, a minimum front yard of 20 feet shall be provided to the garage/carport.
- (iii) *Side building setback.* No side building setbacks are required for interior lots except the minimum distance between two building groups shall be 20 feet and the minimum distance between a building group and any abutting subdivision boundary or zoning district boundary line shall be 20 feet. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street, except where the rear lot line of a corner lot coincides with a side lot line of an adjacent lot, then 25-foot minimum side yards adjacent to the street shall be provided.
- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
- (v) *Rear building setback.* No building shall be constructed closer than ten feet from the rear property line. If the rear of the lots abut any other residential zoning district, the rear building setback shall have a minimum depth of 20 feet.
- (vi) *Width of lot.* Interior lots shall have a minimum width of 25 feet. Corner lots shall have a minimum width of 40 feet except where the rear lot line of a corner lot coincides with a side lot line of an adjacent lot, then the corner lot shall have a minimum width of 50 feet.
- (vii) *Lot depth.* 100 feet.
- (viii) *Lot area per family.* 2,500 square feet.
- (ix) *Common open space.* A minimum of 250 square feet of common open space per lot shall be provided within the townhouse project. In computing the required common open space, individually owned townhouse lots, required front, rear, or side setbacks, streets, alleys, or public rights-of-way of any kind, vehicular drives, parking areas, service drives, or utility easements containing or permitting overhead pole carried service shall not be included. Drainage easements and detention ponds may be used in computing common open space.
- (x) *Building group.* There shall be no less than two nor more than eight individual dwelling units in each building or dwelling group. Each building group shall be at least 20 feet from any other building group, measured from the nearest points of their foundations. Each building or building group shall be at least 20 feet from any subdivision or zoning district boundary line.
- (xi) *Accessory buildings.* Any detached accessory buildings permitted, except carports open on at least two sides, shall be set at least three feet away from the side lot line unless their walls are equal in fire resistance to the common walls of the main structure. Detached carports, open on at least two sides, may be built to the property line with no common wall required. Rear building setback for an accessory building shall be three feet. Any accessory building permitted in district "R-1" shall be permitted in district "TH."
- (xii) *Parking.* There shall be at least two off-street parking spaces for each townhouse.

## SECTION 5

**THAT** all other ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

## SECTION 6

**THAT** if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

## SECTION 7

**THIS** ordinance will take effect upon the second and final reading.

**PASSED AND APPROVED:** First Reading this the 9<sup>th</sup> day of January, 2017.

**PASSED AND APPROVED:** Second Reading this the 23<sup>rd</sup> day of January, 2017.

CITY OF NEW BRAUNFELS

  
BARRON CASTEEL, Mayor

ATTEST:

  
PATRICK D. ATEN, City Secretary

APPROVED AS TO FORM:

  
VALERIA M. ACEVEDO, City Attorney





# BURY

9.978 Acres  
(628,053 sq. ft.)  
110729-50003ex1.dwg.

Fn. No. 110729-50003-1  
January 20, 2016  
Job No. 110729-50003.97

## Field Note Description

Of a 9.978 acre tract of land situated in the city of New Braunfels, Comal County, Texas; and being a remaining portion of that certain called 205.00 acre tract of land as conveyed to Investor Grosenbacher Partnership in Document Number 200706031735 of the Official Public Records of Comal County, Texas; said 9.978 acre tract more particularly described by metes and bounds as follows with all bearings being referenced to the North American Datum of 1983, Texas Coordinate System, South Central Zone:

**Beginning**, at a found 1/2-inch iron rod with Bury Cap for corner; said point being the most Southerly corner of Westpointe Village Self-Storage as recorded in Document Number 201506021380 of the Comal County Map Records, and being on the West Right-of-Way line of Independence Drive (60' R.O.W.);

**Thence**, along the West Right-of-Way line of Independence Drive and the East lines of the herein described tract as follows:

- Along the arc of a curve to the left, having a chord of South 02° 26' 41" E, 139.81 feet, a radius of 430.00 feet and a central angle of 18° 44' 15", a distance of 140.62 feet, to a found 1/2-inch iron rod at a point of tangency for corner;
- S 11° 49' 35" E, 154.80 feet, to a found 1/2-inch iron rod at a point of curvature for corner;
- Along the arc of a curve to the right, having a chord of S 06° 38' 56" W, 234.50 feet, a radius of 370.00 feet and a central angle of 36° 57' 02", a distance of 238.62 feet, to a found 1/2-inch iron rod at a point of tangency for corner;
- S 25° 07' 27" W, 195.36 feet, to a found 1/2-inch iron rod for the most Southerly corner of the herein described tract; said point also being the most Easterly corner of a called 10.005 acre tract as recorded in Document Number 201206022549 of the Official Public Records of Comal County, Texas;

EXHIBIT "A"

**Thence**, along the Westerly lines of the herein described tract and the Easterly lines of said 10.005 acre tract as follows:

- N 64° 53' 04" W, 470.42 feet, to a found 1/2-inch iron rod for corner;
- N 00° 09' 14" E, 43.69 feet, to a found 1/2-inch iron rod at a point of curvature for corner;
- Along the arc of a curve to the left, having a chord of 12° 51' 07" E, 78.32 feet, a radius of 174.00 feet and a central angle of 26° 00' 46", a distance of 79.00 feet, to a found 1/2-inch iron rod at a point of tangency for corner;
- N 19° 19' 58" W, 476.44 feet, to a found 1/2-inch iron rod for corner;
- N 37° 21' 40" W, 7.99 feet, to a found 1/2-inch iron rod with Bury Cap for corner; said point being the Southwest corner of said Westpointe Village Self-Storage tract;

**Thence**, along the Southerly lines of said Westpointe Village Self-Storage Tract and the Northerly lines of the herein described tract as follows:

- N 52° 39' 11" E, 279.43 feet, to a found 1/2-inch iron rod with Bury Cap for corner;
- S 41° 35' 05" E, 73.77 feet, to a found 1/2-inch iron rod with Bury Cap for corner;
- N 48° 24' 55" E, 86.16 feet, to a found 1/2-inch iron rod with Bury Cap for corner;
- S 41° 35' 05" E, 259.69 feet, to a found 1/2-inch iron rod with Bury Cap for corner;
- S 73° 05' 52" E, 177.96 feet, to the **Point of Beginning**, containing 9.978 acres (434,661 square feet) of land, more or less.

*"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."*

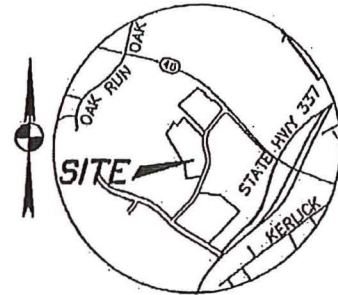
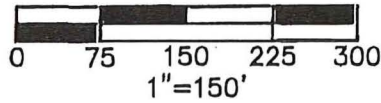


**Note:** Survey plat of even date to accompany this Field Note Description.

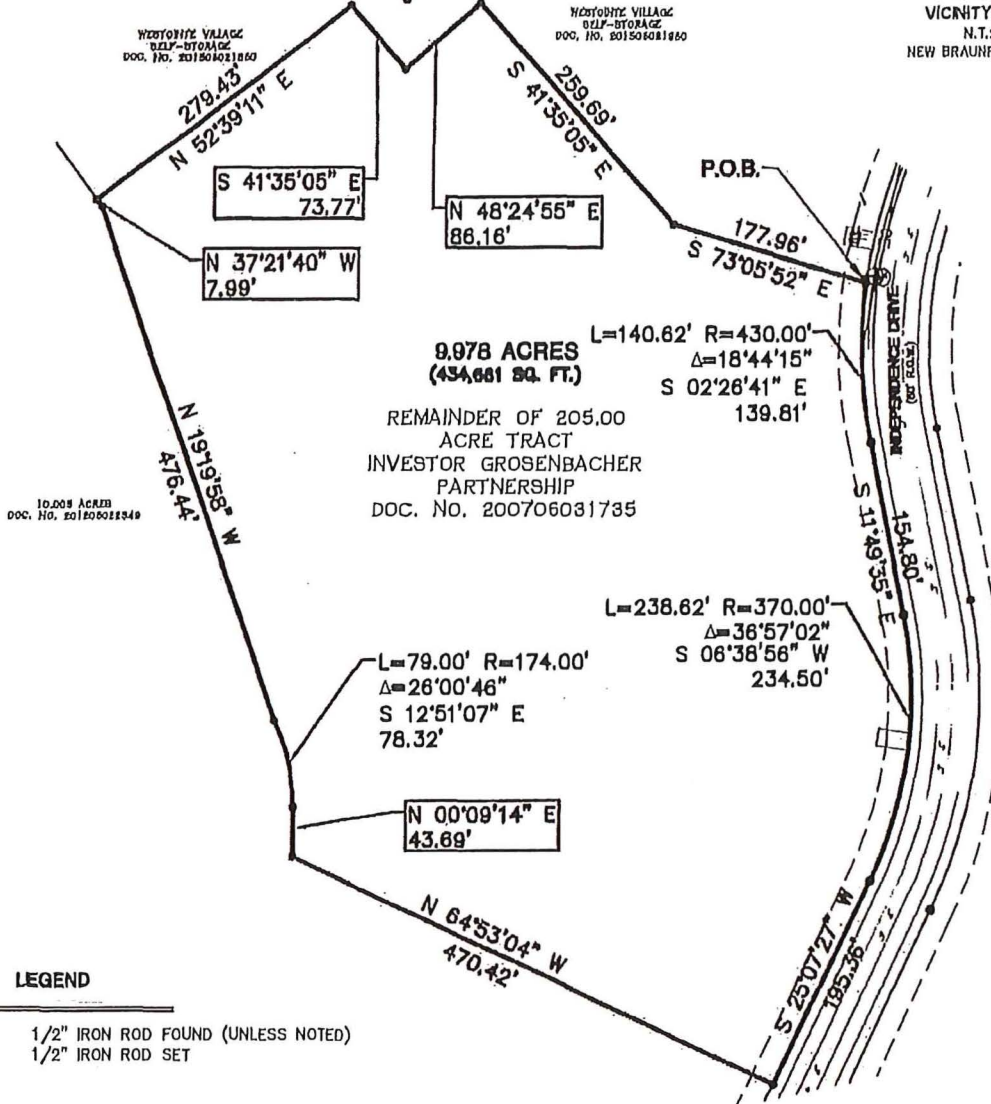
*Hal B. Lane III* 10/19/16

Hal B. Lane III  
Registered Professional Land Surveyor  
Texas Registration Number 4690  
Bury-San, Inc.  
70 NE Loop 410, Suite 1100  
San Antonio, Texas 78216  
210/525-9090  
TBPLS Firm No. 101075-01





VICINITY MAP  
N.T.S.  
NEW BRAUNFELS, TEXAS



**BURY**

221 West Sixth Street, Suite 600  
Austin, Texas 78701  
Tel (512) 328-0011 Fax (512) 328-0325  
TBPE # F-1048 TBPLG # F-10107600  
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EXHIBIT  
FOR  
9.978 ACRES

INVESTOR GROSENBACHER PARTNERSHIP

PAGE 4 OF 4

DATE: 1-20-16

SCALE: 1" = 150'

DRAWN BY: HBL

FILE: H:\110729\_WESTPOINTE PLAT APP REMAIN

PROJECT No. R0110729-50003.97



13.647 ACRES  
(594,458 SQ. FT.)  
110729-50003\_Bndy-Tract D.dwg

FN NO. 2223-10219-4  
September 21, 2016  
JOB NO. 222310219

### FIELD NOTE DESCRIPTION

Being 13.647 acres of land situated in the city of New Braunfels, Comal County, Texas, being that certain called 13.646 acre "Tract III" as conveyed to Westpointe Commercial, LTD., by Deed dated May 19, 2010 and recorded in Document Number 201006016821 of the Official Public Records of Comal County, Texas; said 13.647 acres being more particularly described as follows, with all bearings being referenced to the North American Datum of 1983, Texas State Plane Coordinate System, South Central Zone;

**Beginning**, at a found "PK" nail on the Southeast right-of-way line of Independence Drive (60' R.O.W.), for the most Northerly corner of the herein described tract, said point also being the Southwesterly corner of Westpointe Subdivision Unit 2, Lot 1, Block 1 as recorded in Document No. 201006009911 of the Map and Plat Records of Comal County, Texas; having a Grid coordinate of N = 13,807,776.84, E = 2,234,305.02;

**Thence**, along the Southwesterly lines of said Lot 1, Block 1, Westpointe Subdivision Unit 2 as follows:

- S 81° 35' 56" E, 399.92 feet, to a found 1/2-inch iron rod with a "BPI" cap for corner;
- S 48° 34' 57" E, 452.01 feet, to a set 1/2-inch iron rod with a "BPI" cap on the Northwesterly line of a called 40' Ingress/Egress and Utility Easement as recorded in Document No. 201006009911, for the most Easterly corner of the herein described tract;

**Thence**, along the Northwesterly lines of said 40' Ingress/Egress and Utility Easement as follows:

- S 47° 29' 30" W, 441.03 feet, to a found 1/2-inch iron rod with a "BPI" cap at a point of curvature for corner;
- Along the arc of a curve to the right, having a chord of S 55° 11' 30" W, 100.24 feet, a radius of 375.00 feet and a central angle of 15° 21' 40", for an arc distance of 100.54 feet, to a found 1/2-inch iron rod with a "BPI" cap at a point of reverse curvature for corner;

EXHIBIT "C"



- Along the arc of a curve to the left, having a chord of S 48° 25' 36" W, 211.51 feet, a radius of 425.00 feet and a central angle of 28° 49' 00", for an arc distance of 213.75 feet, to a found 1/2-inch rod with a "BPI" cap at a point of tangency;
- S 34° 06' 38" W, 75.29 feet, to a found 1/2-inch rod with a "BPI" cap in the northwesterly right-of-way line of Oak Run Parkway (R.O.W. width varies) for the most Southerly corner of the herein described tract;

**Thence**, along the Northeast right-of-way line of Oak Run Parkway and the Southwest lines of said 13.646-acre tract as follows:

- N 55° 58' 16" W, 522.50 feet, to a found 1/2-inch iron rod with a "BPI" cap at a point of curvature for corner;
- Along the arc of a curve to the right, having a chord of N 50° 11' 04" W, 192.92 feet, a radius of 955.00 feet and a central angle of 11° 35' 38", for an arc distance of 193.25 feet, to a found "PK" nail at point of compound curvature for corner;
- Along the arc of a curve to the right, having a chord of N 02° 08' 20" E, 21.31 feet, a radius of 15.00 feet and a central angle of 90° 30' 39", for an arc distance of 23.70 feet, to a set 1/2-inch iron rod with a "BPI" cap on the northerly end of a curve return in the southeasterly right-of-way line of Independence Drive (60' R.O.W.) for a point of tangency;

**Thence**, along the Southeasterly right-of-way line of Independence Drive and the Northwesterly lines of said 13.646 acre tract as follows:

- N 47° 28' 39" E, 461.02 feet, along the Southeasterly right-of-way line of Independence Drive, to a found "PK" nail at point of compound curvature for corner;
- Along the arc of a curve to the left, having a chord of N 36° 23' 10" E, 166.94 feet, a radius of 430.00 feet and a central angle of 22° 23' 10", for an arc distance of 168.01 feet, to a set 1/2-inch iron rod with "BPI" cap at a point of tangency for corner;
- N 24° 49' 17" E, 35.42 feet, to the **Point of Beginning**, containing 13.647 acres (594,458 square feet) of land, more or less.

*"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."*

**Note:** Survey plat of even date to accompany this Field Note Description.

*Hal B. Lane III*

9/21/16

DATE

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