

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH HENRY ARMBRUSTER, TEXAS LOCAL GOVERNMENT CODE; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Kyle, Texas (the "City") has initiated several annexations for the purpose of filling gaps and providing for greater continuity within the city limits; and

Whereas, pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, the City has offered to enter a development agreement titled "Development Agreement Under Section 43.035, Texas Local Government Code" (the "Agreement") attached hereto and incorporated herein as Exhibit A, with landowners owning land currently appraised for ad valorem tax purposes as land for agricultural use;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, HAYS COUNTY, TEXAS, THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Agreement Approved. The City Council hereby approves the Development Agreement Under Section 43.035, Texas Local Government Code attached hereto as Exhibit "A", and authorizes the Mayor to execute said Agreement.

Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

FINALLY PASSED AND APPROVED on this the 6th day of October, 2009.

ATTEST:

THE CITY OF KYLE, TEXAS


Amelia Sanchez, City Secretary


Miguel Gonzalez, Mayor

STATE OF TEXAS §
COUNTY OF HAYS §

**DEVELOPMENT AGREEMENT
UNDER SECTION 45.035, TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement (the "Agreement") Under Section 45.035, Texas Local Government Code is entered between the City of Kyle, Texas (the "City") and Henry C. Armbruster joined herein pro forma by his wife, Betty S. Armbruster, to the extent of her community property interest in the property (the "Owner"). The term Owner shall include all owners of the Property. The City and the Owner are collectively referred to as the Parties.

WHEREAS, the Owner owns a parcel of real property in Hays County, Texas, which is more particularly described in the attached Exhibit "A" (the "Property") that is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Texas Tax Code;

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property;

WHEREAS, under Section 43.035, Texas Local Government Code, the City is required to offer to make a development agreement with the Owner that will provide for the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the area for agriculture, wildlife management, or timber;

WHEREAS, Section 43.035 provides that the restriction or limitation on the City's annexation of all or part of the Property under this Agreement is void if the Owner files any type of subdivision plat or related development document for the Property, regardless of how the area is appraised for ad valorem tax purposes;

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172, Texas Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section 1. Extraterritorial Jurisdiction Status of Property. The City agrees that the Property shall remain in the City's extraterritorial jurisdiction (the "ETJ") and the City shall discontinue the pending annexation proceedings as to the Property. The City further agrees that it shall not annex the Property during the term of this Agreement, subject to the terms and conditions of this Agreement.

Section 2. Owner's Obligations. In consideration of the City's agreement not to annex the Property and as a condition of the Property remaining in the City's ETJ, the Owner covenants and agrees to the following:

- (a) The Owner shall use the Property only for agriculture, wildlife management, and/or timber land use, as defined by Chapter 23 of the Texas Tax Code, that are existing on the Effective Date of this Agreement, except for single-family residential use existing on the Effective Date or as otherwise provided by this Agreement, without the prior written consent of the City.
- (b) The Owner shall not subdivide the Property, or file for approval of a subdivision plat, site plan, or related development document for the Property with Hays County or the City until the Property is annexed into and zoned by the City; provided that the Property may be subdivided into two parcels that are greater than five acres in size if required by a lender to finance the construction of a new single family home that is authorized to be constructed on the Property under Section 2(c), provided further that the transfer and conveyance of an undivided interest in the property pursuant to the intestate laws of the State of Texas, or a last will and testament, or gift deeds to members of the owner's family, or by members of the owner's family to unrelated third parties, does not constitute a request for voluntary annexation unless the provision of Section 2 are also violated.
- (c) The Owner shall not construct, or allow to be constructed, any building or structure on the Property that requires a building permit until the Property is annexed into and zoned by the City. Accessory structures authorized under the Agricultural District (District "A") (including but not limited to barns, sheds, fences, and corrals) and buildings or structures that are related to and necessary for the use of the Property as authorized under Section 2(a) (excluding new single family residences, except as authorized in this Section 2(c)) are exceptions to this Section 2(c). One additional new single family residence may be constructed on the Property if the residence is to be occupied by family members of the Owner who participate in the ownership or operation of the agricultural, timberland, or wildlife management uses of the Property. Proof of qualification for this exception must be presented at the time of application for a building permit.
- (d) The City's Agricultural District (District "A") zoning regulations shall apply to the Property, and in addition to the uses authorized under District "A", the Property may also be used for wildlife management or timber land, as defined by Chapter 23 of the Texas Tax Code, if such uses existed on the Effective Date of this Agreement. The Property will also be subject to the animal control ordinances of the City and to the extent that such ordinances do not conflict with agricultural, wildlife management, and/or timberland use, the animal control ordinances shall control. Fences shall not be subject to setback requirements. The City's building codes and regulations shall apply to the Property except as provided otherwise in this Section 2(d). Any buildings or structures constructed

on the Property after the Effective Date shall be constructed in compliance with the regulations for the Agricultural District (District "A") and applicable building codes and regulations, provided that building permits and related inspections shall only be required for the construction of a new single family residence and additions to an existing single family residence that are authorized to be located on the Property under this Agreement.

Section 3. Development and Annexation of Property.

- (a) The following occurrences shall be deemed the Owner's petition for voluntary annexation of the Property, and the Property may subsequently be annexed at the discretion of the City Council:
- (1) The filing of any application for plat approval, site plan approval, building permit (excluding building permit applications for construction of a new single family residence or additions to an existing single family residence authorized to be located on the Property under Section 2), or related development document for the Property, or the commencement of development of the Property, except as specifically authorized herein.
 - (2) The Owner's failure to comply with Sections 2(a), 2(b), or 2(c).
 - (3) The Property is no longer appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Texas Tax Code, or successor statute, unless the Property is no longer appraised for such purposes because the Legislature has abolished agricultural, wildlife management, or timberland exemptions, provided that the Owner is in compliance with Section 2.
 - (4) The filing for voluntary annexation of the Property into the City by the Owner.
 - (5) The expiration of this Agreement.
- (b) The Owner agrees that annexation initiated due to an occurrence under Section 3(a) shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner. Upon annexation, municipal services shall be provided to the Property in accordance with the adopted municipal services plan.

Section 4. Application of City Regulations. Pursuant to Section 43.035(b)(1)(B), Texas Local Government Code, the Property is subject to all of the City's regulations, as they are amended from time to time, and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries and the Owner acknowledges and agrees that the City is hereby authorized to enforce said regulations and planning authority except as specifically provided otherwise herein; provided that fees that are applicable to properties located

within the ETJ shall apply to the Property.

Section 5. Term. The term of this Agreement (the "Term") is fifteen (15) years from the Effective Date. The Agreement may be extended for two additional fifteen year terms upon the agreement of both parties and approval by the City Council.

Section 6. Vested Rights Claims. This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code. The Owner hereby waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein. The Owner further waives any and all vested rights and claims that the Owner may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction the Owner may initiate following the expiration of this Agreement and the institution of annexation proceedings by the City; provided that the City initiates annexation proceedings within one year following the expiration of this Agreement.

Section 7. Authorization.

- (a) All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.
- (b) The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect. The failure of each and every owner of the Property to sign this Agreement at the time of approval and execution by the City shall result in the Agreement being void, and the City may, within its discretion, annex the Property in accordance with applicable law.

Section 8. Notice. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Notices required to be sent to the Owner shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

Henry C. Armbruster
P.O. Box 1172
Buda, Texas 78610

Section 9. Covenant Running with the Land. This Agreement shall run with the Property, and this Agreement or a memorandum of this Agreement acceptable to City and the Owner shall be recorded in the Official Public Records of Hays County, Texas. The Owner and the City acknowledge and agree that this Agreement is binding upon the City and the Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

Section 10. Severability. If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

Section 11. Amendment and Modifications. This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

Section 12. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 13. Governmental Immunity; Defenses. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, nor to create any legal rights or claims on behalf of any third party.

Section 14. Enforcement; Waiver. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 15. Effect of Future Laws. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 16. Venue and Applicable Law. Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.


Section 17. Counterparts. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

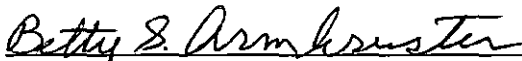
Section 18. Effective Date. This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the parties.

Section 19. Sections to Survive Termination. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

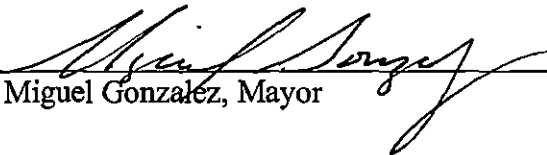
Entered into this 6th day of October, 2009.

Owner (s)


Henry C. Armbruster


Betty S. Armbruster, pro forma to the extent of her
community property interest in the property

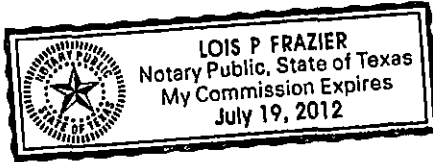
City of Kyle, Texas


Miguel Gonzalez, Mayor

STATE OF TEXAS §
COUNTY OF HAYS §
TRAVIS

BEFORE ME the undersigned authority on this day personally appeared Henry C. Armbruster, Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 23rd day of September, 2009.

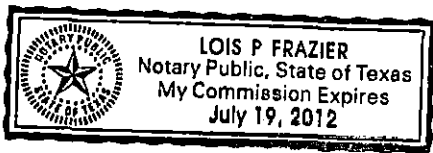


Lois P. Frazier
Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF HAYS §
TRAVIS

BEFORE ME the undersigned authority on this day personally appeared Betty S. Armbruster, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 23rd day of September, 2009.



Lois P. Frazier
Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Miguel Gonzalez, Mayor, City of Kyle, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20th day of October, 2009.



Amelia L. Sanchez
Notary Public – State of Texas

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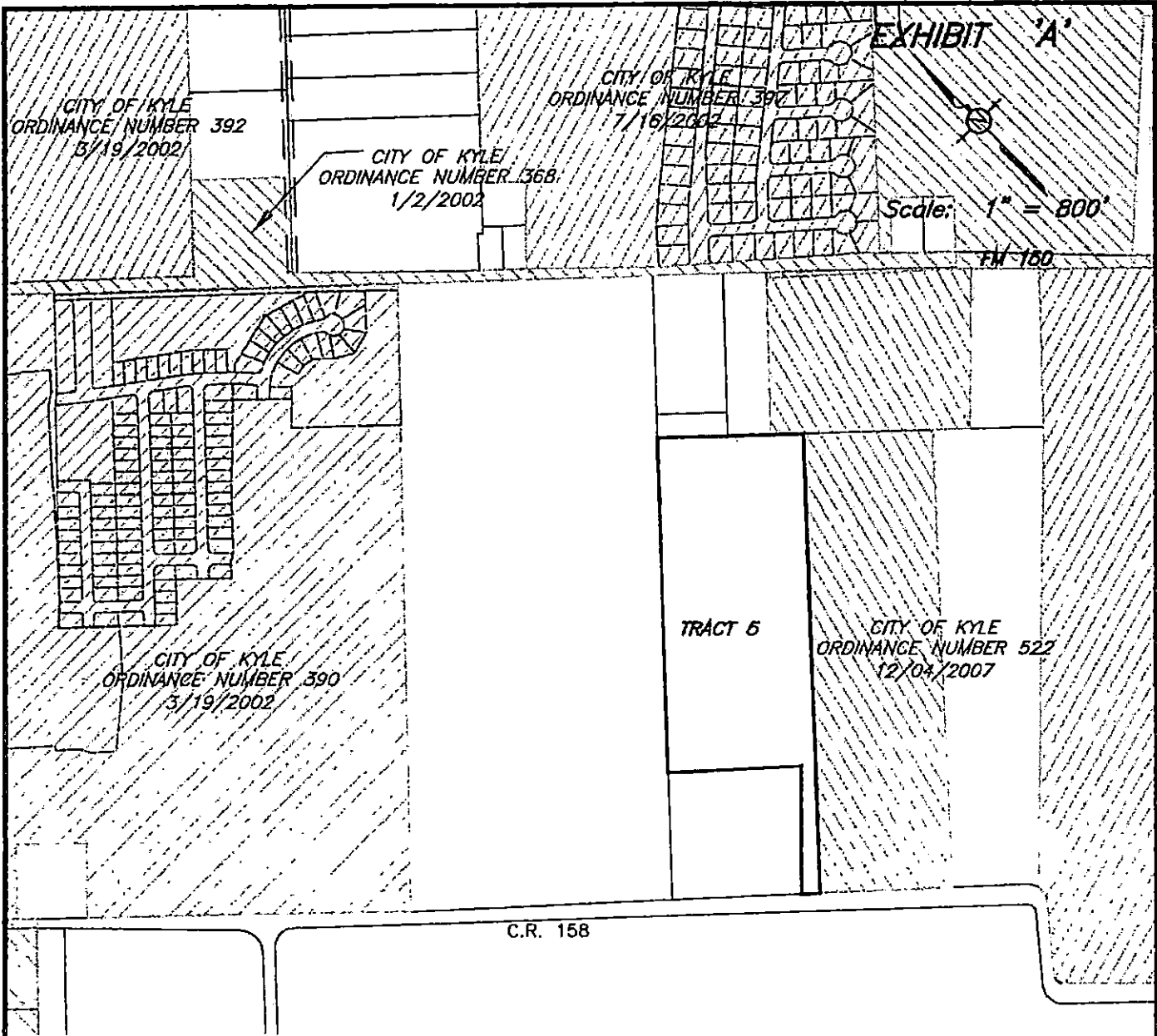


EXHIBIT 'A'

CITY OF KYLE
ORDINANCE NUMBER 392
3/19/2002

CITY OF KYLE
ORDINANCE NUMBER 397
7/16/2002

CITY OF KYLE
ORDINANCE NUMBER 368
1/2/2002

Scale: 1" = 800'

FM-180

CITY OF KYLE
ORDINANCE NUMBER 390
3/19/2002

TRACT 5

CITY OF KYLE
ORDINANCE NUMBER 522
12/04/2007

C.R. 158

**SKETCH OF
ARMBRUSTER TRACT
OF +/-33.3 ACRES
HAYS COUNTY, TEXAS**

**ARMBRUSTER
DEVELOPMENT AGREEMENT
CITY OF KYLE, TEXAS**

TRACT 5

All that certain tract or parcel of land conveyed to Henry C. Armbruster by deed as recorded in Volume 230, Page 398 and Volume 711, Page 598, Official Public Records of Hays County, Texas.

EXHIBIT A

FIELD NOTES OF A SURVEY OF 33.30 ACRES OF LAND, 11.32 ACRES BEING A PORTION OF THE R. T. HUGHES SURVEY AND 21.98 ACRES BEING A PORTION OF THE M. B. ATKINSON SURVEY # 10 -IN HAYS COUNTY, TEXAS, SAID 33.30 ACRE TRACT OF LAND BEING A PORTION OF THAT 151.50 ACRE TRACT OF LAND MORE OR LESS AS CONVEYED IN A DEED FROM JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY TO ALEX B. KERCHEVILLE AND W. A. WORD AS RECORDED IN VOLUME 124, PAGES 58-60, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AS SURVEYED FOR HENRY C. ARMBRUSTER BY WILLIAM M. BROOKS, REGISTERED PUBLIC SURVEYOR, AUSTIN, TEXAS.

BEGINNING at an iron stake placed at corner of fence in the northeast line of a gravel County Road, same being the northeast line of the James W. Williams Survey and being in the southwest line of the R. T. Hughes Survey, said beginning iron stake being the south corner of that 11.82 acre tract of land as conveyed in a deed to the Kyle Independent School as recorded in Volume 207, Pages 406-416, of the Deed Records of Hays County, Texas, said beginning iron stake being in the south line of that 151.50 acre tract of land as conveyed in a deed from John Hancock Mutual Life Insurance Company to Alex B. Kercheville and W. A. Word as recorded in Volume 124, Pages 58-60, of the Deed Records of Hays County, Texas; and from said iron stake an iron stake placed at corner of fence for the east corner of the James W. Williams Survey and in the northwest line of the W. M. Hemphill League for the south corner of the R. T. Hughes Survey, same being the south corner of the said Alex B. Kercheville and W. A. Word 151.50 acre tract of land bears S 45° 00' E 1263.35 feet;

THENCE with the southeast line of the said Kyle Independent School 11.82 acre tract of land as fenced and used upon the ground N 45° 00' E at or about 643.00 feet passing the center line of a 50.00 foot easement to the

United Gas Pipe line as recorded in Volume 182, Pages 409-410, of the Deed Records of Hays County, Texas, in all 700.00 feet to an iron stake placed for the east corner of the said Kyle Independent School 11.82 acre tract of land;

THENCE with the northeast line of the said Kyle Independent School 11.82 acre tract N 45° 00' E at 16.00 feet passing the center line of the said 50.00 foot United Gas Pipe Line easement, in all 735.50 feet to an iron stake placed in the southeast line of that tract of land as conveyed in a deed to W. E. Wiegand and wife, Toni D. Wiegand as recorded in Volume 139, Page 173, of the Deed Records of Hays County, Texas, and being in the northwest line of the said 151.50 acre tract of land, same being the north corner of the said Kyle Independent School 11.82 acre tract;

THENCE with the southeast line of the said W. E. Wiegand tract of land, same being the northwest line of the said 151.50 acre tract of land as fenced and used upon the ground N 45° 00' E at or about 550.00 feet passing the northeast line of the R. T. Hughes Survey, same being the southwest line of the M. B. Atkinson Survey #10, in all 1736.84 feet to an iron stake placed for the north corner of the herein described tract of land;

THENCE S 45° 00' E at or about 165.00 feet passing the center line of said 50.00 foot United Gas Pipe Line easement, in all 806.55 feet to an iron stake placed for the east corner of the herein described tract of land;

THENCE S 45° 00' W at or about 1186.84 feet passing the southwest line of the M. B. Atkinson Survey # 10 same being the northeast line of the R. T. Hughes Survey, at 2016.84 feet passing the center line of the said 50.00 foot United Gas Pipe Line easement, in all 2436.84 feet to an iron stake placed in the northeast line of a gravel County Road, same being the northeast line of the James W. Williams Survey and being the southwest line of the R. T. Hughes

Survey and in the south line of the said 151.50 acre tract
of land, for the south corner of the herein described tract
of land;

THENCE with the northeast line of a gravel County
Road, same being the northeast line of the James W. Williams
Survey and being the southwest line of the R. T. Hughes
Survey and the southwest line of the said 151.50 acre tract
of land N 45° 00' W 71.05 feet to the place of beginning,
containing 33.30 acres of land.

Surveyed February 11, 1969.

F. B. 17, P. 14
Plan - 1063

By *William M. Brooks*
William M. Brooks
Reg. Public Surveyor
1358

