

RESOLUTION NO. R2021-47

A RESOLUTION OF THE CITY COUNCIL OF BURNET, TEXAS APPROVING AN AGREEMENT WITH GRANITE PARTNERS LLC FOR THE PROVISION OF UP TO 75 LIVING UNIT EQUIVALENT OF WHOLESAL WATER TO SERVE REED RANCH; APPROVING A WHOLESAL WATER AGREEMENT; APPROVING THE CONVEYANCE OF 4.93 ACRES TO THE CITY AND APPROVING A PARTIAL RELEASE OF GRANITE PARTNERS LLC'S EASEMENT RIGHTS

WHEREAS, Granite Partners LLC is the owner of the approximately 2000 acre property located north of Inks Lake in unincorporated Burnet County and known as Reed Ranch; and

WHEREAS, Granite Partners LLC plans to develop Reed Ranch into large lot (20 acres or more) subdivisions of land and is requesting 75 Living Equivalent Units of water serve the development; and

WHEREAS, City Council is amenable to providing wholesale water to a TCEQ approved water service provider who will serve the development.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS. THAT:

Section 1. Findings. The recitals herein are found to be true and correct and are incorporated hereby for all purposes.

Section 2. Agreement Approved. The Reed Ranch Water Agreement, attached hereto, and Wholesale Water Agreement, Special Warranty Deed, and Partial Termination, Release, and Discharge of Easements Rights, referenced therein are hereby approved.


Section 3. Authorization. The Mayor is hereby authorized to execute said Reed Ranch Water Agreement, Wholesale Water Agreement, Special Warranty Deed, and Partial Termination, Release, and Discharge of Easements Rights, in substantial form as the instruments attached hereto, and to execute such ancillary documents and take such other actions as may reasonably be necessary to facilitate the purpose of this Resolution.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

Section 6. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

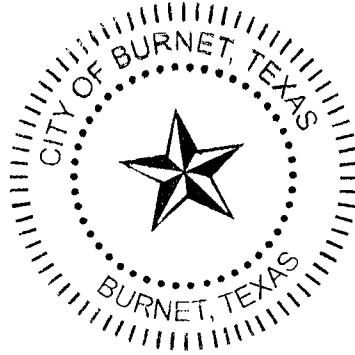
PASSED AND APPROVED this the 14th day of September 2021.

CITY OF BURNET


Crista Goble Bromley, Mayor

ATTEST:


for Kelly Dix, City Secretary



Reed Ranch Agreement Exhibit

Exhibit "E":
Resolution of Developer.

**UNANIMOUS WRITTEN CONSENT
OF MEMBERS OF
GRANITE PARTNERS, LLC
A DELAWARE LIMITED LIABILITY COMPANY**

The undersigned, being the sole Member of GRANITE PARTNERS, LLC, a Delaware limited liability company ("Company"), in accordance with the Company Agreement, hereby adopts the following written consent.

WHEREAS, the Member signing this consent is the sole Member of the Company and is entitled to vote on the following resolutions; and

WHEREAS, the undersigned desires to execute a written consent in lieu of formally holding a Member's meeting and agrees that the adoption of the following resolutions shall be valid and have the same force and effect as though such resolutions had been adopted at a formal Member's meeting; therefore, be it:

RESOLVED, that the Member, or Member's authorized person, is hereby authorized to enter into and execute the Reed Ranch Water Agreement ("Agreement"), as posted on the agenda for the Regular Meeting of the City of Burnet City Council on September 14, 2021, and incorporated herein by reference.

RESOLVED FURTHER, that the Member, or Member's authorized person, is hereby authorized to execute the Special Warranty Deed and the Partial Release of Pipeline Easement and Right-of-Way referenced in said Agreement upon the completion of the terms of the Agreement as set forth therein.

RESOLVED FURTHER, that this written consent shall have the same force and effect as a formal Member's meeting for all purposes.

The undersigned direct that this written consent may be executed in multiple counterparts, all of which shall be considered originals and that this written consent, including multiple counterparts, be filed with the minutes of the proceedings of the Company.

DATED to be effective on September 10, 2021.

DocuSigned by:
Michael MacDougall
926D95E1E24C453...

Michael G. MacDougall, Authorized Person

WAIVER OF NOTICE AND CONSENT

The undersigned, by signing this Unanimous Written Consent of Board of Directors and Officers, hereby waive notice of the time and place of this meeting, consent to the meeting and approve the contents of this written consent.

DocuSigned by:
Michael MacDougall
926D95E1E24C453...

Michael G. MacDougall, Authorized Person

Date Signed: September 10, 2021

Reed Ranch Agreement Exhibit

**Exhibit "E":
Resolution of Developer.**

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Michael MacDougall
926D95E1E24C453...
Michael G. MacDougall, Authorized Person

Date Signed: September 10, 2021

Reed Ranch Agreement Exhibit

Exhibit "F":
Developer's corporate documents.

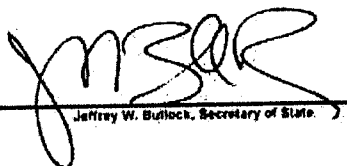
Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "GRANITE PARTNERS, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 2020, AT 4:30 O'CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

7977761 8100
SR# 20204188908

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202960368
Date: 05-20-20

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:30 PM 05/19/2020
FILED 04:30 PM 05/19/2020
SR 20204188908 - File Number 7977761

CERTIFICATE OF FORMATION

OF

GRANITE PARTNERS, LLC

This Certificate of Formation, dated May 19, 2020, has been duly executed and is filed pursuant to Section 18-201 of the Delaware Limited Liability Company Act (the "Act") to form a limited liability company (the "Company") under the Act.

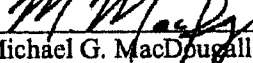
1. **Name.** The name of the Company is: Granite Partners, LLC
2. **Registered Office; Registered Agent.** The address of the registered office required to be maintained by Section 18-104 of the Act is:

Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

The name and address of the registered agent for service of process required to be maintained by Section 18-104 of the Act are:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

EXECUTED as of the date written first above.

By: 
Name: Michael G. MacDougall
Title: Authorized Person

Reed Ranch Water Agreement

THE STATE OF TEXAS §
 § **KNOW ALL PEOPLE BY THESE PRESENTS**
COUNTY OF BURNET §

Reed Ranch Water Agreement

I. Purpose

The purpose of this Agreement is to provide a memorialization of the terms and conditions by which: (i) the City of Burnet, a home rule city organized under the Constitution of the State of Texas (sometimes hereafter referred to as "City") shall provide wholesale water service to real property (hereinafter sometimes referred to as "Reed Ranch" and more particularly described herein); and (ii) Granite Partners LLC, a limited liability company formed in the state of Texas, (sometimes hereafter referred to as "Developer"), shall convey fee simple title to the property on which the City's water treatment plant is located (hereinafter sometimes referred to as "Water Treatment Plant Property" and more particularly described herein) to the City. The Parties acknowledge and agree the mutual promises and covenants contain herein are legally sufficient consideration to cause this Agreement to be a legally binding contract.

II. The Parties.

The Parties to this Agreement, and addresses for notice purposes, are as follows:

"CITY"

City of Burnet, Texas
Attn: City Manager
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

With copy to:



City of Burnet, Texas
Attn: Assistant City Manager
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

"Developer"

Granite Partners LLC
Attn Michael MacDougall
Address

With copy to:

Kendra Pesek
Law Office of Kendra Pesek, PLLC
114 East Austin Street

Initials City:  Developer: 

Fredericksburg, Texas 78624



III. Background.

Reed Ranch is an approximately 2000-acre tract of land located in unincorporated Burnet County, Texas, outside of the City's extraterritorial jurisdiction and more particularly described in that certain Special Warranty Deed With Vendor's Lien recorded in the Public Records of Burnet County on May 25, 2020 as Document No. 202005998. By instrument entitled "Pipeline Easement and Right-Of-Way Agreement," recorded on May 20, 1986, in the Public Records of Burnet County as Vol 364 Pages 387-396, the City obtained the right to construct and operate Water Transmission Lines on and under a described right-of-way within Reed Ranch. By instrument entitled "Water Treatment Plant Easement," recorded on June 5, 1986, in the Public Records Burnet County as Vol 366 Pages 103-110, the City obtained the right to construct and operate a water treatment plant on and under a described area within Reed Ranch. Subsequent to the recordation of the aforementioned easement agreements Developer purchased Reed Ranch with the intent to develop same as a residential housing community (hereinafter sometime referred to as the "Development"). Pursuant to the terms of this Agreement the City shall provide water service to the Development and Developer shall grant to the City: (i) fee simple title to the Water Treatment Plant Easement property, and additional property adjacent property as described herein; and (ii) a release of Developer's rights under the Pipeline Easement and Right-Of-Way Agreement as provided herein.

IV. Provision of Water

The City shall make available to Reed Ranch up to 75 Living Unit Equivalent ("LUE") of water subject to the terms and conditions that follow:

- (A) Purveyor. Developer has engaged with Corix Utilities Texas Inc., or other entity approved by the Texas Commission on Environmental Quality as a public water supplier ("Purveyor").
- (B) Wholesale Water Agreement. Purveyor will enter into an Agreement for Wholesale Water Service Between the City of Burnet and Purveyor ("Water Agreement") in substantially the same format as the Water Agreement attached hereto (**Exhibit "A"**) Water shall be provided on an as needed basis in accordance with the same or commercially similar terms of the Wholesale Water Agreement, which includes the matters that follows:
 - (1) the geographical boundaries of the area to be served;
 - (2) volume, pressure, flow and gallon rates;
 - (3) a requirement that the Wholesale Water Agreement, is authorized by, and in compliance with, the terms and conditions of the Water Service Contract by and between the City and the Lower Colorado River Authority
 - (4) and a requirement that the purveyor comply with LCRA water conservation and drought contingency plan and other requirements.

Initials City:  Developer: 

Reed Ranch Water Agreement

- (C) Costs. All costs, including capital recovery costs associated with providing water under the Wholesale Water Agreement shall be borne by Developer or Purveyor.
- (D) Water shall be provided on an as needed basis subject to the flow and gallon rates stated in the Wholesale Water Agreement referenced as **Exhibit "A."** Water shall be provided only within the geographical area described in said Wholesale Water Agreement.



V. City's Water Treatment Plant and Pipeline Easement and Right-Of-Way

In consideration for the City's commitment to perform the obligations stated in Article IV (entitled "Provision of Water") Developer agrees to perform as provided below:

- (A) Release of Developer's Easement Rights to Pipeline Easement and Right-Of-Way. Within ten days of the approval of the execution of the Wholesale Water Agreement between the City and the Purveyor, Developer shall execute, for recordation in Burnet County Public Records and return to the City for such recordation, the instrument titled "Partial Termination, Release, and Discharge of Easements Rights" attached hereto as **Exhibit "B"**.
- (B) Conveyance of Water Treatment Plant Property. Within ten days of the approval of this Agreement by City Council, Developer shall execute, for recordation in the Burnet County Clerk's Public Records and return to the City for such recordation, the instrument titled "Special Warranty Deed," attached hereto as **Exhibit "C."** As described in exhibits attached to the Special Warranty Deed the conveyance of the Water Treatment Plant Property shall include the following:
 - (1) the conveyance of fee title to the City of 4.93 acres; and
 - (2) the grant of a twenty-foot-wide Rights of Way and Maintenance Easement to the City; and
 - (3) the reservation of a twenty-foot-wide aerial electrical easement by Developer.

VI. Miscellaneous



- (A) Additional Instruments and Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions
- (B) Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.
- (C) Binding Obligation. This Agreement and all covenants, agreements, provisions and conditions hereto, shall be binding upon and inure to the benefit of the respective Parties hereto, their legal representatives, successors or assigns upon

Initials City:  Developer: 

Reed Ranch Water Agreement

execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same, as provided below:

- (1) City Council has authorized the Mayor to execute this Agreement on behalf of the City, as evidenced by Resolution, dated September 14, 2021, and attached hereto as **Exhibit "D."**
 - (2) Developer has authorized its Agent to execute this Agreement on its behalf, as evidenced by Consent Resolution, dated September 10, 2021, and attached hereto as **Exhibit "E"**.
 - (3) Developer has provided the following: Certificate of Formation certified by the Secretary of State of the State of Delaware (the "Secretary of State"); and Certificate of Existence issued by the Secretary of State, which are attached hereto as **Exhibit "F"**.
- (D) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (E) Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Agreement.
- (F) Enforcement. Enforcement of this Agreement shall be limited to the terms and conditions of this Section VI (F)
- (1) The failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within thirty (30) days of receiving written notice from the other Party; or if the performance of the requirement, duty, or covenant within 30 days is not reasonably practical due to Force Majeure, or other event beyond the non-performing Party's reasonable control; and in such case it shall be considered an act of Default if the failure to perform is uncured within such time as may be reasonable to cure the failure to perform.
 - (2) A Default by either Party shall entitled the non-defaulting Party to enforce its rights under this Agreement through the equitable relief of specific performance, restraining orders or injunctions without the necessity of proof of inadequacy of legal remedies or irreparable harm.
 - (3) In no event shall either Party be entitled to monetary damages, whether actual, consequential, special, punitive (or exemplary), or any similar damages against the other Party for any Default under this Agreement. It

Initials City:  Developer: 

Reed Ranch Water Agreement

being the intent of the Parties to limit Enforcement of this Agreement to the relief stated in Sections VI(F)(2) and Sections VI(F)(4)

- (4) If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable and necessary attorney's fees and court and other costs.
- (G) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Burnet, Texas.
- (H) Exhibits and Attachments. All Exhibits and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes. Exhibits to this Agreement are as follows:
- Exhibit "A": Wholesale Water Agreement
 - Exhibit "B": Partial Release of Pipeline Easement and Right-Of-Way
 - Exhibit "C": Special Warranty Deed.
 - Exhibit "D": Resolution of City Council.
 - Exhibit "E": Resolution of Developer.
 - Exhibit "F": Developer's corporate documents.
- (I) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, pandemic, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated Party and delays caused by the other Party, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.
- (J) Gender. The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.
- (K) Governing Law. This Agreement shall be governed by the laws of the State of Texas, without regard to choose-of-law rules of any jurisdiction. and the venue for any action concerning this Agreement shall be in Burnet County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of a court of competent jurisdiction in said County.

Initials City:  Developer: 

Reed Ranch Water Agreement

- (L) Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.
- (M) Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- (N) Independent Contractor. During all times that this Agreement is in effect, the Parties agree that Developer is and shall be deemed to be an independent contractor and operator and not an agent or employee of the City with respect to their acts or omissions hereunder. It is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between the Parties hereto.
- (O) Individuals Not Liable. No director, officer, agent or employee of the City shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution thereof
- (P) Notice. Any notice given to either Party under the terms of this Agreement shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as stated in Article II; or to such other place as each Party may hereafter designate in writing forwarded in like manner for any other notice.
- (Q) Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided, however, no ordinance shall reduce or diminish the contractual obligations contained herein.
- (R) Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- (S) Sovereign Immunity. The Parties agree that nothing in this Agreement shall be determined to waive the City's sovereign immunity.
- (T) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Initials City:  Developer: 

Reed Ranch Water Agreement

- (U) Waivers. No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

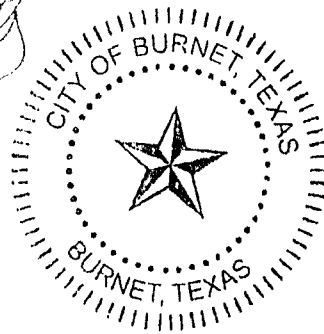
To be effective as of the 28 day of September, 2021.

City
City of Burnet

By: Crista Goble Bromley
Crista Goble Bromley, Mayor

Attest:

By: Kelly Dix
for Kelly Dix, City Secretary



Developer
Granite Partners LLC

By: Michael MacDougall
Michael MacDougall, Authorized Agent

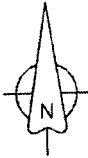
Initials City: CG Developer: MM

Reed Ranch Agreement Exhibit

Exhibit "A" Wholesale Water Agreement

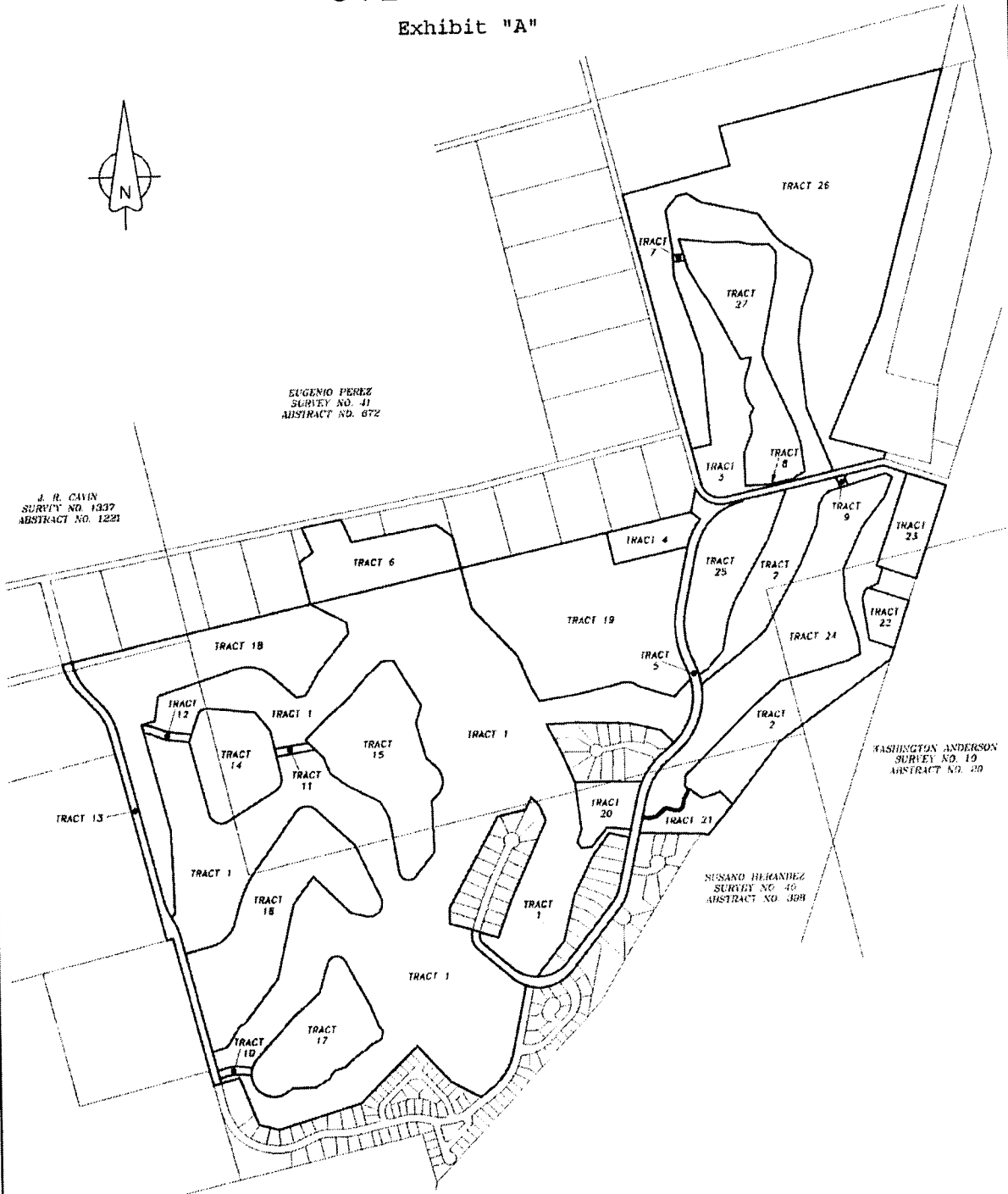
OVERALL EXHIBIT

Exhibit "A"



J. R. CAYEN
SURVEY NO. 1337
ABSTRACT NO. 1221

EUGENIO PEREZ
SURVEY NO. 41
ABSTRACT NO. 672



WASHINGTON ANDERSON
SURVEY NO. 19
ABSTRACT NO. 20

SUSANO HERNANDEZ
SURVEY NO. 46
ABSTRACT NO. 399

SHEET 1	PROJ. NO. 08222	DELAWARE SPRINGS TRACTS 1 THRU 27 BURNET COUNTY, TEXAS		CUPLIN & ASSOCIATES, INC. 3010 WEST RR 1431, SUITE B KINGSLAND, TEXAS 78639 PHONE: 325-388-3300 FAX: 325-388-3320	8 1 DATE NO. DESCRIPTION REVISIONS	DRAWN BY: REG
	DATE: 07/31/09 SCALE 1" = 1000' 500 1000					CHECKED BY:
OF 1					APPROVED BY:	FILE NO.:
						COPY NO.: 1320