

ORDINANCE NO. 2021-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY IN CASE NO. ZC-20-22 BY REZONING APPROXIMATELY 72.85 ACRES OF LAND LOCATED ON HARRIS HILL ROAD, APPROXIMATELY ONE-HALF MILE SOUTH OF YARRINGTON ROAD, FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “MH” MANUFACTURED HOME DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. On December 15, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “MH” Manufactured Home District for approximately 72.85 acres of land located on Harris Hill Road approximately one-half mile south of Yarrington Road (the “Property”), as described by metes and bounds in Exhibit A, attached hereto and made a part hereof for all purposes.

2. The Planning and Zoning Commission approved a recommendation to the City Council regarding the request.

3. The City Council held a public hearing regarding the request.

4. All requirements pertaining to Zoning Map amendments have been met.

5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Official Zoning Map of the City is amended to rezone the Property, as described in Exhibit A, from “FD” Future Development District to “MH” Manufactured Home District.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect after its passage, approval and adoption on second reading and the recording of a restrictive covenant agreement in substantially the form in

Exhibit B, attached hereto and made a part hereof.

PASSED AND APPROVED on first reading on May 4, 2021.

PASSED, APPROVED AND ADOPTED on second reading on May 18, 2021.

Jane Hughson
Mayor

Attest:

Tammy K. Cook
Interim City Clerk

Approved:

Michael J. Cosentino
City Attorney

EXHIBIT A



www.payne-llc.com
TBPLS 10194453

A DESCRIPTION OF 72.293 ACRES, MORE OR LESS, IN THE JOEL MINER SURVEY, ABSTRACT 321, HAYS COUNTY, TEXAS, BEING A PORTION OF A CALLED 72.85 ACRE TRACT OF LAND CONVEYED TO ALVIN POPHAM, A/K/A ALVIN G. POPHAM, AND WIFE, OPAL POPHAM, IN VOLUME 895, PAGE 450 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (OPRHCT), AND BEING A PORTION OF A CALLED 10.00 ACRE TRACT OF LAND CONVEYED TO ALVIN POPHAM, A/K/A ALVIN G. POPHAM, AND WIFE, OPAL POPHAM, IN VOLUME 1910, PAGE 741 (OPRHCT); SAID 72.293 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 3/8-inch iron rod found at the southwest corner of said 72.85 acre tract, same being an angle point in the north right-of-way-line of County Road 160, also known as Harris Hill Road (right-of-way width varies);

THENCE, with the west line of said 72.85 acre tract, in part being the north right-of-way-line of Harris Hill Road, and in part being the east line of Lot 1A, Amended Plat of Saddle Brook Lots 1 and 2, a subdivision of record in Volume 18, Page 22 of the Plat Records of Hays County, Texas (PRHCT), the following two (2) courses and distances:

- 1) **N46°06'14"W**, a distance of **1205.40** feet to a 1/2-inch iron rod with "Delta" cap found;
- 2) **N46°31'50"W**, a distance of **1793.21** feet to a 5/8-inch iron rod found at the northwest corner of said 72.85 acre tract, same being the northeast corner of said Lot 1A, also being in the south line of a called 86.948 acre tract of land conveyed to Whisper Master Community Limited Partnership in Document No. 2016-16000334 (OPRHCT);

THENCE, with the south line of said 86.948 acre tract, same being the north line of said 72.85 acre tract, the following two (2) courses and distances:

- 1) **N44°08'13"E**, a distance of **551.44** feet to a 1/2-inch iron rod found;
- 2) **N43°50'49"E**, a distance of **390.26** feet to a 1/2-inch iron rod found at the southeast corner of said 86.948 acre tract, same being the southwest corner of a called 328.824 acre tract of land conveyed to Bobbie Y. Naughton, et al. in Volume 720, Page 152, Real Property Records of Hays County, Texas (RPRHCT);

THENCE, continuing with the north line of said 72.85 acre tract, same being the south line of said 328.824 acre tract, **N44°14'27"E**, a distance of **116.45** feet to a 1/2-inch iron rod found at the northeast corner of said 72.85 acre tract, same being the northwest corner of said 10.00 acre tract;

THENCE, continuing with the south line of said 328.824 acre tract, same being the north line of said 10.00 acre tract, **N43°16'30"E**, a distance of **144.51** feet to a 5/8-inch iron rod found at the northeast corner of said 10.00 acre tract, same being the northwest corner of a called 10.00 acre tract of land conveyed to Joshua L. Young in Volume 4091, Page 798 (OPRHCT);

THENCE, with the common line of the two 10.00 acre tracts, **S46°20'21"E**, a distance of **1492.37** feet to a 1/2-inch iron rod with "Payne 6064" cap set, from which a 1/2-inch iron rod found for the common south corner of the two 10.00 acre tracts bears **S46°20'21"E**, a distance of **1525.48** feet;

THENCE, crossing said 10.00 acre Popham tract and said 72.85 acre tract, the following two (2) courses and distances:

- 1) **S44°50'14"W**, a distance of **299.99** feet to a 1/2-inch iron rod with "Payne 6064" cap set;
- 2) **S46°20'21"E**, a distance of **1524.84** feet to a 1/2-inch iron rod with "Payne 6064" cap set in the south line of said 72.85 acre tract, same being the north right-of-way-line of Harris Hill Road, from which a 1/2-inch iron rod found at the common south corner of said 72.85 acre tract and said 10.00 acre Popham tract bears **N44°50'14"E**, a distance of 155.59 feet;

THENCE, with the south line of said 72.85 acre tract and the north right-of-way-line of Harris Hill Road, **S44°50'14"W**, a distance of **901.85** feet to the **POINT OF BEGINNING** hereof, and containing 72.293 acres, more or less.

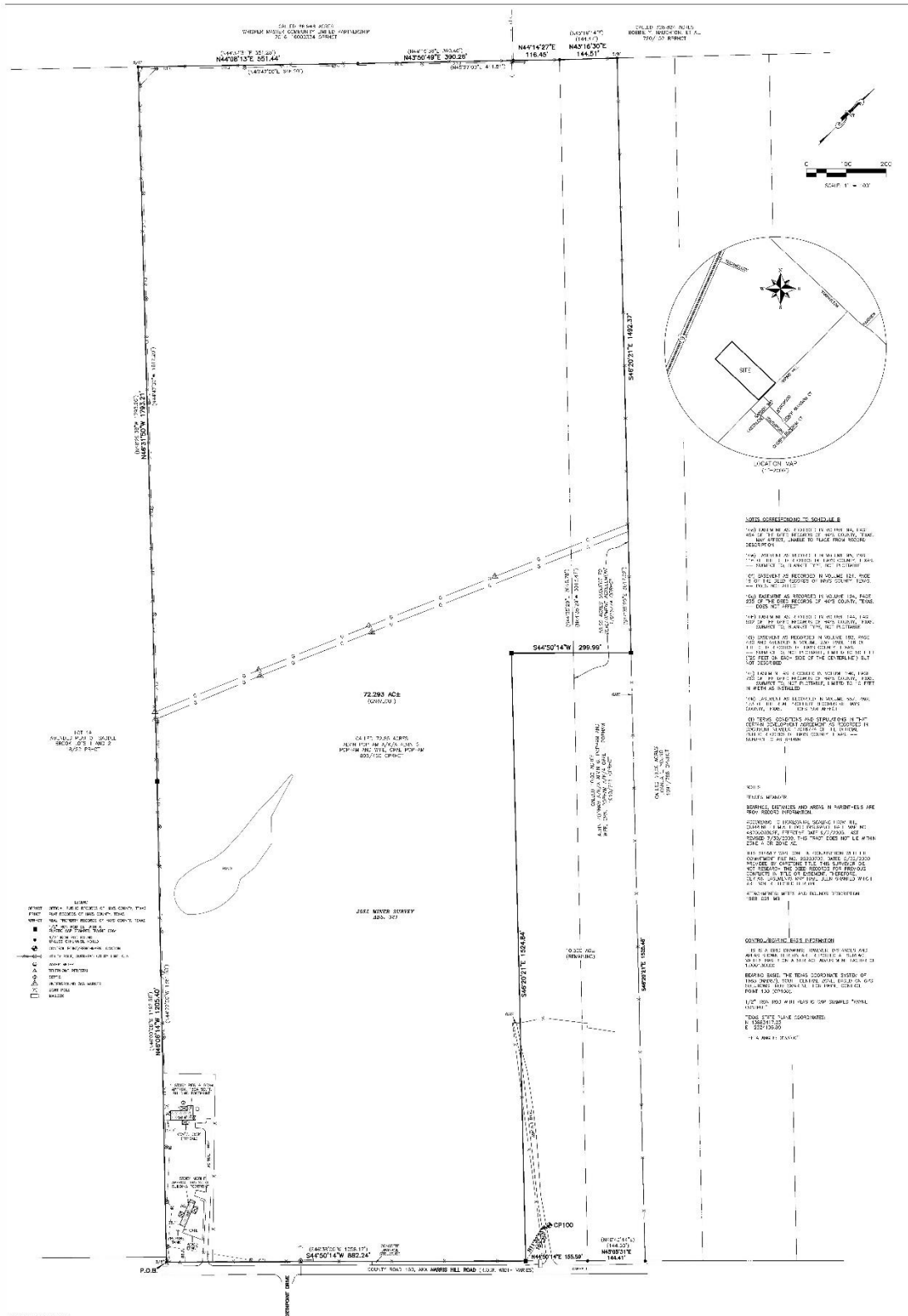
Surveyed on the ground July 6, 2020. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions. Attachments: drawing 1988-001



7/10/20

Eric J. Dannheim, RPLS
State of Texas #6075





FILE NO. 200007001
ADDRESS: 2001
CITY: 2001
COUNTY: 2001
STATE: 2001
ZIP: 2001
DATE: 2001
BY: 2001
FOR: 2001

A LAND TITLE SURVEY OF 72.293 ACRES, MORE OR LESS, IN THE JOEL MINER SURVEY, ABSTRACT 321, HAYS COUNTY, TEXAS, BEING A PORTION OF A CALLED 72.65 ACRE TRACT OF LAND CONVEYED TO ALVIN POPHAM, A/K/A ALVIN G. POPHAM, AND WIFE, OPAL POPHAM, IN VOLUME 896, PAGE 406 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (OPRRECT), AND BEING A PORTION OF A CALLED 10.00 ACRE TRACT OF LAND CONVEYED TO ALVIN POPHAM, A/K/A ALVIN G. POPHAM, AND WIFE, OPAL POPHAM, IN VOLUME 1910, PAGE 741 (OPRRECT).



ALVIN G. POPHAM, SURVEYOR
HAYS COUNTY, TEXAS
EXPIRATION DATE: 12/31/2001

STATE OF TEXAS
COUNTY OF HAYS
I, ALVIN G. POPHAM, SURVEYOR, DO HEREBY CERTIFY THAT THE FOREGOING SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS SURVEYING ACT.

DATE: 12/31/2001
BY: ALVIN G. POPHAM
TITLE: SURVEYOR

SAN MARCO, TEXAS
HAYS COUNTY, TEXAS
PAYNE
P.O. BOX 100, SAN MARCO, TEXAS 78682

EXHIBIT B
[FORM OF RESTRICTIVE COVENANT AGREEMENT]

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2021, by and between _____, (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 72.85 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto (the "**Property**").

B. Owner and the City desire to subject the Property to the terms of this Declaration.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner and the City do hereby agree as follows:

1. Establishment of Restrictive Covenant. The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenants:

a. While occupied by its owner as the owner's residence, leasing of a manufactured home shall be restricted to the family of the owner and up to one other person who is not related to any of the family members by blood, legal adoption, marriage, or conservatorship.

b. As long as the average emergency response time to the Property exceeds the City's then current target emergency response time (seven minutes as of the date hereof), then, at the time of application for, and before execution of, any lease for a lot or space for placement of a manufactured home or lease for a manufactured home, the applicant shall be provided with written notice of the average emergency response time to the Property.

2. No Consent Required. The Owner and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. Remedies. The City may pursue any remedies available at law or in equity to enforce the provisions of this Agreement, including the recovery of reasonable attorney's fees and court costs.

4. **No Waiver.** The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. **Modification.** This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing approved by the city council of the City and signed by all of the then-existing owners of the Property or portions thereof, and by the City, and has been recorded in the Official Public Records of Hays County, Texas.

6. **Binding Effect.** The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. **Partial Invalidity.** If any provision of this Declaration shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[SIGNATURES ON NEXT PAGE]

[OWNER NAME]:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this _____ day of -
_____, 2021, by _____, _____ of
_____, in such capacity, on behalf of said entity.

Notary Public, State of Texas

CITY:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this _____ day of
_____, 2021, by _____, _____ of the City of
San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

EXHIBIT A



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TBPLS 10194453

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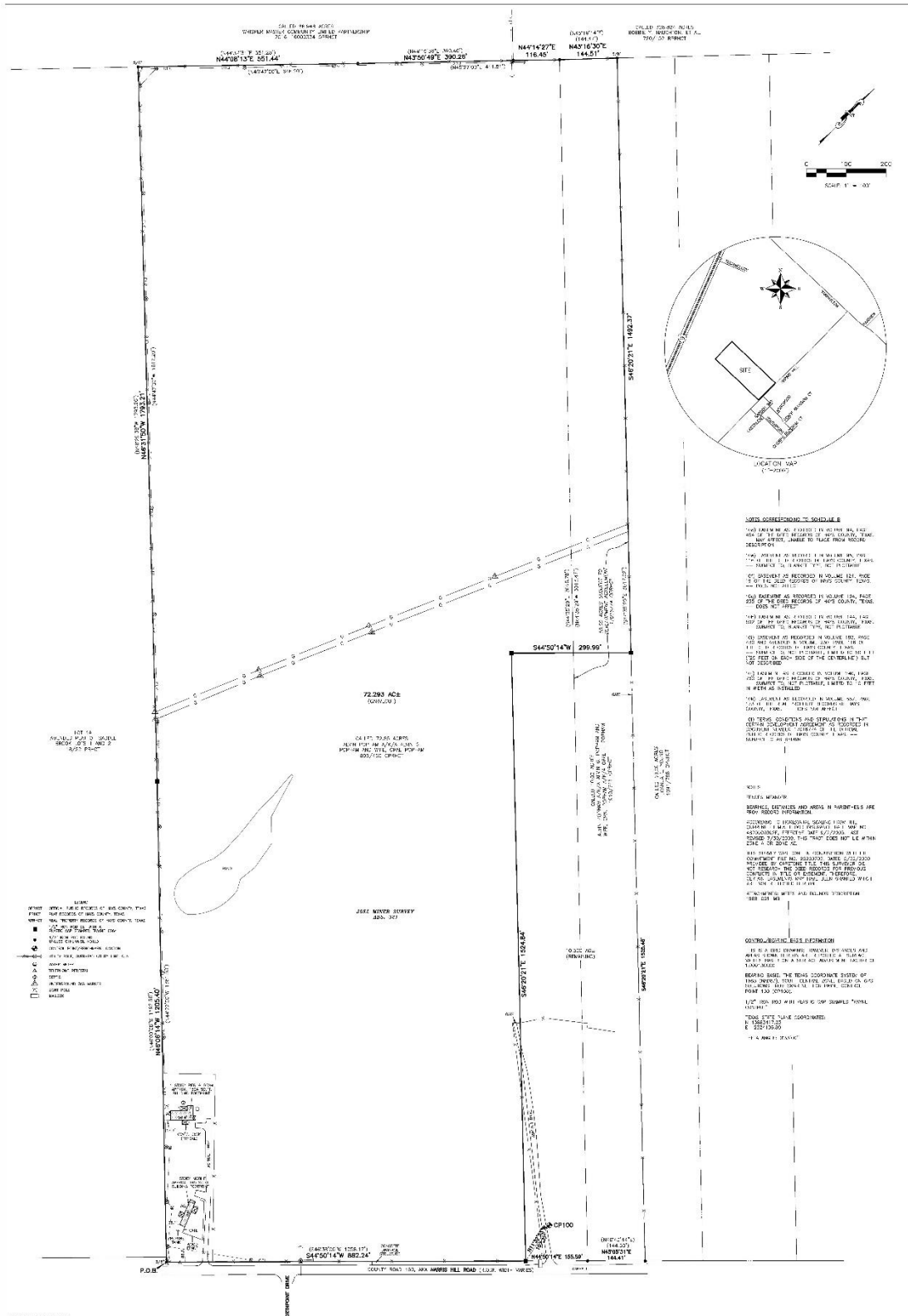
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7/10/20

Eric J. Dannheim, RPLS
State of Texas #6075





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ADDRESS: 2001
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ALVIN G. POPHAM, SURVEYOR
HAYS COUNTY, TEXAS
COMMISSION EXPIRES 12/31/2004

STATE OF TEXAS
COUNTY OF HAYS
I, ALVIN G. POPHAM, SURVEYOR, DO HEREBY CERTIFY THAT THE FOREGOING SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS SURVEYING ACT.

DATE: 12/31/2004
BY: ALVIN G. POPHAM
TITLE: SURVEYOR

SAN MARCO, TEXAS
HAYS COUNTY, TEXAS
PAYNE
P.O. BOX 100, SAN MARCO, TEXAS 78682