



## ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made effective August 1, 2009, by and among **Montvale Property Investors LP**, a New Jersey limited partnership ("Montvale"), and **Whitewater Springs Property Owners Association, Inc.**, a Texas non-profit corporation (the "Association") (collectively "Grantor"), and **Hickory Pass, L.P.**, a Texas limited partnership ("Grantee").

### BACKGROUND

A. Montvale is the developer and/or successor-developer of Whitewater Springs Subdivision, a residential subdivision situated in Burnet County, Texas, more particularly described on Exhibit A attached to and incorporated into this Agreement for all purposes (the "Subdivision").

B. The Association is the property owners association established for the Subdivision, whose duties include administration and maintenance of all roadways within the Subdivision.

C. Grantee is the owner of that certain 978 acre tract of land, more or less, situated adjacent to the Subdivision in Burnet County, Texas, and more particularly described on Exhibit B attached to and incorporated into this Agreement for all purposes (the "978 Tract"). Grantee intends to use the 978 Tract for conservation and traditional ranching purposes and limit its development to not more than 8 building sites, with each building site designated for single family use only (a "Building Site").

D. Grantor desires to help Grantee preserve the 978 Tract by granting a non-exclusive access easement upon and across all streets and roadways now or hereafter located, platted, and/or constructed within the Subdivision, as may be modified by Montvale or the Association from time to time, as well as that portion of the common area between Sunset Peak and the current gap/gate in the high fence on the Subdivision/978 Tract boundary (collectively, the "Roadways"). An access easement over the Roadways eliminates the need for Grantee to build impervious roads on the 978 Tract, thereby enhancing its conservation purposes.

### AGREEMENT

IN CONSIDERATION of the background, \$10.00, and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor and Grantee agree as follows:

**1. Grant of Easement.** Grantor does hereby grant, sell, and convey to Grantee a perpetual nonexclusive easement (the "Easement") over and across the Roadways for the purpose of allowing vehicular and pedestrian ingress and egress to/from the 978 Tract and RR 1174, to have and to hold the Easement to Grantee and Grantee's successors and assigns forever, subject to the limitations and conditions stated in this Agreement. Grantor binds Grantor and Grantor's heirs, legal representatives, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof when the claim is by, through or under Grantor but not otherwise.

## 2. Limitations on Easement's Use.

**2.1. Only for Designated Owners.** Use of the Easement is limited to the owners of a Building Site (a "Designated Owner"), together with their respective family members, invitees, and guests for normal single family residential access purposes only.

A. Initial Designated Owner. The initial Designated Owner of the 8 Building Sites is Grantee. Since Grantee is an entity, David H. Johnston, the managing general partner of Grantee, shall be deemed to be the Initial Designated Owner for purposes of determining family members, invitees, and guests.

B. Transfer of Interest in the 978 Tract. If a Designated Owner transfers an interest in the 978 Tract and an associated interest in a Building Site, then that Designated Owner must give written notice to the Association stating the new Designated Owner, his contact information, and the transfer's effective date, and pay any transfer fee customarily charged by the Association in addition to filing the appropriate transfer document in the Official Public Records of Burnet County, Texas.

C. Cancellation of Building Sites. If Grantee legally restricts the number of Building Sites on the 978 Tract to a number less than 8, then Grantee may cancel the difference between the original 8 Building Sites and the new maximum number of legally allowable Building Sites; provided however, Grantee may not restrict a Building Site that has been transferred. For example, if Grantee legally restricts the 978 Tract to a total of 5 Building Sites, then Grantee may cancel 3 Building Sites. For this purpose, any portion of the 978 Tract that becomes part of the Balcones Canyonlands National Wildlife Refuge shall be deemed to be restricted to zero Building Sites. If Grantee does cancel one or more Building Sites, Grantee shall provide the Association with appropriate legal documents substantiating the restrictions.

### D. Fees.

(1) Regular Assessment. A Designated Owner shall pay to the Association the Association's regular assessment on the Association's property owners based on 2 acres per Building Site or, if the Association changes its method of assessment from acres to lots, then 1 lot per Building Site. For example, if the Association sets its regular assessment for a year at \$250 per acre, then a Designated Owner shall pay \$500 per Building Site. Grantee shall pay the prorated regular assessment for 2009 for 8 Building Sites.

(2) Special Assessments. In the same manner as described for regular assessments, each Designated Owner shall pay to the Association any special assessment imposed/levied on Association property owners if, and only if, the special assessment is exclusively for the construction, reconstruction, repair or maintenance of Roadways or Roadway related appurtenances.

(3) Construction Fee. If a Designated Owner decides to construct a building or buildings on his Building Site utilizing the Easement for construction access, then that Designated Owner shall pay the Association the then current Association's road impact fee to compensate for the wear and tear caused by the construction trucks accessing the Building Site.

**2.2. Maximum Number of Designated Owners.** Notwithstanding anything else to the contrary, the maximum number of Designated Owners (initial and additional) allowed under this Agreement is 8.

**2.3. US Fish & Wildlife.** It is possible that the US Fish & Wildlife Service ("Fish") may purchase part or all of the 978 Tract, either directly or through an environmental charitable organization such as The Nature Conservancy (a "Charity"), to be permanently added to the Balcones National Wildlife Refuge. Notwithstanding anything else to the contrary, if Fish or a Charity purchases part or all of the 978 Tract, the Fish or the Charity shall NOT be designated as a Designated Owner.

**2.4. Restrictions.** The Easement is for the use of Designated Owners, together with their respective family members, invitees, and guests, and shall be used for normal residential access purposes only. Any public or commercial use of the Easement is strictly prohibited.

**2.5. Subject to Association's Rules.** The rights granted herein to any Designated Owner shall be subject to and conditioned upon the reasonable rules and regulations of the Association pertaining to ingress and egress into and from the Subdivision and the use of the Roadways.

**2.6. Default.** If a Designated Owner, or his respective family members, invitees, or guests, violates any of the limitations in this Section or any other provision of this Access Easement Agreement, including but not limited to violating any of the reasonable rules and regulations promulgated by the Association that are applicable to the Subdivision and the property owners of the Subdivision alike, then that Designated Owner shall be in default ("Defaulting Designated Owner"). Upon default, the Association may give written notice to the Defaulting Designated Owner which states the default and specifies how the Defaulting Designated Owner may cure the default ("Default Notice"). If the Defaulting Designated Owner does not cure the default within 10 days of receiving the Default Notice or if the default pertains to a violation of Section 2.3 and is a second violation within a twelve (12) month period, then the Association may terminate the Defaulting Designated Owner's rights under this Agreement by filing a written instrument in the Official Public Records of Burnet County, with a copy to the Defaulting Designated Owner, which states that the Defaulting Designated Owner's rights are terminated under this provision. A Defaulting Designated Owner shall pay the Association's reasonable costs to enforce this provision including but not limited to reasonable attorney fees.

**3. Waiver and Indemnity.** Each Designated Owner waives any and all causes of action he may have against Montvale and the Association for any damages that Designated Owner may incur while using the Easement. In addition, each Designated Owner will hold harmless and indemnify Montvale and the Association for any and all costs, damages, and liabilities, including attorney's fees, associated with any lawsuit filed by that Designated Owner's family members, invitees, and guests against Montvale and the Association for claims and causes of action that are in any way related to the Easement.

#### **4. General.**

**4.1. No Dedication.** Nothing in this Agreement shall be construed to give the public or any governmental or quasi-governmental entity any rights of access in or to the Roadways.

**4.2. No Consent Required.** Grantor and Grantee each hereby represents and warrants to the other that they have full requisite power and authority to enter into this Agreement, without the joinder or consent of any other party, including that of any lender, lienholder or tenant, and that the Easement will not be subordinate to any existing lien or other monetary encumbrance.

**4.3. Modification.** The rights created under this Agreement may not be modified or amended unless such modification or amendment has been reduced to writing and signed by all of the then existing

Designated Owners and the Association, and has been recorded in the Official Public Records of Burnet County, Texas.

**4.4. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the Easement and no other agreement, statement, or promise made by any party, or to any employee, officer, partner, or agent of any party, which is not contained in this Agreement, shall be binding or valid. This Agreement does not subject Grantee, the 978 Tract, or the users of the Easement to the covenants, conditions, and restrictions of the Subdivision except as provided herein.

**4.5. Binding Effect.** The Easement and other obligations created by this Agreement shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties and their respective heirs, legal representatives, lessees, successors, and assigns.

**4.6. Interpretation.**

A. Headings. All titles, headings, and captions used in this Agreement have been inserted for reference purposes only and shall not in any way affect the meaning and interpretation of its provisions.

B. Gender, Tense. Pronouns, nouns, and terms used in this Agreement shall include the masculine, feminine, neuter, singular and plural forms wherever appropriate to the context.

C. Including. "Including" is used to list examples and is not used by way of limitation.

D. May. "May" is used to indicate that an action or inaction is permissible but not required.

E. No Presumption. This Agreement shall be deemed to be drafted equally by both parties after consultation with each party's attorney.

F. Partial Invalidity. If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, then the remaining provisions shall nevertheless be valid, legal, and enforceable and shall be construed in such a manner as to fulfill the purpose of this Agreement.

**4.7. Notice.** Any notice made under this Agreement shall be in writing and made the United States mail, certified mail, return receipt requested, by hand, or by email and is valid 3 days after deposit, when delivered, or when sent, respectively. Notice shall be made to each party as follows (or to any other location or email address as specified by a party in writing):

**Grantor:**

Montvale Property Investors LP  
c/o Madison Realty Investors, Inc.  
3100 Monticello Ave., #335  
Dallas, Texas 75205

**Grantee:**

Hickory Pass, L.P.  
1803 Brookhaven Drive  
Austin, Texas 78704  
[hickorypass@hotmail.com](mailto:hickorypass@hotmail.com)

Whitewater Springs Property Owners Association, Inc.  
10900 FM Hwy 1174  
Bertram, Texas 78605

**4.8. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

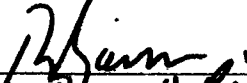
**4.9. Swimming Pool.** Family members of Grantee's general partners, David Johnston and Jacquelyn Mouton-Johnston (the "Johnstons"), shall be allowed to use the Subdivision's swimming pool subject to the same conditions and rules as members of the Association so long as a David H. Johnston is a deemed Designated Owner.

EXECUTED on the first date written above.

GRANTOR:

**Montvale Property Investors LP**  
a New Jersey limited partnership

By: Montvale GP Inc,  
A Delaware corporation  
Its General Partner

By:   
Name: Thomas H. Bjornason  
Title: vice-president

GRANTEE:

**Hickory Pass, L.P.**  
a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Whitewater Springs Property Owners Association, Inc.**  
a Texas non-profit corporation

By: \_\_\_\_\_  
Name: LaDale Young  
Title: President

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EXECUTED on the first date written above.

GRANTOR:

**Montvale Property Investors LP**  
a New Jersey limited partnership

By: Montvale GP Inc,  
A Delaware corporation  
Its General Partner

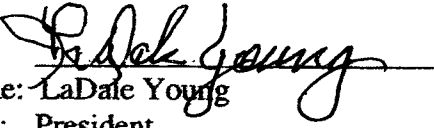
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

**Hickory Pass, L.P.**  
a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Whitewater Springs Property Owners Association, Inc.**  
a Texas non-profit corporation

By:   
Name: LaDale Young  
Title: President

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EXECUTED on the first date written above.

GRANTOR:

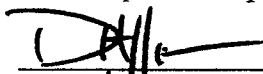
**Montvale Property Investors LP**  
a New Jersey limited partnership

By: Montvale GP Inc,  
A Delaware corporation  
Its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

**Hickory Pass, L.P.**  
a Texas limited partnership

By:   
Name: D.H. JOHNSTON  
Title: GENERAL PARTNER

**Whitewater Springs Property Owners Association, Inc.**  
a Texas non-profit corporation

By: \_\_\_\_\_  
Name: LaDale Young  
Title: President

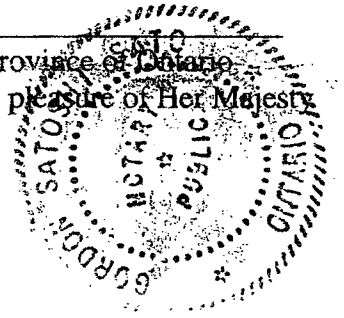
**ACKNOWLEDGMENTS**

PROVINCE OF ONTARIO §  
§  
JUDICIAL DISTRICT OF YORK §

This instrument was acknowledged before me on July 30, 2009, by Thomas H. Bjarnason, in his capacity as Vice President of Montvale GP Inc., a Delaware corporation, General Partner of Montvale Property Investors LP, a New Jersey limited partnership, on behalf of said partnership.



Notary Public in and for the Province of Ontario  
My commission expires at the pleasure of Her Majesty



STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by LaDale Young, in his capacity as President of the Whitewater Springs Property Owners Association Inc., a Texas nonprofit corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by DH Johnston, in his capacity as General Partner of Hickory Pass, L.P., a Texas limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas



ACKNOWLEDGMENTS

PROVINCE OF ONTARIO §  
§  
JUDICIAL DISTRICT OF YORK §

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\_\_\_\_\_  
Notary Public in and for the Province of Ontario  
My commission expires at the pleasure of Her Majesty

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

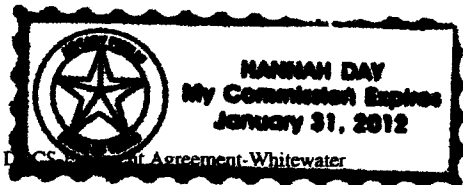
This instrument was acknowledged before me on \_\_\_\_\_, 2009, by LaDale Young, in his capacity as President of the Whitewater Springs Property Owners Association Inc., a Texas nonprofit corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on July 29, 2009, by DH Johnston, in his capacity as General Partner of Hickory Pass, L.P., a Texas limited partnership.

Hannah Day  
\_\_\_\_\_  
Notary Public, State of Texas



**ACKNOWLEDGMENTS**

PROVINCE OF ONTARIO §  
§  
JUDICIAL DISTRICT OF YORK §

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by Thomas H. Bjarnason, in his capacity as Vice President of Montvale GP Inc., a Delaware corporation, General Partner of Montvale Property Investors LP, a New Jersey limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public in and for the Province of Ontario  
My commission expires at the pleasure of Her Majesty

STATE OF TEXAS  
COUNTY OF Burnet

This instrument was acknowledged before me on August 3, 2009, by LaDale Young, in his capacity as President of the Whitewater Springs Property Owners Association Inc., a Texas nonprofit corporation.

Nancy K. Collins  
Notary Public, State of Texas



STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on \_\_\_\_\_, 2009, by DH Johnston, in his capacity as General Partner of Hickory Pass, L.P., a Texas limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

## SUBDIVISION

WHITEWATER SPRINGS, SECTION ONE, as recorded in Plat Cabinet 2, Slide 108B-111A, Plat Records of Burnet County, Texas and as replatted and recorded in Cabinet 2, Slide 126D, Plat Records of Burnet County, Texas; consisting of a 332.40 acre tract of land, consisting of approximately 3.38 acres out of the Hugh Brown & A.C. Hillman Survey No. 10, Abstract No. 1876, 7.25 acres out of the E. Schnell Survey No. 98, Abstract No. 1799, 36.68 acres out of the G. W. Harris Survey No. 926, Abstract No. 421, 83.17 acres out of the H. W. Heine Survey No. 532, Abstract No. 428, and 198.92 acres out of the T.C.R.R. Co. Survey No. 109, Abstract No. 1401, and being a portion of the certain 60 foot wide strip of land conveyed to the 1902 Land Owners Association, Inc., recorded in Volume 764, Page 31, Official Public Records of Burnet County, Texas and a portion of that certain 1151.05 acres of land known as Tract C, conveyed to said Suntex Fuller Corporation recorded in Volume 763, Page 995, Official Public Records of Burnet County, Texas;

WHITEWATER SPRINGS, SECTION TWO, as recorded in Plat Cabinet 2, Slide 120D-124A, Plat Records of Burnet County, Texas and as replatted and recorded in Plat Cabinet 2, Slide 133C-134B; Cabinet 2, Slide 126C, Cabinet 2, Slide 127A, and Cabinet 2, Slide 133A&B, Plat Records of Burnet County, Texas; being a portion of a 475.16 acre tract of land, consisting of approximately 129.37 acres out of the T.C. Railroad Co. Survey No. 109, Abstract No. 1401, approximately 13.63 acres out of the H.W. Heine Survey No. 532, Abstract No. 428, approximately 25.71 acres out of the Hugh Brown and A.C. Hillman Survey No. 10, Abstract No. 1876, and approximately 306.45 acres out of the E. Schnell Survey No. 98, Abstract No. 1799, and being a portion of that certain 60 foot wide strip of land conveyed to the 1902 Land Owners Association, inc., recorded in Volume 764, Page 31, Official Public Records of Burnet County, Texas, and a portion of that certain 1151.05 acre tract of land known as Tract C, conveyed to Suntex Fuller Corporation, recorded in Volume 763, Page 995, Official Public Records of Burnet County, Texas;

WHITEWATER SPRINGS, SECTION THREE, as recorded in Plat Cabinet 2, Slide 148A-149C, Plat Records of Burnet County, Texas, being a portion of 191.42 acres of land consisting of approximately 141.69 acres out of the Joseph Kealy Survey No. 561, Abstract No. 513, 40.59 acres out of the E.H. Caldwell Survey No. 8, Abstract No. 200, 5.24 acres out of the B.O. Stavely, Sr. Survey No. 509, Abstract No. 853, and 3.90 acres out of the G.W. Harris Survey No. 826, Abstract No. 421, and being portions of that certain 60 foot wide strip conveyed to Suntex Fuller Corporation, recorded in Volume 885, Page 151, Official Public Records of Burnet County, Texas, and all of that certain Tract A, 0/90 acre tract conveyed to Suntex Fuller Corporation, recorded in Volume 763, Page 995, Official Public Records of Burnet County, Texas;

WHITEWATER SPRINGS, SECTION FOUR, as recorded in Plat Cabinet 2, Slides 149D-150D, Plat Records of Burnet County, Texas, which consists of 137.04 acres of land, consisting of approximately 7.47 acres out of the Joseph Kealy Survey No. 561, Abstract No. 513, 0.38 acres out of the E. H. Caldwell Survey No. 8, Abstract No. 200, 123.40 acres out of the B.O. Stavely, Sr. Survey No. 509, Abstract No. 853, and 5.79 acres out of the G.W. Survey No. 826, Abstract No. 421, and being portions of that certain 60 foot wide strip conveyed to Suntex Fuller Corporation recorded in Volume 805, Page 218, Official Public Records of Burnet County, Texas, that certain Tract B, 11.29 acres conveyed to Suntex Fuller Corporation recorded in Volume 763, Page 995 and Volume 763, Page 1009, Official Public Records of Burnet County, Texas, and that certain Tract No. 2, 127.84 acres conveyed to Suntex Fuller Corporation recorded in Volume 805, Page 218, Official Public Records of Burnet County, Texas;

WHITEWATER SPRINGS, SECTION FIVE, as recorded in Plat Cabinet 2, Slide 154C-155A, Plat Records of Burnet County, Texas, which consists of 320.7 acres of land, out of the E. Schnell Survey No. 98, Abstract No. 1799, and being a portion of that certain Tract C, 1151.05 acres of land conveyed to Suntex Fuller Corporation, recorded in Volume 763, Page 995, Official Public Records of Burnet County, Texas; and

WHITEWATER SPRINGS, SECTION SIX, a subdivision in Burnet County, Texas, according to the plat recorded in Cabinet 2, Slide 174A-175C, Plat Records of Burnet County, Texas and the replat recorded in Cabinet 3, Section 52B, Plat Records of Burnet County, Texas.

## 978 TRACT

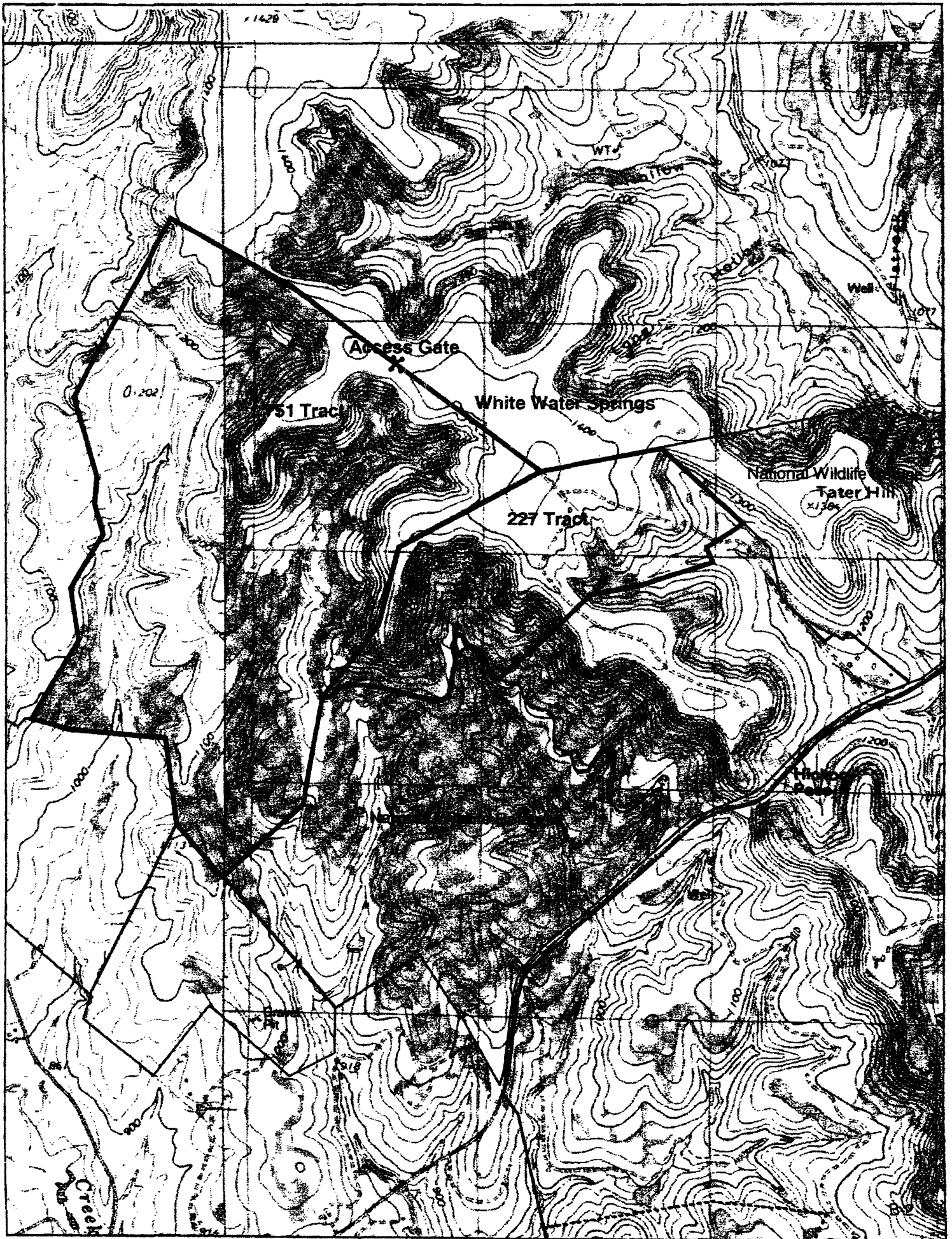
Being 978 acres, more or less, composed of 2 tracts as more particularly described as follows:

1. **751 Tract.** 751.54 acres described in that certain General Warranty Deed, dated September 15, 2008, made by Bar 9.9, L.P., as grantor, to Out of Order, Inc., as the exchange accommodation titleholder in a qualified exchange accommodation arrangement for Hickory Pass, L.P. as grantee, and recorded on September 16, 2008, as Document 200809742 in the Official Public Records of Burnet County, Texas.
2. **227 Tract.** 227.10 acres described in that certain General Warranty Deed, dated May 6, 2009, made by Jonathan Ring and Jennifer Ring, as grantor, to Out of Order, Inc., as the exchange accommodation titleholder in a qualified exchange accommodation arrangement for Hickory Pass, L.P., as grantee, and recorded on May 11, 2009, as Document 200904117 in the Official Public Records of Burnet County, Texas.

See Attached Topo Map showing the approximate locations of the 751 Tract, 227 Tract, the Subdivision ("White Water Springs") and the access gate/gap between the properties.

AFTER RECORDING, PLEASE RETURN TO:

DH JOHNSTON  
1803 BROOKHAVEN DRIVE  
AUSTIN, TEXAS 78704



**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Janet Parker*

200907806

August 27, 2009 02:31:07 PM

FEE: \$68.00

Janet Parker, County Clerk

Burnet County, Texas