

206-664



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BOERNER, L.L.C.

TO

THE PUBLIC

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THE STATE OF TEXAS §  
  §  
COUNTY OF GILLESPIE §

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, BOERNER, L.L.C., is the owner of that 71.8 acre tract of land, situated in Gillespie County, Texas, and being part of the Wm. O. Merriwether Survey No. 36, Abstract No. 488, said 71.8 acre tract of land is described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all pertinent purposes; and

WHEREAS, BOERNER, L.L.C. will convey the above-described lands subject to certain protective covenants, reservations, conditions, restrictions and charges as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the Property shall be owned, held, sold, transferred and conveyed subject to all of the terms and provisions set forth below which are for the purpose of protecting the value and desirability of, and which shall run with, said Property and shall be binding on all parties having a right, title or interest in or to the above-described property or any part thereof, and their heirs, successors and assigns and which restrictions, covenants and conditions shall inure to the benefit of each owner thereof, any contract or deed which may hereafter be executed in connection with said tract or tracts or any part thereof shall be conclusively held to have been executed, delivered and accepted subject to the terms and conditions contained in this instrument, regardless of whether or not such terms and conditions are specifically set out in said contract or deed.

I.

DEFINITIONS

1.01. OWNER shall refer to the record owner, whether one or more persons or entity, of the fee simple title to any portion of the above and herein described Property, excluding however, those having any interest therein merely as security for the performance of an obligation.

1.02. TRACT shall refer to any portion of the land as owned by any Owner.

1.03. DEVELOPER as used in these restrictions shall refer to BOERNER, L.L.C., its successors or assigns.

1.04. PROPERTY shall mean and refer to that certain real property hereinbefore described as that 71.8 acre tract of land, situated in Gillespie County, Texas, and being part of

the Wm. O. Merriwether Survey No. 36, Abstract No. 488, said 71.8 acre tract of land is described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all pertinent purposes.

1.05. BOERNER DEVELOPERS shall mean and refer to CHARLES BOERNER, III, GARY DEAN BOERNER, GRETCHEN GOERTZ, CARL BOERNER, JOHN DANIEL BOERNER, JAMES WAYNE BOERNER, MARY BOERNER, and MARK EDWARD BOERNER, their spouses, and any lineal descendants of them, who own a fee interest in and to any of the following described real property:

Tract I: Being that 32.5 acre tract of land situated in Gillespie County, Texas, and being part of the Wm. O. Merriwether Survey No. 36, Abstract No. 488, said 32.5 acre tract of land is described by metes and bounds on Exhibit "B" attached hereto and made a part hereof for all pertinent purposes.

Tract II: Being that 84.0 acre tract of land situated in Gillespie County, Texas, and being part of the Wm. O. Merriwether Survey No. 36, Abstract No. 488, said 84.0 acre tract of land is described by metes and bounds on Exhibit "C" attached hereto and made a part hereof for all pertinent purposes.

## II.

### USE RESTRICTIONS

2.01. Doublewide, modular, singlewide mobile homes and/or trailer houses are prohibited and shall not be placed, erected, stored or located on the Property. Recreational vehicles, motor homes and travel trailers shall not be used as a residence on any Tract. An Owner's recreational vehicle, motor home and/or travel trailer, not used as a residence, may be parked upon the Property.

2.02. There shall be no unreasonable use of the Property that creates a nuisance of sound, air or pollution of smell.

2.03. There shall be no use of the Property that would include raising or having poultry and/or swine.

2.04. There shall be no use of the Property that would include any type of salvage business or storage of wrecked or abandoned automobiles or vehicles.

2.05. There shall be no use of the Property that would involve dumping or providing a place for trash or garbage to accumulate.

2.06. Prior to August 1, 2036, the Property shall not be subdivided into tracts of less than 20 acres in size. After August 1, 2036, this restriction shall terminate and be of no further force or effect.

III.

MISCELLANEOUS

3.01. These restrictive covenants shall be binding upon and inure to the benefit of all parties claiming under Developer until August 1, 2036, at which time said restrictive covenants shall be automatically extended for successive terms of ten (10) years each, until such time that the Owners of 65% of the acreage of the Property and 100% of the Boerner Developers shall execute an instrument waiving or amending the restrictive covenants. Any amendments shall be in writing and shall not be effective until duly recorded. A copy of the amendments as recorded shall be forwarded to the address maintained by the Gillespie Central Appraisal District for a Tract Owner.

3.02. If any term or provision of this instrument or the application thereof shall be held to be invalid, all other terms and provisions of these restrictive covenants or the application thereof shall not be affected thereby, nor shall any failure of the Developer, Boerner Developers or Tract Owners to seek enforcement of any term or provision constitute a waiver of any right to do so in the future or the validity or enforceability of such term or provision.

3.03. Developer, Boerner Developers, and every other person, firm or corporation hereinafter having any right, title or interest in any Tract in the Property shall have the right to enforce, by any proceeding at law or in equity, all restrictive covenants by injunction or other lawful procedure and to recover any damages resulting from such violations. Damages for the purpose of this paragraph shall include court costs and necessary attorney fees.

EXECUTED this \_\_\_\_\_ day of August, 2006.

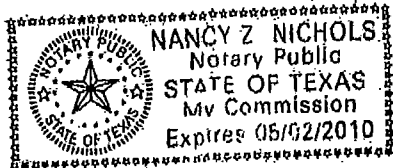
BOERNER, L.L.C.

By: [Signature]  
Printed  
Name: Carl Boerner  
Title: President

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the 7 day of August, 2006, by CARL BOERNER, PRESIDENT of BOERNER, L.L.C., a limited liability company, on behalf of said entity.



[Signature]  
Notary Public, State of Texas

# EXHIBIT " A "

71.8 acre tract

STATE OF TEXAS, \*  
COUNTY OF GILLESPIE. \*

Field notes and accompanying plat of a survey of 71.8 acres of land, more or less, made at the request of Mark Boerner, et al. Said land is situated in Gillespie County, Texas, being part of the Wm. O. Merriwether Survey No. 36, Abstract No. 488, and being part of that 66.7 acre tract of land described in a conveyance to Mark Edward Boerner, et al, by Gary Dean Boerner and Charles Boerner, III, dated March 14, 2002, found of record in Volume 460, pages 133-136 of the Official Public Records of Gillespie County, Texas, and being part of that 13.0 acre tract of land described in a conveyance to Mark Edward Boerner, et al, by Gary Dean Boerner and Charles Boerner, III, dated March 14, 2002, found of record in Volume 460, pages 129-132 of said Official Public Records.

Said 71.8 acre tract of land is described by metes and bounds as follows, to wit:

**BEGINNING** at a 1/2 inch steel bar (capped: BONN 4447) found set in the West line of the Old San Antonio (county) Road as described in a Right-of-Way Deed found of record in Volume 40, pages 14-17 of the Deed Records of Gillespie County, Texas, for the S.E. corner of that 7.42 acre tract of land described in a conveyance to Samuel J. Watson, et al, by Boerner LLC, dated May 4, 2006, found of record in Instrument No. 20063013 of said Official Public Records, for the E.N.E. corner of this tract of land;

**THENCE** with the West line of said Old San Antonio (county) Road, being 40 feet westerly of the as-built centerline, as follows:

with the arc of a curve to the right having a radius of 505.67 feet, in an southerly direction, a distance of 196.73 feet (L.C. bears S. 12 deg. 48 min. 15 sec. E. 195.5 feet) to a point;

S. 1 deg. 40 min. 10 sec. E. 858.47 feet to a point;

S. 0 deg. 34 min. 40 sec. E. 256.49 feet to a point, for the N.E. corner of that 4.45 acre tract of land described in a conveyance to George Thomas Weirich, found of record in Volume 515, pages 767-772 of said Official Public Records, for the S.E. corner of said 66.7 acre Boerner tract, for the S.E. corner of this tract of land, from which a 1/2 inch steel bar found set at a fence post bears N. 88 deg. 41 min. 30 sec. E. 8.18 feet;

**THENCE** with the North line of said 4.45 acre tract and the South line of said 66.7 acre tract, S. 88 deg. 41 min. 30 sec. W., at 1048.7 feet passing a 1/2 inch steel bar found at a cedar post, at 1291.5 feet passing a 1/2 inch steel bar (capped: BONN 4447) found set in a fence, at 1510.4 feet passing a 1/2 inch steel bar (capped: BONN 4447) found set, 2239.03 feet in all to a point at a pipe fence corner post in an East line of that 47.3 acre tract of land described in a conveyance to George Thomas Weirich found of record in Volume 520, pages 874-879 of said Official Public Records, for the N.W. corner of said 4.45 acre tract, for the S.W. corner of this tract of land;

**THENCE** with an East line of said 47.3 acre tract, N. 0 deg. 09 min. 50 sec. W., along the general course of a fence, 421.28 feet to a 1/2 inch steel bar found set at a pine corner post, for the S.E. corner of that 17.52 acre tract of land described in a conveyance to George Thomas Weirich found of record in Volume 141, pages 228-230 of the Deed Records of Gillespie County, Texas, for a N.E. corner of said 47.3 acre tract, for a westerly corner of this tract of land;

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# EXHIBIT "A"

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71.8 acre tract

THENCE with the easterly lines of said 17.52 acre tract and said 47.3 acre tract, along the general course of a fence, as follows:

- N. 0 deg. 03 min. 15 sec. W. 918.12 feet to a 1/2 inch steel bar set near a corner post;
- N. 32 deg. 19 min. W. 433.90 feet to a pine corner post found set in the South line of that 52.9 acre tract of land described in a conveyance to John David Hodges found of record in Volume 87, pages 257-258 of said Deed Records, for the most northerly N.E. corner of said 47.3 acre Weirich tract, for the N.W. corner of said 13.0 acre Boerner tract, for the N.W. corner of this tract of land;

THENCE with the South line of said 52.9 acre tract and the North line of said 13.0 acre tract, N. 88 deg. 24 min. 15 sec. E., along the general course of a fence, 660.41 feet to a 1/2 inch steel bar (capped: BONN 4447) found set, for the N.W. corner of that 0.58 acre tract of land described in a conveyance to Samuel J. Watson, et al, by Boerner, LLC, found of record in said Instrument No. 20063013 of said Official Public Records, for the N.N.E. corner of this tract of land;

THENCE with the West line of said 0.58 acre tract, S. 1 deg. 08 min. 40 sec. E. 402.88 feet to a 1/2 inch steel bar (capped: BONN 4447) found set, for the S.W. corner of said 0.58 acre tract, for a reentrant corner of this tract of land;

THENCE with the South line of said 0.58 acre tract, N. 88 deg. 51 min. 20 sec. E., at 96.1 feet passing a pipe fence corner post for the S.E. corner of said 0.58 acre tract and for the S.W. corner of that 7.0 acre tract of land described in a conveyance to Samuel J. Watson, et al, found of record in Volume 367, pages 408-411 of the Real Property Records of Gillespie County, Texas, continuing with a South line of said 7.0 acre tract, along the general course of a fence, at 634.44 feet passing a pipe fence corner post for a S.E. corner of said 7.0 acre tract and for the S.W. corner of said 7.42 acre Watson tract, continuing with the South line of said 7.42 acre tract, 1733.71 feet in all to the PLACE OF BEGINNING.

Surveyed August 31, 2004  
Updated July 5, 2006

Carey Bonn  
Reg. Prof. Land Surveyor No. 4447  
Bonn Surveying 830-997-3884

# EXHIBIT " B "

THE STATE OF TEXAS, \*  
COUNTY OF GILLESPIE \*

Field notes for 32.5 acres of land, more or less, made at the request of Charles Boerner, Jr. Said land is situated in Gillespie County, Texas, being part of the Wm. O. Merriweather Survey No. 36, Abstract No. 488, being part of that 104.4 acre TRACT II described of record in Volume 125, pages 692-694 of the Deed Records of Gillespie County, Texas, and is described as a 32.7 acre tract SAVE & EXCEPT that 0.2 acre FIRST TRACT described of record in Volume 47, pages 250-251 of said Deed Records.

Said 32.7 acre, more or less, entire tract of land is described by metes and bounds as follows, to wit:

BEGINNING at a point in the north line of that 84.00 acre TRACT I described of record in Volume 125, pages 692-694 of the Deed Records of Gillespie County, Texas, for the S.E. corner of that 5.0 acre tract described of record in Volume 180, pages 198-200 of said Deed Records, for the S.W. corner of this tract of land;

THENCE N. 0 deg. 50 min. E. 765.3 feet to the N.E. corner of said 5.0 acre tract, for the N.W. corner of this tract of land;

THENCE N. 89 deg. 49 min. E. 1862.0 feet to a point in the west line of the Old San Antonio (County) Road, for the N.E. corner of this tract of land;

THENCE with the west line of said county road, S. 0 deg. 29 min. W. 765.23 feet to the N.E. corner of said 84.0 acre tract, for the S.E. corner of this tract of land;

THENCE S. 89 deg. 49 min. W. 1866.7 feet to the place of beginning.

# EXHIBIT "C"

The State of Texas,  
County of Gillespie. | Field notes of a survey of 84.0 acres of land  
made at the request of Charles Hoerner, Jr. Said land is situated in  
Gillespie County, Texas, being part of Survey No. 36, originally granted  
to Wm. C. Merriwether, and patented to Nathaniel Townsend by Patent  
No. 78, vol. 2, dated December 6, 1845, Abstract No. 488, and is described  
by metes and bounds as follows, to-wit:

Beginning at a steel bar set on the North bank of the Pedernales River,  
being a point in the S. W. line of the old Fredericksburg - San Antonio  
Road, for the approximate S. E. corner of Survey No. 36, Wm. C.  
Merriwether, for the S. E. corner of this tract of land;  
Thence up the Pedernales River with the meanders of its North bank  
as follows:

S. 56° 30' W. 510.0 feet;

S. 65° 09' W. 421.5 feet;

S. 70° 12' W. 405.0 feet;

S. 78° 30' W. 345.0 feet;

S. 75° 00' W. 305.0 feet;

N. 78° 35' W. 216.1 feet to a steel bar set for the S. W. corner of  
this tract of land;

Thence with fence as follows:

N. 1° 13' E. 713.0 feet;

N. 1° 11' E. 585.5 feet;

N. 1° 08' E. 778.2 feet to a steel bar set in fence line for the  
N. W. corner of this tract of land;

Thence with fence line projection and fence, N. 00° 49' E. 2096.7 feet  
to a steel bar set at fence post, being a point in the West line of the  
old Fredericksburg - San Antonio Road, for the N. E. corner of this tract  
of land;

Thence with the West and S. W. line of the old Fredericksburg - San Antonio  
Road as follows:

S. 0° 29' W. 285.4 feet to a steel bar set for corner;

S. 11° 10' W. 99.4 feet to a steel bar set for corner;

S. 31° 42' W. 105.9 feet to a steel bar set for corner;

S. 48° 27' W. 288.0 feet to a steel bar set for corner;

S. 31° 46' W. 177.9 feet to a steel bar set for corner;

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- S. 1° 59' W. 129.0 feet to a steel bar set for corner;
- S. 89° 12' E. 194.8 feet to a steel bar set for corner;
- S. 49° 13' E. 398.3 feet to the place of beginning.

SAVE AND EXCEPTING FROM THIS TRACT OF LAND, that 0.07 acre tract of land, designated as "SECOND TRACT" in a conveyance by Otto Braeutigam, et ux to the City of Fredericksburg, Texas, by deed dated June 17, 1935, recorded in Vol. 47, pages 250 - 251 of the Deed Records of Gillespie County, Texas.

survey completed July 7, 1978.

I, Victor L. Nixon, a Registered Public Surveyor, do hereby certify that the survey designated by the foregoing plat and field notes, was made under my supervision, on the ground, and that the corners and boundaries are truly and correctly described.

Witness my signature and official seal at Fredericksburg, Texas,  
this the 10th day of July, 1978.

\_\_\_\_\_  
Victor L. Nixon  
Registered Public Surveyor No. 655



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



*Mary Lynn Rusche*

Mary Lynn Rusche, County Clerk

Gillespie County TEXAS

August 09, 2006 09:40:31 AM

FEE: \$43.00

20065066

*KC*

*HCC*