

WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §

COUNTY OF GILLESPIE §

THAT ANDREW B. PHILLIPS, of the County of Kerr, and State of Texas, (hereinafter referred to as "Grantor", whether one or more), for and in consideration of the sum of TEN AND NO/100THS (\$10.00) DOLLARS and other good and valuable consideration to the undersigned paid by PHILBREED PARTNERS, a Texas general partnership, of the County of Kerr, and State of Texas, (hereinafter referred to as "Grantee", whether one or more), the receipt of which is hereby acknowledged, and the further consideration of the execution and delivery by Grantee of Grantee's one certain promissory note ("Note") of even date herewith, in the principal sum of NINETY FIVE THOUSAND AND NO/100 (\$95,000.00) DOLLARS, payable to the order of Citizens Bank, a state banking association ("Lender"), in Slaton, Lubbock County, Texas, and/or each successor in ownership of the above described Note secured by the vendor's lien herein retained, as therein provided and bearing interest at the rates therein specified and providing for acceleration of maturity in event of default and for attorney's fees, the payment of which note is secured by a first and superior vendor's lien herein retained, and is additionally secured by a first and superior Deed of Trust of even date herewith to J. David Williams, Trustee, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee all of the following described property, lying and being situated in Gillespie County, Texas, subject to the Exceptions hereinbelow defined and to taxes for the current year and subsequent years, subsequent assessments for prior years and visible and/or apparent roads, streets, rights-of-way and easements, and by acceptance hereof GRANTEE hereby assumes and agrees to pay taxes for the current year and subsequent years and subsequent assessments for prior years, together with any and all improvements thereon and all rights, benefits, privileges, tenements, hereditaments and appurtenances thereon or in anywise appertaining thereto and further together with any and all right, title and interest of Grantor in and to adjacent streets, alleys, easements and rights-of-way (whether public or private) (collectively, the "Property"), to-wit:

Being all of that certain tract or parcel of land containing 59.65 acres of land situated in Gillespie County, Texas as more particularly described in Exhibit A attached hereto and incorporated herein for all purposes; together with (i) that certain perpetual nonexclusive access easement ("Easement One") comprised of 3 strips of land described as Tract Two, Tract Three and Tract Four; said Tracts being more particularly described by metes and bounds in Exhibit B attached hereto and incorporated herein for all purposes and (ii) that certain perpetual, nonexclusive 40 feet wide access easement ("Easement Two") as more particularly described in that certain Easement Agreement of even date herewith between Andrew B. Phillips and Borrower and being of record at Clerk's File No. _____ of the Real Property Records of Kerr County, Texas.

This Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee SUBJECT TO the following, to-wit:

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All matters set forth above and in Exhibit C attached hereto and incorporated herein for all purposes and the hereinafter stated Restrictions and Special Condition (herein collectively referred to as "Exceptions").

SPECIAL CONDITION

It is understood by the parties hereto that the lands herein described have been rendered for ad valorem tax purposes under the Texas Constitutional Provision of Section I-D-1 of Article VIII as "open space" lands. Grantee is aware of the fact that should Grantee, after purchase of said lands, (i) fail to timely file with the applicable taxing authorities, Grantee's application for continuance of the open space land appraisal of such lands or having timely filed such application is denied or (ii) discontinue to use such lands so as to qualify under the "open space" provisions of the law of this State, then an assessment of additional taxes including a roll back tax may become due to such taxing authorities. Grantee further agrees that should an assessment of additional taxes including a "roll back" occur, then such tax obligation shall be the sole obligation of Grantee.

RESTRICTIONS

Grantor hereby imposes upon the Property for the benefit of Grantor and Grantor's heirs, successors and assigns, and declares that all of the Property shall be subject to the following restrictive covenants ("Restrictions"), which Restrictions are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the land, binding upon Grantee, and subsequent owners of the Property and any and all other parties having any right, title or interest in the Property, or any part thereof, and their respective heirs, legal representatives, successors and assigns, to-wit:

1. The Property may be re-subdivided one time only into not more than two (2) parcels containing not less than 20 acres each.
2. No structures shall be erected, placed or maintained on any portion of the Property other than a single family private residence and/or such customary accessory structures and buildings as a garage, guest house, servant's quarters, barns, stables, corrals, and or similar structures used in connection with the raising and keeping of horses, cattle, and other domestic animals, and the storage of equipment, machinery, feeds and other items related thereto. All residences and other structures constructed or erected shall be of new construction, and in no event shall any prefabricated or existing houses, buildings, garages or other structures (but excluding hunting blinds which are permitted) be permanently or temporarily placed, stored or erected or otherwise permitted on any portion of the Property.

3. No mobile homes, house trailers, modular or other not on-site manufactured homes or structures of any kind (excluding hunting blinds which are permitted and recreational vehicles so long as such vehicles are not used as a residence on the property) shall be permanently or temporarily placed or erected or otherwise permitted on any portion of the Property. A mobile home is a "mobile home" within the meaning of this restriction even if its wheels have been removed and the structure set in or on a permanent foundation or slab or if connected to water, electrical and other utilities. No multi-family dwellings of any kind, including apartments or condominiums, shall be erected or otherwise permitted on any portion of the Property.
4. No single family residence erected on any portion of the Property shall have a living area of less than 1,450 square feet, excluding porches, patios, garages or other appendages. The exterior walls of any single family residence constructed on any portion of the Property shall be composed of at least 50 percent masonry, such percentage to apply to the aggregate area of all walls of the residence, inclusive of door, window and similar openings. Masonry includes stucco, brick, rock and all other materials commonly referred to in Kerr County, Texas as masonry.
5. No building or other structure of any kind shall be located on any portion of the Property nearer than 60 feet to any perimeter boundary line of the portion of the Property on which the building or structure is located.
6. No trash, garbage, construction debris, rubbish, abandoned or junk cars, or any refuse, including any hazardous or toxic substances may be dumped, disposed of or maintained on any portion of the Property. All trash, garbage or other waste shall be kept in a clean, sanitary and sightly condition and all containers shall be screened from view from adjoining landowners. No refuse shall be burned on any portion of the Property at any time except in accordance with the regulations of Kerr County, Texas.
7. In the event that buildings and other structures ("Existing Structures") are situated on the PROPERTY as of the date of this deed and such Existing Structures are not in compliance with these restrictive covenants and conditions, then such Existing Structures are "grandfathered" and a variance is hereby granted to the extent of such noncompliance of the Existing Structures as of the date of this deed; provided that this variance applies only to the Existing Structures and if any such Existing Structure is destroyed, raised or removed from the PROPERTY, then and in such event, the variance herein granted shall terminate.

The aforesated restrictive covenants shall inure to the benefit of and are enforceable by Grantor, and Grantor's heirs, successors and assigns (any one of them). Enforcement of the aforesated restrictive covenants shall be by any proceedings at law or in equity, including without

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limitation injunction, mandatory or prohibitive against any person or persons violating or attempting to violate any of the restrictive covenants, either to restrain violation or to recover damages. In the event an action is brought to enforce such covenants then the party bringing such action shall be entitled to recover, from the party or parties violating the restrictive covenants, all costs of court and attorneys' fees incurred in connection therewith. Invalidation of any one of the foregoing restrictive covenants by judgment or court order shall in no wise affect any other covenants, all of which shall remain in full force and effect. Failure to enforce any of the covenants herein provided shall not be deemed a waiver of the right to enforce any such covenant thereafter or a waiver of the right to enforce any other covenant herein contained. The restrictive covenants imposed hereby shall remain in effect for a period of thirty (30) years from the date this Deed is recorded.

TO HAVE AND TO HOLD the Property, subject to the Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's heirs and assigns forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Exceptions, unto the said Grantee, Grantee's heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed that the vendor's lien, as well as the superior title in and to the above described Property, is retained against the Property until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute.

Lender, at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the Property as is evidenced by the hereinbefore mentioned Note, the vendor's lien, together with the superior title to the Property, is retained herein for the benefit of the said Lender and the same are hereby TRANSFERRED and ASSIGNED, without warranty or recourse on the undersigned, to the said Lender.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED the 4 day of August, 2003.

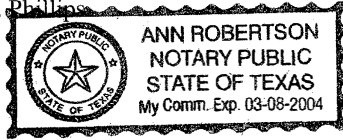

ANDREW B. PHILLIPS

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STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on the 4 day of August, 2003, by Andrew B. Phillips



Ann Robertson
Notary Public, State of Texas

AFTER RECORDING, RETURN TO
GRANTEE'S ADDRESS:

Philbreed Partners
c/o H. Ritman Jons
829-B Main Street
Kerrville, Teas 78028
(830) 896-8383

PREPARED IN THE LAW OFFICE OF:

H. RITMAN JONS
829-B Main Street
Kerrville, Texas 78028
(830) 896-8383

FIELD NOTES DESCRIPTION FOR 59.65 ACRES OF THE DAVID 188.76 ACRES IN GILLESPIE COUNTY, TEXAS

Being all of a certain tract or parcel of land comprising, approximately, 33.24 acres out of B.S. & F. Survey No. 2, Certificate No. 1586 and 26.41 acres out of B.S. & F. Survey No. 2, Certificate No. 1587, in Gillespie County, Texas; part of 188.76 acres conveyed to David W. Park, et al, from William R. Magee by a Warranty Deed with Vendor's Lien executed the 10th day of February, 1999 and recorded in Volume 996 at Page 151 of the Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a three-way fence cornerpost in the north line of said 188.76 acres, the southeast corner of 971.1 acres conveyed as Third Tract to Charles M. Peril by a Partition Deed dated the 6th day of March, 1948 and recorded in Volume 63 at Page 602 of the Deed Records of Gillespie County, Texas, the southwest corner of Lot No. 1 of Bear Hollow Ranch Section One, the plat of which is recorded in Volume 1 at Page 48 of the Plat Records of Gillespie County, Texas; which point is at or near the southerly common corner of Surveys No. 357 and No. 358, in the north line of B.S. & F. Survey No. 2, Certificate No. 1587;

THENCE, along a fence with the north line of said 188.76 acres: with the south line of said Lot No. 1, S.89°59'35"E. 1116.49 ft. (S.89°57'43"E. 1116.90 ft.) to a three-way cornerpost at the southerly common corner of Lots No. 1 and No. 26; and with the south line of said Lot No. 26, S.89°19'31"E. 43.48 ft. (N.89°48'58"E. 42.72 ft.) to a 1/2" iron stake found near a three-way cornerpost for the northeast corner of the herein described tract and said 188.76 acres, the northwest corner of 288.766 acres conveyed to Margaret Ann Magee Bird from Phil R. Magee, III, et al, by a General Warranty Deed executed the 28th day of January, 1981 and recorded in Volume 244 at Page 203 of the Deed Records of Kerr County, Texas;

THENCE, along a fence with the common line between said 188.76 acres and said 288.766 acres, S.00°24'08"W. (S.00°23'46"W.) 1181.79 ft. to a 1/2" iron stake set for the southeast corner of the herein described tract;

THENCE, upon, over and across said 188.76 acres, West 2224.66 ft. to a 1/2" iron stake set in a fence for the southwest corner of the herein described tract in the common line between said 188.76 acres and 70.69 acres conveyed to Stanley Charles Jones, M.D., Trustee from William R. Magee, Trustee, by a Warranty Deed with Vendor's Lien executed the 1st day of November, 1982 and recorded in Volume 268 at Page 80 of the Deed Records of Kerr County, Texas;

THENCE, with the common line between said 188.76 acres and said 70.69 acres, along or near a fence, N.00°42'30"W. (N.00°42'57"W.) 1095.49 ft. to a 1/2" iron stake found at a three-way cornerpost for the northwest corner of the herein described tract and said 188.76 acres, the northeast corner of said 70.69 acres, in the occupied south line of said 971.1 acres;

THENCE, along a fence with the occupied common line between said 188.76 acres and said 971.1 acres: N.84°50'34"E. 303.57 ft. (N.84°45'42"E. 304.20 ft.) to a 10" diameter Cedar tree; and N.85°38'45"E. 786.46 ft. (N.85°41'49"E. 786.25 ft.) to the PLACE OF BEGINNING containing 59.65 acres of land, more or less, within these metes and bounds.

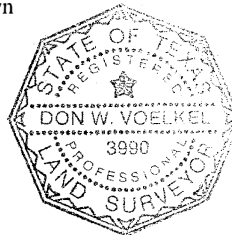
I hereby certify that these field notes and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, and that all property corner are as shown (Bearing basis = True north based on GPS observations).

Dates Surveyed: July 2 & 7, 2003

Dated this 8th day of July, 2003

Don W. Voelkel

Registered Professional Land Surveyor No. 3990



TRACT TWO: A perpetual, non-exclusive access easement on, over and across the following property, to-wit:

BEING all of a certain strip, tract or parcel of land across David M. Lowrance Survey No. 1405, Abstract No. 1027, and J. M. Saunders Survey No. 1927, Abstract No. 1245, in Kerr County, Texas; upon, over and across 207.615 acres of land conveyed to Peggy Lou Clemer by a Deed of Partition executed the 5th day of September, 1980, of record in Volume 240, Page 685 of the Deed Records of Kerr County, Texas; being fifteen (15) feet along and abutting each side of that portion of the centerline of an existing ranch road described as follows:

BEGINNING at a $\frac{1}{2}$ " iron stake set in the center of a cattleguard in the northeasterly right of way line of F. M. Highway No. 1338, in the occupied southwest line of said Survey No. 1405 and 291 feet N. 48° 07' W. from its south corner;

THENCE, along the approximate centerline meanders of said ranch road: N. 51° 59' E. 80.31 feet; N. 85° 21' E., 363.26 feet; N. 79° 22' E. 156.05 feet to the southwest end of a concrete dam and bridge; N. 60° 39' E., 137.87 feet across said dam and bridge to its northeast end;

THENCE, all of a strip, tract or parcel of land being ten (10) feet along and abutting each side of the centerline of said existing ranch road, N. 59° 26' E., 326.77 feet; N. 22° 32' E. 443.05 feet; N. 35° 04' E. 144.44 feet; N. 62° 52' E. 137.89 feet; N. 86° 23' E. 179.46 feet; and S. 77° 41' E., 209.47 feet to a $\frac{1}{2}$ " iron stake in the west line of TRACT TWO, 317.433 acres, of said Deed of Partition, which point bears 1098.31 feet, N. 02° 29' E. from the common southerly corner of said TRACTS ONE and TWO.

Being the same real property and easement described in easement dated June 11, 1981, executed by Peggy Lou Clemer to Margaret Ann Magee Bird, Phil R. Magee, III, William R. Magee, Individually and as Trustee for Phil R. Magee, III, Robert L. Burgess and August C. Bering, IV, recorded in Volume 12, Page 681, Easement Records of Kerr County, Texas.

TRACT THREE: A perpetual, non-exclusive access easement on, over and across the following property, to-wit:

Being all of a certain forty (40) ft. wide strip, tract or parcel of land along an existing ranch road upon, over and across a certain 317.433 acres of land described as TRACT TWO in a partition deed made by and between Peggy Lou Clemer, Phil R. Magee, III, et al, executed the 5th day of September, 1980 and recorded in Volume 240 at Page 685 of the Deed Records of Kerr County, Texas; partly out of J. M. Saunders Survey No. 1927, Abstract No. 1245, and partly out of B. S. & F. Survey No. 2, Certificate No. 1586, in Kerr County, Texas; that same strip described as EASEMENT ONE and EASEMENT TWO in a Right-of-way Easement granted from Phil R. Magee, III and William R. Magee, Trustee, to William R. Magee and Margaret Ann Magee Bird executed the 25th day of August, 1981 and recorded in Volume 13 at Page 74 of the Easement Records of Kerr County, Texas; being twenty (20) ft. along and abutting each side of the centerline of said existing ranch road described as follows:

BEGINNING at an existing ½" iron stake in the centerline of said ranch road in the west line of TRACT TWO for the west terminus of the herein described easement and said EASEMENT TWO, the northwest corner of 34.12 acres of land conveyed to Robert L. Burgess from Phil R. Magee, III by a Warranty Deed with Vendor's Lien executed the 28th day of April, 1981 and recorded in Volume 247 at Page 544 of the Deed Records of Kerr County, Texas, the southwest corner of 124.47 acres of land conveyed to August C. Bering, IV from Phil R. Magee, III by a Warranty Deed with Vendor's Lien executed the 5th day of June, 1981 and recorded in Volume 249 at Page 376 of the Deed Records of Kerr County, Texas; which point bears 1098.31 ft. N.02°29'E. from the southwest corner of said TRACT TWO;

THENCE, with the centerline of said ranch road upon, over and across said TRACT TWO with the common line between said 34.12 and 124.47 acre tracts, all calls to 60 "d" nails at road angles: S.81°12'E., 119.40 ft.; N.75°43'E., 265.49 ft.; S.74°47'E., 112.08 ft.; S.28°13'E., 57.85 ft.; S.15°14'E., 157.89 ft.; S.47°03'E., 67.82 ft.; S.77°01'E., 109.66 ft.; N.72°48'E., 133.41 ft.; N.75°08'E., 381.01 ft.; S.67°09'E., 363.30 ft.; and N.68°38'E., 170.74 ft. to a ½" iron stake for the east terminus of said EASEMENT TWO and west terminus of EASEMENT ONE, the northeast corner of said 34.12 acre tract and southeast corner of said 124.47 acre tract;

THENCE, continuing with the said centerline of ranch road upon, over and across TRACT TWO, all calls to 60 "d" nails at road angles: N.68°38'E., 272.91 ft.; N.86°26'E., 155.33 ft.; S.75°36'E., 284.48 ft.; S.81°09'E., 218.41 ft.; S.71°50'E., 158.46 ft.; S.38°29'E., 85.57 ft.; S.22°20'E., 126.73 ft.; S.32°21'E., 224.33 ft.; S.59°08'E., 172.93 ft.; S.78°01'E., 199.17 ft.; and N.83°29'E., 225.86 ft. to a ½" iron stake set in the common line between said Phil R. Magee, III 317.433 acre tract and 288.766 acres of land conveyed to William R. Magee in said partition deed, approximately 3893 ft. S.00°18'E. from the common northerly corner for said 317.433 acre Phil R. Magee, III tract and 288.766 acre William R. Magee tract for the east terminus of the herein described easement and said EASEMENT ONE.

TRACT FOUR: A perpetual, non-exclusive access easement on, over and across the following property, to-wit:

Being all of a certain forty (40) ft. wide strip, tract or parcel of land along an existing ranch road upon, over and across a certain 288.766 acres of land described as TRACT THRES in a partition deed made by and between Peggy Lou Clamer, William R. Magee, et al, executed the 5th day of September, 1980, and recorded in Volume 240, at Page 685 of the Deed Records of Kerr County, Texas; out of B.S. & P. Survey No. 2, Certificate No. 1586, in Kerr County, Texas; being twenty (20) ft. along and abutting each side of the centerline of said existing ranch road described as follows:

BEGINNING at a 1/2" iron stake in the common line between said William R. Magee 288.766 acres and 317.433 acres of land conveyed to Phil R. Magee, III, in said partition deed approximately 2973 ft. S. 00° 40' E. from the common northerly corner for said William R. Magee and Phil R. Magee, III tracts;

THENCE, N. 84° 11' E., 76.92 ft.; S. 53° 29' E., 281.49 ft.; S. 47° 51' E., 231.43 ft.; N. 80° 25' E., 212.45 ft.; S. 60° 11' E., 213.68 ft.; S. 33° 51' E., 480.86 ft.; S. 50° 13' E., 324.95 ft.; S. 49° 08' E., 230.31 ft.; N. 75° 14' E., 189.45 ft.; N. 64° 23' E., 87.36 ft.; N. 43° 07' E., 312.40 ft.; and N. 62° 33' E., 165.16 ft. to a 1/2" iron stake set in the common line between said William R. Magee 288.766 acre tract and 288.766 acres of land conveyed to Margaret Ann Magee Bird in said partition deed, approximately 3893 ft. S. 00° 19' E. from the common northerly corner for said William R. Magee and Margaret Ann Magee Bird tracts. Being the same real property and easement described in easement dated September 1, 1981 executed by William R. Magee to Margaret Ann Magee Bird recorded in Volume 13, Page 70, Easement Records, Kerr County, Texas.

EXHIBIT "C"**EXCEPTIONS:**

1. Visible and apparent easements on or across property herein described.
2. Right of Way Easement to Margaret Ann Magee Bird, dated September 1, 1981, recorded in Volume 13, Page 70, Easement Records of Kerr County, Texas (as to Easement One).
3. Easement to Kerrville Telephone Company, dated November 25, 1983, recorded in Volume 18, Page 422, Easement Records of Kerr County, Texas, and in Volume 157, Page 829 of the Deed Records of Kerr County, Texas.
4. Right of Way Easement to Central Texas Electric Cooperative, Inc., notarized August 5, 1983, recorded in Volume 19, Page 157, Easement Records of Kerr County, Texas.
5. Right of Way Easement to Central Texas Electric Cooperative, Inc., dated June 2, 1981, recorded in Volume 13, Page 314, Easement Records of Kerr County, Texas.
6. Right of Way Easement to Central Texas Electric Cooperative, Inc., dated June 1, 1987, recorded in Volume 500, Page 318, Real Property Records of Kerr County, Texas.
7. Right of Way Easement to Central Texas Electric Cooperative, Inc., dated November 17, 1989, recorded in Volume 535, Page 206, Real Property Records of Kerr County, Texas.
8. Easement executed by David W. Park and Doris Park to Kerrville Telephone Company, dated October 14, 1999, recorded in Volume 383, Page 755, Real Property Records of Gillespie County, Texas, and in Volume 1036, Page 202, Real Property Records of Kerr County, Texas.
9. Mineral interest as described in deed executed by Mrs. Seawillow Ward Stafford, et al to Lloyd Owen, dated October 12, 1970, recorded in Volume 98, Page 805-808 of the Deed Records of Gillespie County, Texas.
10. Right of Way Easement to Margaret Ann Magee Bird, et al, dated June 11, 1981, recorded in Volume 12, Page 681, Easement Records of Kerr County, Texas (as to Easement One).
11. Right of Way Easement to William R. Magee and Margaret Ann Magee Bird dated

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August 25, 1981, recorded in Volume 13, Page 74, Easement Records of Kerr County, Texas (as to Easement One).

I, the undersigned, Clerk of the County Court of Kerr County, Texas, do hereby certify that the within and foregoing instrument of writing is a true and correct copy of the original instrument of writing as the same is on file in my office in Kerr County, Texas, and as the same is recorded in the public records of Kerr County, Texas, in Volume 13, Page 74, Easement Records of Kerr County, Texas (as to Easement One).

Witness my hand and the Seal of the County Court of Kerr County, Texas, this 25th day of August, 1981.

 Clerk of the County Court of Kerr County, Texas

FILED FOR RECORD
AT 3:59 O'CLOCK P.M.

034794

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985

AUG 1 2003

MARY LYNN RUSCHE
CLERK COUNTY COURT
GILLESPIE COUNTY, TEXAS
By *[Signature]* Deputy

THE STATE OF TEXAS } I, MARY LYNN RUSCHE, Clerk of
County of Gillespie } the County Court of said County.

do hereby certify that the foregoing instrument of writing with its certificate of authentication was filed for record on date stamped hereon and duly recorded this 13th day of August, A.D. 20 03, at 11:40 o'clock a.m., in the official public records of said County, in Volume 516, on Pages 974-985.

Witness my hand and seal of the County Court of said County, at office in Fredericksburg, Texas, the day and year last above written.

MARY LYNN RUSCHE
Clerk, County Court, Gillespie County, Texas

By *[Signature]* Deputy

Jessica Gorman