

**RESOLUTION NO. 17-2018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING ACCEPTANCE OF AN EASEMENT AGREEMENT FOR UTILITIES TO BE LOCATED AT 13210 RANCH ROAD 12, WIMBERLEY, HAYS COUNTY, TEXAS, ON A PROPERTY OWNED BY THE CITY OF WIMBERLEY**

**WHEREAS**, Wimberley SLF, LLC has been in negotiations with various property owners to acquire property for the construction, placement and maintenance of electrical connection; and

**WHEREAS**, it is necessary for Wimberley SLF, LLC to acquire certain easements in connection with ongoing subdivision and site development.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS:**

**SECTION 1.** That the City Council of Wimberley accepts the dedication of the easement made by Wimberley SLF, LLC to the City, a description of said property being fully set forth in the attached Exhibit "A" for the purposes provided therein.

**SECTION 2.** The Mayor is hereby authorized to execute the dedication instrument and all related documents on behalf of the City to formalize this acceptance.

**PASSED, APPROVED, AND ADOPTED** on this 19<sup>th</sup> day of April, 2018, at a regular meeting of the City Council of the City of Wimberley, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.



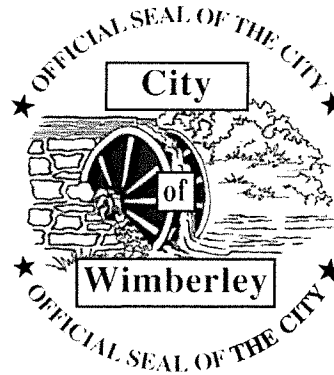
Herschel P. "Mac" McCullough, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Laura J. Calcote, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
City Attorney  
Denton, Navarro, Rocha & Bernal, P.C.



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**PUBLIC UTILITY EASEMENT AGREEMENT**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HAYS       §

**GRANT OF EASEMENT:**

**THE CITY OF WIMBERLEY, TEXAS**, a Texas general law type A city, with offices located at 221 Stillwater, Wimberley, Hays County, Texas 78676 (“Grantor”), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto the **WIMBERLEY SLF, LLC** (“Grantee”), a Public Utility easement and right-of-way (“Easement”) upon and across the property of Grantor, which is more particularly described on **Exhibit ”A”**, attached hereto and incorporated herein by reference (“Easement Tract”),

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights, and privileges and on the terms and conditions set forth below; and Grantor, subject to the Exceptions, to Warranty, does hereby covenant and agree to **WARRANT AND FOREVER DEFEND** title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor, but not otherwise, except as to the reservations from conveyance and the exceptions to conveyance and warranty.

**Terms and Conditions:** The following terms and conditions apply to the Easement granted by this agreement:

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
  - (a) “Holder” shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance, subject to the terms of this agreement.
  - (b) “Permitted Improvements” shall mean landscaping or planting of vegetation, driveways and sidewalks; but shall not mean the construction of a building or structure unless such installation or construction is approved in writing by the City Manager or the City Manager’s designee.

(c) "Public Utility" shall mean water, wastewater, electricity, fiber optic, gas, television cable, and telecommunication infrastructure.

2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The Easement rights of use granted herein is irrevocable. The intent of this Easement is to specifically disclaim and negate the Doctrine of Merger for all purposes. The Easement is for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for Public Utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Utility facilities and related appurtenances ("Facilities"), or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Public Utility facilities and related appurtenances.
4. *Term.* Easement rights granted herein shall be in perpetuity, subject to the following reservations.

*Reservation of Rights (Surface use only).* Grantor and Grantor's heirs, successors, and assigns shall retain the right to use the surface and subsurface of all or part of the Easement Property for Permitted Improvements purposes in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose.
5. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 6, immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, provided that Holder shall replace any landscaping, driveways or parking areas to their original condition that are damaged in connection with the work.
6. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Tract and Permitted Improvements, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Tract free of litter, debris, or trash.
7. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the

necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
10. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
11. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
12. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
13. *Legal Construction.* Any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
14. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
16. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

IN WITNESS WHEREOF, this instrument is executed this 8th day of May, 2018.

**GRANTOR:**

**CITY OF WIMBERLEY, TEXAS,**  
a Texas general law type A municipality

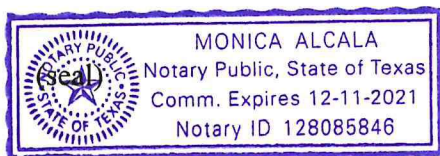
By: Shawn Cox  
Shawn Cox, City Manager

ATTEST:

Laura J. Calcote  
Laura Calcote, City Secretary

THE STATE OF TEXAS           §  
  §  
COUNTY OF HAYS           §

This instrument was acknowledged before me on May 8, 2018, by Shawn Cox, City Manager of the City of Wimberley, Texas, a Texas general law type A municipality, on behalf of said municipality.



[Signature]  
Notary Public Signature

**EXHIBIT "A"**

**BEING 11,704 SQUARE FEET OF LAND OUT OF THE H. KEISER SURVEY NUMBER 60, ABSTRACT NUMBER 271, AND THE AMASA TURNER SURVEY NUMBER 1, ABSTRACT NUMBER 461, BOTH IN HAYS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CERTAIN VILLAGE OF WIMBERLEY 128.36 ACRE TRACT RECORDED IN VOLUME 2689, PAGE 795, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, SAME BEING A 10 FOOT WIDE UTILITY EASEMENT, THE CENTERLINE OF SAID 11,704 SQUARE FEET OF LAND TO BE MORE PARTICULARLY DESCRIBED AS FOLLOWS.**

COMMENCING at an iron rod found in the northerly right-of-way line of Old Kyle Road, also known as FM 3237, at the southwest corner of that certain Wimberley SLF, LLC 2.977 acre tract recorded in Volume 2596, Page 451, Official Public Records, said county, same being an angle corner in the southerly line of said 128.36 acre tract;

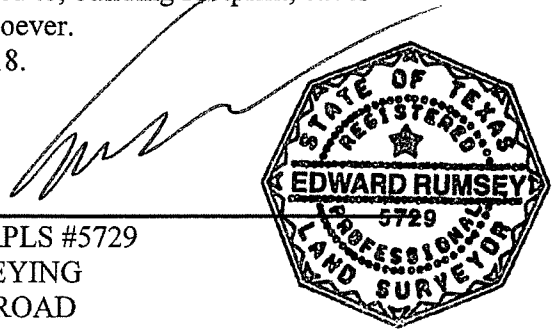
THENCE North 00 degrees 35 minutes 43 seconds West, along the southerly line of said 128.36 acre tract and the westerly line of said 2.997 acre tract, 50.07 feet to the POINT OF BEGINNING, hereof, from which an iron rod found at the northwest corner of said 2.997 acre tract bears, North 00 degrees 21 minutes 29 seconds West, 533.76 feet;

THENCE through said 128.36 acre tract, the following 5 calls,

1. South 88 degrees 09 minutes 37 seconds West, 251.57 feet,
2. South 81 degrees 14 minutes 23 seconds West, 358.30 feet,
3. South 74 degrees 25 minutes 10 seconds West, 381.00 feet,
4. North 07 degrees 48 minutes 24 seconds East, 150.00 feet,
5. North 82 degrees 11 minutes 36 seconds West, 30.00 feet to the termination of said centerline, being in the westerly line of said 128.36 acre tract, from which an iron rod found at the southwest corner of said 128.36 acre tract bears, South 07 degrees 47 minutes 17 seconds West, 225.63 feet;

I, Edward Rumsey, licensed to practice Land Surveying in the State of Texas, hereby certify that the foregoing metes and bounds legal description and sketch were based on an on the ground survey, that all protrusions and encroachments into the easement area are accounted for including but not limited to, building footprint, eaves and roof overhangs and all visible improvements whatsoever.

Witness my hand and seal this, 21nd day of March, 2018.

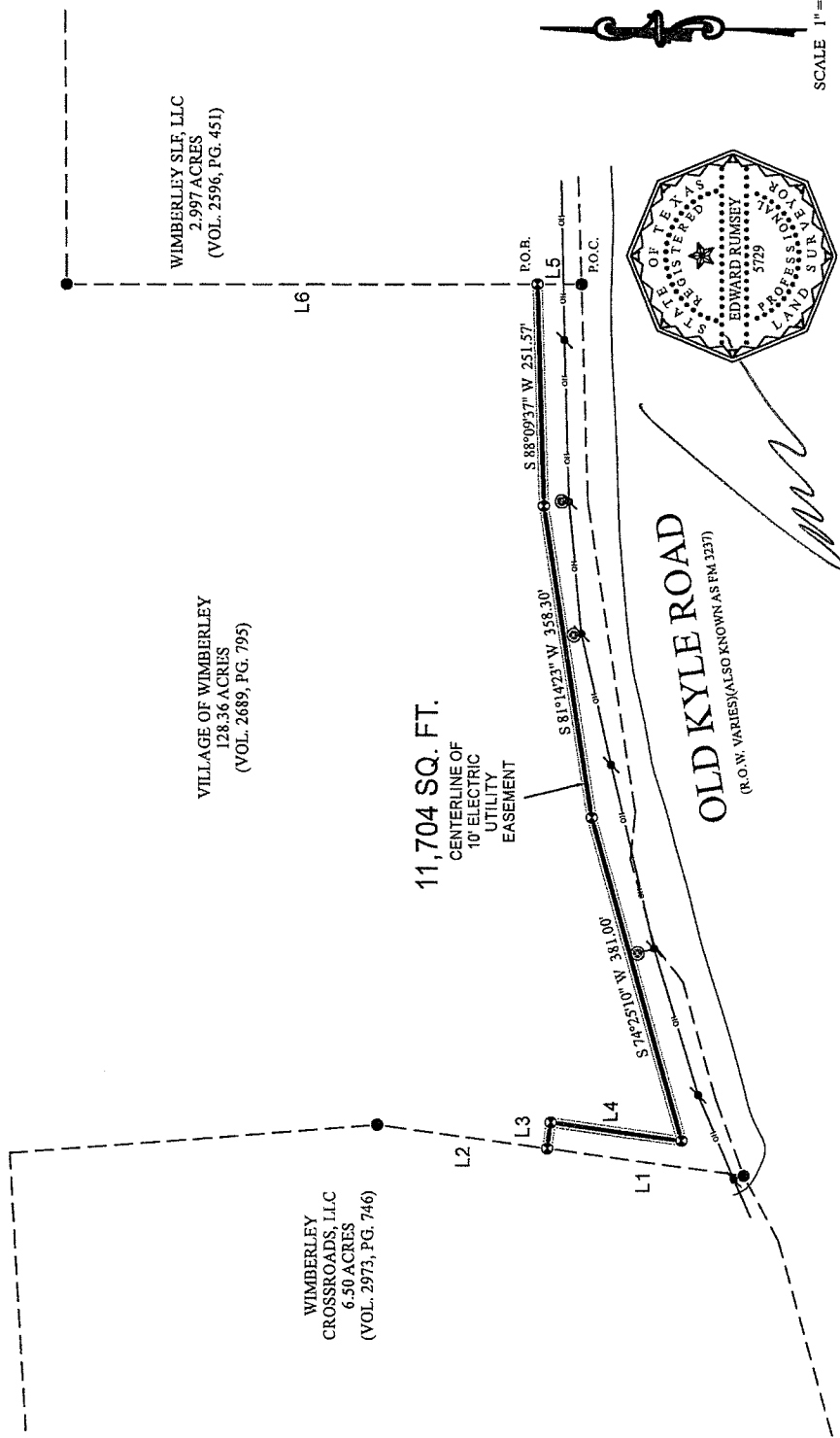


EDWARD C. RUMSEY, TX. RPLS #5729  
ALL STAR LAND SURVEYING  
9020 ANDERSON MILL ROAD  
AUSTIN, TEXAS 78729  
JOB # A0303218  
PAGE 1 OF 2

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# 11,704 SQ. FT. ELECTRIC UTILITY EASEMENT

BEARING BASIS:  
BEARINGS ARE BASED TO THE TEXAS COORDINATE SYSTEM SOUTH  
CENTRAL, TEXAS ZONE NAD83 UARN HORIZONTAL CONTROL



## LEGEND

- CALCULATED POINT
- ⊕ UTILITY POLE
- OH OVERHEAD UTILITY LINES
- ⊙ DOWN GUY
- POINT OF BEGINNING
- 1/2" ROD FOUND
- P.O.C. POINT OF COMMENCING

LINE	BEARING	LENGTH
L1	S 07° 47' 17" W	225.63'
L2	N 07° 48' 24" E	194.43'
L3	N 82° 11' 36" W	30.00'
L4	N 07° 48' 24" E	150.00'
L5	N 00° 35' 43" W	30.07'
L6	N 00° 21' 29" W	533.76'

SURVEY DATE	MARCH 21, 2018
JOB NO.	A030218
FILED BY:	JONATHAN MOHR 03/14/2018
CALC. BY:	EDWARD RUMSEY 03/21/2018
DRAWN BY:	SEAN SUTTON 03/21/2018
PLS CHECK	EDWARD RUMSEY 03/21/2018

**ALLSTAR**  
Land surveying  
9020 ANDERSON MILL RD  
AUSTIN, TEXAS 78729  
(512) 249-8149 PHONE  
(512) 331-5217 FAX  
TSP-LS FRM NO. 10135800

Instrument # 18021059 Number of Pages: 8  
Filed and Recorded: 6/15/2018 9:54 AM  
Liz Q. Gonzalez, Hays County Clerk, Texas  
Rec \$54,00 Deputy Clerk: HRIGSBY

SCALE 1" = 160'

