Instrument # 18026399 Number of Pages: 9
Filed and Recorded: 7/25/2018 3:04 PM
Liz Q. Gonzalez, Hays County Clerk, Texas
Rec $58.00 Deputy Clerk: RMONTEMAYOR

RESOLUTION NO. 22-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING ACCEPTANCE OF A TEMPORARY CONSTRUCTION EASEMENT AGREEMENT FOR CONSTRUCTION OF UTILITIES TO BE LOCATED ON HAYS CAD PROPERTY ID R18405 ALONG HENSON RD., WIMBERLEY, HAYS COUNTY, TEXAS, ON A PROPERTY OWNED BY CARSON DIVERSIFIED LAND 2 LLC

WHEREAS, the City of Wimberley has been in negotiations with various property owners to temporarily utilize property for the construction of wastewater connections and pipelines for the Central Wimberley Wastewater Project as approved by this City Council; and

WHEREAS, it is necessary for the City to acquire certain easements in connection with this Project.

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 temporary construction easement made by CARSON DIVERSIFIED LAND 2 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 19th day of July, 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.

Susan B. Jaggers, Mayor

ATTEST:

Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

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

OFFICIAL SEAL OF THE CITY
City of Wimberley
OFFICIAL SEAL OF THE CITY

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

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

GRANT OF EASEMENT:

CARSON DIVERSIFIED LAND 2 LLC, a Texas limited liability company with a mailing address of 407 S Stagecoach Trail, Ste 203, San Marcos, Texas ("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 CITY OF WIMBERLEY, TEXAS**, a Type A General Law city located in Hays County, Texas with a mailing address of PO Box 2027, Wimberley, TX 78676 ("Grantee"), a temporary access and construction easement ("TCE" or "Easement") across a variable width area not to exceed twenty (20) feet from the right of way boundary of Henson Road upon and across that certain 2.7 acre property of Grantor identified as Property ID R18405 by the Hays County Appraisal District. The TCE is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Property"). Grantor and Grantee may jointly be referred to by "the parties."

TO HAVE AND TO HOLD the same onto Grantee together with the rights and privileges and on the terms and conditions set forth below.

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 subject to the terms of this agreement.

   (b) "Permitted Improvements" shall mean landscaping or planting of vegetation; but shall not mean the construction of a building,

structure, above or below grade utilities, or any other improvements whatsoever.

(c) "Public Infrastructure" shall mean reclaimed water and/or wastewater pipelines and associated appurtenances to be constructed by the Holder or its agents, contractors and assigns outside the Easement Property in the abutting right of way.

2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." The TCE rights of use granted herein are irrevocable until the termination of the TCE in accordance with the terms herein.

3. *Purpose of Easement.* The Easement shall be used to facilitate the construction of Public Infrastructure, which shall include use of the Easement Property for access, construction staging and storage, and other construction activities. No Public Infrastructure may be constructed on the Easement Property.

4. *Term.* The variable width TCE granted herein shall terminate on the earlier of December 31, 2018 or upon completion of the portion of construction of the Public Infrastructure directly abutting the TCE included in Grantee's Public Infrastructure project.

5. *Reservation of Rights.* Save and except: Grantor retains the right to surface use. Grantor and Grantor's heirs, successors, and assigns shall retain the right to use the surface of all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns neither interferes nor conflicts with the use of the Easement Property by Holder for the Easement Purpose.

6. *Use and Maintenance of Easement Property.* Holder has the right to remove or relocate any surface vegetation and juniper (aka cedar) or hackberry trees upon the Easement Property as necessary to utilize the same for the purpose of this Easement. Removal of any other type of tree requires Grantors express consent. Holder shall be solely and fully responsible for compliance with any and all laws and regulations related to the removal of trees and other vegetation upon the TCE, erosion control, litter control, environmental protection, and all other maintenance of the Easement Property during the term of this TCE. Not more than thirty (30) days after to the termination of this TCE, Holder shall restore the Easement Property to the same condition of the Easement Property immediately before the Grantee's use of the same (except there is no requirement to replant trees permitted to be removed by this TCE) including, but not limited to, re-establishing the Easement Property with native grass (the "Requirement to

Restore"). This Requirement to Restore shall survive termination of this TCE.

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. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

9. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

10. *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 Hays County, Texas.

11. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

12. *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.

13. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

14. *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.

15. *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.

16. *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.

17. *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.

18. *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.

[Signature Page Follows]

IN WITNESS WHEREOF, this instrument is executed this 23rd day of JULY 2018.

GRANTOR:
CARSON DIVERSIFIED LAND 2, LLC,
By: Carson Haysco Holdings, LP, Its Sole Member
By: Carson Diversified GP, LLC, Its General Partner

By: _____
By: W.C. Carson,
Manager of the General Partner

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared W.C. Carson, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is authorized to execute such instrument; and that said instrument is executed as the free and voluntary act and deed for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 23rd day of July 2018.

_____
Notary Public Signature

(seal)

REBECCA L PARMAN
Notary Public State of Texas
My Commission # 126601337
My Comm. Exp. July 24, 2020

GRANTEE:

AGREED AND ACCEPTED:

CITY OF WIMBERLEY, TEXAS,
a Texas Type A General Law municipality

By: Susan Jaggers
Susan B. Jaggers, Mayor

ATTEST:

Laura J. Calcote
Laura J. Calcote, City Secretary

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

This instrument was acknowledged before me on July 25, 2018, by Susan Jaggers, Mayor of the City of Wimberley, Texas, a Texas Type A General Law municipality, on behalf of said municipality.

Laura Calcote
Notary Public Signature

(seal)

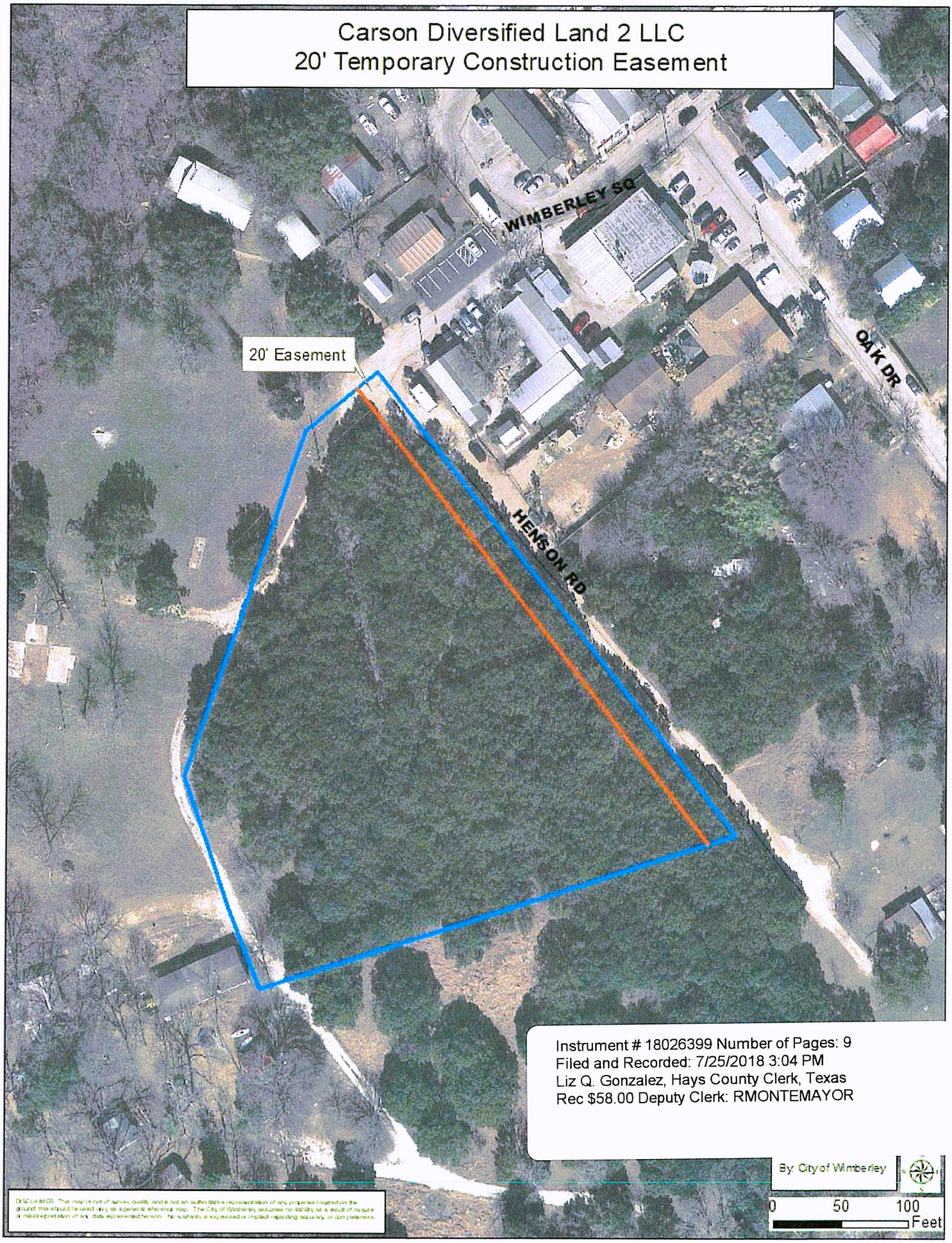
LAURA CALCOTE
Notary Public, State of Texas
Comm. Expires 05-05-2020
Notary ID 130650909

AFTER RECORDING, RETURN TO:

City of Wimberley
Attn.: Laura J. Calcote, City Secretary
PO Box 2027
Wimberley, Texas 78676

EXHIBIT "A"

Carson Diversified Land 2 LLC
20' Temporary Construction Easement



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DISCLAIMER: This map is not of survey quality, and is not an authoritative representation of any properties located on the ground. This should be used only as a general reference map. The City of Wimberley assumes no liability as a result of inaccurate or misinterpretation of any data represented hereon. No warranty is expressed or implied regarding accuracy or completeness.