

RESOLUTION NO. 31-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING THE ACCEPTANCE OF AN EASEMENT AGREEMENT FOR UTILITIES TO BE LOCATED ON A TRACT OF LAND BEING LOT 30, BREEZEWAY SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREFORE RECORDED IN VOLUME 138, PAGE 160-A, HAYS COUNTY DEED RECORDS, A PROPERTY OWNED BY JEROME E PAISLEY (LIFE ESTATE), AND KENT PAISLEY AND KIMBERLY PAISLEY (REMAINDERMEN).

WHEREAS, the City of Wimberley has been in negotiations with various property owners to acquire property for the construction, placement and maintenance of wastewater connection 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.

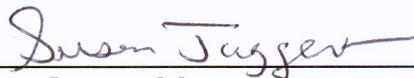
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS:

SECTION 1. That the City Council of Wimberley accepts the dedication of the easement made by Jerome E. Paisley (Life Estate) and Kent Paisley and Kimberly Paisley (Remaindermen) to the City, a description of said property being fully set forth in the attached Exhibit "A" for the purposes provided therein.

SECTION 2. That this Resolution supersedes Resolution No. 30-2018.

SECTION 3. 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 6th day of December, 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 Jagers, Mayor

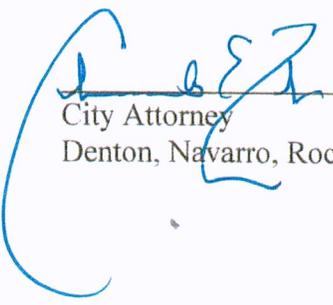
ATTEST:



Laura J. Calcote, City Secretary



APPROVED AS TO FORM:



City Attorney

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

Exhibit A

Easement Agreement for Utilities

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.

Date: December 28, 2018

GRANTOR: Jerome E. Paisley, Life Estate Holder with full power to sign and execute documents related to the Property, and Kent Paisley and Kimberly Paisley, as remainderman

GRANTOR'S MAILING ADDRESS:

Jerome Paisley
c/o of Kimberly Paisley
221 Linden Lane
San Marcos, Texas 78666

Kent Paisley
18812 Manga Way
Pflugerville, Texas 78660

Kimberly Paisley
221 Linden Lane
San Marcos, Texas 78666

GRANTEE: City of Wimberley

GRANTEE'S MAILING ADDRESS: P. O. Box 2027, Wimberley, Texas 78676

GRANT: Grantor has GRANTED, SOLD, and CONVEYED, and does hereby GRANT, SELL, and CONVEY, unto Grantee, an easement and right-of-way for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a wastewater collection line, appurtenances and facilities in, on, under, over and through that tract of land being Lot 30, Breezeway Subdivision, according to the map or plat thereof recorded in Volume 138, Page 160-A, Hays County Deed Records.

DESIGNATION OF COURSE: The easement and right-of-way hereby granted (the "Easement") shall be limited to Fifteen feet (15') in width and generally follow the north line of Lot 30, extending from Blue Heron Run, to a point to be determined during installation of the wastewater collection line. Grantee is hereby authorized to designate the course of the Easement herein conveyed subject to the approval of Grantor, except that when the wastewater collection line is installed, the Easement herein granted shall be limited to a strip of land fifteen (15') feet in width the centerline of such Easement being the wastewater collection line as installed. Upon completion of construction of the wastewater collection line, Grantee will have the easement area surveyed at Grantee's expense, and an Amendment to this Easement will be executed by Grantor and Grantee and recorded in the Official Public Records of Hays County, Texas, designating the exact location of the wastewater collection line easement as it installed in the ground. The easement will.

TEMPORARY CONSTRUCTION EASEMENT: During the period of construction of the wastewater collection line, the Easement will be extended an additional twenty (20') feet in

width. Upon completion of all construction and the restoration of the surface to its preconstruction condition, the construction easement (the extra 20 feet) will revert to Grantor and will not be available to Grantee without future consent of Grantor, which consent will not be unreasonably withheld if the easement is necessary for future construction to maintain, repair or replace the wastewater collection line.

CONSIDERATION: Ten dollars (\$10.00) and other good and valuable consideration paid to Grantor by Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor.

PURPOSE: The Easement may be used for the purpose of laying, constructing, installing, maintaining, inspecting, operating, protecting, repairing, replacing, altering, changing the size of, relocating (but only within the existing easement), substituting and/ or removing the wastewater collection line and any appurtenant materials (including, but not limited to, associated valves, fittings, casings, and structural supports), apparatuses and/ or facilities common to and as may from time to time be deemed necessary by the Grantee in connection with the use, operation, transportation and furnishing of wastewater services to customers in Grantee's service area, including Grantor, as hereinafter provided.

RESERVATIONS FROM CONVEYANCE: None

TERMS AND SPECIAL CONDITIONS:

1. Restoring the Surface of the Easement: By acceptance of this grant and utilization of any rights granted hereby, Grantee agrees that it will at all times, after doing any work pursuant to the rights hereby granted, restore the surface of the Easement (including the asphaltting of any roads or drives affected) to substantially the same condition as existed prior to such work; that it shall bury the wastewater collection line and service lines (but not those surface appurtenances, including valve stems, signs, and other facilities as are reasonably necessary for operation of the collection line) located within the Easement so that such lines will not create a nuisance; and that Grantee will not do any act, or fail to do any act, that will be detrimental or create a hazard to the surface of the lands covered thereby or to the use thereof.

2. Duration of Easement. The duration of the Easement is perpetual.

3. Reservation of Rights. Grantee's right to use the Easement is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement in conjunction with Grantee as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement by Grantee for the Easement Purpose.

4. Improvement and Maintenance of Easement and Facilities. Improvement and maintenance of the Easement and the Facilities will be at the sole expense of Grantee. Grantee has the right to eliminate any encroachments into the Easement. Grantee must maintain the Easement in a neat and clean condition. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's

obligations under this agreement. Grantee has the right to remove trees (except for any pecan tree, oak tree or cypress tree which will require the approval of Grantor) or other vegetation, or obstructions, or to remove or relocate any fences within the Easement or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work.

5. Waiver of Property: Given the significance of this Easement coupled with the fact that the house located on the Property is not occupied, Grantor is hereby granted a waiver (“Waiver”) from the mandatory hook-up to remain in effect as long as Grantor owns the Property. Grantor’s Property subject to this waiver is identified as Tract One, Tract Two and Tract Three as described in that certain Special Warranty Deed dated December 8, 2015, executed by Jerome E. Paisley to Kent Paisley and Kimberly Paisley recorded in Volume 5403, Page 465, Official Public Records, Hays County, Texas. The Waiver is personal to Grantor and is only in effect while Grantor owns the Property.

6. Indemnity: To the extent permitted by law, Grantee, its successors and assigns, will defend and indemnify Grantor against any liabilities, claims, demands or damages to the extent such loss or damages are caused by any wrongful or negligent act or admission of Grantee, its agents or employees in the course of its exercise of rights granted by this Easement.

7. Right to Grant Additional Use Within Easement. Grantor, their heirs, successors and assigns, will have the right to grant to others the right to place, install, and maintain utilities within the easement as long as it does not interfere with or impede the use of the easement by the City for the wastewater collection line. In such event, written notice will be given to Grantee by Grantor detailing the purpose for which the easement will be used, the facilities to be placed within the easement, the spacing from the wastewater collection line and any other information necessary to protect the interest of the City and to allow for proper coordination.

HABENDUM AND WARRANTY: TO HAVE AND HOLD the Easement and all and singular the rights and appurtenances thereunto belonging unto Grantee, its successors and assigns for so long as any wastewater collection line or facilities are located and operated thereon. Grantor binds Grantor and Grantor’s heirs, 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 of the Easement by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and Exceptions to Warranty.

SUCCESSORS AND ASSIGNS: The Easement granted hereby and all of the rights, agreements, and burdens pertaining thereto shall constitute a covenant running with the land and inure to the benefit of and shall be binding upon the Grantor, any other owner in the future on any part of the property across which the Easement runs, and the Grantee, and all of their respective successors, legal representatives, and assigns. Grantee's rights hereunder may be assigned in whole or in part to one or more assignees.

CONVENANT OF GRANTOR: Grantor covenants that Grantor is the owner of the above-described lands and that the person signing this easement is authorized to execute the same on behalf of the owner or all the owners of the property.

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.

ATTORNEY’S FEES: If [either/any] 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.

BINDING EFFECT: This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

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.

COUNTERPOINTS: 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.

WAIVER OF DEFAULT: It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a 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.

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.

ENTIRE AGREEMENT: This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property, and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

LEGAL CONSTRUCTION: If 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.

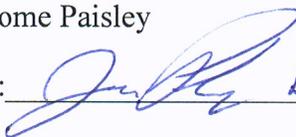
Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

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.

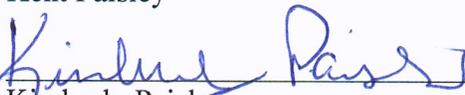
RECITALS: Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

GRANTOR:

Jerome Paisley

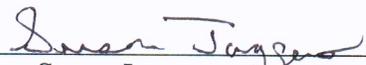
By:  by  POA


Kent Paisley


Kimberly Paisley

GRANTEE:

City of Wimberley

By: 
Mayor Susan Jagers

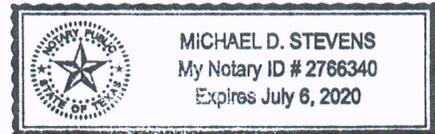
ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on this 28th day of December, 2018, by Jerome Paisley by Kent Paisley, Agent and Attorney in Fact for Jerome Paisley.

Michael D. Stevens
Notary Public, State of



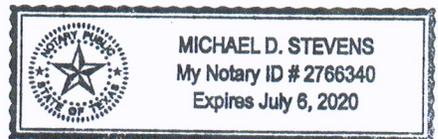
ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on this 28th day of December, 2018, by Kent Paisley.

Michael D. Stevens
Notary Public, State of



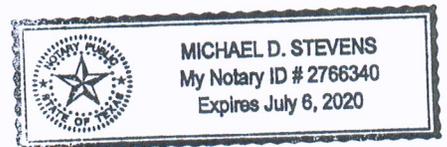
ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on this 28th day of December, 2018, by Kimberly Paisley.

Michael D. Stevens
Notary Public, State of

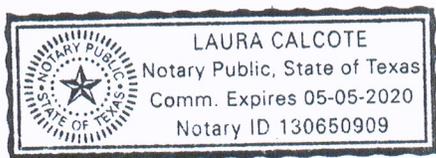


ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on this 11th day of January, 2018
by Susan Jagers, Mayor of the City of Wimberley, on behalf of said City.



Laura Calcote
Notary Public, State of Texas

Statutory Durable Power of Attorney

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, Jerome E. Paisley, 110 Blue Heron Road, Wimberley, Texas 78676, appoint:

Kent Paisley
18812 Mangan Way, Pflugerville, Texas 78660

as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- _____ (A) Real property transactions;
- _____ (B) Tangible personal property transactions;
- _____ (C) Stock and bond transactions;
- _____ (D) Commodity and option transactions;
- _____ (E) Banking and other financial institution transactions;
- _____ (F) Business operating transactions;
- _____ (G) Insurance and annuity transactions;
- _____ (H) Estate, trust, and other beneficiary transactions;
- _____ (I) Claims and litigation;
- _____ (J) Personal and family maintenance;
- _____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- _____ (L) Retirement plan transactions;

(M) Tax matters.

 (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

If Line (N) is initialed, this document shall be construed and interpreted as a general power of attorney and my agent (attorney-in-fact) shall have the power and authority to perform or undertake any action I could perform or undertake if I were personally present.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of one of the following sentence to have it apply):

 Broad Gift-Giving Power. My agent (attorney in fact) shall have the power and authority to make gifts outright to or for the benefit of any one or more of the following persons or organizations, including by the exercise of a presently exercisable general power of appointment held by me, without the necessity of any court approval or judicial action of any kind if my agent deems the gifts to be in the best interests of my family, for tax savings purposes or otherwise:

- (i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which my agent reasonably believes that I have an interest;
- (ii) my spouse or partner, any of my descendants or any other person related to me by blood or marriage;
- (iii) any devisee or beneficiary under what my agent reasonably believes is my latest validly executed will or trust; and
- (iv) my agent, if my agent is eligible under either category (ii) or (iii) above.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

 Initial in front of the following sentences to have the sentence apply:

 Creating, Amending, Restating or Revoking a Living Trust or a Special Needs Trust for my benefit. My agent shall have the power and authority to create a trust for my benefit, naming my agent or any substitute or successor agents named in this instrument as trustee or, if my agent so chooses, naming a bank or trust company with assets under management of \$100 million or more as trustee, which trust may also benefit my spouse, my partner, any of my descendants and/or any devisee or beneficiary under what my agent reasonably believes is my latest validly executed will, and to transfer all or any part of my property or estate to the trust so created or to any existing trust of which I am a settlor, a beneficiary, or both, even though my agent may be the trustee. Any trust created by my agent or to which my agent transfers property under this provision may contain such dispositive provisions as my agent shall deem appropriate, so long as they are consistent with this provision, including but not limited to placing assets in a trust, including a QIT or Miller Trust, which will be protected from and/or assist in qualifying me or a member of my family for Medicaid or other governmental benefits. This power shall include the authority to create, amend, restate or revoke my trust or any aspect of my estate planning to take advantage or to avoid certain estate planning strategies or mistakes.

 Real Property or Mineral Powers for my benefit. My agent shall have the power and authority to sign any documents relating to the purchase or sale or lease of any real property or any interest in real property that I currently own or which is acquired by me or a trust for my benefit after the date of this document. This authority shall include those powers required for the acquisition, sale or lease of oil, gas or other minerals, assignment of royalties and including the power to execute pooling or unitization agreements.

 Tax Matters. Without limiting the authority of my agent with respect to tax matters as provided above, I specifically authorize my agent to represent me, and to appoint an agent or agents to represent me, before the Internal Revenue Service or any state or taxing authority by completing, signing and delivering IRS Form 2848 or any other governmental form. My agent shall have the authority to prepare, sign and file all federal, state and local tax returns including income, gift, FICA and payroll tax returns on my behalf. My agent may also prepare, sign and file claims for refunds, requests for extensions of time to file returns or pay taxes, extensions, waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts (including but not limited to the United States Tax Courts) and to negotiate offers in compromise on my behalf.

My agent shall be entitled to reasonable compensation from my property for services rendered as agent, not to exceed the fees charged by corporate fiduciaries for trust services in the area in which I live or the amount approved by me if I then have capacity. In addition, my agent shall be entitled to be reimbursed from my property for reasonable expenses incurred by my agent in the course of performing his or her duties under this power of attorney, subject to my approval if I then have capacity.

Additional Authority:

Although this instrument contains modifications of the statutory durable power of attorney form found in Tex. Est. Code § 752.051, I intend for it to be a "statutory durable power of attorney" as provided in that section and to be construed as a "statutory durable power of attorney."

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

_____ (A) This power of attorney is not affected by my subsequent disability or incapacity.

_____ ~~(B) This power of attorney becomes effective upon my disability or incapacity.~~

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

REVOCATION:

I revoke all powers of attorney previously granted by me as principal and terminate all agency relationships created by me except:

powers granted by me under any state statutory short form Durable Power of Attorney;

powers granted by me under any Medical Power of Attorney;

powers granted by me on forms provided by financial institutions granting the right to write checks on, deposit funds to, and withdraw funds from accounts to which I am a signatory; and

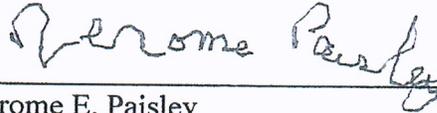
powers granting access to a safe-deposit box.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Kimberly Paisley

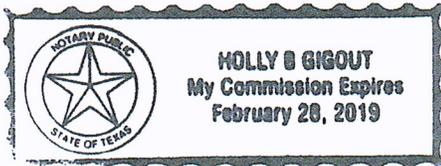
Signed this 8 day of December, 2015.



Jerome E. Paisley

STATE OF TEXAS
COUNTY OF HAYS

This document was acknowledged before me on December 8, 2015 by Jerome E. Paisley.



Holly B. Wigout
Notary Public, State of Texas

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Instrument # 19001671 Number of Pages: 15
Filed and Recorded: 1/16/2019 2:25 PM
Elaine H. Cárdenas, Hays County Clerk, Texas
Rec \$82.00 Deputy Clerk: PFLORES