

PUBLIC UTILITY EASEMENT

Effective Date: _____, 2021

Grantor: THE CITY OF NEW BRAUNFELS
Robert Camareno, City Manager
550 Landa Street
New Braunfels, TX 78130

Grantee: NEW BRAUNFELS UTILITIES ("NBU")
An Agency of the City of New Braunfels
Attention: CEO
P.O. Box 310289
New Braunfels, TX 78131

Permanent Easement Property: Those properties described on *Exhibit "A"* and depicted on *Exhibit "B"* attached hereto, located in the City of New Braunfels, Comal County, Texas.

Permanent Easement Purpose. The purpose of the Utility Easement (as hereinafter defined) is to grant NBU the right for erecting, constructing, installing, replacing, repairing, operating, using, inspecting, reconstructing, modifying, removing and maintaining electric, water and wastewater services and underground NBU telecommunication devices, together with all lines, pipes, conduits and other equipment, improvements and appurtenances used in the supply and provision of public utilities (the "Facilities").

Consideration. Ten Dollars (\$10.00) and other good and valuable consideration, and the agreements set out herein.

Grant. Grantor, for the Consideration and subject to the Reservations From Conveyance and the Exceptions to Conveyance and Warranty, grants, sells and conveys to NBU an easement over, upon and across the Easement Property for the Easement Purpose and for the benefit of NBU; to have and hold it to NBU, subject to the terms hereof. Grantor binds Grantor and Grantor's successors and assigns to warrant and defend all and singular the easements, rights and property interests herein conveyed to NBU against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations From Conveyance and the Exceptions to Conveyance and Warranty, by, through, or under Grantor, but not otherwise.

Reservations from Conveyance:

1. Grantor reserves the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement by NBU for the Easement Purpose, including the right to place surfacing materials over and across the Easement Property and to use the same for parking and/or driveways or walkways; provided, however, no buildings, structures of any kind, ponds (excluding existing ponds and drainage facilities), drainage facilities or other improvements may be placed on the Easement Property which will obstruct the Easement or interfere with the Facilities or the exercise of NBU's rights. Grantor may raise, but not lower the level of the surface of the Easement Property, provided that any such change in the level of the surface of the Easement Property may not unreasonably interfere with or prevent the use of the Easement Property for the Easement Purpose. In the event Grantor utilizes the surface of the Easement Property for parking, protective barriers must be erected and maintained at Grantor's expense around any above ground Facilities. To the extent that such laws and codes apply, Grantor or its successors or assigns must observe all safety codes and laws which apply to working along, within and or near the Easement Property and Facilities, including O.S.H.A., the Texas Health and Safety Code, the National Electric Code, and the National Electrical Safety Code.

Exceptions to Conveyance and Warranty: This conveyance is made by Grantor and accepted by NBU subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Property is located, or that may be apparent on the Property.

Terms: The following terms apply to this easement:

1. *Character of Easement.* The easement is exclusive to NBU utilities; otherwise, it is non-exclusive provided that any other utility provider must cooperate with NBU when locating its Facilities within the Easement Property to assure that none of the NBU Facilities are damaged or functionally impaired. NBU will also have reasonable rights of ingress and egress to and from said Easement Property, together with reasonable working space, for the purposes of erecting, installing, operating, maintaining, replacing, inspecting and removing the Facilities, together with the additional right to remove from the Easement Property and land immediately adjoining thereto, all bushes, trees and parts thereof, any vegetation or other structures or improvements which are within, protrude, bisect, encroach or overhang into the Easement Property and which, in the sole opinion of NBU, endanger or may interfere with the efficient, safe and proper operation and maintenance of the Facilities.
2. *Duration.* The duration of the easement is perpetual and irrevocable.
3. *Easement Improvements.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the sole discretion of NBU, subject to performance of its obligations under this easement. All Facilities or other improvements constructed within, on or under the Easement Property will be and remain the property of NBU. To the extent allowed by the Constitution and the laws of the State of Texas, NBU assumes the entire responsibility for the construction and maintenance of the Facilities, and nothing contained herein will ever be construed to place upon Grantor any manner of liability for injury to or death of persons or for damage to or loss of property arising from or in any manner connected with the acts, conduct or negligence of NBU in the construction and maintenance of the Facilities. In the event Grantor places surfacing materials, landscaping or other permitted improvements over and across the Easement Property or portions thereof (the Grantor Improvements), NBU will use ordinary care to minimize damage to the Grantor Improvements in the event repair, replacement or maintenance of the Facilities is required. NBU will restore existing Grantor Improvements and any material damage to Grantor's property, except landscaping, to their condition prior to the time NBU commenced work. Landscaping will only be restored on land adjacent to the easement to the extent NBU's negligent acts or omissions contribute to their damage.
4. *Enforcement.* If there is any breach or threatened breach of this easement by any party or their successors or assigns, and the default or threat continues after the claiming party gives the defaulting party notice of the claim of default and a reasonable opportunity to cure the default (if the default is capable of being cured), then the claiming party may enforce the terms of this Easement by restraining order and by temporary and permanent injunction, prohibiting such breach and commanding the offending party to comply with all terms of this Easement. Restraining orders and injunctions will be obtainable upon proof of the existence of any breach or threatened breach, and without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties hereto or those benefited hereby; 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.

5. *Attorneys' Fees.* Any party who is the prevailing party in any legal proceeding against any other party brought under or in connection with this easement or the subject matter hereof, is additionally entitled to recover reasonable attorneys' fees, expert fees, and all other litigation expenses.
6. *Effect of Waiver or Consent.* No waiver or consent, express or implied, by any party to this easement of any breach by any party in the performance by such party of its obligations hereunder will be deemed or construed to be a consent to or a waiver of any other breach and the performance by such party of the same or any other obligations of such party hereunder. Failure on the part of a party to complain of any act of any party or to declare any party in default, regardless of how long such failure continues, will not constitute a waiver by such party of its rights hereunder until the applicable statute of limitations period has run.
7. *General Provisions.*
 - (a) This easement binds and inures to the benefit of the parties hereto and their respective successors and assigns.
 - (b) This easement contains the complete easement of the parties and cannot be varied except by written easement. The parties agree that there are no oral agreements, representations or warranties that are not expressly set forth in this easement.
 - (c) 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 easement and all transactions contemplated by this easement.
 - (d) This easement 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 in which the Easement Property is located.
 - (e) If any provision in this easement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain between the parties, the unenforceability will not affect any other provision hereof, and this easement will be construed as if the unenforceable provision had never been a part of the easement. Whenever the context requires, the singular will include the plural and neuter includes the masculine or feminine gender, and vice versa. Article and section headings in this easement are for reference only and are not intended to restrict or define the text of any section. This easement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
 - (f) Any notice required or permitted under this easement must be in writing. Any notice required by this easement 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 easement. 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.

GRANTOR:

THE CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the _____ day of _____, 2021, by Robert Camareno, in the capacity of City Manager of The City of New Braunfels.

NOTARY PUBLIC, STATE OF TEXAS
Notary's Name Printed: _____
My Commission Expires: _____

[This space intentionally left blank. Exhibits "A" and "B" follow.]

“EXHIBT A”
METES AND BOUNDS DESCRIPTION
FOR A
20-FOOT UTILITY EASEMENT

A 0.604 of an acre easement located on a called 100.007 acre tract described in deed to The City of New Braunfels recorded in Document No. 201006008069 of the Official Public Records of Comal County, Texas, being out of the A.M. Esnaurizar Survey No. 1, Abstract No. 98, Comal County, Texas and being in the City of New Braunfels, Comal County, Texas. Said 0.604 of an acre easement being more fully described as follows:

BEGINNING: At a found ½” iron rod with a cap marked “HMT” at the east corner of said 100.007 acre tract, at the south corner of a called 105.6 acre tract recorded in Document No. 201306036754 of said Official Public Records and on the northwest line of a called 109.33 acre tract recorded in Document No. 200706027818 of said Official Public Records;

THENCE: S 45°19'02" W, with the southeast line of said 100.007 acre tract and the northwest line of said 109.33 acre tract, a distance of 20.00 feet to a point from which a found 1/2” iron with an orange cap at an angle point in the southeast line of said 100.007 acre tract, at the west corner of said 109.33 acre tract and at the north corner of a called 76.95 acre tract recorded in Document No. 201906001455 of said Official Public Records, bears S 45°19'02" W, a distance of 206.67 feet;

THENCE: N 44°58'10" W, departing the northwest line of said 109.33 acre tract, over and across said 100.007 acre tract, a distance of 1315.65 feet to a point on the southeast line of a called 0.646 acre utility easement recorded in Document No. 201806038000 of said Official Public Records;

THENCE: N 45°17'17" E, continuing over and across said 100.007 acre tract and with said 0.646 acre utility easement, a distance of 20.00 feet to a point at the east corner of said 0.646 acre utility easement, on the northeast line of said 100.007 acre tract and on the southwest line of said 105.6 acre tract;

THENCE: S 44°58'10" E, with said line. a distance of 1315.66 feet to the POINT OF BEGINNING and containing 0.604 of an acre in the City of New Braunfels, Comal County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Reference exhibit of 0.604 of an acre easement prepared this same date.


Jon W. Cooper

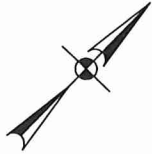
Registered Professional Land Surveyor No.6716

S:\Projects\032 - Fred Heimer\032.052 Kivlin Tract (The Landing) Surveying\Word\032.052 MB 0.604 AC UE.docx



"EXHIBIT B"

A 0.604 OF AN ACRE EASEMENT LOCATED ON A CALLED 100.007 ACRE TRACT DESCRIBED IN DEED TO THE CITY OF NEW BRAUNFELS RECORDED IN DOCUMENT NO. 201006008069 OF THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS, BEING OUT OF THE A.M. ESNAURIZAR SURVEY NO. 1, ABSTRACT NO. 98, COMAL COUNTY, TEXAS AND BEING IN THE CITY OF NEW BRAUNFELS, COMAL COUNTY, TEXAS.



SCALE: 1"=200'

LEGEND:

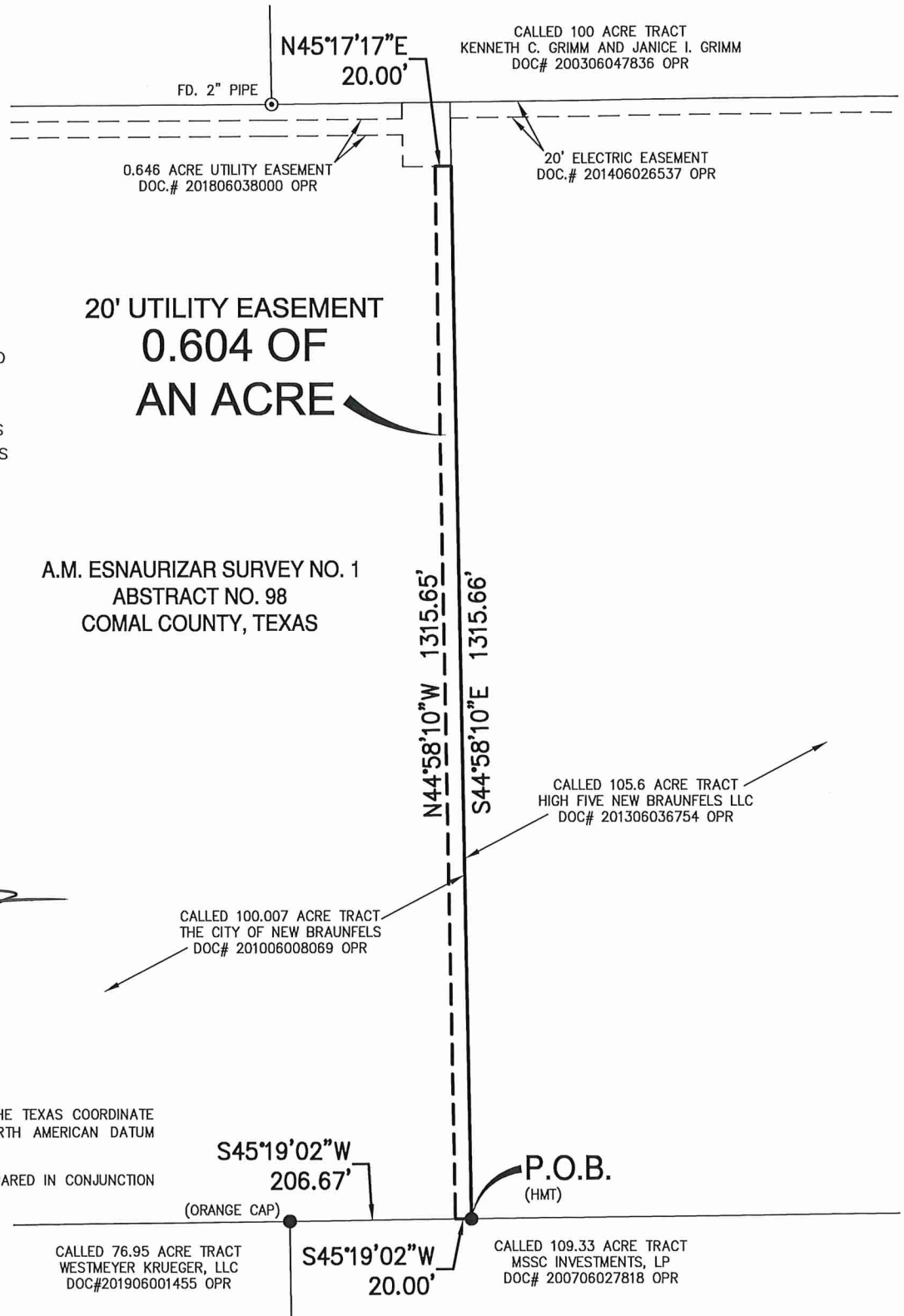
- = FND 1/2" IRON PIN
UNLESS OTHERWISE NOTED
- ⊙ = 2" PIPE
- P.O.B. = POINT OF BEGINNING
- OPR = OFFICIAL PUBLIC RECORDS
OF COMAL COUNTY, TEXAS
- DR = DEED RECORDS OF
COMAL COUNTY, TEXAS

**20' UTILITY EASEMENT
0.604 OF
AN ACRE**

A.M. ESNAURIZAR SURVEY NO. 1
ABSTRACT NO. 98
COMAL COUNTY, TEXAS



7/30/21



NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NORTH AMERICAN DATUM 1983.
2. METES AND BOUNDS DESCRIPTION WERE PREPARED IN CONJUNCTION WITH THIS EXHIBIT.

DRAWN BY:	JC
FIELD CREW:	



290 S. CASTELL AVE., STE. 100
NEW BRAUNFELS, TX 78130
TBPE FIRM F-10961
TBPLS FIRM 10153600

JULY 30, 2021

JOB NO.: 032.052

Drawing Name: S:\Projects\032 - Fred Heimer\032.052 - Krilin Tract (The Landing) Surveying\CAD\032.052 20 UE.dwg User: jonathanc Jul 30, 2021 - 9:54am