

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.

WASTEWATER PIPELINE EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company ("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 PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas ("Grantee"), an exclusive easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on **Exhibit "A-1"** and depicted on **Exhibit "A-2,"** attached hereto and incorporated herein by reference ("Easement Property"). Grantor and Grantee may jointly be referred to as "the Parties."

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. Grantor 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 to the extent that such claim arises by, through, or under Grantor.

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) "Grantee" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is 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) "Wastewater pipeline" shall mean a pipeline designed and operated to transport wastewater.

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 Easement is for the benefit of Grantee.
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 wastewater pipelines, public utility facilities, and related appurtenances, or making connections thereto (hereinafter collectively "Facilities"). The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Facilities.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
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 Grantee 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 Grantee for the Easement Purpose. Grantor shall not construct any building, structure or obstruction on the Easement Property. Any improvement made by Grantor (Permitted Improvement) must comply with applicable ordinances, development codes, and engineering guidelines of the City of Pflugerville. Grantor shall obtain Grantee's permission prior to the start of constructing Permitted Improvements. Grantor shall not construct any fencing or gating on the Easement Property without Grantee's permission.
6. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7, immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Grantee. Grantee has the right to eliminate any encroachments into the Easement Property. Grantee has the right to construct, install,

maintain, replace, and remove the Facilities under or across any portion of the Easement Property. 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 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. Grantee shall not be required to repair or replace to their original condition any landscaping, driveways, parking areas, or Permitted Improvement on the Easement Property that are damaged in connection with the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of the Facilities.

7. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash.
8. *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.
9. *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.
10. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
11. *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.
12. *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.

13. *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.
14. *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.
15. *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.
16. *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.
17. *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.
18. *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.
19. *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

GRANTEE:

AGREED AND ACCEPTED:

**CITY OF PFLUGERVILLE,
TEXAS**, a Texas home-rule
municipality

By: _____
Brandon Wade, City Manager

ATTEST:

Karen Thompson, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____,
2016, by Brandon Wade, City Manager of the City of Pflugerville, Texas, a Texas home-
rule municipality, on behalf of said municipality.

Notary Public Signature

(seal)

AFTER RECORDING, RETURN TO:

City of Pflugerville
Attn.: Emily Barron, Planning Director
Development Services Center
P.O. Box 589
Pflugerville, Texas 78691

EXHIBIT "A-1"

EXHIBIT "A-1"

O,REILLY AUTO ENTERPRISES LLC TO
THE CITY OF PFLUGERVILLE
(WASTEWATER EASEMENT)

780 SQUARE FEET
O'REILLY AUTO PARTS
LOT 2 H.E.B./PFLUGERVILLE REPLAT

FN. NO. 16-310(DLB)
AUGUST 31, 2016
JOB NO. 222010405

DESCRIPTION

OF 780 SQUARE FEET OF LAND OUT OF THE SEFRIN EISELIN SURVEY NO. 1, SITUATED IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 2, REPLAT OF H.E.B./PFLUGERVILLE SUBDIVISION NO. 2, OF RECORD IN DOCUMENT NO. 201500122 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID LOT 2 CONVEYED TO OREILLY AUTO ENTERPRISES LLC BY DEED OF RECORD IN DOCUMENT NO. 2015133013 OF SAID OFFICIAL PUBLIC RECORDS; SAID 780 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a cut "X" found in the northerly right-of-way line of Pflugerville Road East (R.O.W. varies), being the southernmost southeasterly corner of Lot 1, of said Replat of H.E.B./Pflugerville Subdivision No. 2, and the southwesterly corner of said Lot 2, for the southwesterly corner hereof;

THENCE, N27°47'00"E, leaving the northerly right-of-way line of E. Pecan Street, along the common line of said Lot 1 and said Lot 2, for the westerly line hereof, a distance of 5.00 feet for the northwesterly corner hereof;

THENCE, S62°46'54"E, leaving the easterly line of said Lot 1, over and across said Lot 2, for the northerly line hereof, a distance of 156.01 feet to a point in the easterly line of said Lot 2, being the westerly line of Lot 3 of said Replat of H.E.B./Pflugerville Subdivision No. 2, for the northeasterly corner hereof;

THENCE, S27°47'00"W, along the common line of said Lots 2 and said Lot 3, for the easterly line hereof, a distance of 5.00 feet to a 1/2 inch iron rod with BURY" cap set in the northerly right-of-way line of Ease Pecan Street, being the common southerly corner of said Lot 2 and said Lot 3, for the southeasterly corner hereof;

THENCE, N62°46'54"W, along the northerly right-of-way line of E. Pecan Street, being the southerly line of said Lot 2, for the southerly line hereof, a distance of 156.01 feet to the **POINT OF BEGINNING** containing an area of 780 square feet of land, more or less, within these metes and bounds.

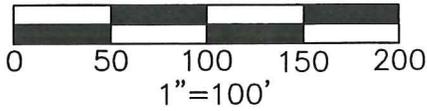
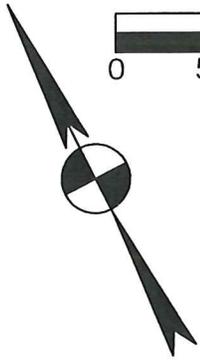
STANTEC CONSULTING
SERVICES INC.
221 WEST SIXTH ST.
SUITE 600
AUSTIN, TEXAS 78701

Mark J. Jezisek 8/31/14
MARK J. JEZISEK

R.P.L.S. NO. 5267
STATE OF TEXAS
TBPLS # F-10194230
Mark.Jezisek@stantec.com



EXHIBIT "A-2"



LEGEND

- 1/2" IRON ROD WITH "BURY" CAP SET
- ⊗ "X" FOUND CUT "X" FOUND
- P.O.B. POINT OF BEGINNING

BEARING BASIS NOTE:

THE BASIS OF BEARING OF THE SURVEY SHOWN HEREON IS TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(96), UTILIZING WESTERN DATA SYSTEMS CONTINUALLY OPERATING REFERENCE STATION (CORS) NETWORK.

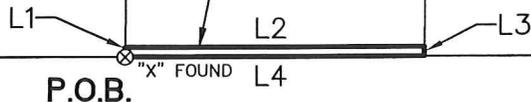
LINE TABLE		
NO.	BEARING	DISTANCE
L1	N27°47'00"E	5.00'
L2	S62°46'54"E	156.01'
L3	S27°47'00"W	5.00'
L4	N62°46'54"W	156.01'

LOT 1, REPLAT OF
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO. 201500122

LOT 2,
REPLAT OF
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO.
201500122

LOT 3, REPLAT OF
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO. 201500122

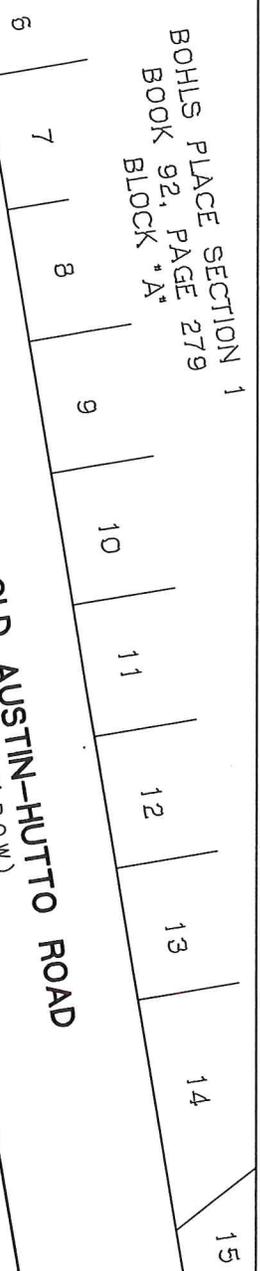
0.018 ACRE
(780 SQ. FT.)
WASTEWATER EASEMENT



E. PECAN STREET (R.O.W. VARIES)

OLD AUSTIN-HUTTO ROAD
(85' R.O.W.)

BOHLS PLACE SECTION 1
 BOOK 92, PAGE 279
 BLOCK "A"



LOT 1
GILLELAND
CENTER
BK. 88, PG. 28

TRACT TWO - 2 ACRES
MARIA R. MERCADO
VOL. 10433, PG. 125



Stantec

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TBPE # F-6324 TBPLS # F-10194230
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SKETCH TO ACCOMPANY DESCRIPTION

OF A 780 SQUARE FOOT TRACT OF LAND OUT OF THE SEFRIN EISELIN SURVEY NO. 1, SITUATED IN THE CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 2, REPLAT OF H.E.B./PFLUGERVILLE SUBDIVISION NO. 2, OF RECORD IN DOCUMENT NO. 201500122 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**O'REILLY
AUTO PARTS**

PFLUGERVILLE