

WATER PIPELINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT PURCHASE AGREEMENT

This Water Pipeline Easement and Temporary Construction Easement Purchase Agreement (this “Agreement”) is made and entered into by and between the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home rule municipality (“Grantee”), and **OP III ATX 5121 HOWARD LANE, LP**, a Delaware limited partnership (“Grantor”), hereafter collectively referred to as the “Parties”, upon the premises and for the purposes set out herein and is effective as stated in this Agreement.

INTRODUCTION

A. Grantor is the current owner thereof, among other property, of a 32.22-acre tract, BEING THAT TRACT DESCRIBED AS 32.220 ACRES CONVEYED TO OP III ATX 5121 HOWARD LANE, LP, IN A SPECIAL WARRANTY DEED AS RECORDED IN DOCUMENT NO. 2022081901, DATED MAY 4, 2022, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS (CALLED “TRACT 3” AND MORE PARTICULARLY DEPICTED ON EXHIBIT “C” ATTACHED TO SUCH SPECIAL WARRANTY DEED).

B. Grantee requires acquisition of two tracts as described in **Exhibit “A”** (+/- 0.2924-acre “Water Pipeline Easement”) and **Exhibit “B”** (“Area 1 and Area 2 of the TACE”) (collectively, +/- 1.513-acre “Temporary Access and Construction Easement”) for the Secondary Colorado Raw Water Line Project hereafter collectively referred to as the “Easement Property”.

C. Grantor is willing to convey and Grantee to purchase certain easement rights, as more particular described herein the Easement Property for the settlement value of **\$92,623.00**.

NOW, THEREFORE, in exchange for the mutual promises provided herein, the Parties agree as follows:

I.

Purchase and Sale Agreement. For the Purchase Price (as defined below), Grantor agrees to grant, subject to all instruments of record relating to the Easement Property, an (i) exclusive water pipeline easement on the Easement Property described in **Exhibit “A”** (the “Water Pipeline Easement”) and (ii) exclusive temporary construction and access easement on the Easement Property described in **Exhibit “B”** (the “Temporary Construction Easement”, and together with the Water Pipeline Easement, collectively, the “Easements”) to Grantee, and Grantee agrees to pay Grantor for such easement rights on the Easement Property as described in **Exhibit “A” and Exhibit “B”**, respectively, all in accordance with this Agreement and as more particularly described in the Easement Agreement (as defined below). The promises by Grantee and Grantor stated in this contract are the consideration for the formation of this contract. The obligations of Grantee and Grantor contained in this Agreement are conditional on City Council of Pflugerville’s (the

“City Counsel”) approval and acceptance of the Easements. In the event the City Council does not approve the acceptance of the Easements, Grantee shall pay Grantor \$100.00, as consideration for Grantor’s agreement to the condition on closing and shall return to Grantor all original documents, unfiled with the County, at Grantee’s expense.

II.

The Purchase Price. **Ninety-Two Thousand Six Hundred Twenty-Three and No/Dollars (\$92,623.00)** (the “Purchase Price”) to be paid at closing.

III.

The Easement Property. More or less two (2) tracts as described in **Exhibit “A”** (+/- 0.2924-acre Water Pipeline Easement) and in **Exhibit “B”** (+/- 1.513-acre Temporary Construction Easement) out of the 32.22-acre tract being that TRACT DESCRIBED AS 32.220 ACRES CONVEYED TO OP III ATX 5121 HOWARD LANE, LP, IN A SPECIAL WARRANTY DEED AS RECORDED IN DOCUMENT NO. 2022081901, DATED MAY 4, 2022, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS (CALLED “TRACT 3” AND MORE PARTICULARLY DEPICTED ON EXHIBIT “C” ATTACHED TO SUCH SPECIAL WARRANTY DEED).

IV.

Easement Instrument. The instrument of conveyance shall be in substantial conformance with the form and substance as stated in the Exclusive City of Pflugerville Water Pipeline Easement and Temporary Construction Easement in **Exhibit “A-1”** (the “Easement Agreement”) attached hereto and incorporated by reference for all purposes.

V.

Term of Easement. The Water Pipeline Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee. The Temporary Construction Easement shall terminate automatically upon the earlier of (i) completion of the construction of the public water pipeline or (ii) with respect to Area 2 of the TACE, January 15, 2026, and Area 1 of the TACE (being the area that is 70 ft by 71 ft of the northern most portion of the TACE, as shown on Exhibit “B”), January 15, 2027.

VI.

Miscellaneous.

- A. *Closing Date.* The parties shall close on this transaction within 30 days of the City Council’s approval and acceptance of the Easements or April 1, 2024, whichever date is earlier; provided, however, Grantee may extend the closing date for up to an additional forty-five (45) days by, on or before April 1, 2024, giving written notice to Grantor of its election to extend the closing date.
- B. *Notice.* Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; (ii) by

depositing it with Federal Express or another service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by electronic mail with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Grantee: City of Pflugerville
Attn: Sereniah Breland, City Manager
100 East Main Street
Pflugerville, Texas 78660
Email: _____

Grantor: OP III ATX 5121 Howard Lane, LP
Attn: Megan Frey
500 W. 5th Street, Suite 700
Austin, TX 78701
Email: mfrey@endeavor-re.com

- C. *Severability; Waiver.* If any provision of this agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is similar in terms to the illegal, invalid, or enforceable provision as is possible. Each of the rights and obligations of the parties hereto are separate covenants. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
- D. *Applicable Law and Venue.* The interpretation, performance, enforcement, and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.
- E. *Entire Agreement.* With the exception of the permits and approvals to be issued in connection with this Agreement, this Agreement contains the entire agreement of the Parties and there are no other agreements or promises, oral or written between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter hereof.
- F. *Exhibits and Counterparts.* All exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The

section headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the sections. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts bear the signatures of all the parties.

- G. Representations and Warranties by Grantor.* Grantor warrants, represents, covenants, and agrees that Grantor has fee simple absolute title to the Easement Property described in **Exhibit “A” and Exhibit “B”**, that said Easement Property is free of any liens or other encumbrances that would prevent this grant, and that Grantor meets all requirements to contract with the City of Pflugerville as provided by Chapter 38 of the City’s Code of Ordinances related to its authorization to grant the Easement Property to the City as provided herein.
- H. Eligibility Certification.* Grantor certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this certification is inaccurate.
- I. Payment of Debt or Delinquency to the State or Political Subdivision of the State.* Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Grantor agrees that any payments owing to Grantor under the Agreement may be applied directly toward any debt or delinquency that Grantor owes the City of Pflugerville, State of Texas, or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- J. Texas Family Code Child Support Certification.* Grantor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
- K. Closing Costs.* For the avoidance of any doubt, Grantor shall not be expected or required to contribute to any closing costs. Each party shall pay their own legal fees related to this Agreement and closing.
- L. “As-Is, Where-Is”.* Grantee acknowledges and agrees that, upon closing, Grantor shall convey to Grantee such easement rights as described in the Easement Agreement and Grantee shall accept such easement rights **“AS IS, WHERE IS, WITH ALL FAULTS”**. Grantee has not relied and will not rely on, and Grantor has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Water

Pipeline Easement or the Temporary Construction Easement or relating thereto made or furnished by Grantor, or any property manager, real estate broker, agent or third party representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing. Grantee represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise in purchasing the easement rights described herein and in the Easement Agreement and shall make an independent verification of the accuracy of any documents and information provided by Grantor. Grantee will conduct such inspections and investigations of the Easement Property as Grantee deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same.


[Signatures Appear on Following Page]

EXECUTED this the 22nd day of January, 2024.

GRANTOR:

OP III ATX 5121 HOWARD LANE, LP,
a Delaware limited partnership

By: EOP III Sub GP, LLC,
a Delaware limited liability company,
its general partner

By: 
Name: William Marsh
Title: EVP

GRANTEE:

CITY OF PFLUGERVILLE,
a Texas home rule municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary

EXHIBIT "A"

0.2924 Acre WE
Waterline Easement
Mariguita Castro Survey No. 50, Abstract No. 160
Travis County, Texas

DESCRIPTION FOR A 0.2924 OF ONE ACRE
WATERLINE EASEMENT

DESCRIPTION OF A 0.2924 OF ONE ACRE (12,735 SQUARE FOOT) EASEMENT, OUT OF THE MARIGUITA CASTRO SURVEY NO. 50, ABSTRACT NO. 160, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS 32.220 ACRES (TRACT 3 – EXHIBIT "C") CONVEYED TO OP III ATX 5121 HOWARD LANE, LP, AS RECORDED IN DOCUMENT NO. 2022081901 DATED MAY 4, 2022, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS; SAID 0.2924 OF ONE ACRE EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point at the southeast corner of this easement, being in the west line of a 40 foot wide waterline easement recorded in Document No. 2004076016, Official Public Records, Travis County, Texas, said POINT OF BEGINNING having Surface Coordinates of N=10,112,583.15, E=3,153,709.95, from which a 1/2-inch iron pipe found at the southeast corner of said 32.220 acre OP III ATX 5121 Howard Lane tract, being the northeast corner of that tract described as 47.733 acres conveyed to East Creek ATX, LLC by General Warranty Deed, as recorded in Document No. 2022008621, Official Public Records, Travis County, Texas, bears South 37°45'09" West 136.73 feet, and South 59°45'39" East 40.35 feet, and also from which a 1/2-inch iron pipe (disturbed) found in the south line of said 32.220 acre OP III ATX 5121 Howard Lane tract, and the north line of said 47.733 acre East Creek ATX tract, bears South 37°45'09" West 136.73 feet, and North 59°45'39" West 275.24 feet,;

- 1) THENCE, along the south line of this easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, **North 52°18'47" West 49.69 feet** to a calculated point at the southwest corner of this easement;
- 2) THENCE, along the west line of this easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, **North 37°41'13" East 255.58 feet** to a calculated point at the northwest corner of this easement;
- 3) THENCE, along the north line of this easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, **South 52°14'51" East 49.98 feet** to a calculated point at the northeast corner of this easement, being in the west line of said 40 foot wide waterline easement;

0.2924 Acre WE

- 4) THENCE, along the east line of this easement, and the west line of said 40 foot wide waterline easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, **South 37°45'09" West 255.52 feet** to the POINT OF BEGINNING and containing 0.2924 of one acre (12,735 square feet) of land within these metes and bounds.

Bearing Basis Note

The bearings described herein are based on the Texas Coordinate System, Central Zone (4203), NAD83 (2011) EPOCH 2010.00. The coordinates shown are surface coordinates and can be converted to grid by dividing a combined scale factor of 1.000070.

SURVEYED BY:

McGRAY & McGRAY LAND SURVEYORS, INC.
3301 Hancock Dr., Ste. 6
Austin, TX 78731 (512) 451-8591
TBPELS Survey Firm# 10095500



07/10/2023

Chris Conrad, Reg. Professional Land Surveyor No. 5623

Date

Note: There is a plat to accompany this description.

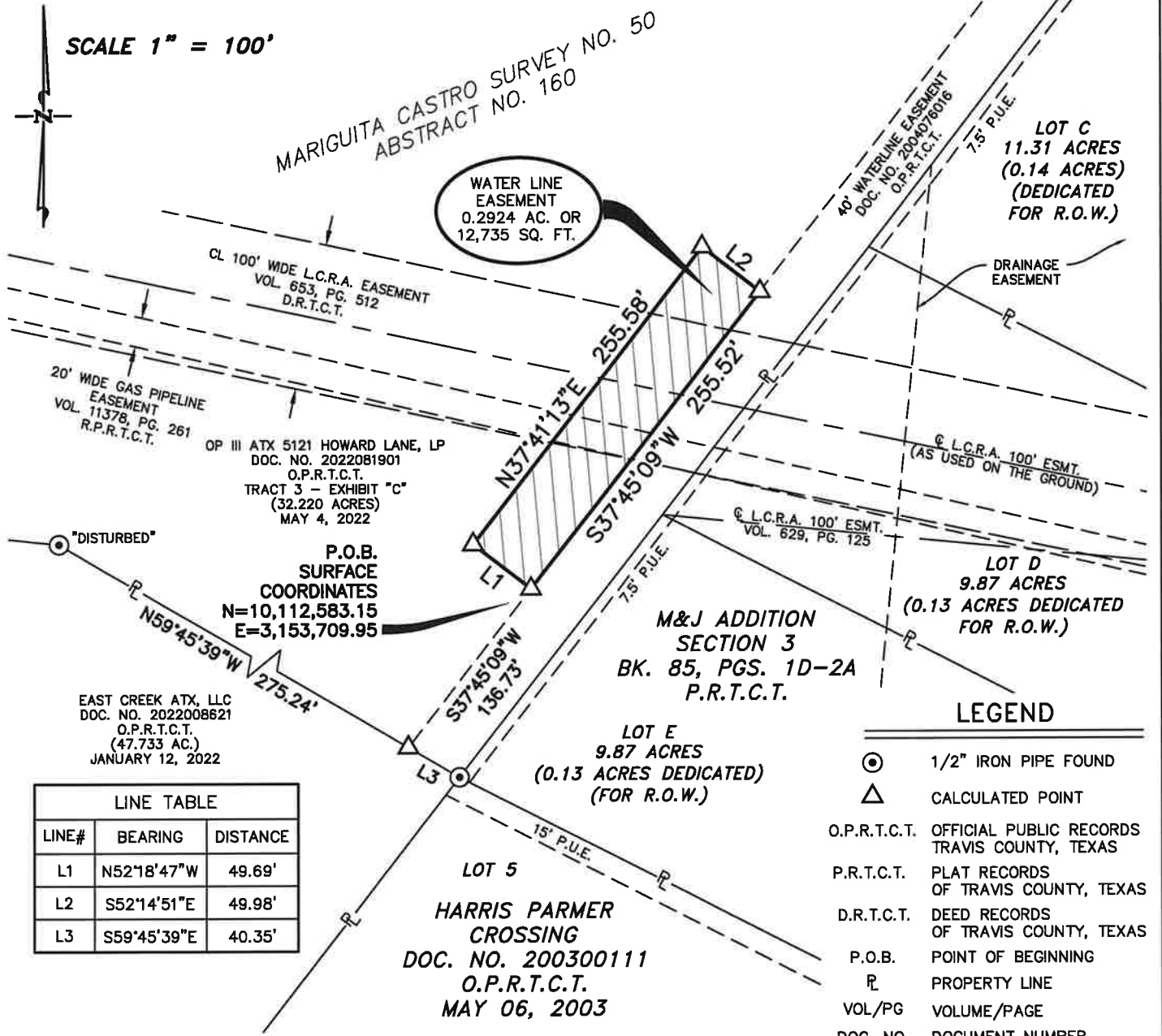
M:\F&N~22-009~Pville Raw Water Line\Description\0.2924 Ac OP III WE-Rev2

Issued 01/13/2023; Revised 06/19/2023; Revised 07/10/2023

AUSTIN GRID Q-32 & Q-31
TCAD# 0251410329

**SKETCH TO ACCOMPANY DESCRIPTION
OF 0.2924 AC. OR 12,735 SQ. FT. OF LAND OUT OF
THE MARIGUITA CASTRO SURVEY NO. 50, ABSTRACT NO. 160
AUSTIN, TRAVIS COUNTY, TEXAS**

SCALE 1" = 100'



EAST CREEK ATX, LLC
DOC. NO. 2022008621
O.P.R.T.C.T.
(47.733 AC.)
JANUARY 12, 2022

P.O.B.
SURFACE
COORDINATES
N=10,112,583.15
E=3,153,709.95

LINE TABLE		
LINE#	BEARING	DISTANCE
L1	N52°18'47"W	49.69'
L2	S52°14'51"E	49.98'
L3	S59°45'39"E	40.35'

NOTES:
1. THIS PROJECT IS REFERENCED, FOR ALL BEARING AND COORDINATE BASIS, TO THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203), NORTH AMERICAN DATUM OF 1983 (2011) EPOCH 2010.00. COORDINATES SHOWN HEREON ARE SURFACE COORDINATES AND CAN BE CONVERTED TO GRID BY DIVIDING BY A COMBINED SCALE FACTOR OF 1.000070.
2. THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A TITLE COMMITMENT PREPARED BY TITLE RESOURCES GUARANTY COMPANY G.F. NO. 2217325-KFO, EFFECTIVE DATE MAY 05, 2022.



Chris Conrad
07/10/2023

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE
Note: There is a description to accompany this plat.

M:\F&N\22-009~ Pville Raw Water Line\Draw\Parcels\OP III ATX WLE_REV2.dwg

LEGEND

- ⊙ 1/2" IRON PIPE FOUND
- △ CALCULATED POINT
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
- P.R.T.C.T. PLAT RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- P.O.B. POINT OF BEGINNING
- ℙ PROPERTY LINE
- VOL/PAGE VOLUME/PAGE
- DOC. NO. DOCUMENT NUMBER
- R.O.W. RIGHT OF WAY
- DISTANCE NOT TO SCALE
- (.....) RECORD INFORMATION

REVISED: 07/10/2023
REVISED: 06/19/2023
ISSUED: 01/13/2023

TCAD# 0251410329

SURVEYED BY:

PAGE 3 OF 3

**McGRAY & McGRAY
LAND SURVEYORS, INC.**
3301 HANCOCK DRIVE #6
AUSTIN, TEXAS 78731
MCGRAY.COM (512) 451-8591
TBPELS SURVEY FIRM #10095500

AUSTIN GRID: Q-32 & Q-31

JOB NO.: 22-009

EXHIBIT "B"

1.513 Acre TCE
Temporary Construction Easement
Mariguita Castro Survey No. 50, Abstract No. 160
Travis County, Texas

DESCRIPTION FOR A 1.513 ACRE
TEMPORARY CONSTRUCTION EASEMENT

DESCRIPTION OF A 1.513 ACRE (65,908 SQUARE FOOT) EASEMENT, OUT OF THE MARIGUITA CASTRO SURVEY NO. 50, ABSTRACT NO. 160, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS 32.220 ACRES (TRACT 3 – EXHIBIT "C") CONVEYED TO OP III ATX 5121 HOWARD LANE, LP, AS RECORDED IN DOCUMENT NO. 2022081901 DATED MAY 4, 2022, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS; SAID 1.513 ACRE EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point at the northwest corner of this easement, being in the north line of said 32.220 acre OP III ATX 5121 Howard Lane tract, and in the existing south right-of-way line of East Howard Lane (varying width), said POINT OF BEGINNING having Surface Coordinates of N=10,113,628.44, E=3,154,438.52;

- 1) THENCE, along the north line of this easement and said 32.220 acre OP III ATX 5121 Howard Lane tract, and the existing south right-of-way line of East Howard Lane, **South 19°49'04" East 71.40 feet** to a calculated point at the northeast corner of this easement, being the northwest corner of a 40 foot wide waterline easement recorded in Document No. 2004076015, Official Public Records, Travis County, Texas, from which a 1/2-inch iron rod with "Jones Carter" cap found at the northeast corner of said 32.220 acre OP III ATX 5121 Howard Lane tract and said 40 foot wide waterline easement, and the northwest corner of that tract described as 1.541 acres (Tract Two) conveyed to TCHFC Howard Lane Land LLC by Special Warranty Deed, as recorded in Document No. 2021248385, Official Public Records, Travis County, Texas, being in the existing south right-of-way line of East Howard Lane, bears South 19°49'04" East 47.60 feet, and from which a 1/2-inch iron rod with "Jones Carter" cap found in the north line of said 1.541 acre TCHFC Howard Lane Land tract, and the existing south right-of-way line of East Howard Lane, bears South 19°52'27" East 26.92 feet;

THENCE, along the east line of this easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, the following four (4) courses, numbered 2 and 5:

- 2) **South 37°21'12" West 525.28 feet** along the west line of said 40 foot wide waterline easement, and the west line of a 40 foot wide water line easement recorded in Document No. 2004076016, Official Public Records, Travis County, Texas, to a calculated point,
- 3) **South 37°45'09" West 453.47 feet** along the west line of said 40 foot wide waterline easement recorded in said Document No. 2004076016 to a calculated point,
- 4) **North 52°14'51" West 49.98 feet** to a calculated point,
- 5) **South 37°41'13" West 166.88 feet** to a calculated point at the southeast corner of this easement, being in the south line of a 20 foot wide gas pipeline easement recorded in Volume 11378, Page 281, Real Property Records, Travis County, Texas, from which a 1/2-inch iron pipe found at the southeast corner of said 32.220 acre OP III ATX 5121 Howard Lane tract, being the northeast corner of that tract described as 47.733 acres conveyed to East Creek ATX, LLC by General Warranty Deed, as recorded in Document No. 2022008621, Official Public Records, Travis County, Texas, bears South 52°14'51" East 89.79 feet, and South 37°45'09" West 220.10 feet, and from which a 1/2-inch iron pipe found at an angle point in the south line of said 32.220 acre OP III ATX 5121 Howard Lane tract, and the north line of said 47.733 acre East Creek ATX tract, bears North 59°45'39" West 466.90 feet;
- 6) THENCE, along the south line of this easement, and said 20 foot wide gas pipe line easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, **North 77°07'35" West 33.05 feet** to a calculated point at the southwest corner of this easement;

THENCE, along the northwest line of this easement, crossing said 32.220 acre OP III ATX 5121 Howard Lane tract, the following four (4) courses, numbered 7 through 10:

- 7) **North 37°41'13" East 220.78 feet** to a calculated point,
- 8) **South 52°15'10" East 19.99 feet** to a calculated point,
- 9) **North 37°44'50" East 424.70 feet** to a calculated point, and

1.513 Acre TCE

10) **North 37°21'12" East 552.34 feet** to the POINT OF BEGINNING and containing 1.513 acres (65,908 square feet) of land within these metes and bounds.

Bearing Basis Note

The bearings described herein are based on the Texas Coordinate System, Central Zone (4203), NAD83 (2011) EPOCH 2010.00. The coordinates shown are surface coordinates and can be converted to grid by dividing a combined scale factor of 1.000070.

SURVEYED BY:

McGRAY & McGRAY LAND SURVEYORS, INC.
3301 Hancock Dr., Ste. 6
Austin, TX 78731 (512) 451-8591
TBPELS Survey Firm# 10095500



08/21/2023

Chris Conrad, Reg. Professional Land Surveyor No. 5623

Date

Note: There is a plat to accompany this description.

M:\F&N~22-009~Pville Raw Water Line\Description\1.513 Ac OP III TCE-Rev3

Issued 11/04/2022; Revised 06/19/2023; 07/10/2023; 08/21/2023

AUSTIN GRID Q-32 & Q-31 / TCAD# 00251410329

**SKETCH TO ACCOMPANY DESCRIPTION
OF 1.513 AC. OR 65,908 SQ. FT. OF LAND OUT OF
THE MARIGUITA CASTRO SURVEY NO. 50, ABSTRACT NO. 160
AUSTIN, TRAVIS COUNTY, TEXAS**



SCALE 1" = 100'

LINE TABLE		
LINE#	BEARING	DISTANCE
L1	S19°49'04"E	71.40'
L5	S19°49'04"E	47.60'
L6	S19°52'27"E	26.92'

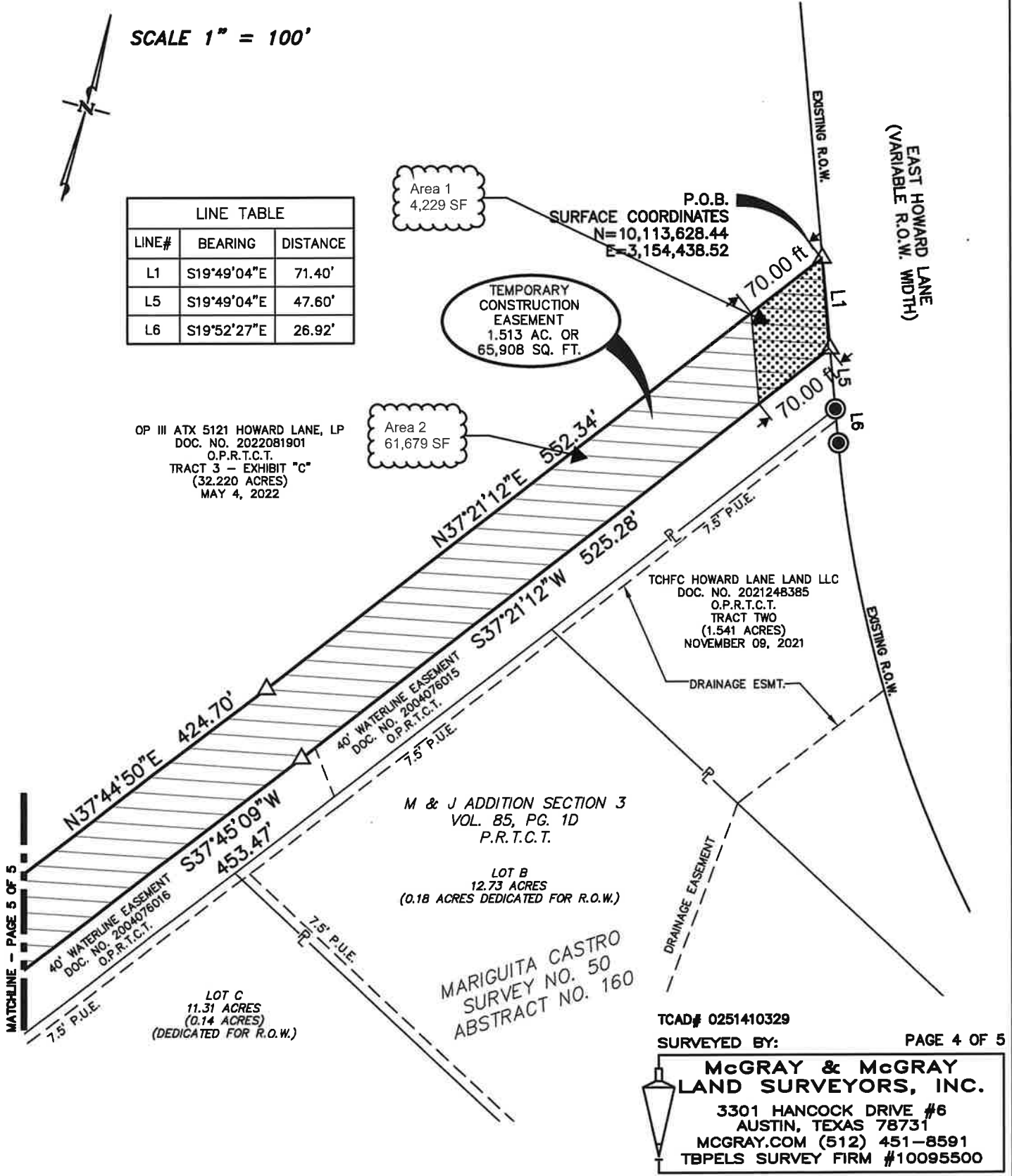
OP III ATX 5121 HOWARD LANE, LP
DOC. NO. 2022081901
O.P.R.T.C.T.
TRACT 3 - EXHIBIT "C"
(32.220 ACRES)
MAY 4, 2022

Area 1
4,229 SF

P.O.B.
SURFACE COORDINATES
N=10,113,628.44
E=3,154,438.52

TEMPORARY
CONSTRUCTION
EASEMENT
1.513 AC. OR
65,908 SQ. FT.

Area 2
61,679 SF



MATCHLINE - PAGE 5 OF 5

EAST HOWARD LANE
(VARIABLE R.O.W. WIDTH)

TCHFC HOWARD LANE LAND LLC
DOC. NO. 2021248385
O.P.R.T.C.T.
TRACT TWO
(1.541 ACRES)
NOVEMBER 09, 2021

M & J ADDITION SECTION 3
VOL. 85, PG. 1D
P.R.T.C.T.

LOT B
12.73 ACRES
(0.18 ACRES DEDICATED FOR R.O.W.)

MARIGUITA CASTRO
SURVEY NO. 50
ABSTRACT NO. 160

LOT C
11.31 ACRES
(0.14 ACRES)
(DEDICATED FOR R.O.W.)

TCAD# 0251410329

SURVEYED BY: PAGE 4 OF 5

**McGRAY & McGRAY
LAND SURVEYORS, INC.**
3301 HANCOCK DRIVE #6
AUSTIN, TEXAS 78731
MCGRAY.COM (512) 451-8591
TBPELS SURVEY FIRM #10095500

**SKETCH TO ACCOMPANY DESCRIPTION
OF 1.513 AC. OR 65,908 SQ. FT. OF LAND OUT OF
THE MARIGUITA CASTRO SURVEY NO. 50, ABSTRACT NO. 160
AUSTIN, TRAVIS COUNTY, TEXAS**

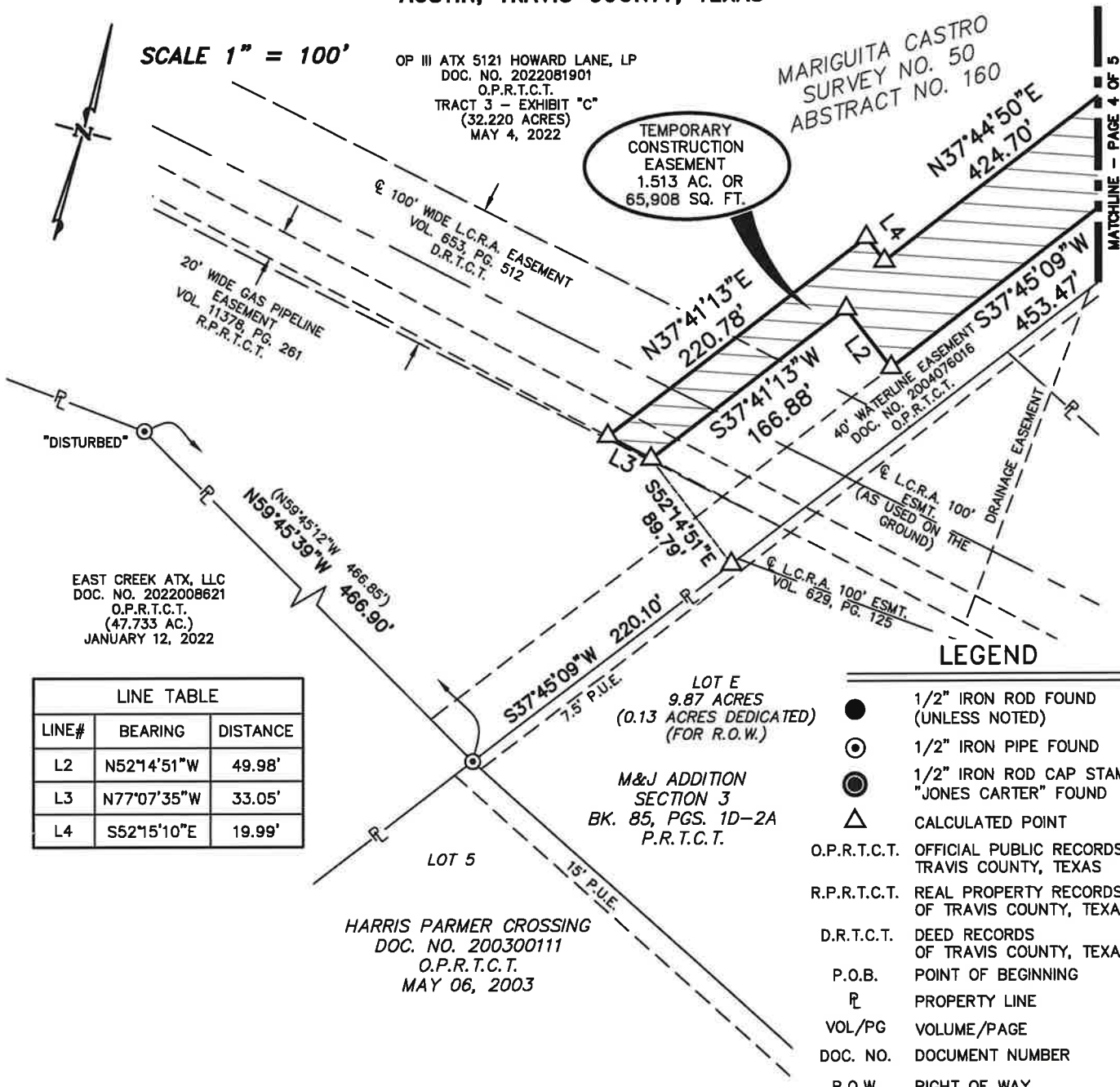
SCALE 1" = 100'

OP III ATX 5121 HOWARD LANE, LP
DOC. NO. 2022081901
O.P.R.T.C.T.
TRACT 3 - EXHIBIT "C"
(32.220 ACRES)
MAY 4, 2022

MARIGUITA CASTRO
SURVEY NO. 50
ABSTRACT NO. 160

TEMPORARY
CONSTRUCTION
EASEMENT
1.513 AC. OR
65,908 SQ. FT.

MATCHLINE - PAGE 4 OF 5



EAST CREEK ATX, LLC
DOC. NO. 2022008621
O.P.R.T.C.T.
(47.733 AC.)
JANUARY 12, 2022

LINE TABLE		
LINE#	BEARING	DISTANCE
L2	N52°14'51\"W	49.98'
L3	N77°07'35\"W	33.05'
L4	S52°15'10\"E	19.99'

LOT E
9.87 ACRES
(0.13 ACRES DEDICATED)
(FOR R.O.W.)

M&J ADDITION
SECTION 3
BK. 85, PGS. 1D-2A
P.R.T.C.T.

HARRIS PARMER CROSSING
DOC. NO. 200300111
O.P.R.T.C.T.
MAY 06, 2003

LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED)
- ⊙ 1/2" IRON PIPE FOUND
- ⊙ 1/2" IRON ROD CAP STAMPED "JONES CARTER" FOUND
- △ CALCULATED POINT
- O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
- R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- D.R.T.C.T. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- P.O.B. POINT OF BEGINNING
- ℙ PROPERTY LINE
- VOL/PAGE VOLUME/PAGE
- DOC. NO. DOCUMENT NUMBER
- R.O.W. RIGHT OF WAY
- ⋯ DISTANCE NOT TO SCALE
- (.....) RECORD INFORMATION

NOTES:
1. THIS PROJECT IS REFERENCED, FOR ALL BEARING AND COORDINATE BASIS, TO THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203), NORTH AMERICAN DATUM OF 1983 (2011) EPOCH 2010.00. COORDINATES SHOWN HEREON ARE SURFACE COORDINATES AND CAN BE CONVERTED TO GRID BY DIVIDING BY A COMBINED SCALE FACTOR OF 1.000070.
2. THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A TITLE COMMITMENT PREPARED BY TITLE RESOURCES GUARANTY COMPANY G.F. NO. 2217325-KFO, EFFECTIVE DATE MAY 05, 2022.

REVISED: 08/21/2023
REVISED: 07/10/2023
REVISED: 06/19/2023
ISSUED: 11/04/2022
PAGE 5 OF 5

TCAD# 0251410329
SURVEYED BY:

08/21/2023



**McGRAY & McGRAY
LAND SURVEYORS, INC.**
3301 HANCOCK DRIVE #6
AUSTIN, TEXAS 78731
MCGRAY.COM (512) 451-8591
TBPELS SURVEY FIRM #10095500

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE
Note: There is a description to accompany this plat.

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.

**EXCLUSIVE CITY OF PFLUGERVILLE WATER PIPELINE EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

Pursuant to this EXCLUSIVE CITY OF PFLUGERVILLE WATER PIPELINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT (this "Agreement"), **OP III ATX 5121 HOWARD LANE, LP**, a Delaware limited partnership ("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 upon and across certain property of Grantor as more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "Easement") and a temporary access and construction easement upon and across certain property of Grantor as more particularly described on **Exhibit "B"** (Area 1 and Area 2 of the TACE") attached hereto and incorporated herein by reference (collectively, the "TACE"). Such property of Grantor is collectively referred to herein as the "Easement Property". Grantor and Grantee may jointly be referred to as "the Parties".

TO HAVE AND TO HOLD the above-described easement 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 the easement rights to the Easement and TACE 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 but not otherwise, subject to the exceptions set forth herein. This easement grant is made and accepted subject to all instruments shown of record relating to the Easement Property.

Terms and Conditions: The following terms and conditions apply to the Easement and TACE granted by this Agreement:

1. *Definitions.* For the purposes of this Agreement 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 and are 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 similar structure unless such installation or construction is approved in writing by the City Manager or the City Manager's designee.
- (c) "Public Water Pipeline" shall mean a pipeline designed and operated to transport potable and/or raw water and its associated appurtenances.
2. *Character of Easement and TACE.* The Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement tract. Grantor may alter or otherwise use the surface of the Easement tract for such purposes that do not interfere with the exercise by Grantee of the rights herein, granted, and may place, construct, operate, repair and maintain, drainage lines and systems, and other public utility lines (including without limitation, water, wastewater, electric, telephone, cable television, and gas lines and systems) in, over, under and across the Easement tract (but may not install parallel lines within the Easement tract), and may grant public and/or private easements for such uses; provided, however, that plans for all improvements to be placed within the Easement tract must be approved by Grantee before such improvements are installed or built, with such approval not to be unreasonably withheld, conditioned or delayed. The Easement and TACE granted herein are "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 are irrevocable. The TACE rights of use granted herein are irrevocable until the termination of the TACE in accordance with the terms herein. The Easement and TACE are for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for Public Water Pipeline purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Water Pipelines 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 (but only within the limitations and in accordance with the terms of this Agreement) of the Facilities.
4. *Purpose of TACE.* The TACE shall be used to facilitate the construction of the Public Water Pipeline on the Easement Property, including access to the

Easement Property, construction staging and storage, and other construction activities.

5. *Term of Easement.* The Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
6. *Term of TACE.* The TACE granted herein shall terminate automatically upon the earlier of (i) completion of the construction of the Public Water Pipeline or (ii) with respect to Area 2 of the TACE, January 15, 2026, and Area 1 of the TACE (being the area that is 70 ft by 71 ft of the northern most portion of the TACE, as shown on Exhibit B), January 15, 2027.
7. *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. Grantor shall not construct any building, structure or obstruction on the Easement Property unless such building, structure or obstruction is approved in writing by the City Manager or the City Manager's designee. Any Permitted Improvement made by Grantor must comply with applicable ordinances, development codes, and engineering guidelines of the City of Pflugerville. Grantor shall not construct any fencing or gating on the Easement Property without Holder's permission.
8. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 9, 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 eliminate any encroachments into the Easement Property that are not Permitted Improvements. Holder 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 Holder's sole discretion, subject to performance of Holder's obligations under this Agreement. Holder has the right to remove or relocate any fences or other encroachments that are not Permitted Improvements (or not otherwise in approved in writing by Holder) within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities; provided, however, if Holder removes or relocates any fencing that exists along Grantor's property line as of the date hereof, Holder shall be responsible for all costs and expenses incurred in relocating and/or repairing such fencing. After initial installation of the Facilities, Holder shall be required to repair or replace to their original condition any landscaping, driveways, parking areas, or Permitted Improvements on the Easement Property that are damaged in connection with the replacement, repair, maintenance, relocation, removal, and/or operation of the Facilities.

9. *Maintenance of Surface Easement Property/Permitted Improvements.* While the TACE remains in effect and Grantee is constructing the Public Water Pipeline on the Easement Property, Grantee shall be responsible for maintaining the Easement Property, including regularly mowing or cutting back vegetation and keeping the surface of the Easement Property free of litter, debris, or trash. After the TACE has expired or is otherwise terminated in accordance with the terms of this Agreement and construction on the Public Water Pipeline has been completed, Grantor shall be responsible for maintaining the Easement Property, including regularly mowing or cutting back vegetation and keeping the surface of the Easement Property free of litter, debris, or trash.

10. *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, 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.

11. *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.

12. *Binding Effect.* This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

13. *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.

14. *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.

15. *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.

16. *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.

17. *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.

18. *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, electronic mail transmission (if also provided in another manner permitted hereunder at the same time), 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.

19. *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.

20. *Entire Agreement.* This Agreement 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 Agreement shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

21. *Assignability.* The Easement may be assigned by Grantee to a utility provider without the prior written consent of Grantor, but such assignment shall not release Grantee from this Agreement and any such assignee shall also be bound by the terms of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 2024.

GRANTOR:

**OP III ATX 5121 HOWARD
LANE, LP,**

a Delaware limited partnership

By: EOP III Sub GP, LLC,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this _____ day personally appeared _____ of EOP III Sub GP, LLC, a Delaware limited liability company, the general partner of **OP III ATX 5121 HOWARD LANE, LP**, a Delaware limited partnership, 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 _____ day of _____ 2024.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on _____,
2024, by Sereniah Breland, 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:

Norma Martinez
Real Estate Manager
City of Pflugerville
Development Services Center
P.O. Box 589
Pflugerville, Texas 78691