

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

TEMPORARY DRAINAGE EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

HERITAGE LAKES PARTNERS, LLC, a Texas limited liability company having an address of 2020 E. Continental Blvd., Southlake, Tarrant County, Texas ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule city, with offices located at 100 East Main Street Pflugerville, Travis County, Texas ("Grantee"), an easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Tract"),

TO HAVE AND TO HOLD the same to Grantee and its successors and assigns, together with the rights, and privileges and on the terms and conditions set forth, and for the duration set out, below; and Grantor, subject to the Exceptions to Warranty (as hereinafter defined), does hereby covenant and agree to WARRANT AND 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.

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

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - a) "Holder" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance and is subject to the terms of this agreement.
 - b) "Public Utility" shall mean storm water drainage.
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 is for the benefit of Holder.

3. *Purpose of easement.* The Easement shall be used for storm water drainage purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public storm water drainage facilities and related appurtenances, or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the storm water drainage facilities and related appurtenances.
4. *Term.* The Easement shall terminate on November 21, 2016. Grantor hereby binds Grantor and Grantor's heirs, legal representatives, successors and assigns, to warrant and forever defend the Easement unto Grantee, its successors and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.
5. *Reservation of Rights (Surface use only).* Holder's right to use the Easement Property is exclusive and Grantor shall not convey to others any right to use all or part of the Easement Property. This exclusivity is subject to Grantor and Grantor's heirs, successors, and assigns retained right to use the surface of all or part of the Easement Property in conjunction with Holder provided such use by Grantor and Grantor's heirs, successors, and assigns in no way interferes with the use of the Easement Property by Holder for the Easement Purpose.
6. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7 below, improvement and maintenance of the Easement Property and the Facilities (as hereinafter defined) will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder has the right to construct, install, maintain, replace, and remove storm water drainage improvements (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 within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.
7. *Maintenance of surface Easement Property.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including 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 nondefaulting party fails to declare immediately any 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. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable (the "Exceptions to Warranty").

17. *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. When the context requires, singular nouns and pronouns include the plural.
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, 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.
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 instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

[SIGNATURE PAGE FOLLOWS]

(Signature Page to Drainage Easement Agreement)

In witness whereof, this instrument is executed this 12 day of September, 2016.

GRANTOR:

HERITAGE LAKES PARTNERS, LLC,
a Texas limited liability company

By: [Signature]
Robert Johnson, Managing Member

By: [Signature]
G. Mikal Darden, Managing Member

AGREED AND ACCEPTED BY:

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

By: [Signature]
Brandon Wade, City Manager

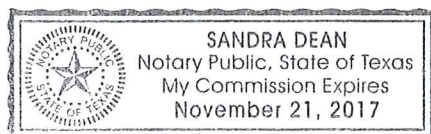
ATTEST:

[Signature]
Karen Thompson, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF Tarrant §

This instrument was acknowledged before me on September 12, 2016, by Robert Johnson and G. Mikal Darden, the Managing Members of Heritage Lakes Partners, LLC, a Texas limited liability company, on behalf of said company.

(seal)



[Signature]
Notary Public Signature

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

 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)

EXHIBIT “A”

EASEMENT TRACT

(See Attached)

EXHIBIT "A"

TEMPORARY DRAINAGE EASEMENT HERITAGE LAKES PARTNERS, LLC. CITY OF PFLUGERVILLE, TRAVIS COUNTY, TEXAS

Field Notes for the description of a Temporary Drainage Easement covering a 9.871 acre tract of land, being situated in the Edward Flint Survey No. 11, Abstract No. 277, Travis County, Texas and being a portion of that certain called 11.629 acre tract of land described in General Warranty Deed to Heritage Lakes Partners, LLC, and recorded in Document No. 2015146459 of the Official Public Records of Travis County, Texas (O.P.R.T.C.T.) and a portion of that certain called 19.81 acre tract of land described in General Warranty Deed to Heritage Lake Partners, LLC, and recorded in Document No. 2015146460 of the O.P.R.T.C.T. and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2 inch iron rod with orange plastic cap stamped "WALLACE GROUP" found on the southwesterly right-of-way line of Kelly Lane (variable width right-of-way) and the easterly corner said 11.629 acre tract and being the northerly corner of a called 20.162 acre tract of land described in deed to Ronny Wayne Rinderknecht, Lonny Charles Rinderknecht and Becky Rinderknecht, and recorded in Volume 9568, Page 80 of the Real Property Records of Travis County, Texas (R.P.R.T.C.T.);

THENCE South 26 degrees 43 minutes 26 seconds West, departing the southwesterly right-of-way line of said Kelly Lane and along the common line of said 11.629 acre tract and said Rinderknecht tract, a distance of 545.33 feet to the **POINT OF BEGINNING**;

THENCE South 26 degrees 43 minutes 26 seconds West, continuing along the common line of said 11.629 acre tract and said Rinderknecht tract, a distance of 1,014.86 feet to a 1 inch iron pipe found at the southerly corner of 11.629 acre tract and the westerly corner of said Rinderknecht tract and being on the northeasterly line of a called 5.794 acre tract of land as described in deed to Jack Payne, as recorded in Document No. 2008040028 O.P.R.T.C.T.;

THENCE North 62 degrees 36 minutes 00 seconds West, along the common line of said 11.629 acre tract and said Payne tract, a distance of 17.60 feet to a 1" iron rod found for an angle point in the southwesterly line of said 11.629 acre tract and being the northerly corner of said Payne tract and also being the easterly corner of a called 12.104 acre tract of land as described in deed to Diaper Full of Love, LLC, as recorded in Document No. 2015179720 O.P.R.T.C.T.;

THENCE North 64 degrees 38 minutes 37 seconds West, along the common line of said 11.629 acre tract and said Diaper Full of Love tract, a distance of 315.82 feet to a 1/2 inch iron rod found for the westerly corner of said 11.629 acre tract and the southerly corner of said 19.81 acre tract and also being an angle point on the northeasterly line of said Diaper Full of Love tract;

THENCE North 64 degrees 28 minutes 20 seconds West, along the common line of said 19.81 acre tract and said Diaper Full of Love tract, a distance of 366.22 feet to a 1/2 inch iron rod found for an angle point in the southwesterly line of said 19.81 acre tract and being the northerly corner of said Diaper Full of Love tract and also being the easterly corner of The Villages of Hidden Lake, Phase 1, an addition to the City of Pflugerville, as recorded in Document No. 200300119 O.P.R.T.C.T.;

THENCE North 64 degrees 32 minutes 06 seconds West, along the common line of said 19.81 acre tract and said Villages of Hidden Lake, Phase 1, a distance of 175.91 feet to a 1/2 inch iron rod with orange plastic cap stamped "Pate" found for the westerly corner of said 19.81 acre tract and being the southerly corner of Lot 1, Pathways Subdivision, an addition to the City of Pflugerville, as recorded in Document No. 201000077 O.P.R.T.C.T.;

THENCE North 26 degrees 56 minutes 08 seconds East, along the common line of said 19.81 acre tract and said Lot 1, Pathways Subdivision, a distance of 822.98 feet to a point, from which a cotton gin spindle found at the northerly corner of said 19.81 acre tract and the easterly corner of said Lot 1, Pathways Subdivision bears North 26 degrees 56 minutes 08 seconds East, 756.66 feet;

THENCE, departing the common line of said 19.81 acre tract and said Lot 1, Pathways Subdivision and crossing said 19.81 acre tract and said 11.629 acre tract the following twenty-two (22) courses and distances:

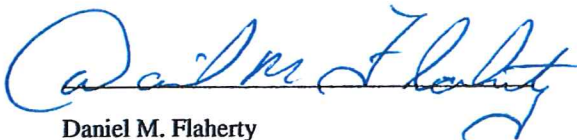
- 1) North 68 degrees 39 minutes 02 seconds East, a distance of 83.48 feet to a point;
- 2) North 63 degrees 26 minutes 05 seconds East, a distance of 65.54 feet to a point;
- 3) South 18 degrees 30 minutes 53 seconds West, a distance of 50.29 feet to a point;

- 4) South 24 degrees 25 minutes 19 seconds West, a distance of 96.76 feet to a point;
- 5) South 20 degrees 34 minutes 16 seconds West, a distance of 102.78 feet to a point;
- 6) South 30 degrees 40 minutes 13 seconds West, a distance of 149.19 feet to a point;
- 7) South 26 degrees 35 minutes 53 seconds West, a distance of 88.96 feet to a point;
- 8) South 22 degrees 46 minutes 21 seconds West, a distance of 174.62 feet to a point;
- 9) South 53 degrees 48 minutes 40 seconds East, a distance of 82.51 feet to a point;
- 10) South 23 degrees 46 minutes 08 seconds East, a distance of 109.54 feet to a point;
- 11) South 71 degrees 33 minutes 27 seconds East, a distance of 73.06 feet to a point;
- 12) South 84 degrees 48 minutes 44 seconds East, a distance of 88.74 feet to a point;
- 13) South 63 degrees 28 minutes 11 seconds East, a distance of 26.61 feet to a point;
- 14) South 88 degrees 45 minutes 03 seconds East, a distance of 186.64 feet to a point;
- 15) South 88 degrees 15 minutes 58 seconds East, a distance of 35.06 feet to a point;
- 16) North 11 degrees 50 minutes 54 seconds East, a distance of 79.49 feet to a point;
- 17) North 24 degrees 22 minutes 18 seconds East, a distance of 135.62 feet to a point;
- 18) North 06 degrees 19 minutes 12 seconds East, a distance of 73.17 feet to a point;
- 19) North 40 degrees 15 minutes 49 seconds East, a distance of 143.34 feet to a point;
- 20) North 61 degrees 04 minutes 45 seconds East, a distance of 147.77 feet to a point;
- 21) North 63 degrees 44 minutes 08 seconds East, a distance of 103.66 feet to a point;
- 22) North 72 degrees 09 minutes 41 seconds East, a distance of 109.24 feet to the **POINT OF BEGINNING** and Containing 9.871 acres of land, more or less.

Bearings are based on the Texas State Plane Coordinate System, Central Zone, NAD 83 (HARN 93) based on Leica's central Texas GPS cooperative CORS RTK network, Distances and area shown are surface.

This field note description is accompanied by an exhibit drawing.

I, Daniel M. Flaherty, Registered Professional Land Surveyor No. 5004, State of Texas, do hereby certify that this description and the exhibit attached hereto were prepared from an actual survey of the property performed on the ground and that the same is true and correct.



Daniel M. Flaherty
Registered Professional Land Surveyor
Texas Registration No. 5004



09/12/16

EXHIBIT "A"

TEMPORARY DRAINAGE EASEMENT

SITUATED IN THE
EDWARD FLINT NO. 11 SURVEY, ABSTRACT NO. 277
TRAVIS COUNTY, TEXAS
PAGE 3 OF 3

KELLY LANE
(VARIABLE WIDTH R.O.W.)

P.O.C.

P.O.B.

0 150 300
SCALE 1"=300'

LINE TABLE		
LINE	BEARING	LENGTH
L-1	N 82°36'00" W	17.60'
L-2	N 68°39'02" E	83.48'
L-3	N 63°26'05" E	65.54'
L-4	S 18°30'53" W	50.29'
L-5	S 24°25'19" W	96.76'
L-6	S 20°34'16" W	102.78'
L-7	S 30°40'13" W	149.19'
L-8	S 26°35'53" W	88.96'
L-9	S 22°46'21" W	174.62'
L-10	S 53°48'40" E	82.51'
L-11	S 23°46'08" E	109.54'
L-12	S 71°33'27" E	73.06'
L-13	S 84°48'44" E	88.74'
L-14	S 63°28'11" E	26.61'
L-15	S 88°45'03" E	186.64'
L-16	S 88°15'58" E	35.06'
L-17	N 11°50'54" E	79.49'
L-18	N 24°22'18" E	135.62'
L-19	N 06°19'12" E	73.17'
L-20	N 40°15'49" E	143.34'
L-21	N 61°04'45" E	147.77'
L-22	N 63°44'08" E	103.66'
L-23	N 72°09'41" E	109.24'

COTTON GIN
SPINDLE FND.
(C.M.)

EDWARD FLINT SURVEY NO. 11
ABSTRACT NO. 277

LOT 1
PATHWAYS SUBDIVISION
DOC. NO. 201000077
O.P.R.T.C.T.

HERITAGE LAKES PARTNERS, LLC,
CALLED 11.629 ACRES
DOCUMENT NO. 2015146459, O.P.R.T.C.T.
&
CALLED 19.81 ACRES
DOCUMENT NO. 2015146460, O.P.R.T.C.T.

RONNY WAYNE RINDERKNECHT,
LONNY CHARLES RINDERKNECHT,
BECKY RINDERKNECHT KRUEGER
CALLED 20.162 ACRES
VOL. 9568, PG. 80
R.P.R.T.C.T.

TEMPORARY DRAINAGE
EASEMENT
9.871 ACRES

LEGEND:

P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCING
C.M. = CONTROL MONUMENT
R.O.W. = RIGHT-OF-WAY
I.R.F. = IRON ROD FOUND
C.I.R.F. = CAPPED IRON ROD FOUND
O.P.R.T.C.T. = OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
R.P.R.T.C.T. = REAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
[Pattern] = TEMPORARY EASEMENT

BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE
SYSTEM, CENTRAL ZONE, NAD 83 (HARN 93) BASED ON LEICA'S
CENTRAL TEXAS GPS COOPERATIVE CORS RTK NETWORK, DISTANCES
AND AREA SHOWN ARE SURFACE.

THE WALLACE GROUP, INC.



A CP&Y COMPANY
ENGINEERS • PLANNERS • SURVEYORS
1 CHISHOLM TRAIL, SUITE 130
ROUND ROCK, TEXAS 78681
TBPIS FIRM NO. 10051701
(512-248-0085)



JACK PAYNE
CALLED 5.794 ACRES
DOCUMENT NO. 2008040028
O.P.R.T.C.T.



Daniel M. Flaherty
Registered Professional Land Surveyor
Texas Registration No. 5004

A FIELD NOTE DESCRIPTION OF EVEN SURVEY
DATE HEREIN ACCOMPANIES THIS DRAWING.