

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.

WATER PIPELINE EASEMENT AGREEMENT (*RADY, ET AL.*)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

Richard Z. Rady and Agatha O. Rady, Co-Trustees of the Rady Family Trust dated September 8, 1994, and Realtron, Inc., a Texas corporation (collectively, "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"), a non-exclusive easement and right-of-way (the "Easement") upon and across a portion of that certain real property owned in fee by Grantor which overall property is more particularly described at Exhibit "A" attached hereto and incorporated herein by this reference (the "Grantor Property", the location of the Easement being graphically described at Exhibit "B" attached hereto and incorporated herein by reference (the "Easement Area"). 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, but not otherwise, subject to the reservations, terms and conditions of this Agreement and further subject to any and all easements, liens and encumbrances of record, to the extent the same are valid and enforceable.

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) "Agreement" shall mean this Wastewater Pipeline Easement Agreement.

- (b) “Holder” shall mean Grantee and Grantee's successors and assigns who at any time own any interest in the conveyance is subject to the terms of this Agreement.
 - (c) “Permitted Improvements” shall mean landscaping, hardscaping, planting of vegetation, and installation, maintenance and repair of all driveways and sidewalks, but shall not mean the construction of a permanent building or structure unless such installation or construction is approved in writing by Grantee’s City Manager or the City Manager’s designee, which approval shall not be unreasonably withheld, conditioned or delayed.
 - (d) “Public 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. Subject to the terms of this Agreement and to applicable covenants, conditions and restrictions of record and all applicable laws, ordinances and regulations of duly constituted public authorities (collectively, the “Applicable Laws”), the rights of uses of the Easement granted herein is irrevocable. The Easement is for the benefit of Holder.
- 3. *Purpose of Easement.* The Easement shall be used solely for public wastewater utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Wastewater Pipelines and related appurtenances, or making connections thereto (collectively, the “Facilities”), together with the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Facilities (collectively, the “Easement Purpose”), provided that Grantee’s use of the Facilities and the Easement Purpose shall not interfere with Grantor’s placement, construction, installation, replacement, repair, maintenance, relocation, removal and operation of the Permitted Improvements, nor Grantor’s use and enjoyment of the remainder of the Grantor Property for all legal purposes thereof that do not interfere with the Easement Purpose.
- 4. *Term.* Subject to the terms of this Agreement and Applicable Law, the Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
- 5. *Reservation of Rights.* Notwithstanding anything to the contrary contained herein, the Easement shall be non-exclusive and Grantor and Grantor’s employees, directors, members, representatives, contractors, successors and assigns shall have the right to use the surface of all or part of the Easement Area 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 Area by

Holder for the Easement Purpose. Grantor shall not construct any permanent building or structure on the Easement Area. Any Permitted Improvement must comply with all Applicable Laws and engineering guidelines of the City of Pflugerville.

6. *Improvement and Maintenance of Easement Area.* Subject to the provisions of Section 7 below, Holder shall be solely responsible for the improvement, maintenance and repair of the Easement Area and the Facilities at the sole cost expense of Holder. Holder has the right to construct, install, maintain, replace and remove the Facilities under or across any portion of the Easement Area, provided that such actions do not materially interfere, nor conflict with Grantor's use of the remainder of the Grantor Property for all lawful purposes under Applicable Laws that do not interfere with the Easement Purpose. 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 shall have the right to remove or relocate any fences or other encroachments within the Easement Area or along its boundary lines that are not Permitted Improvements if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Grantee shall repair or replace to substantially their original condition as its sole cost and expense any Permitted Improvement on the Easement Area, any other improvement located on the remainder of the Grantor Property, or the remainder of the Grantor Property itself, that is damaged or destroyed by any act or omission of Holder or Holder's employees, agents, contractors, representatives or invitees (collectively, the "Grantee Parties"), including without limitation in connection with the placement, construction, installation, replacement, repair, maintenance, relocation, removal and operation of the Facilities.
7. *Maintenance of Surface of Easement Area/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall have the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Area reasonably free of litter, debris or trash consistent with Grantor's maintenance guidelines and Applicable Laws for the remainder of the Grantor Property.
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. In addition to the foregoing, Grantor and Grantee shall have all of its rights and remedies at law and in equity in connection with a default by the other party hereunder.

9. *Liens Not Impaired.* No breach of the terms, conditions and covenants of this Agreement or any other enforcement thereof shall defeat or render invalid the lien of any deed of trust or mortgage made in good faith and for value, now or hereafter encumbering the Easement Area. None of the terms and provisions of this Agreement shall supersede or in any way reduce the security or affect the validity of any such deed of trust or mortgage; provided, however, that any such term, covenant, condition or restriction shall be binding upon and effective against the owner of any parcel whose title to said parcel or any portion thereof is acquired by foreclosure, trustee's sale or otherwise.
10. *Compliance with Laws.* Grantor and Grantee each covenant that each will comply with all Applicable Laws with respect to the use, occupancy, maintenance and repair of the Easement Area, including without limitation any Applicable Laws relating to the use, storage, transportation or removal of hazardous materials.
11. *Default.* In the event of a default by either party hereunder, the non-defaulting party shall give not less than thirty (30) days' prior written notice to the defaulting party. Should the defaulting party fail to cure such default within said thirty-day period, then notwithstanding anything to the contrary contained in this Agreement, the non-defaulting party shall have all of its rights and remedies at law and in equity. Notwithstanding the foregoing, if the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, then the defaulting party shall have such additional time as may be reasonably necessary provided that the defaulting party commences such cure within said thirty (30) day period and diligently prosecutes the same to completion.
12. *Liens.* Grantee shall promptly pay and discharge all claims for labor performed, materials or supplies furnished and services rendered by or on behalf of Grantee or any Grantee Party in connection with the placement, construction, installation, replacement, repair, maintenance, relocation, removal or operation of the Facilities of the Easement Area and shall keep the Easement Area and the Grantor Property free from all mechanics' and materialmen's liens in connection therewith.
13. *Attorney's Fees.* If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees, costs and expert witness fees as the court shall determine. The term "Prevailing Party" shall mean a party who substantially obtains or defeats the relief sought, as the case may be, by the entering of a judgment or arbitration award in such party's favor.
14. *Binding Effect.* This Agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

15. *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 Area is located.
16. *Counterparts.* This Agreement may be executed and acknowledged 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.
17. *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.
18. *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.
19. *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.
20. *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.
21. *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) three (3) business days after the same is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown on the signature pages of this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery (including national receipted overnight delivery service, such as Federal Express) 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.

22. *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.
23. *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.
24. *Assignability.* The Easement may be assigned by Grantee, its successors or assigns, with the prior written consent of Grantor, which shall not be unreasonably delayed, conditioned or withheld. Any attempted assignment without the prior written consent of Grantor shall be void ab initio.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, this instrument is executed as of this ____ day of _____, 2017.

GRANTOR:

RICHARD Z. RADY, as Co-Trustee of the
Rady Family Trust, dated September 8, 1994

AGATHA O. RADY, as Co-Trustee of the
Rady Family Trust dated September 8, 1994

REALTRON, INC., a Texas corporation

By: _____
Name: Jack Z. Rady
Title: _____

Grantor's Notice Addresses:

Richard Z. Rady, et al.
c/o Living Spaces Furniture, LLC
14501 Artesia Boulevard
La Mirada, CA 90638
Attention: Jeff Seabrook

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____. 2017,
by _____ of _____, a
_____ on behalf of said _____.

Notary Public Signature
(seal)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____. 2017,
by _____ of _____, a
_____ on behalf of said _____.

Notary Public Signature
(seal)

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____. 2017,
by _____ of _____, a
_____ on behalf of said _____.

Notary Public Signature
(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Brandon Wade, City Manager

ATTEST:

Karen Thompson, City Secretary

Grantee's Notice Addresses:

If by U.S. mail:

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

If other than by U.S. mail:

Attn: Emily Barron, Planning Director
Development Services Center

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2017, 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"

LEGAL DESCRIPTION OF GRANTOR PROPERTY

BEING 21.353 acres of land situated in the Peter Conrad Survey No. 71 Abstract 200, of Travis County, Texas, and being part of the residue of that certain called 69.086 acre tract of land as recorded in Instrument No. 2006202615 of the Deed Records of Travis County, Texas, said 21.353 acre tract of land to be more particularly described by metes and bounds as follows:

BEGINNING at a ½" Iron Rod (fnd.) at the southeast corner of the above referenced 69.086 acre tract, same being the southwest corner of that certain called 132.6766 acre tract of land as recorded in Instrument No. 2003196132, and being in the north right-of-way line of Meister Lane;

THENCE South 89°33'20" West, with the south boundary line of said 69.086 acre tract and the north right-of-way line of Meister Lane, for a distance of 660.17 feet to a ½" Iron Rod (set);

THENCE North 01°56'39" East, over and across the above mentioned 69.086 acre tract, for a distance of 1837.09 feet to a ½" Iron Rod (set) on the south right-of-way line of State Highway 45, being in a curve to the right;

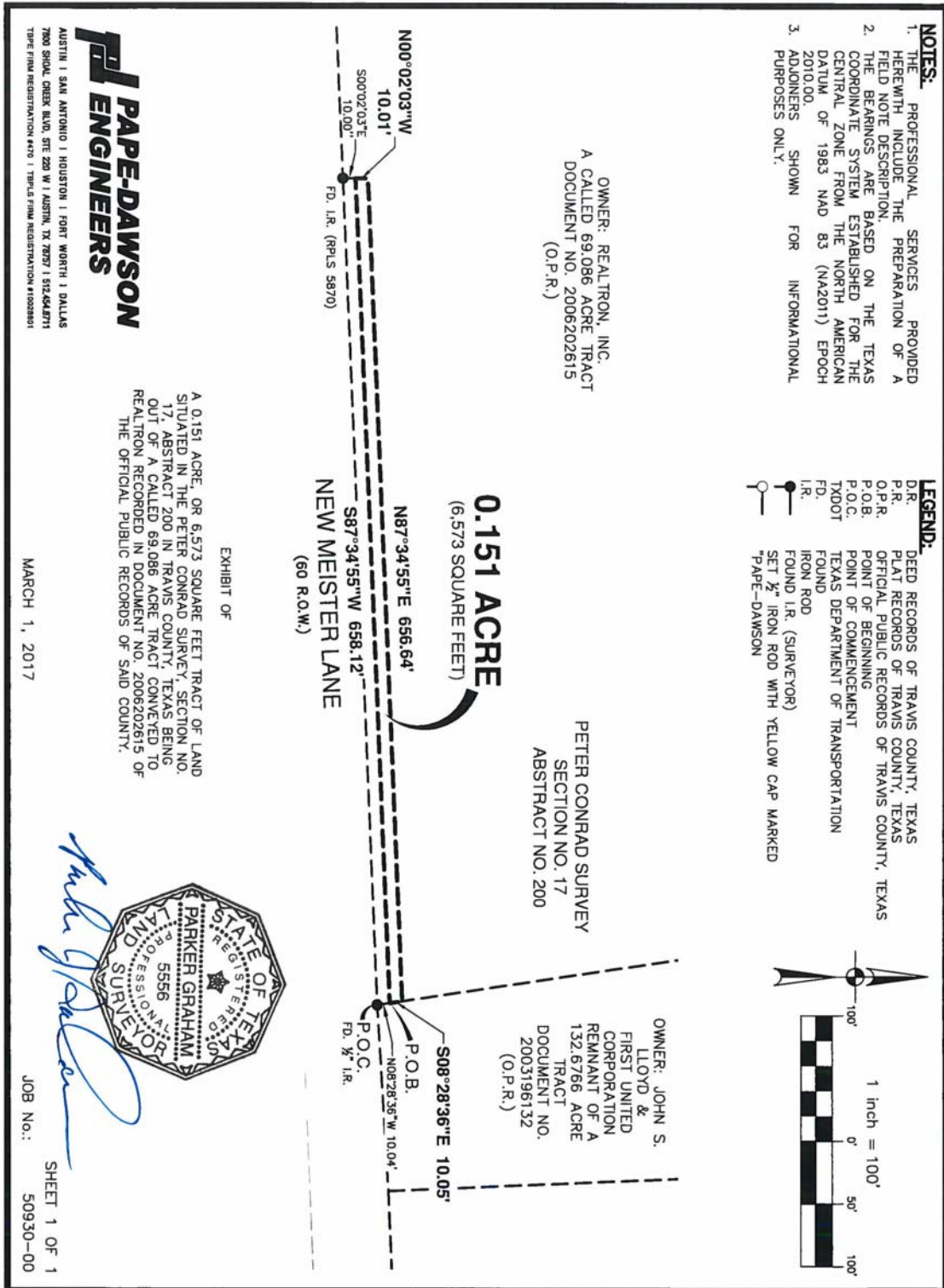
THENCE with the south right-of-way line of State Highway 45 and with said curve to the right, having a radius of 7618.53 feet, a chord bearing of South 68°05'37" East, a chord distance of 438.26 feet, for an arc distance of 438.32 feet to a point for corner at the northwest corner of said 132.6766 acre tract, same being the northeast corner of said 69.086 acre tract, from which a fence corner (fnd.) bears South 17°49'46" East, a distance of 26.54 feet;

THENCE South 06°32'32" East, with the east boundary line of said 69.086 acre tract and the west boundary line of said 132.6766 acre tract, for a distance of 1678.33 feet, back to the point of beginning and containing 21.353 acres of land.

Bearings are based on the south boundary line of that certain called 132.6766 acre tract of land as recorded in Instrument No. 2003196132 of the Deed Records of Travis County, Texas.

EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA





FIELD NOTES
FOR

A 0.151 ACRE, OR 6,573 SQUARE FEET TRACT OF LAND SITUATED IN THE PETER CONRAD SURVEY, SECTION NO. 17, ABSTRACT 200 IN TRAVIS COUNTY, TEXAS BEING OUT OF A CALLED 69.086 ACRE TRACT CONVEYED TO REALTRON RECORDED IN DOCUMENT NO. 2006202615 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY. SAID 0.151 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH THE BEARINGS BASED ON THE NORTH AMERICAN DATUM OF 1983 (CORS 1996), FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE:

COMMENCING at a ½" iron rod found at the southwest corner of a Remnant Portion of a called 132.6766 acre tract conveyed to John S. Lloyd & First United Corporation recorded in Document No. 2003196132 of the Official Public Records of Travis County, Texas, same being the southeast corner of said 69.086 acre tract, also being a point in the north right-of-way line of New Meister Lane, a variable width right-of-way;

THENCE N 08°28'36" W, departing the north right-of-way line of said New Meister Lane, with the west line of said Remnant Portion, same being the east line of said 69.086 acre tract, a distance of **10.04 feet** to a calculated point for the southeast corner and **POINT OF BEGINNING** hereof;

THENCE departing the west line of said Remnant Portion, through the interior of said 69.086 acre tract the following three (3) courses and distances:

1. **S 87°34'55" W**, a distance of **658.12 feet** to a calculated point for the southwest corner hereof, from which an iron rod with cap marked "RPLS 5870" found in the south line of said 69.086 acre tract, same being a point in the north right-of-way line of said New Meister Lane, bears, through the interior of said 69.086 acre tract **S 00°02'03" E**, a distance of 10.00 feet,
2. **N 00°02'03" W**, a distance of **10.01 feet** to a calculated point for the northwest corner hereof, and
3. **N 87°34'55" E**, a distance of **656.64 feet** to a calculated point in the west line of said Remnant Portion for the northeast corner hereof;

TBPE Firm Registration #470 | TBPLS Firm Registration #10028601
Austin | San Antonio | Houston | Fort Worth | Dallas
Transportation | Water Resources | Land Development | Surveying | Environmental
7800 Shoal Creek Blvd., Suite 220 West, Austin, TX 78757 T: 512.454.8711 www.Pape-Dawson.com

0.151 Acre
Job No. 50930-00
Page 2 of 2

THENCE S 08°28'36" E, with the west line of said Remnant Portion, same being the east line of said 69.086 acre tract, a distance of **10.05 feet** to the **POINT OF BEGINNING**, and containing 0.151 acres in Travis County, Texas, Said tract being described in accordance with a survey made on the ground prepared under Job No. 50930-00 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 1, 2017
JOB No.: 50930-00
DOC.ID.: H:\survey\CIVIL\50930-00\Easements\Word\50930-00_0.151Ac_WaterEsmt.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-01

