

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

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

That 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", attached hereto and incorporated herein by reference ("Easement Property"). Grantor and Grantee may jointly be referred to by "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) "Holder" 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) "water pipeline" shall mean a pipeline designed and operated to transport potable water.

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 Holder.
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 water 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 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. 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 Holder's permission prior to the start of constructing Permitted Improvements. Grantor shall not construct any fencing or gating on the Easement Property without Holder'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 Holder. Holder has the right to eliminate any encroachments into the Easement Property. 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 within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder 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 instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.
20. *Assignability.* The Easement may be assigned by Grantee, its successors or assigns, without the prior written consent of Grantor.

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

2017.

GRANTOR:

**O'REILLY AUTO
ENTERPRISES, LLC**, a
Delaware limited liability
company

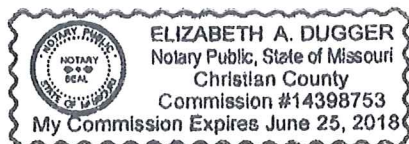
By: 
Scott Kraus, Sr. Vice President

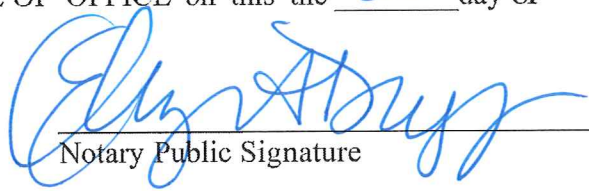
THE STATE OF MISSOURI §
§
COUNTY OF GREENE §

BEFORE ME, a Notary Public, on this day personally appeared Scott Kraus, Sr. Vice President of O'Reilly Auto Enterprises, LLC, 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.

N UNDER MY HAND AND SEAL OF OFFICE on this the 3rd day of
January 2017.

(seal)




Notary Public Signature

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 _____,
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.: Amy Giannini, Development Engineering Director
Development Services Center
P.O. Box 589
Pflugerville, Texas 78691

EXHIBIT "A"

DESCRIPTION TO 0.093 ACRE 15' WATERLINE EASEMENT
WITHIN LOT 2, OF THE REPLAT OF H.E.B./ PFLUGERVILLE SUBDIVISION NO. 2
SEFRIN EISELIN SURVEY NO. 1, ABSTRACT 265
TRAVIS COUNTY, TEXAS

Being over across and upon all that certain tract or parcel of land known as Lot 2 of the H.E.B./Pflugerville Subdivision No. 2 in the Sefrin Eiselin Survey No. 1, A-265 in Travis County, Texas, as recorded in Document Number 201500122 of the Official Public Records of Travis County, Texas (O.P.R.T.C.T.), and being described in a Deed from HEB Grocery Company, LP to O'REILLY Auto Enterprises, LLC dated August 18, 2015 and recorded in Document Number 2015133013 OPRTCT, said easement being described by metes and bounds as follows, to wit:

BEGINNING at a capped 1/2-inch iron rod stamped BURY found for the Northwest corner of the referenced Lot 2 and the Northwest corner of this easement;

THENCE S 62°16'52" E, along the North line of Lot 2, a distance of 156.00 to a capped 1/2-inch iron rod stamped BURY for the Northeast corner the herein described easement, also being the Northerly common corner of Lot 2 and Lot 3 of the H.E.B./ Pflugerville Subdivision No. 2;

THENCE S 27°47'00" W, along the East line of Lot 2, a distance of 127.77 feet to a point where it intersects the South Line of the existing 15' Public Utility Easement described a Deed to the City of Pflugerville, as recorded in Volume 11100, Page 12 of the Real Property Records of Travis County, Texas (RPRTCT) for the Southeast corner of this easement;

THENCE N 63°06'05" W, along the South line of the existing 15' Public Utility Easement, a distance of 15.00 feet, to a point for the Southerly Southwest corner of this easement;

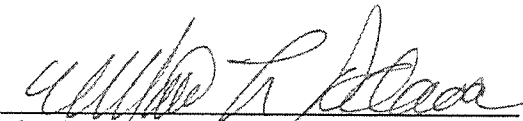
THENCE N 27°47'00" E, being 15' perpendicular and parallel West of the East line of the referenced Lot 2, passing at 15.00 feet the North line of the existing 15' Public Utility Easement and continuing for a total distance of 112.98 feet, to a ELL corner of this easement;

THENCE N 62°16'52" W, being 15' perpendicular and parallel South of the North line of the referenced Lot 2, a distance of 141.00 feet to a point in the West line of the referenced Lot 2;

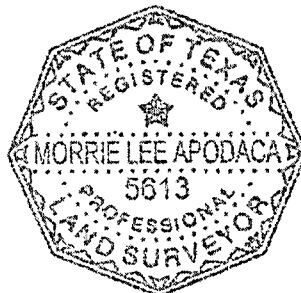
THENCE N 27°47'00" E, along the West line of Lot 2, a distance of 15.00 feet to the Point of Beginning and occupying an area of 0.093 acre, all as shown on the accompanying survey plat of even date herewith.

This description is based on a survey that was made upon the ground under my direction on September 17, 2014 and last revised on August 20, 2015.

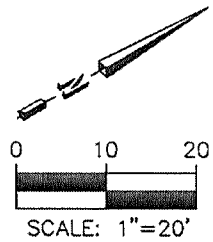
Bearings are based on the West line of Lot 2, of the H.E.B./ Pflugerville Subdivision No. 2 - N 27°47'00" E


Morrie L. Apodaca, R.P.L.S. No. 5613
Lufkin, Texas November 15, 2016

Goodwin – Lasiter – Strong
1609 S. Chestnut St., Suite. 202
Lufkin, Texas 75901
TBPLS Firm No. 10110900



SEFRIN EISELIN SURVEY NO. 1, A-265
TRAVIS COUNTY, TEXAS

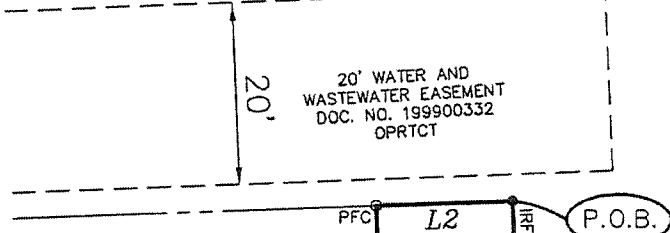


LEGEND

- IRF 1/2" Iron Rod Found
- PFC Point For Corner

DRTCT Deed Records Travis County, Texas
OPRTCT Official Public Records Travis County, Texas

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N63°06'05"W	15.00
L2	N27°47'00"E	15.00



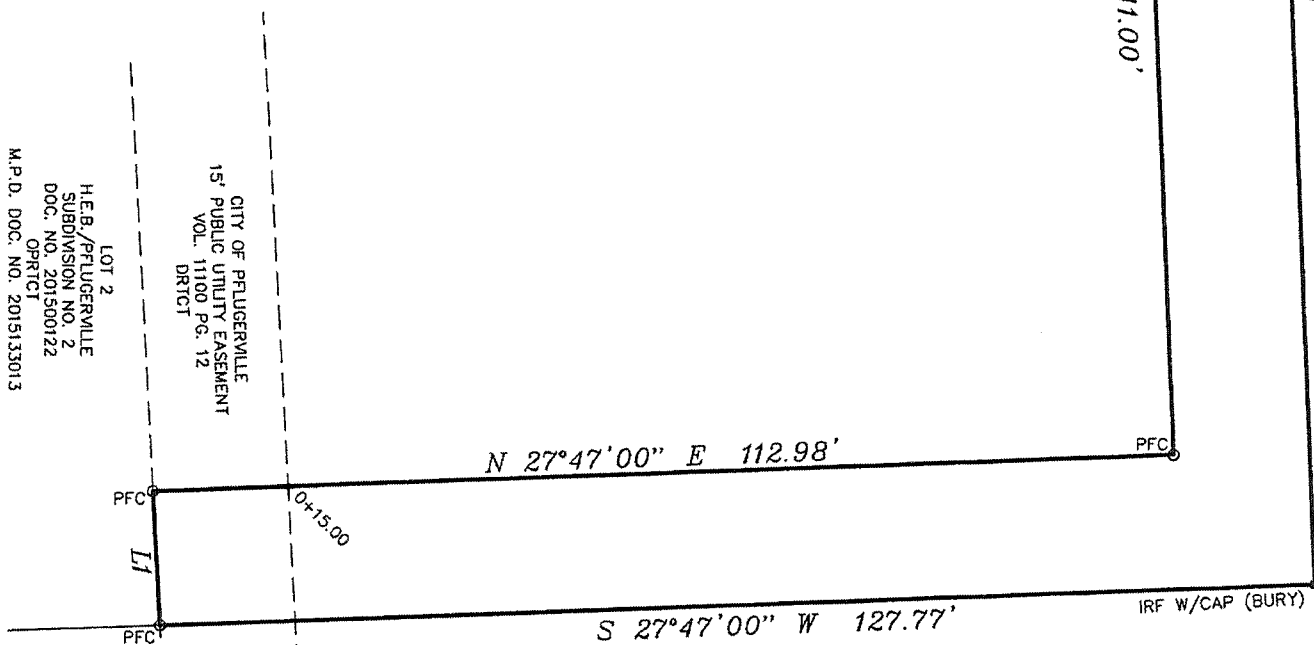
LOT 1
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO. 201500122
OPRTCT

S 62°16'52" E 156.00'

0.093 ACRE

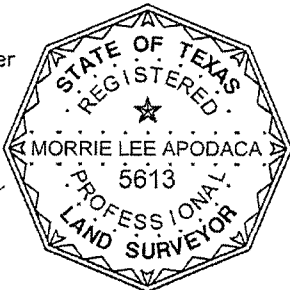
LOT 2
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO. 201500122
OPRTCT
M.P.D. DOC. NO. 2015133013

N 62°16'52" W 141.00'



I, Morrie L. Apodaca, Registered Professional Land Surveyor, do hereby certify that the above plat is true and correct and that this survey was made on the ground under my supervision.

GOODWIN-LASITER-STRONG
[Signature]
Morrie L. Apodaca R.P.L.S. No. 5613
Lufkin, Texas December 15, 2016
See Attached Field Notes



LOT 3
H.E.B./PFLUGERVILLE
SUBDIVISION NO. 2
DOC. NO. 201500122
OPRTCT

H:\170\170087\170087-ESMT2.DWG 1/10/2016 11:18 AM



DATE 11-17-16	DRAWN BY: WBB	APPROV BY: MLA	SCALE 1"=20'	JOB NUMBER 170087
SURVEY SKETCH 0.093 ACRE 15' WATERLINE EASEMENT SEFRIN EISELIN SURVEY, NO. 1, A-265 TRAVIS COUNTY, TEXAS				SHEET NO.
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TBPE FIRM REGISTRATION #413 - TBPE FIRM REGISTRATION #10110900				