

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.

**DECLARATION OF ACCESS EASEMENT AND UNDERGROUND STORMWATER
DETENTION SYSTEM MAINTENANCE AND INSPECTION COVENANT**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

OWNER: **O'Reilly Auto Enterprises, LLC**

MAILING ADDRESS: **Scott Kraus, Senior Vice President**
 O'Reilly Auto Enterprises, LLC
 233 S Patterson Ave.
 Springfield, MO 65802

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by City of Pflugerville to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Approximately 1.023 acre tract of land, being Lot 2, according to Replat of HEB/Pflugerville Subdivision No. 2, recorded on June 5, 2015 in Document No. 201500122 of the Official Public Records of Travis County, Texas.

For and in consideration herein recited, Declarant (also referred to as “Owner” or “Grantor”), hereby makes this Declaration:

I. Access Easement:

THE OWNER (“Grantor”), for the consideration recited above, does hereby grant, sell and convey unto the **CITY OF PFLUGERVILLE** (“Grantee”), a perpetual, non-exclusive access easement (“Easement”) in, over, under, upon and across the Property of Grantor, for the purposes of inspecting Underground Stormwater Detention System Facilities, as defined below, and the right, but not the obligation to maintain said facilities in the event of Owner’s failure to maintain the same.

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 herein; and Grantor, subject to exceptions to warranty, including any easements, liens, encumbrances, and other matters not subordinated to the Easement and of record in the Real Property Records of the Travis County, Texas that are valid, existing, and affect the Easement as of the date of this

declaration, 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 when the claim is by, through, or under Grantor, but not otherwise.

II. Underground Stormwater Detention System Maintenance and Inspection Covenant:

RECITALS

WHEREAS, the Owner of the Property and the City of Pflugerville have agreed that in order to ensure perpetual compliance with applicable City of Pflugerville regulations regarding stormwater drainage detention requirements that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of Property, for the consideration recited above, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this Underground Stormwater Detention System Maintenance and Inspection Covenant (the “Restrictive Covenant”). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors and assigns. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC COVENANTS AND RESTRICTIONS:

1. Recitals and Definitions Incorporated. The above Recitals, definitions, and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Covenant and Restriction to Inspect, Maintain and Preserve. Owner acknowledges and agrees that development of the Property required adherence to and compliance with specific regulations established by the City of Pflugerville Code of Ordinances, which included a requirement to capture, control and convey stormwater traveling onto and generated by the Property. Owner further acknowledges and agrees that as a condition of development approval and subsequent release of a certificate of occupancy permitting legal occupation of the Property that Owner is required to, and hereby covenants to inspect, maintain and preserve Underground Stormwater Detention System Facilities (the “Facilities”) proposed as part of the Owner’s development of the Property, as more specifically identified in the site drainage plan attached hereto as **Exhibit A**, which is incorporated herein for all purposes, in accordance with the terms of this Restrictive Covenant.
3. Inspection and Maintenance Obligations. The Owner hereby covenants to provide periodic inspection and maintenance to ensure that the Facilities remain in good, functioning, and safe condition in compliance with all applicable laws and in accordance with the requirements of the City as more specifically detailed in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

4. Preservation Obligations. The Owner hereby covenants that the Facilities shall be maintained and restricts the use of the Property such that the Facilities shall not be removed, relocated, destroyed, or otherwise disposed of without the express written release of the City. In the event of the Facilities' destruction due to occurrences of Force Majeure outside the reasonable control of the Owner, Owner hereby covenants to repair, replace and/or restore the Facilities to their original condition within sixty (60) days of said destruction.

5. Annual Reporting. Owner further covenants that Owner shall provide an annual report to the City's Development Services Center on or before December 31st of each subsequent year specifically detailing Inspection and Maintenance Obligations undertaken to maintain the Facilities or the occurrence of any event requiring the Owner to perform Preservation Obligations, and the extent of those performed, during the current calendar year.

6. Failure to Maintain or Preserve. The Owner acknowledges and agrees that the Owner is obligated to perform the Inspection and Maintenance Obligations and uphold the Preservation Obligations and, in the event any Owner does not perform the Inspection and Maintenance Obligations or uphold the Preservation Obligations, Owner further agrees: (a) that the City at its option may, but is not obligated to perform the Inspection, Maintenance and Preservation Obligations; (b) to indemnify the City for all City costs necessary to perform the Inspection, Maintenance and Preservation Obligations and/or secure the reimbursement of such costs from Owner, including without limitation, attorney's fees and court costs; and (c) that the City is entitled to a judicially enforceable lien on the Property to secure the payment of all City costs necessary to perform the Inspection, Maintenance and Preservation Obligations or secure reimbursement of such costs from Owner. The City shall also have the right to enforce the Owner's Inspection, Maintenance and Preservation Obligations or secure reimbursement of any costs incurred in any manner provided at law or in equity, including without limitation, through Code Enforcement action to enforce the Development Code requirement upon which this Restrictive Covenant is predicated.

7. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.

III. General Provisions:

1. Severability. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this Declaration shall remain in full effect.

2. Non-Waiver. If at any time the City of Pflugerville fails to enforce this Declaration, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

3. Modification and Amendment. The Restrictive Covenant provided by this Declaration may be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Real Property Records of Travis County, Texas, executed,


acknowledged, and approved by (a) the Director of Planning of the City of Pflugerville, or successor department; (b) by the owner(s) of the property subject to the modification, amendment or termination at the time of such modification, amendment or termination, and (c) any mortgagees holding first lien security interests on any portion of the Property. The Easement granted by this Declaration in Section I above may only be modified, amended or terminated upon filing and obtaining approval of an application for modification, partial vacation, or vacation of the Easement in compliance with the requirements of the City of Pflugerville Code or Ordinances, as amended.

4. Governing Law. This Declaration and all rights and obligations created hereby will be governed by the laws of the State of Texas and venue shall be located in Travis County, Texas.

5. Entire Agreement. This Declaration, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration will be construed as a whole according to their common meaning and not strictly for or against any party.

Executed to be effective on _____, 20__.

DECLARANT/OWNER/GRANTOR:



Scott Kraus, Senior Vice President
O'Reilly Auto Enterprises, LLC
233 S Patterson Ave.
Springfield, MO 65802
(417) 862-2674

AGREED AND ACCEPTED:

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

ATTEST:

By: _____
Brandon E. Wade, City Manager

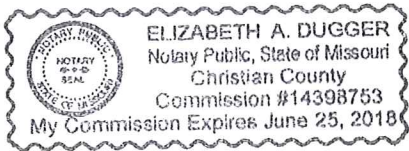
Karen Thompson, City Secretary

Acknowledgement Page Follows.

State of Missouri §
County of Greene §

Before me, a notary public, on this day personally appeared Scott Kraus, Sr. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16th day of June, 2017.



[Signature]
Notary Public's Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 201_, by Brandon E. Wade, City Manager of the City of Pflugerville, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public Signature

AFTER RECORDING, RETURN TO:

City of Pflugerville
Development Services Center
201-B East Pecan
Pflugerville, Texas 78660

Project Name: _____
Attn.: _____

EXHIBIT A

The Site Plan/Facilities Detail (Site Drainage Plan, Sheet C-7)

EXHIBIT B

The Inspection and Maintenance Obligations

**O'REILLY AUTO PARTS
1008 EAST PECAN ST.
PFLUGERVILLE, TX**

**STORMWATER SYSTEM
& BMP MAINTENANCE
MANUAL**

THIS MANUAL IS TO BE KEPT AT THE SITE
AT ALL TIMES

CONTENTS

1. DETENTION INSPECTION PROCEDURE
2. DETENTION INSPECTION FORM

**O'REILLY AUTO PARTS,
1008 EAST PECAN, PFLUGERVILLE, TX**

BMP OPERATIONS AND MAINTENANCE MANUAL

DETENTION SYSTEM MAINTENANCE PROCEDURES

RESPONSIBLE MAINTENANCE PERSONNEL:

O'Reilly Auto Parts maintains a Maintenance Department.

Manager: Jason Bayless

Phone #: (417) 862-3333

The Maintenance Department with O'Reilly Auto Parts is fully qualified to examine the Buried Detention Systems including removal of the grates on the inlets, inspecting the pipe systems and detention system for silt accumulation.

SCHEDULE OF DETENTION SYSTEM INSPECTIONS:

The Maintenance Personnel shall inspect pollution control measures at least once every 6 months and within 24 hours after a storm event of 1 inch or greater. Damaged measures that prove to be ineffective shall be replaced with more effective measures or additional measures within seven days. Repeated failure of a control measure requires installation of a more suitable device to prevent discharge of pollutants from the construction site. The owner will keep a record of all inspections using the O'Reilly Auto Parts, Pflugerville, TX Detention System Inspection Form.

DETENTION SYSTEM INSPECTION PROCEDURE:

1. Make a copy of the Detention Inspection Form from this Maintenance Manual for fax delivery to O'Reilly Maintenance Department. Note the time and date of the reported inspection inside the maintenance manual that permanently remains on-site for store documentation.
2. Visually inspect each inlet and note on the Inspection Form the amount of sediment accumulated in the inlet.
3. The maintenance person to measure the sediment depths at the bottom of the catch basins, yard inlets, and infiltration chambers (just stick a rod through the inlet cover, don't even bother to remove). When the accumulated sediment gets deeper than a couple of inches, the entire system needs to be cleaned out. A professional company could be hired to do the cleaned out. The sediment and any wash or cleanout water should be hauled off-site for proper disposal, not discharged to the outfall.
4. Note on the Detention Inspection Form that the Inlet has been cleaned.
5. Contact the local landfill or garbage collection company to coordinate a pick up and disposal of the sediment.
6. Walk the site and note any areas of soil erosion or pollution discharge from the site. Make note of these occurrences on the Detention Inspection Form and Contact the O'Reilly Maintenance Department to schedule a repair of these areas.
7. Sign & date the report, fax a copy to the O'Reilly Maintenance Department, and file the original in the On-Site Inspection Manual.

DETENTION SYSTEM INSPECTION FORM

STEP 1. INSPECT INLETS FOR SEDIMENT & DEBRIS:

Check the box for each item inspected:

Area Inlet C3 ☐ Area Inlet C11: ☐ Nyloplast Drain C5: ☐

Detention Outlet Structure C4: ☐

STEP 2. NOTE ANY SEDIMENT OR DEBRIS WITH INLET # AND DEPTH:

STEP 3. VERIFY THAT EACH INLET HAS BEEN CLEANED:

Check the box for each structure to confirm is it clean of sediment & debris:

Area Inlet C3 ☐ Area Inlet C11: ☐ Nyloplast Drain C5: ☐

Detention Outlet Structure C4: ☐

STEP 4. VISUAL INSPECTION & RECORD OF ANY SITE EROSION:

STEP 5. SIGN, DATE, FAX COPY TO O'REILLY MAINTENANCE & FILE:

Printed Name of Inspector

Signature of Inspector

Date

GENERAL STORMWATER DETENTION INFORMATION

Detention/Pipe Maintenance

Trash, Sediment, and Debris

All trash, sediment, and debris should be removed from the detention/pipes at least twice a year or more frequently if the amount of accumulated material warrants such a practice.

Leaking and Misaligned Pipe Joints

Even though underground detention systems are supposed to remain water tight, it is not uncommon for some of the pipe joints to begin to leak. Usually, a leaking pipe joint is not a great concern unless soil material from outside the pipe is infiltrating the system. The progressive infiltration of the soil into the system could result in a cave-in over the pipe, which could damage parking and travel surfaces that may lie on top of the system. Leaking pipes, which are allowing the infiltration of soil into the system, should be repaired as soon as practicable. Concrete pipe joints should be cleaned and sealed with a low-shrink epoxy grout. Metal pipe joints should be cleaned, and a non hydro-phobic waterproofing sealant should be injected into the open gap(s) in the pipe joint.

Separated Pipe Joints

Depending on the severity, separated pipe joints could, conceivably, be repaired in a manner similar to that described above. In many instances, however, it may be necessary to expose the joint from the outside and then “diaper” it with a felt wrap (or neoprene in the instance of corrugated metal pipe [CMP]), flashing (or banding in the instance of CMP), and concrete. In severe separations, the separated pipes may need to be removed, the subbase support rebuilt, and the pipes relayed or replaced prior to the diapering operation described above. Consultation with a registered Professional Engineer is recommended to assess the severity of the problem and devise a workable solution to correct or repair the problem.

Crushed, Collapsed, or Rusted-out Sections of Pipe

In most instances, a pipe in this condition should be removed and replaced under the supervision of a registered Professional Engineer.

Inlet Maintenance

Inlets

Inlets to the underground detention system should be kept open and in good working condition. All eroded areas should be repaired.