

EASEMENT DESCRIPTION: 30-Foot Utility Easement
EASEMENT LEGAL REF: Map Book 1996, Page 1235

STATE OF NORTH CAROLINA
COUNTY OF WAKE

TOWN OF CARY
AND

EASEMENT ENCROACHMENT AGREEMENT

Paul and Nicole Bartleson

STANDARD FORM

This Easement Encroachment Agreement is entered on the date indicated below between the Town of Cary ("Town") and Paul and Nicole Bartleson (the "Applicant").

WITNESSETH:

WHEREAS, Applicant is the owner of record of a lot or parcel of land more particularly described in Deed Book 017177 at Page 990, Wake County Registry ("Property"); and

WHEREAS, Town acquired a 30-foot utility easement over Property by instrument recorded at Map Book 1996, Page 1235, Wake County Registry ("Town Easement"); and

WHEREAS, Applicant desires to install a 2-inch private sewer force main on Applicant's Property, to be partially located in the Town Easement; and

WHEREAS, based on Applicant's submittals, such proposed encroachment is in a location and of a size such that it will not substantially impair or hinder the purpose or use of the Town Easement because the existing utility easement is 30-feet wide and allows for a minimum of 10-feet of horizontal separation between the existing public 8-inch water main and the proposed private 2-inch sewer force main; and

WHEREAS, Town is willing to exercise its authority to permit the Applicant to encroach over the Town Easement in the locations, and for the purposes described below.

NOW, THEREFORE, the parties agree as follows:

1. Permission to Encroach. The Town hereby grants the Applicant non-exclusive, revocable permission to encroach over the designated portion of the Town Easement for the purpose of construction and/or erection and maintenance of a private 2-inch sewer force main, as more particularly described in the Plan ("Facilities") attached hereto as Exhibit A and incorporated herein by reference, subject to the terms and conditions stated below (the "Permission"). The installation, operation, and maintenance of the Facilities are sometimes referred to herein as "the Work." Applicant understands and agrees that, notwithstanding any language in this Agreement to the contrary, Town grants Permission only to the extent authorized by law and the terms of the conveyance of Town Easement to Town. Applicant shall be solely responsible for obtaining for itself all easements, licenses and property rights, and in complying with any state or federal regulatory requirements as

may be necessary for the Work. Nothing in this Agreement shall constitute or create an assignment to Applicant by Town of any easement or license held by Town or of any rights under any easement or license held by Town. Nothing herein contained shall be construed to confer on Applicant an exclusive right to encroach on Town Easement or confer any rights to any third party not specifically identified herein by name.

2. The Applicant's Obligations. The Applicant, and its successors and permitted assigns shall:

- (a) install, operate and maintain the Facilities at Applicant's sole cost and expense in accordance with Plan, Town's Standard Specifications and Details, as such may be amended from time to time, and other Town policies, and otherwise in such a safe and proper condition that installation, operation, and maintenance of the Facilities will not endanger or otherwise interfere with access to, or use, operation, or maintenance of (i) any Town easements or other Town property; (ii) any Town-owned infrastructure located within the Town Easement; or (iii) any other infrastructure or equipment located within Town Easement, so long as such infrastructure or equipment is lawfully present within the Town Easement;
- (b) promptly repair any damage to Town Easement, infrastructure, or property or interest in property, and all other areas disturbed during installation and maintenance of the Facilities, including but not limited to pavement, sidewalk, curb and gutter, drainage systems, signs, pavement markings, underground fiber, and water, sewer, or reclaimed water lines, and shall restore to the condition existing prior to Applicant's disturbance, re-establishing grass cover with seeding and spreading of straw for finishing, all to the satisfaction of Town, which shall not be unreasonably withheld or delayed;
- (c) exercise reasonable precaution during construction, operation and maintenance of the Facilities to prevent soil erosion, silting or other pollution of any surface water or groundwater, and otherwise comply with all applicable rules and regulations, including Town's Erosion Control and Public Street Right(s)-of-Way Ordinances;
- (d) give written notice to Town when all work is completed pursuant to this Agreement;
- (e) reimburse Town for any costs or expenses of Town, reasonably incurred, for any repairs or maintenance to Town Easement, any Town-owned infrastructure, facilities, structures, or other areas resulting from or related to the installation, operation, maintenance or existence of the Facilities, following receipt of invoices from the Town detailing those costs (and including supporting documentation evidencing them if available and requested by Applicant);
- (f) promptly remove or alter the Facilities at its costs, at Town's request in the event that Town or its contractors need to conduct work in the relevant areas;
- (g) understand and agree that damage or destruction may occur to Facilities and other property of Applicant in the course of Town's operations and that Town has no obligation to protect Applicant, Applicant's property or Facilities or to minimize, mitigate or avoid any such damage; and release, waive, and discharge any legal rights to seek payment or relief of any kind from the Town, its officers, boards, commissions and employees, for any damages resulting from Town's operations, maintenance, or other use of the Public Streets;
- (h) understand and agree that Permission is non-exclusive, that additional encroachments by others may be permitted in the Town Easement ("Third Party Encroachments"), that Town is not liable for any damage to Facilities that arise from the installation, operation, maintenance, or existence of Third Party Encroachments, and that any recourse for such damage must be from the Third Party Encroacher;

- (i) release, waive, and discharge any legal rights to seek payment or relief of any kind from the Town, its officers, boards, commissions and employees, for any damages resulting from Third Party Encroachments;
- (j) indemnify, defend, and hold harmless Town, its officers, boards, commissions, employees, and contractors, from and against any and all damages, loss, costs, expense and claims and liabilities, including reasonable attorney's fees and costs, that arise from the installation, operation, maintenance or existence of the Facilities, the restoration of the area disturbed by the installation, maintenance or existence of the Facilities, and Applicant's activities or items in the Town Easement; and
- (k) comply with all applicable federal, state and local laws, statutes, ordinances, codes or regulations in connection with the construction, operation and maintenance of the Facilities. Applicant, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

3. Term. The term of this Agreement is the earlier of twenty (20) years (the "First Term") or the cessation of use and maintenance of the Facilities. At the end of the First Term, if the Facilities are still being used and operated, the Agreement shall automatically renew for successive one-year terms unless terminated by either party as provided herein or unless superseded by a new or amended agreement. Either party may terminate this Agreement upon thirty days written notice to the other party. Notwithstanding the foregoing, the grant of Permission to encroach shall become void, and this Agreement terminated, if the Applicant does not begin installation of the Facilities within one (1) year of the date of this Agreement, unless mutually agreed upon by the parties in writing, and thereafter diligently pursue installation to completion. If the Town Manager or designee determines that suspension of this Agreement is warranted to protect the public health or safety, Town may suspend this Agreement, in whole or in part, immediately upon notice to Applicant and for such length of time as deemed necessary by the Town to protect the public health or safety. Upon the termination of this Agreement, Applicant shall remove Facilities and restore any disturbed area to the condition existing prior to Applicant's encroachment, re-establishing grass cover with seeding and spreading of straw for finishing, all to the satisfaction of Town, which shall not be unreasonably withheld or delayed.

4. Other Requirements.

A. Applicant binds itself, its successors, permitted assigns, legal representatives and successors in title to the terms of this Encroachment Agreement. This Agreement may not be assigned without the prior written consent of Town. Applicant may subcontract the Work, provided that the Applicant shall be and remain responsible for the Work and all required insurance and financial security. All entities performing the work must be North Carolina licensed and bonded contractors.

B. Applicant must comply with all relevant provisions of the Town of Cary Code of Ordinances, including but not limited to Sections 22-102 – 22-112 ("Noise") and Section 36-1 ("Tampering with water or sewer systems--Protection of systems on certain days"), as they may be amended from time to time. Section 36-1 prohibits performing "any excavation or other work adjacent to or near" the Town's water or sewer system (including reclaimed water system) or the making "of any street or other repairs which might endanger said water or sewer system on any legal holidays of the town or on Saturdays or Sundays without prior written permission of the town manager."

C. This Agreement is further subject to the following conditions or requirements: (applicable if checked)

The Applicant shall procure and maintain liability and worker's compensation and other insurance at all

times during performance of any work under this Agreement, in the amounts and under the terms stipulated on the attached Exhibit B, ***Schedule of Insurance***, incorporated herein by reference. The Applicant shall deliver to Town a certificate of insurance evidencing such coverage, and that Town is an additional insured. Should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The Applicant shall furnish a Performance Bond in an amount not less than the sum of _____ or the estimated cost of construction or erection of Facilities, whichever is the higher amount, as security for the faithful performance of this Agreement for the term of this Agreement. The Performance Bond shall be with a Surety acceptable to Town and shall be in the form and amount as stipulated on the attached Exhibit C, ***Performance Bond Form***, incorporated herein by reference.

Other: _____

5. Notice. Notices to Applicant under this Agreement shall be sent to the following address:

Paul and Nicole Bartleson

528 Front Ridge Drive

Cary, NC 27519

Notices to Town under this Agreement shall be sent to the following address:

Town of Cary
Attn: Director, Utilities Department
316 N. Academy Street
Cary, NC 27513

6. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina. All suits or actions related to Agreement shall be brought exclusively in Wake County, North Carolina.
7. Recitals. The Recitals are incorporated herein.
8. Miscellaneous. (a) Neither party waives any rights it may have under applicable law with respect to the subject matter in this Agreement. (b) There are no third party beneficiaries to this Agreement. (c) Town may convert the signed original of this Agreement to an electronic record pursuant to an approved North Carolina Department of Cultural Resources procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of this Agreement shall be deemed for all purposes to be the original signed Agreement. (d) The individual signing Agreement has the right and power to do so and bind Grantee to the obligations set forth herein and such individual does so warrant that he/she has such authority. (e) Applicant acknowledges that records in the custody of Town are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests. (f) Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority. (g) Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town's defense of sovereign or governmental immunity from any cause of action alleged or brought

against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Town shall be subject to any personal liability by reason of the execution of this Agreement. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law. (h) This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, and may only be amended only by written amendment in a writing signed by the both parties.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed in the day and year first above written.

NAME OF APPLICANT: Paul Bartleson/Nicole Bartleson

Paul Bartleson / Nicole Bartleson
Signature

Paul Bartleson / Nicole Bartleson
Name and Title, if Applicable (Please Print)

528 Front Ridge Drive
Address

Cary, NC, 27519
City, State, Zip

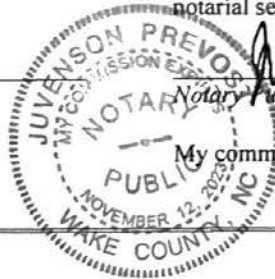
NOTARY OR CORPORATE SEAL

ATTEST OR WITNESS:

NORTH CAROLINA

COUNTY OF Wake

I, Juwenson Prevost, a notary public, do certify that Paul Bartleson/Nicole Bartleson personally appeared before me this day and acknowledged the due execution of the foregoing agreement. Witness my hand and notarial seal this 18 day of March, 2021



Juwenson Prevost
Notary Public

My commission expires: November 12, 2023

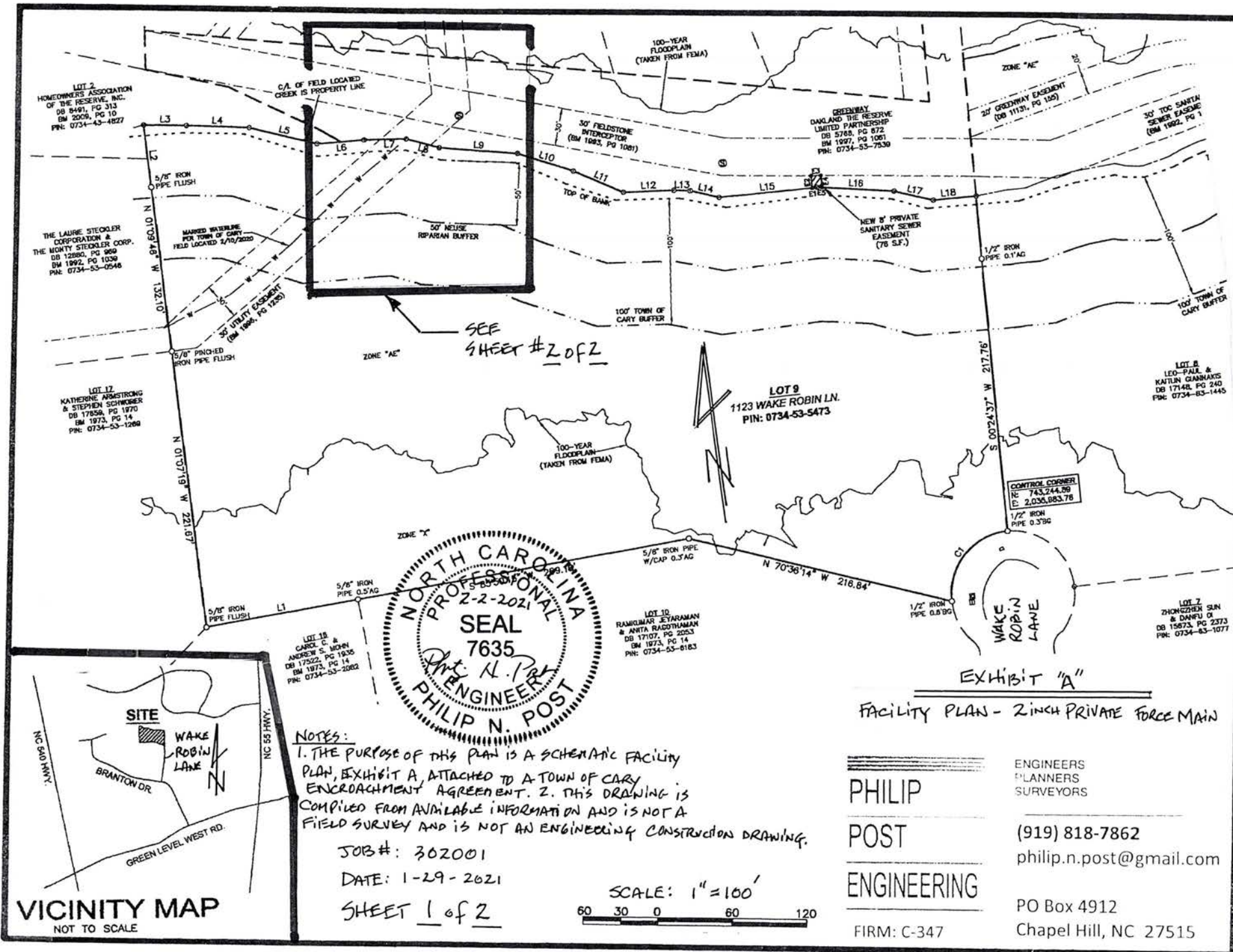
TOWN OF CARY APPROVAL

So Agreed By: Davis Reynolds DATE July 9, 2021

Davis Reynolds, Water Distribution System Operator
Title

EXHIBIT A

[INSERT PLAN – Site Plan or other]



NOTES:
1. THE PURPOSE OF THIS PLAN IS A SCHEMATIC FACILITY PLAN, EXHIBIT A, ATTACHED TO A TOWN OF CARY ENCROACHMENT AGREEMENT. 2. THIS DRAWING IS COMPILED FROM AVAILABLE INFORMATION AND IS NOT A FIELD SURVEY AND IS NOT AN ENGINEERING CONSTRUCTION DRAWING.

JOB #: 302001
DATE: 1-29-2021
SHEET 1 of 2

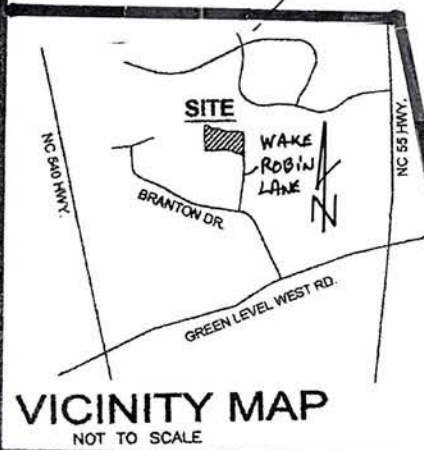
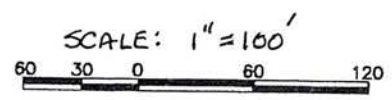
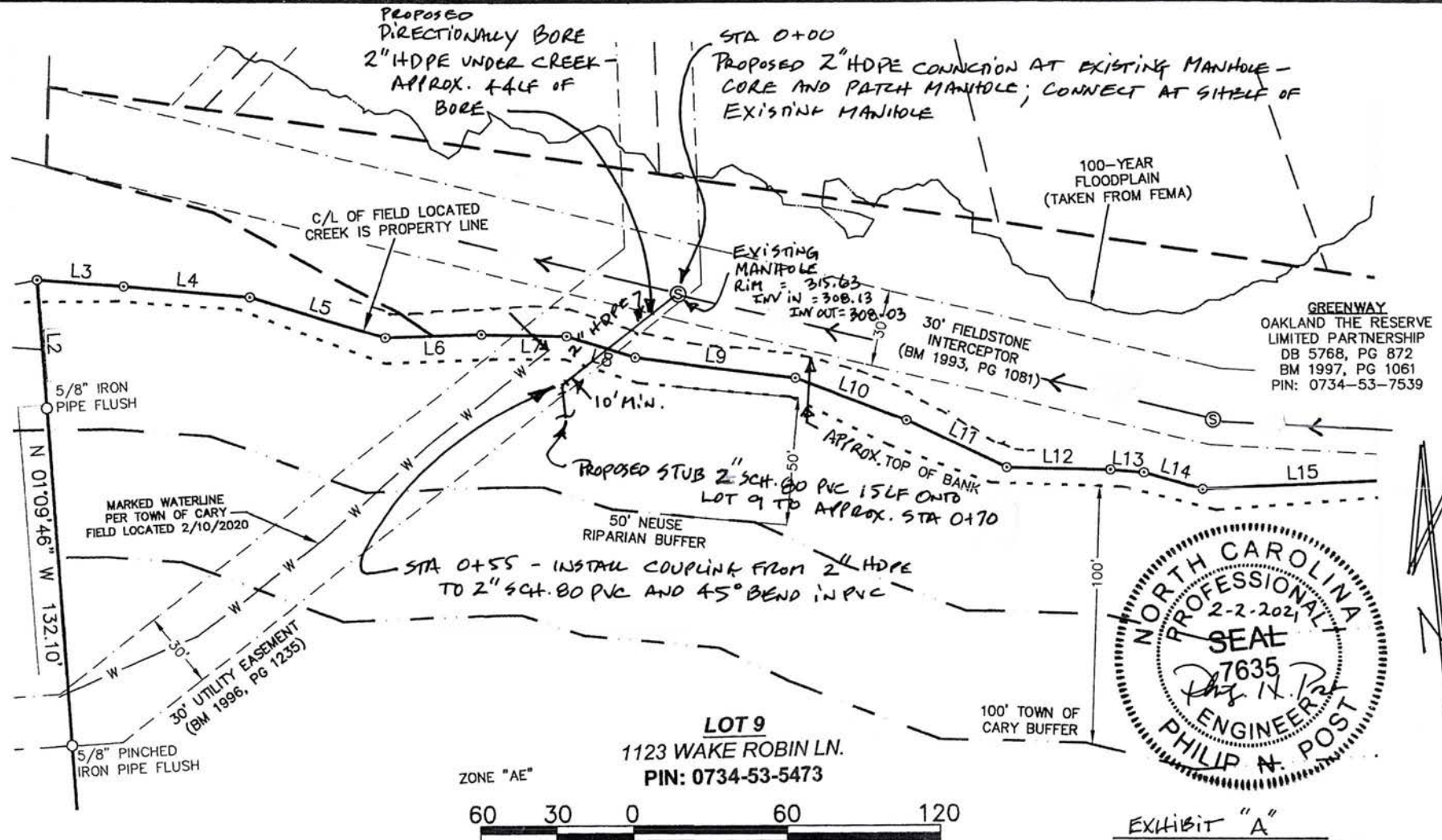


EXHIBIT "A"
FACILITY PLAN - ZINCH PRIVATE FORCE MAIN

PHILIP
POST
ENGINEERING
FIRM: C-347

ENGINEERS
PLANNERS
SURVEYORS
(919) 818-7862
philip.n.post@gmail.com
PO Box 4912
Chapel Hill, NC 27515



NOTES:

1. THIS IS AN EXHIBIT DRAWING AND IS NOT AN ENGINEERING CONSTRUCTION DRAWING AND SHOULD NOT BE USED FOR CONSTRUCTION.
2. 2" HDPE AND 2" SCH 80 PVC PRIVATE FORCE MAIN TO HAVE MIN. 42" COVER AT ALL POINTS.
3. FROM STA 0+00 TO STA 0+55 PRIVATE FORCE MAIN TO BE A MIN. OF 10 FEET FROM EXISTING WATERLINE AND APPROX. 4' FROM SOUTHERN BOUNDARY OF TOWN OF CARY 30' UTILITY EASEMENT.

JOB #: 302001
DATE: 1-29-2021
SHEET 2 of 2

PHILIP
POST
ENGINEERING

FIRM: C-347

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