

**AFTER RECORDING RETURN TO:**  
Archer & Lovell PC  
PO Box 1024  
Cartersville, GA 30120

## **CITY OF CARTERSVILLE ENCROACHMENT AGREEMENT**

The CITY OF CARTERSVILLE, hereinafter called the "CITY," hereby consents for SDH Atlanta, LLC, a Georgia limited liability company, hereinafter called the "Undersigned" to use an area within CITY's subject gas distribution facilities or other utility facilities right-of-way described as follows:

Said right-of-way being Silo Drive and having a variable width and extending in part through Land Lot 449, of the 4<sup>th</sup> District, 3<sup>rd</sup> Section, of Bartow County, Georgia, on which CITY has the said right-of-way shown on plat attached hereto as Exhibit "A" and made a part hereof. The use of the area by the Undersigned within said right-of-way, pursuant to this consent, shall be limited to the construction, operation and maintenance of an irrigation system as indicated on Exhibit "A," at the location and to the extent as shown on said attached plat. Said use is subject to the conditions of this Agreement, and the terms and conditions set forth in Exhibit "B," which is attached hereto and incorporated herein by reference. It is specifically understood that no buildings or other obstructions of any type will be permitted within or on said right-of-way.

1. The plans and specifications as submitted by the Undersigned meet CITY'S approval provided the Undersigned conforms to the following terms and conditions: The Undersigned agrees to obtain all necessary rights from the owners of the lands crossed by CITY'S right-of-way in the event the Undersigned does not own the said lands and rights.
2. The Undersigned agrees to use said area within CITY'S right-of-way in such a manner as will not interfere with CITY'S activities and facilities as now, or hereafter, exist thereon (hereinafter CITY'S "activities" and "facilities").
3. The Undersigned agrees that the use of CITY'S right-of-way as herein provided shall in no way affect the validity of CITY'S right-of-way and shall in no way modify or restrict the use or rights of CITY, its successors or assigns, in and to the area to be used. The Undersigned acknowledges CITY'S right and title to said right-of-way and the priority of CITY'S right of use and hereby agrees not to resist or assail said priority.
4. The use of said area within said right-of-way by the Undersigned shall be at the sole risk and expense of the Undersigned, and CITY is specifically relieved of any responsibility for damage to the facilities and property of Undersigned resulting or occurring from the use of said right-of-way by CITY as provided herein. Undersigned covenants not to sue CITY in that instance.
5. The Undersigned hereby agrees and covenants not to use and will prohibit agents, employees and contractors of Undersigned from excavating with mechanized equipment within five (5) feet of CITY'S natural gas facilities or other utility facilities without prior written consent by an authorized representative of CITY. The Undersigned agrees to comply with Official Code of Georgia Section 25-9-1 et seq., (Georgia Utility Facilities Protection Act) and any and all Rules and Regulations of the

6. State of Georgia promulgated in connection therewith, all as now enacted or as hereinafter amended; and further agrees to notify any contractor(s) that may be employed by the Undersigned to perform any of the work referred to in this Agreement of the existence of said code sections and regulations by requiring said work to be performed in compliance with said code sections and regulations by including same as a requirement in its request for bids and including said requirements in any contract let as a result of said bid. The Undersigned further agrees and covenants to warn all persons whom the Undersigned knows or should reasonably anticipate for any reason may resort to the vicinity of such facilities of the fact that such facilities are (a) distributing natural gas, (b) in service, (c) pressurized to a maximum of 300 psig and (d) inherently dangerous and (e) other utilities operating in said easement.
7. Notwithstanding anything to the contrary contained herein, the Undersigned agrees to reimburse CITY for all cost and expense for any damage to CITY'S facilities resulting from the use by the Undersigned of said area within said right-of-way. Also, the Undersigned agrees that if in the opinion of CITY, it becomes necessary, as a result of the exercise of the permission herein granted, to relocate, rearrange or change any of CITY'S facilities, to promptly reimburse CITY for all cost and expense involved in such relocation, rearrangement or changing of said facilities.
8. The Undersigned agrees to notify or have (HIS/THEIR) contractor notify the Cartersville Planning and Development Department, Phone (770) 387-5600, Attention: David Hardegee, during normal business hours, 8:00-4:30, at least two (2) days prior to actual construction on CITY'S right-of-way.
9. The Undersigned agrees to indemnify and save harmless and defend CITY from the payment of any sum or sums of money to any persons whomsoever (including third persons, subcontractors, the Undersigned, CITY and agents and employees of them) on account of claims or suits growing out of injuries to persons (including death) or damage to property (including property of CITY) in any way attributable to or arising out of the use of the above described lands, by the Undersigned as herein provided, including (but without limiting the generality of the foregoing) all liens, garnishments, attachments, claims, suits, judgments, costs, attorney's fees, cost of investigation and of defense, and excepting only those situations where the personal injury or property damage claimed have been caused by reason of the sole negligence on the part of CITY, it's agents or employees.
10. The Undersigned hereby agrees to incorporate in any and all of its contracts and/or agreements, for any work or construction done on or to said described right-of-way , with any and all third persons, contractors, or subcontractors, a provision requiring said third parties, contractors, or subcontractors to indemnify and defend CITY, its agents and employees as provided for above from payment of any sum or sums of money by reason of claims or suits resulting from injuries (including death) to any person or damage to any property which is in any manner attributable to or resulting from the construction, use or maintenance of the Undersigned's facilities, projects or programs conducted on CITY's right-of-way herein described.
11. The Undersigned further agrees to require that any such third party, contractor, or subcontractor doing or providing any such work or construction on said right-of-way carry liability insurance which shall specifically cover such contractually assumed liability. A certificate of such insurance issued by the appropriate insurance company shall be furnished to CITY on request, said amount of insurance to be not less than \$1,000,000 for any one person, \$5,000,000 for any one accident for bodily injury or death and \$1,000,000 for property damage for any one accident.
12. R/W/EASEMENT LANDSCAPING SPECIFICATIONS: The CITY shall have the right to remove all trees and brush from the limits of the right-of-way. However, for aesthetics for Jackson Farm Subdivision, CITY will permit as indicated in the approved plans for Jackson Farm Subdivision or written consent from the Planning and Development Department of the CITY for the planting of shrubbery provided these plants do not interfere with the access to and operation of CITY'S facilities.
13. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and/or assigns.

The Undersigned hereby accepts the foregoing consent, and has by legal and proper authorization, duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (a copy of which will be furnished to CITY on request) authorized the execution and acceptance of this Agreement subject to the terms and conditions set forth above and in the event the Undersigned fails to perform as herein provided and shall not have executed and returned this Agreement on or before the \_\_\_\_\_, this Agreement shall become void and no use of CITY'S right-of-way as herein provided for shall be made.

IN WITNESS WHEREOF this Agreement has been duly executed, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed, sealed and delivered  
in the presence of:

**CITY OF CARTERSVILLE, GEORGIA**

By: \_\_\_\_\_(SEAL)  
Matthew Santini, Mayor

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_(SEAL)  
Julia Drake, City Clerk

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

Signed, sealed and delivered  
in the presence of:

**SDH ATLANTA, LLC**

By: \_\_\_\_\_(SEAL)

\_\_\_\_\_  
Witness

Its: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**[SIGNATURES CONTINUED ON NEXT PAGE]**

**THIS ENCROACHMENT AGREEMENT BY AND BETWEEN THE CITY OF CARTERSVILLE AND SDH ATLANTA, LLC, FOR JACKSON FARM SUBDIVISION, IS CONSENTED TO AND APPROVED BY OWNER, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
[NOTARIAL SEAL]

**JACKSON FARM 106, LLC,  
a Delaware limited liability company**

By: Builder Capitol, LLC,  
a Delaware limited liability company

Its: Manager

By: Arizona Crows Next Ventures, LLC,  
an Arizona limited liability company

Its: Manager

By: \_\_\_\_\_ (SEAL)

William Southworth  
Sole Member

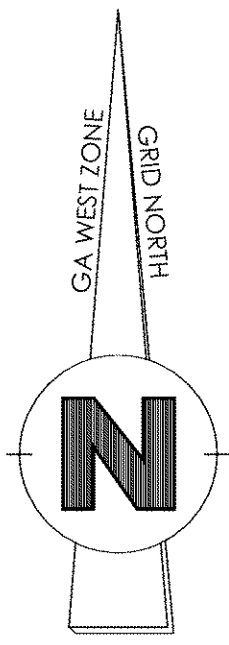
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FILED IN OFFICE  
CLERK OF COURT  
05/17/2022 04:37 PM  
MELBA SCOGGINS, CLERK  
SUPERIOR COURT  
BARTOW COUNTY, GA

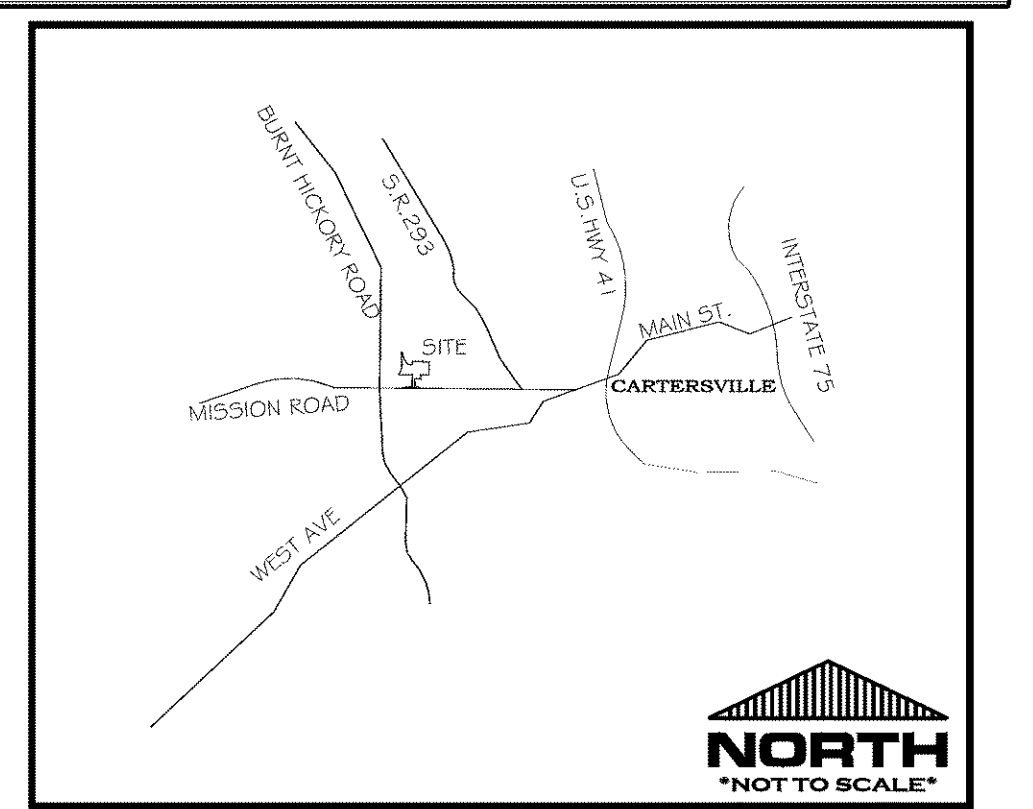
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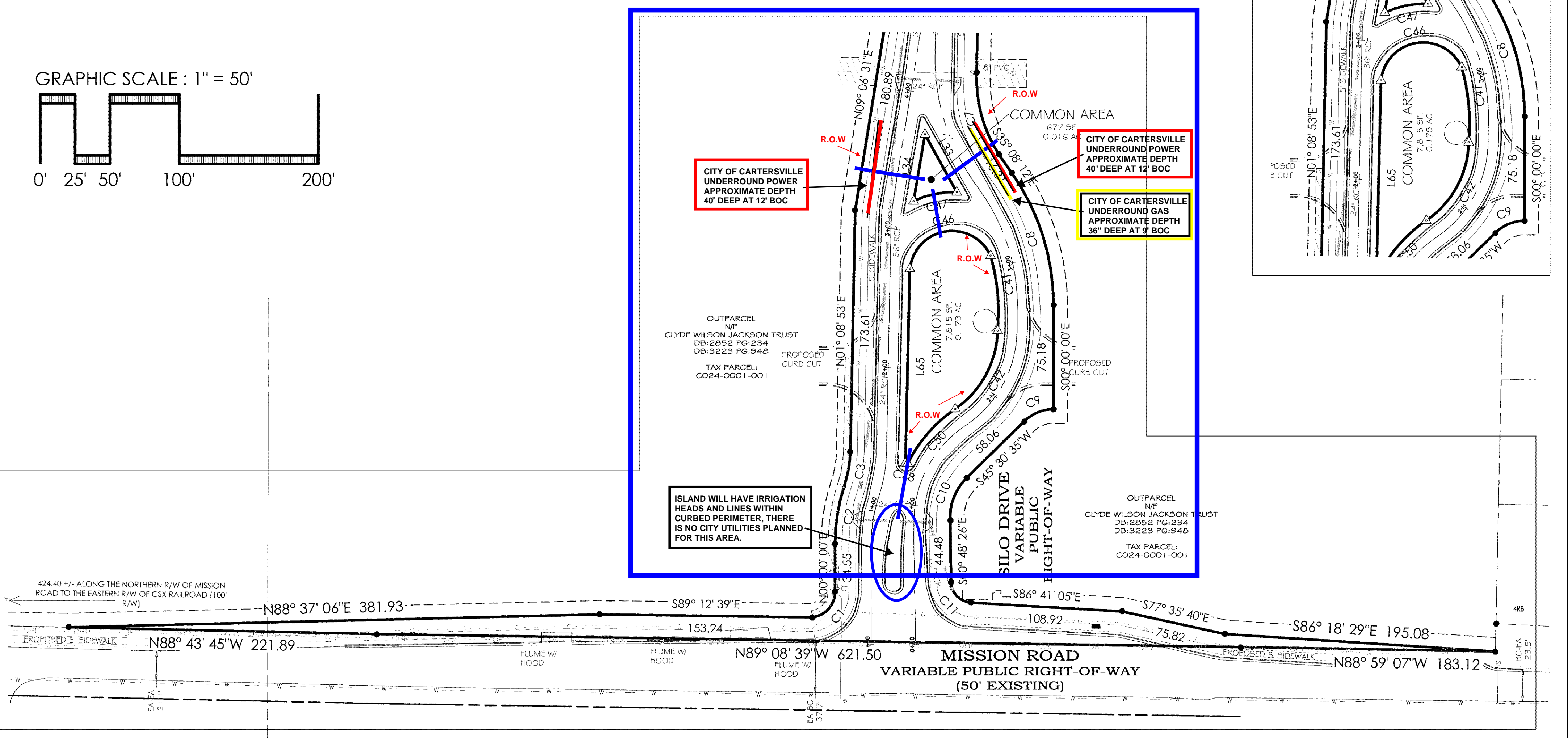
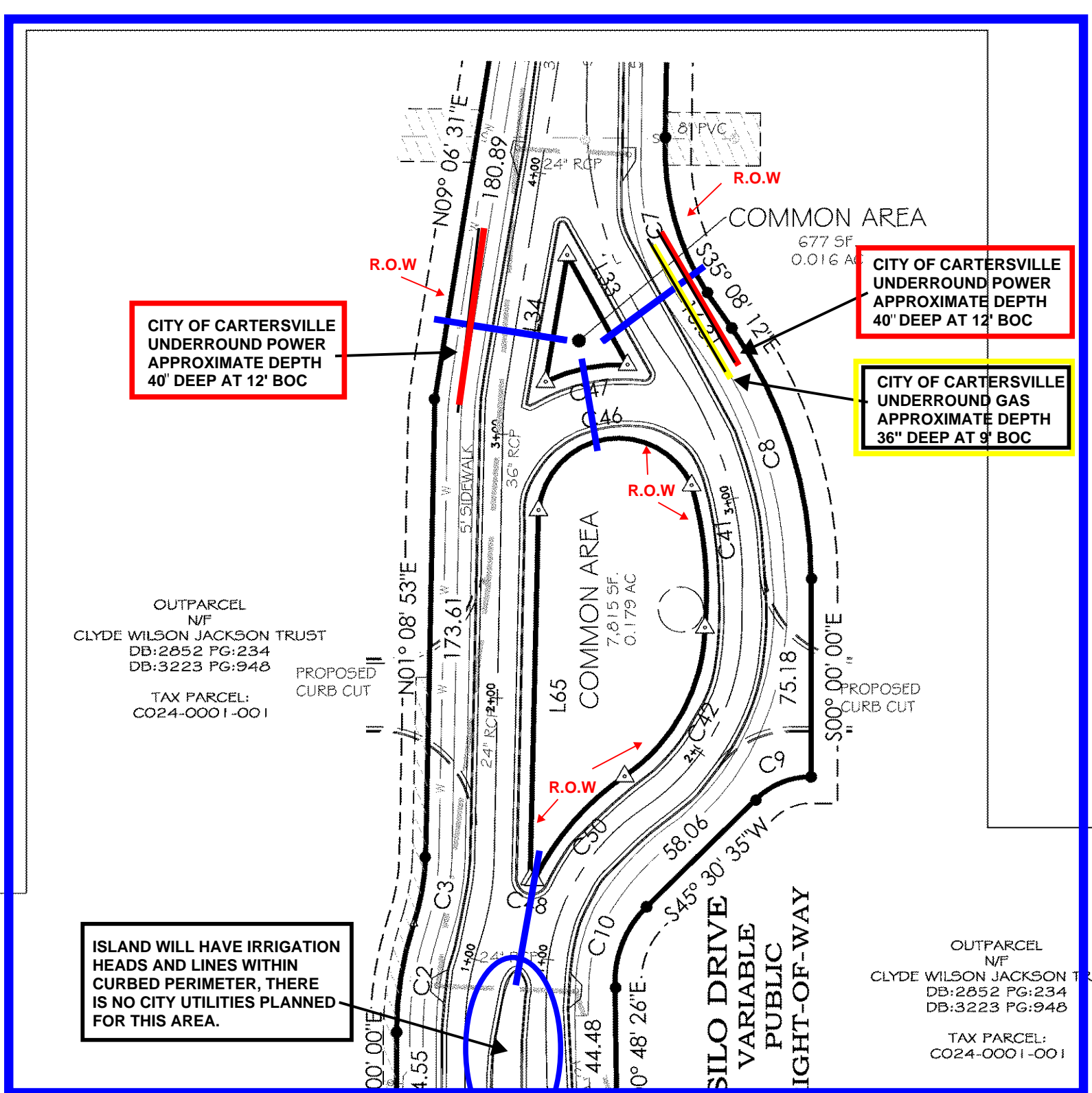
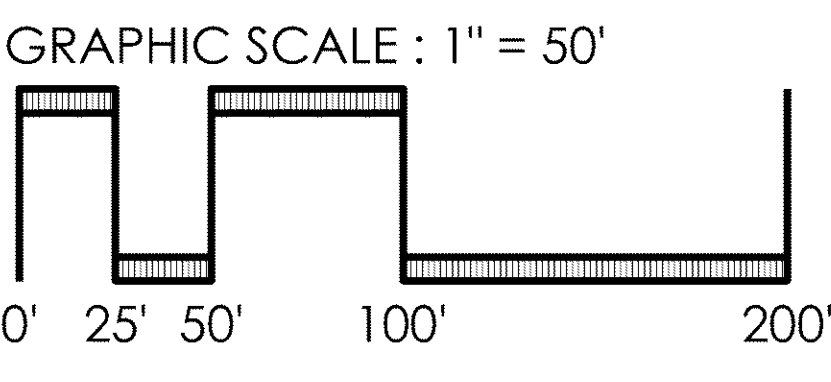
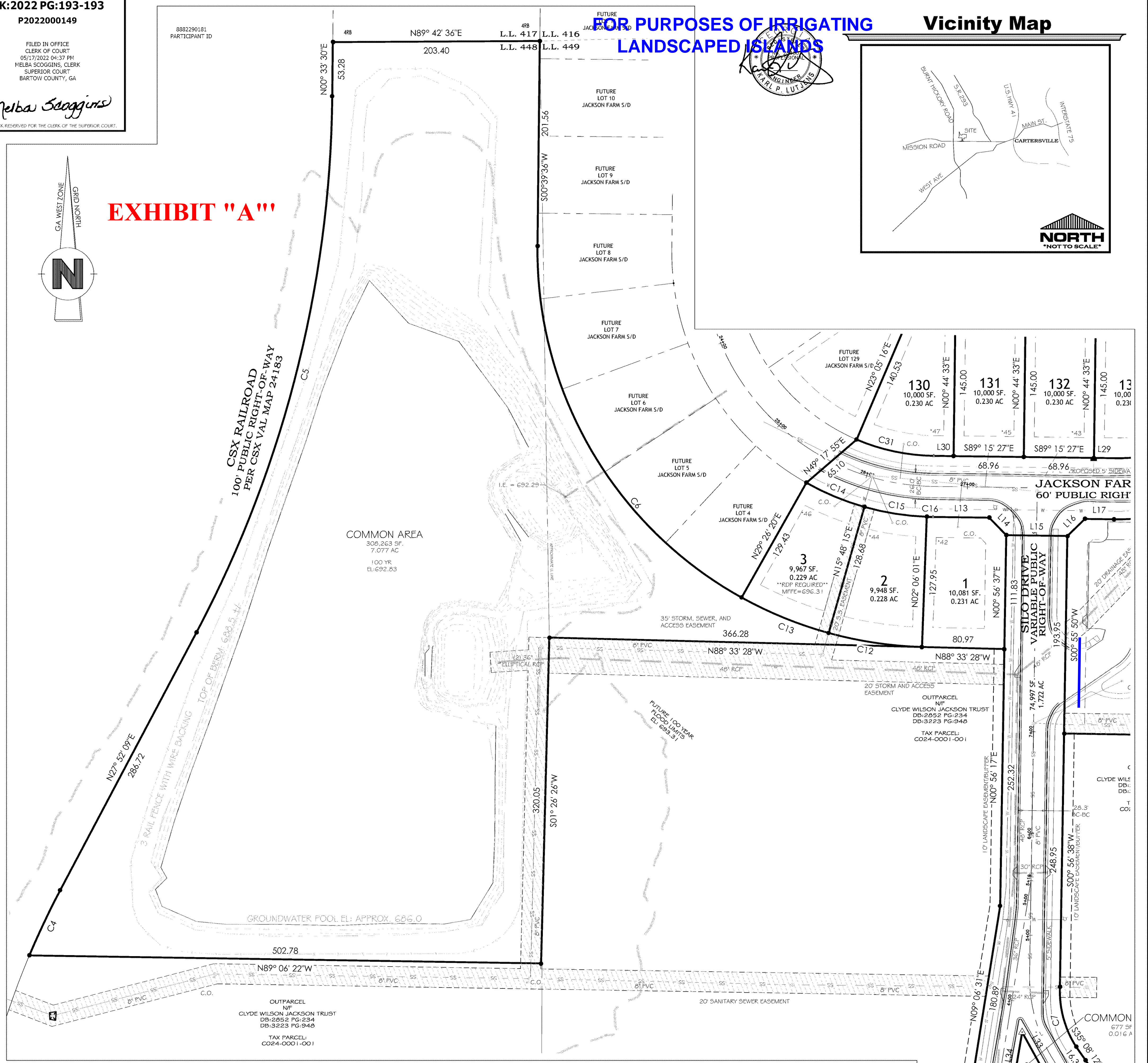
EXHIBIT "A"



Vicinity Map



FOR PURPOSES OF IRRIGATING  
LANDSCAPED ISLANDS



**SOUTHLAND ENGINEERING**  
CIVIL ENGINEERS - LAND SURVEYORS - LAND PLANNERS  
114 OLD MILL ROAD, CARTERSVILLE, GA 30120  
PH: 770.387.0440 FAX: 770.607.5151

DATE: MARCH 22 2022 REV: JOB NO: 19098  
DATE OF FIELDWORK: SEPTEMBER 29, 2021 DR: CPR CH: KNC APP: KNC

FINAL PLAT  
**JACKSON FARM  
PHASE 1 UNIT 1**

LOCATED IN LAND LOT(S) 416, 448, 6449  
4TH DISTRICT, 3RD SECTION,  
CITY OF CARTERSVILLE, BARTOW COUNTY, GEORGIA



**Flood Statement**  
THE F.I.R.M. (FLOOD INSURANCE RATE MAP) SHOWS THE REFERENCED PARCEL TO BE IN ZONE A AND IS IN AN AREA HAVING SPECIAL FLOOD HAZARDS ACCORDING TO PANEL NO: 13015 C 0262 H, DATED: OCTOBER 5, 2018.

**Owner/Developer**  
SMITH DOUGLAS HOMES  
ATTN: KEITH ADAMS  
1110 VILLAGE TRAIL, SUITE 215 WOODSTOCK, GA 30188  
OFFICE: (770)-372-3020

**Zoning Notes**  
ZONED: PUD  
ACREAGE: 100.08 TOTAL  
RESIDENTIAL 30.61 COMM: 20.28  
TOTAL PROJECT LOTS: 197  
TOTAL PROJECT RESIDENTIAL BLDG LOTS: 191  
DENSITY: 2.16 LOTS PER ACRE  
A. FRONT YARD SETBACK: 20 FEET  
B. SIDE YARD SETBACK: 10 FEET  
C. REAR YARD SETBACK: 20 FEET  
D. MINIMUM LOT AREA: 10,000

## **EXHIBIT "B"**

1. Smith Douglas Homes and its contractors shall maintain 12" vertical and 24" horizontal clearance from city utilities.
2. **With the exception of the first island (closest to Mission Road)** No irrigation heads will be within the public right-of-way, Only irrigation line crossings will be allowed in the public right-of-way and no irrigation heads, valves or other appurtenances shall be permitted within the public right-of-way and in no case shall an irrigation line parallel the public right-of-way within the public right-of-way
3. Irrigation lines shall be buried with a traceable wire or other acceptable means of locating the irrigation lines in accordance with City Ordinance Sec. 24-6. - Installation of tracer wire in all underground utilities.
4. Crossings will be bored at 18" depth of top of curb which will be 12" under road asphalt topping and will not be deeper than 18" deep through right of way / shoulders.
5. City of Cartersville Power underground lines are located approximately 12' back of curb on both sides of Silo Drive at approximately 40" deep. Smith Douglas Homes and its contractors are responsible for locating and avoiding.
6. City of Cartersville Gas underground lines are located approximately 9' back of curb at 36" deep on the east side of Silo Drive. Smith Douglas Homes and its contractors are responsible for locating and avoiding.
7. All utilities shall be located and will be "pot-holed" to verify depth.
8. **With the exception of the first island (closest to Mission Road)**, other than the crossings shown in blue the remainder of irrigation installed will be installed outside of the right of way with no heads or lines in the city right of way
9. Gas System takes no exception provided the utility facility owner understands that, if the owner does not participate in Georgia Code § 25-9, Georgia Utility Facility Protection Act, the Gas System shall not be held responsible for any damages that occur to the facilities during any excavation by the Gas System for any purpose and that any proposed facility shall be installed with a minimum vertical separation of 24" and a minimum horizontal separation of 36" from any existing natural gas facility.
10. Smith Douglas Homes on behalf of the Jackson Farm agrees that that if any facilities to need be relocated due to conflicts, said relocation shall be at their expense, and if said facilities are damaged during maintenance of City facilities, the City has no obligation to repair.