

TEMPORARY CONSTRUCTION EASEMENT/AGREEMENT

Georgia, Whitfield County

This Temporary Construction Easement Agreement (the “Agreement”) is made this _____ day of _____, 20____ (the “Effective Date”), by and between **K2 Holdings, LLC** (hereinafter “Grantor”), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter “Grantee”), their respective successors and assigns:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Property being a city street, right-of-way, and city park and more particularly described as Chattanooga Avenue and Crown Creek Park (the “City Property”); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the construction identified therein said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement**. Grantor, and for and on behalf of its successors and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across and through that certain portion of the Property shown on the Easement Exhibit of Entrance To Crown Cotton Mills by Lowery and Associates Land Surveying, LLC dated January 13, 2020 (designated by hash marks) attached hereto as Exhibit “B” and incorporated herein by reference (the “Construction Easement”). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive construction identified therein. Said Construction Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Easement**. The parties contemplate that the construction project can be completed in seven days or less and will be completed during Spring Break 2020. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement

shall be for a period of seven (7) days beginning March 30, 2020 through April 3, 2020. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon as reasonably possible. The parties shall reasonable cooperate to complete the project in a timely manner.

3. **Additional Rights.** The Temporary Construction Easement granted herein shall include:

(a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;

(b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Easement, which removal is necessary for Grantee's construction identified herein;

(c) the right to demolish and reconstruct the driveway and culvert as generally provided in Exhibit "B";

(d) the right to relocate sewer lines by Dalton Utilities as generally provided in Exhibit "C"; and

(e) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Easement Use.**

(a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Easement. Any such use of the Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.

(b) Any construction or activities performed on the Easement by Grantee shall be done in a good workmanlike manner and the Easement shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable and as generally provided in the Exhibit "B".

(c) Grantee shall if necessary temporarily brace the Grantor's signage

during the term of this Agreement. If necessary to avoid any damage to the signage, Grantee shall temporarily relocate the signage in such a manner as to reasonably maximize the street view of said signage, in consultation with the Grantor. Upon completion of the project, Grantee shall reinstall the signage in its original location.

(d) Grantee shall temporarily provide access for egress and ingress to the Property as generally provided in the Wayfinding Plan attached hereto as Exhibit "D".

6. **Covenants of Grantor.**

(a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledge that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Constructive Easement.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easements, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page.]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My commission expires:

[Notarial Seal]

Grantor:

K2 Holdings, LLC

By: _____ (Seal)

Title: _____

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My commission expires:

[Notarial Seal]

Grantee:

City of Dalton, GA

By: _____ (Seal)

Title: _____

EXHIBIT “A”

EN
ATT

Please return to: Wright W. Smith
P. O. Box 5007, Rome, GA 30162

Deed Doc: QCD
Recorded 09/21/2017 09:54AM
Georgia Transfer Tax Paid : \$0.00
MICHA KENDRICK
Clerk Superior Court, WHITFIELD County, Ga.
Bk 06574 Pg 0285-0286
PTE1002508

[Space above this line for recording data]

QUIT CLAIM DEED

STATE OF GEORGIA
COUNTY OF WHITFIELD:

THIS INDENTURE, Made this 14th day of September, 2017, between **KSHE Land Investments, Inc.**, a Georgia corporation, ("Grantor") of the first part, and **K2 Holdings, LLC**, a Georgia limited liability company ("Grantee") of the second part. ("Grantor" and "Grantee" to include their respective heirs, successors, executors, administrators, legal representatives and assigns where the context requires or permits. Use of pronouns in any form shall be read as either masculine, feminine or neuter, and either, singular or plural, whenever the context and facts permit such construction).

WITNESSETH: That Grantor, for and in consideration of Love and Affection has transferred and conveyed, and by these presents does transfer and convey unto Grantee the following described property:

All that tract or parcel of land lying and being in Land Lots 182 and 199 of the 12th District and 3rd Section of Whitfield County, Georgia, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the said land, together with all appurtenances thereto belonging, to the only use of the said Grantee, in as ample a manner only as said Grantor has and holds the same.

IN WITNESS WHEREOF, The said Grantor has hereunto set his hand and affixed his seal the day and year first above written.

Signed, sealed and delivered
in the presence of:

KSHE Land Investments, Inc.

Janet Weller
UNOFFICIAL WITNESS

By: Lowell T. Kirkman
Lowell T. Kirkman, President

Wright W. Smith
NOTARY PUBLIC

My Commission Expires: 8. 8. 20

[CORPORATE SEAL]

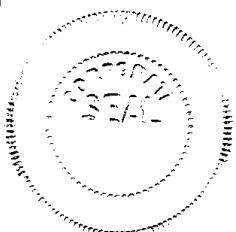
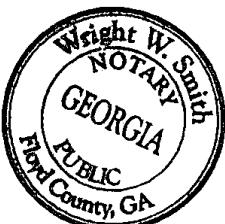


EXHIBIT A

A certain tract or parcel of land lying and being in Land Lots 182 and 199 of the 12th District and 3rd Section of Whitfield County, Georgia, and being more particularly described in a plat by Lowery and Associates Land Surveying, LLC dated March 23, 2016, as follows:

TO FIND THE TRUE POINT OF BEGINNING begin at the intersection of the northwest right of way of Tyler Street and Chattanooga Avenue, thence proceed north 16 degrees 41 minutes 39 seconds west 1,407.46 feet to a 5/8 inch capped rebar set at the easternmost southeast corner of that 0.110 acre tract of land conveyed to KSHE Land Investments, Inc. by Warranty Deed from Crown Mill Development Company, LLC of record in Deed Book 5608, Page 277 and the TRUE POINT OF BEGINNING; thence along southerly, easterly and southerly lines of said property shown by deed at Deed Book 5608, Page 277 the following courses and distances, to wit: south 76 degrees 22 minutes 09 seconds west 56.05 feet to a railroad spike found, south 13 degrees 54 minutes 25 seconds east 19.97 feet to a railroad spike found and south 76 degrees 25 minutes 04 seconds west 90.18 feet to a railroad spike found at the southwest corner of that tract of land shown at Deed Book 5608, Page 277; thence south 13 degrees 41 minutes 49 seconds east 16.40 feet to a 5/8 inch capped rebar set; thence south 76 degrees 51 minutes 45 seconds west 89.25 feet; thence north 13 degrees 41 minutes 49 seconds west 72.09 feet; thence south 76 degrees 39 minutes 37 seconds west 245.71 feet to a 5/8 inch capped rebar set on the east right of way of the CSX Railroad; thence north 22 degrees 39 minutes 51 seconds west along said railroad right of way 178.21 feet to the southwest corner of that tract of land conveyed to Columbia Recycling Corp. by deed of record in Deed Book 4395, Page 74, Whitfield County, Clerk's Records; thence along the southerly lines of said tract of land conveyed at Deed Book 4395, Page 74 the following courses and distances, to wit: north 67 degrees 19 minutes 28 seconds east 83.80 feet, north 19 degrees 24 minutes 06 seconds east 84.98 feet, north 76 degrees 10 minutes 28 seconds east 149.07 feet and north 52 degrees 40 minutes 13 seconds east 158.55 feet to the easternmost corner of that tract of land conveyed at Deed Book 4395 page 74; thence north 66 degrees 57 minutes 43 seconds east 80.00 feet, south 31 degrees 14 minutes 49 seconds east 292.28 feet to the northernmost corner of that tract of land conveyed by KSHE Land Investments, Inc. to City of Dalton, Georgia, at Deed Book 5295, page 322, Whitfield County, Clerk's Records; thence along northerly and westerly lines of said property conveyed to City of Dalton the following courses and distances, to wit: south 68 degrees 05 minutes 04 seconds west 45.61 feet, thence southwesterly following the arc of a curve to the left (said curve (having a radius of 58.00 feet and being subtended by a chord bearing south 17 degrees 55 minutes 29 seconds west a chord distance of 81.44 feet) an arc distance of 90.28 feet and south 30 degrees 03 minutes 59 seconds east 21.89 feet to a 5/8 inch capped rebar set and the TRUE POINT OF BEGINNING.

The above described property is presently designated Tax Parcel No. 12-182-04-000 for the Whitfield County Tax Assessor's Office.

TOGETHER WITH THAT CERTAIN Perpetual Easement as an appurtenance to the property herein described said easement being for purposes of access, maintenance and upkeep of above and below ground utility installation as said perpetual easement is more particularly described in that deed from KSHE Land Investments, Inc. to Columbia Recycling Corp. at Deed Book 4395, page 74, Whitfield County, Clerk's Records, said deed being incorporated herein by reference for a full and complete description of the perpetual easement.

TOGETHER WITH THAT CERTAIN EASEMENT from Columbia Recycling Corporation to KSHE Land Investments, Inc. which said easement is an appurtenance to the properties conveyed herein and is recorded said easement at Deed Book 4395, Page 76. Said easement is incorporated herein by reference for a full and complete description of same.

TOGETHER WITH THAT CERTAIN EASEMENT for ingress and egress from Crown Mill Development Company, LLC to KSHE Land Investments, Inc. of record in Deed Book 5138, Page 193, Whitfield County, Clerk's Records, said easement being incorporated herein by reference for a full and complete description of said perpetual non-exclusive easement.

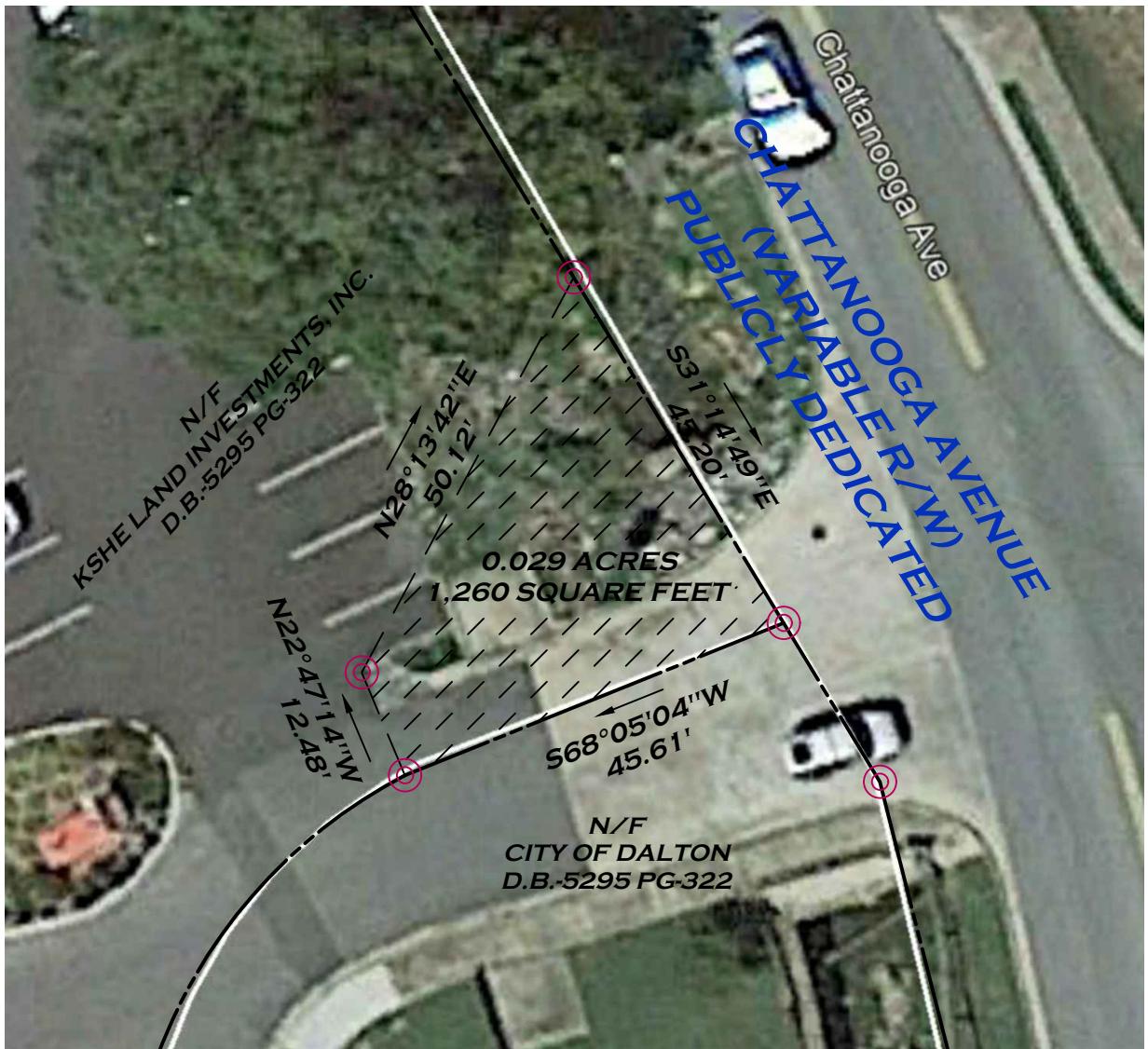
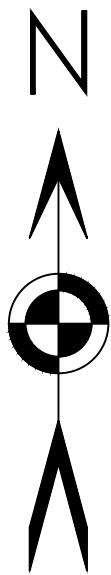
TOGETHER WITH THAT CERTAIN EASEMENT for purposes of ingress, egress and installation of below ground utilities reserved by KSHE Land Investments, Inc. in that deed to City of Dalton at Deed Book 5295, Page 322, said deed being incorporated herein for a full and complete description of said easement.

EXHIBIT “B”

GRAPHIC SCALE



1 Inch = 20 Feet



**EASEMENT EXHIBIT OF:
ENTRANCE TO CROWN COTTON MILLS
PREPARED FOR:
THE CITY OF DALTON**

FILE NO: 161270	SCALE: 1"=20'
DATE: JANUARY 13, 2020	DRAWN BY: J.BURNETTE
STATE: GEORGIA	COUNTY: WHITFIELD
LAND LOT: 182	DISTRICT: 12TH
SECTION: 3RD	
LOWERY AND ASSOCIATES LAND SURVEYING, LLC 317 GRASSDALE ROAD CARTERSVILLE, GA 30121 770-334-8186	

Exhibit “C”

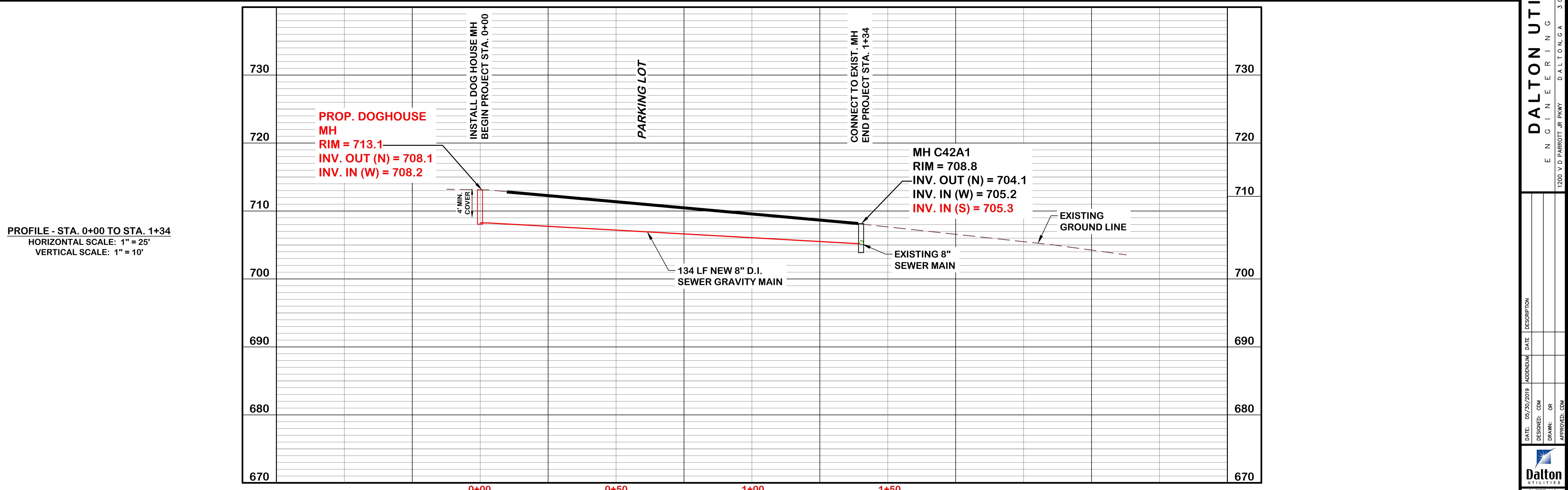
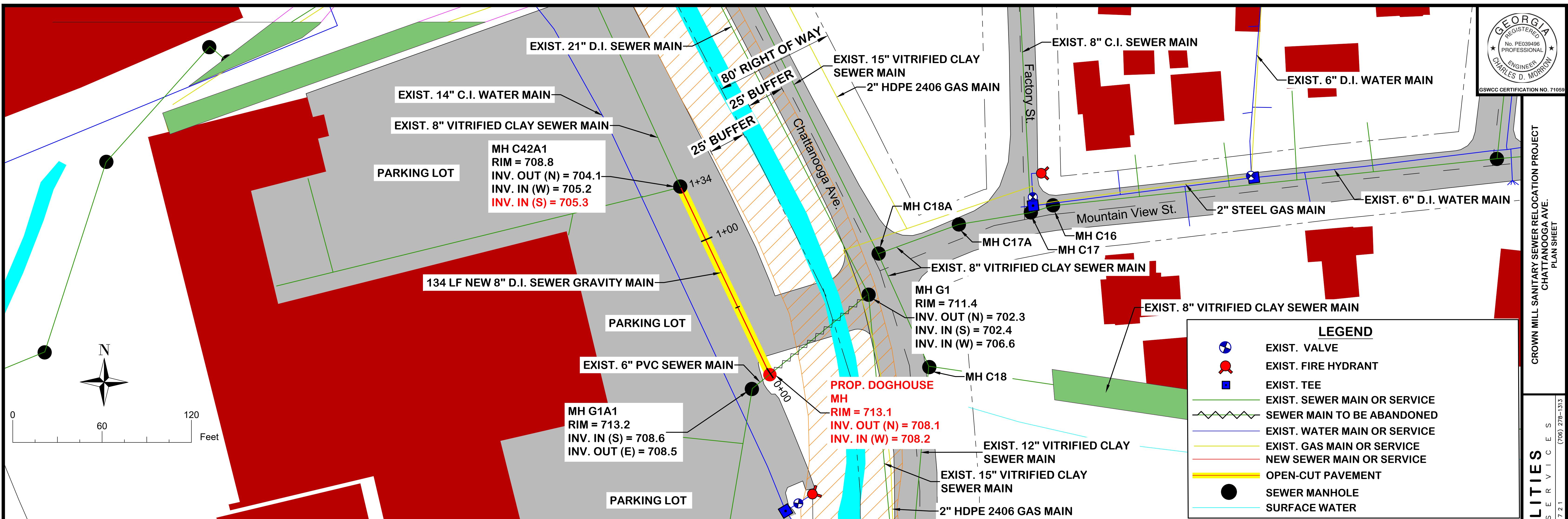


EXHIBIT “D”

