

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) is made and entered as of the date of the last signature below (the “Effective Date”), by and between the **CITY OF RALEIGH** (“City”), with an address of P.O. Box 590, Raleigh, North Carolina, 27602, **COUNTY OF WAKE**, a political subdivision of the State of North Carolina (“County”), with an address of P.O. Box 550, Raleigh, NC 27602 (the City and County collectively being referred to herein as the “Grantors”) and **3540 AUBURN LLC**, a North Carolina limited liability company (“Grantee”), with an address of 2310 S. Miami Blvd Ste 238, Durham, NC 27703.

RECITALS

WHEREAS, the Grantors are the owners of that certain parcel of land located in Wake County, North Carolina having Wake County PIN # 1741256016, and more particularly described in Book 11637, Page 2770, Wake County Registry (the “Grantor Property”); and

WHEREAS, Grantee has acquired approvals for the development of certain land lying adjacent to the Grantor Property, having Wake County PIN # 1741150442, and more particularly described in Book 18490, Page 2319, Wake County Registry (the “Grantee Property”), such development approvals otherwise identified by the City of Raleigh with Case Number SPR-0003-2024 (the “Project”); and

WHEREAS, in order to extend public sanitary sewer facilities and water supply facilities to the Project, Grantee desires to construct sanitary sewer facilities and water supply facilities upon, under, through and across easements established on the Grantor Property (collectively, the “Easements”) to connect to existing public sewer lines and waterlines; and

WHEREAS, the Grantors have determined that extending the sewer main and water main over the Grantor Property to allow for such extension would represent an orderly and cost-efficient expansion of the City's sanitary sewer system and water supply facilities and is in the public interest; and

WHEREAS, the Grantors are willing to grant permission to Grantee, its agents and contractors, to enter onto the Right of Entry Area (as defined below) to construct the sanitary sewer facilities and water supply facilities, subject to the terms and conditions stated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Right of Entry.** The Grantors hereby grant to Grantee, its agents and contractors, access to and across the Grantor Property in that area specified below to construct and install of a

system of pipelines or mains for sanitary sewer purposes and water supply and distribution purposes, together with all the appurtenant facilities and equipment necessary or convenient thereto (collectively, the “Facilities”) within the respective Easements. Installation of the Facilities within the Easement shall conform to all applicable City and County standards and City Code and County Code requirements, including all requirements and conditions of the Project’s approval. Grantee shall cause each of its agents and contractors to comply with all applicable laws, rules, and regulations in exercising the rights granted herein. The portion of the Grantor Property subject to this Agreement shall consist of those areas described and shown on **Exhibit A** as “City of Raleigh Waterline Easement” and “30’ Permanent Sanitary Sewer Easement”, together with that area described and shown on **Exhibit A** as “10’ Temporary Construction Easement” (collectively, the “Right of Entry Area”). For the avoidance of doubt the Facilities related to water supply and distribution shall be located within the area described as “City of Raleigh Waterline Easement” on **Exhibit A** and the Facilities related to the sanitary sewer system shall be located within the area described as “30’ Permanent Sanitary Sewer Easement” on **Exhibit A**.

2. **Term; Restoration.** The term of this Agreement shall commence on the Effective Date and shall terminate upon the earlier of (i) the date on which the permanent Facilities that have been installed within the Easements are accepted by the City and Restoration (as defined in this paragraph) has been completed by Grantee; or (ii) December 31, 2026, should Grantee or its successors or assigns not begin construction of the Facilities within the Right of Entry Area on or before such date. On or by the termination date, Grantee shall remove any and all of its equipment, vehicles, supplies, or any other materials from the Grantor Property. Within sixty (60) days of the date on which the Facilities are accepted by the City, Grantee shall re-grade, mulch, re-seed, plant reasonable ground cover (which may include grass) and/or otherwise restore and repair the Right of Entry Area and any areas disturbed by Grantee outside of the Right of Entry Area (the “Restoration”). In the event Grantee fails to restore any portion of the Grantor Property pursuant to the terms of this Agreement, within thirty (30) days of any written request from the City or County to perform such Restoration, then the City or County may, at either of its option, restore such portions of the Grantor Property, and Grantee shall within thirty (30) days of demand therefore, pay the restoring party for the reasonable cost of such Restoration.
3. **Maintenance.** Until such time as the Facilities are accepted by the City, Grantee shall be solely responsible for maintenance of the Facilities. Prior to such acceptance of the Facilities, this Agreement shall include Grantee’s right of reasonable ingress and egress over the Right of Entry Area as may be necessary for maintenance purposes.
4. **Indemnification.** Grantee agrees to indemnify, defend, and hold the Grantors, their Council Members, Commissioners, employees, contractors, agents, invitees, and guests harmless from and against all claims, demands, actions, losses, damages, liabilities, and expenses (including reasonable attorneys’ fees actually incurred) arising out of, or in any way related to (i) Grantee’s failure to comply with all provisions in this Agreement and all applicable laws; or (ii) injuries to persons, death, or damage to property arising out of, resulting from, or in connection with activities performed by Grantee or its agents or

contractors during their use of the Right of Entry Area. This representation and warranty shall survive the termination or expiration of this Agreement.

5. **Insurance.** During the term of this Agreement, Grantee agrees to keep and maintain in force, and shall require its contractors performing work as contemplated herein to keep and maintain in force commercial general liability insurance with limits of \$2,000,000.00 per occurrence for bodily injury and property damage and general aggregate, with the City and County each being included as an additional insureds as their interest may appear under this Agreement. Grantors do not waive its sovereign or governmental immunity by being named as an additional insured. No later than the commencement of any work by Grantee within the Right of Entry Area, Grantee shall furnish Grantors a certificate of insurance from the insurer(s) evidencing the coverage required under this Agreement is in full force and effect. Upon receipt of notice from its insurer(s), Grantee shall provide Grantors thirty (30) days prior written notice of cancellation of any required coverage. All such policies shall be purchased only from insurers who are licensed, authorized or permitted to do business in the State of North Carolina and having an A.M. Best Rating or its equivalent of A-VIII or better.
6. **Notice.** Any notice contemplated by this Agreement must be in writing, addressed as set forth herein and shall be either (a) sent by United States Mail, postage prepaid, registered or certified mail, return receipt requested, in which case the notice will be deemed delivered four (4) business days after being deposited in the United States mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case the notice shall be deemed delivered one (1) business day after deposit with such courier; or (c) sent by personal delivery, in which case the notice will be deemed delivered on the date of delivery.

If to Grantee: 3540 Auburn LLC
 2310 S Miami Blvd., Suite 235
 Durham, NC 27703
 Attn: Tim Summerville

If to City: City of Raleigh
 Raleigh Water
 Attn: Development Services Manager
 P.O. Box 590
 Raleigh, NC 27602

With a copy to: City of Raleigh
 Real Estate
 Attn: Real Estate Manager
 P.O. Box 590
 Raleigh, NC 27602

If to County: Wake County
Community Services
Attn: Parks Recreation & Open Space Director
P.O. Box 550
Raleigh, NC 27602

With a copy to: Wake County Attorney's Office
P.O. Box 550
Raleigh, NC 27602

Either party hereto may change its address for purposes of notice hereunder by giving the other party hereto ten (10) days prior written notice of such new address.

7. **Assignment.** Grantee is not permitted to assign this Agreement without the prior written consent of the Grantors.
8. **No Interest in Real Property.** It is expressly understood that this Right of Entry does not grant or convey any permanent easement, lease, fee, or other interest in the Grantor Property to Grantee. This Right of Entry is not exclusive and the Grantors may enter and inspect the Grantor Property at any time or grant other rights of entry for the Grantor Property. Notwithstanding Section 2 above, this Agreement is revocable by the Grantors. In the event Grantors determine at any time that Grantee, its contractors, agents, or employees interferes with Grantors' use or access to the Grantor Property, violates any law or restriction in this permit, and/or creates a safety hazard or nuisance, Grantors may terminate this Agreement by providing written notice to Grantee.
9. **Waiver of Rights.** The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance.
10. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of North Carolina, and venue for any action relating to this Agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN TESTIMONY WHEREOF, this Agreement has been executed by the parties hereto, in duplicate originals, all as of the dates below.

CITY OF RALEIGH

Marchell Adams-David, City Manager
Date: _____

ATTEST:

_____, (Deputy) City Clerk

Seal of City

THE INSTRUMENT APPROVED AS TO FORM

_____, Senior Associate City Attorney

WAKE COUNTY

David Ellis, County Manager
Date: _____

3540 AUBURN LLC,
a North Carolina limited liability company

By: _____
Print Name: _____
Its: _____
Date: _____

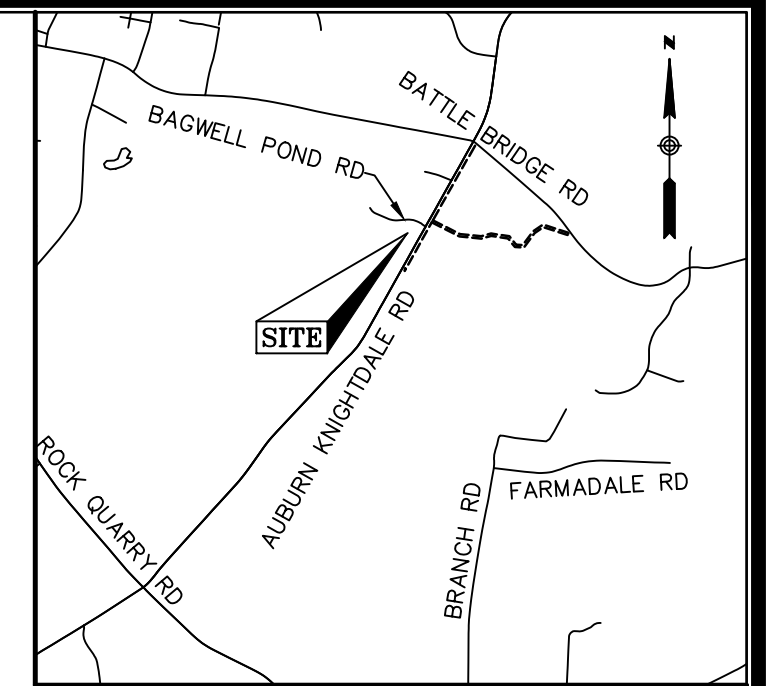
EXHIBIT A

Right of Entry Area

[ATTACHED HERETO]

BASIS OF BEARING

NC GRID NORTH NAD83



LOCUS MAP

OWNER INFO

ATTORNEY'S OFFICE
CITY OF RALEIGH
WAKE COUNTY

PIN 1741256016
REID 0376083
BK 11637 PG 2770
BM 2007 PG 1372

LOT 1

SITE DATA

TOTAL AREA OF PERMANENT
SANITARY SEWER EASEMENT

60,387 SQ. FT
1.386 ACRES

TOTAL AREA OF PERMANENT
WATERLINE EASEMENT

22,733 SQ. FT.
0.522 ACRES

TOTAL AREA OF TEMPORARY
CONSTRUCTION EASEMENT

59,209 SQ. FT.

1.359 ACRES

GENERAL NOTES

1. THIS MAP IS FOR DESCRIPTIVE AND REFERENCE PURPOSES ONLY. IT DOES NOT CONSTITUTE A DEDICATION OR CONVEYANCE OF PROPERTY, EASEMENTS, OR RIGHT OF WAY.
2. REFERENCES ON THE FACE OF THE MAP WERE ACQUIRED FROM THE WAKE COUNTY REGISTER OF DEEDS.
3. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND MEASUREMENTS IN US SURVEY FEET, UNLESS OTHERWISE NOTED.
4. AREAS ARE BY COORDINATE COMPUTATION.
5. THIS MAP WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO ANY MATTERS THAT A FULL TITLE SEARCH DISCLOSES.

I, CHAN CHOI, CERTIFY THAT THIS
MAP WAS DRAWN UNDER MY DIRECT
SUPERVISION FROM AN ACTUAL
SURVEY MADE UNDER MY
SUPERVISION AND THAT THE SURVEY
IS OF AN EXISTING PARCEL.

REVISION

DATE	DESCRIPTION
--/--/--	---

**EASEMENT ACQUISITION PLAT OF
AUBURN BUILDERS INC.
RANDLEIGH SEWER EASEMENT
ST. MARY'S TOWNSHIP, WAKE COUNTY
KNIGHTDALE, NORTH CAROLINA**

**META
GEOMATICS**

7307 Self Storage Rd, Apex NC - 27523
(919) 612- 1187 NC FIRM # P-2567


Drawn By	CC	Date	Job No.
Surveyed By	CC/MG	8 AUGUST, 2024	C23022
Checked By	CC/DB	Scale	Sheet No.
Book No.	2023A	1" = 200'	1 OF 1

LEGENDS

PROPERTY MARKER
NEW CORNER SET
COMPUTED POINT
TELECOM. BOX
CABLE BOX
FIRE HYDRANT
WATER METER
WATER VALVE
SANITARY SEWER CLEAN-OUT
SANITARY SEWER MANHOLE
MONITORING WELL
LIGHT POLE
MAIL BOX
CONIFEROUS TREE
DECIDUOUS TREE
SHRUB/ORNAMENTAL TREE

PROPERTY LINE
SEWER EASEMENT
TEMP. CONST ESMT

TREE LINE
HEDGE ROW
EXISTING IRON PIPE
EXISTING IRON STAKE
DEED BOOK
PAGE
BOOK OF MAPS
RIGHT-OF-WAY
NORTHING
EASTING
ELEVATION
SANITARY SEWER MANHOLE



 EIP

 EIS

 DB

 PG

 BM

 R/W

 N

 E

 EL/ELEV

 SSMH

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

N/F
AUBURN BUILDERS INC.
PIN 1741150442
BK 18490 PG 2319
BM 2004 PG 665
1,914,502 SQ. FT
43.95 ACRES

CONTROL
CORNER (EIP)
NC GRID NAD83(2011)
N: 715522.38'
E: 2141825.62'

(TIE LINE)
S5°53'11"W
151.40

N/F
JAMES ELLIS AND A. CINDY
PIN 1741146858
DB 6301 PG 616
BM 1999 PG 1768

R/N KIGHTDALE RD SR-2555
60' PUBLIC R/W
BM 2004 PG 665