

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC., and )	
PHILLIP EVANS, )	
)	
Plaintiffs, )	Civil Action No.:
)	
v. )	2014-CV-253810
)	
THE ATLANTA BOTANICAL )	
GARDEN, INC., )	
)	
Defendant. )	
_____ )	

**REPLY IN SUPPORT OF DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

The terms of the lease between the Atlanta Botanical Garden, Inc. (the “Garden”) and the City of Atlanta grant the Garden an estate for years in the botanical garden property – which makes the property “private” under Georgia law. Because the City of Atlanta conveyed an estate for years, the Garden is “in legal control of private property through a lease” and is entitled to “exclude or eject a person who is possession of a weapon” on their private property under O.C.G.A. § 16-11-127 (c).

Plaintiffs’ opposition to the Garden’s motion for summary judgment argues that the lease grants a mere usufruct – pointing to inapposite case law and ignoring

the stated intent of the lease to convey a “leasehold estate.”<sup>1</sup> There are no genuine issues of material fact in this action and the sole legal question has a clear answer: the Garden’s lease conveys an estate for years. Accordingly, the Garden respectfully requests that the Court grant this motion for summary judgment as the Garden is entitled to judgment as a matter of law on all of Plaintiffs’ claims.

## **II. ARGUMENT AND CITATIONS OF AUTHORITY**

Plaintiffs claim that there is a genuine issue of material fact that precludes summary judgment, that the Garden’s lease conveys a usufruct as a matter of law, and that the lease’s tax provision is dispositive of this case. Plaintiffs are incorrect on all counts. There is no genuine issue of material fact remaining in this case – contrary to Plaintiffs’ claims, the Garden’s lease grants “exclusive control and management” over the botanical garden property. The lease is also not a mere usufruct, which is clear under the Georgia Court of Appeals’ analysis in *Jekyll Dev. Assocs. L.P. v. Glynn Cty. Bd. of Tax Assessors*, 240 Ga. App. 273, 274 , 523 S.E.2d 370 (1999). And, finally, the provision in the Garden’s lease noting that the Garden is exempted from paying *ad valorem* taxes is consistent with the parties’ intent to

---

<sup>1</sup> The creation of a “leasehold estate” is essentially synonymous with the creation of an estate for years under Georgia law. *See e.g. Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 16, 131 SE2d 768 (1963) (holding that “[w]hen the City of Atlanta conveyed . . . a leasehold estate in the land . . . [the City] completely disposed of a distinct estate in its land for a valuable consideration, and [the private entity] acquired [the distinct estate] and holds it as a private owner.”

create an estate for years; ultimately, the only relevant fact about this provision is that it was included because the holder of an estate for years must typically pay these taxes. For these reasons, the Garden is entitled to a grant of summary judgment in its favor.

**A. There is No Genuine Issue of Material Fact**

Plaintiffs incorrectly argue that the affidavit of Garden CEO Mary Pat Matheson “sets up a genuine issue of material fact” simply because the affidavit states that the Garden, a Georgia nonprofit corporation, has continuously maintained exclusive control and management over the Garden for the last 40 years. Plaintiffs seek to create this fact question by falsely claiming that the statement is contradicted by the Garden’s lease. To the contrary, the Garden’s lease explicitly states that the Garden has “exclusive control and management” of the botanical garden property in the terms of the lease:

**5.5 Control.** Subject to the terms and conditions of this Agreement, Lessor agrees that Lessee shall have *exclusive control and management* of the Demised Premises and the Garden...

Exhibit A at 6, Section 5.5. (emphasis added).

Plaintiffs attempt to buttress this argument by citing to various terms and restrictions in the lease, but none of the terms creates a genuine issue of material fact. For example, Plaintiffs point to the requirement that the Garden is responsible for maintenance and cleaning of the botanical garden property as evidence that “the

Garden does *not* have exclusive control and management of the property” – in truth, this is exactly the kind of autonomy and responsibility that a estate holder with “exclusive control and management” of a property should have. Plaintiffs’ Opposition Brief at 2-3.

It is an incontrovertible fact that the Garden’s lease grants “exclusive control and management” of the property to the Garden. Ms. Matheson’s affidavit stating the same does not create an issue of fact – it restates and affirms the clear terms of the lease, which has been stipulated to as authentic by the parties. Interpretation of the Garden’s lease and analysis of whether its terms create an estate for years is a question of law, whereby the court must “scrutinize[] objectively to determine whether the legal effect of the agreement is to grant an estate in the property or merely a right of use.” *Jekyll*, 240 Ga. App. at 274-75 (2). Plaintiffs may disagree about the legal effect of the terms in the Garden’s lease but the terms themselves are not in dispute. Accordingly, there is no genuine issue of material fact regarding whether the City of Atlanta conveyed exclusive control and management to the Garden through this lease over the last 40 years.

**B. The Garden’s Lease Conveys an Estate for Years**

Plaintiffs also incorrectly argue that “[t]he City so pervasively retains control over the use and operations of the Garden’s interest that the interest is merely a usufruct.” Plaintiffs’ Opposition Brief at 5. As outlined in both the Garden’s Motion

and further explained in the Affidavit of Mary Pat Matheson, the Garden has spent 40 years developing and operating the Atlanta Botanical Garden like a property owner would – raising and investing its own money, developing its own vision, and running day-to-day operations without the oversight or involvement of the City of Atlanta. Moreover, the lease provisions themselves are consistent with those that the Georgia Court of Appeals has determined create an estate for years.

To try and portray the lease as creating a usufruct, Plaintiffs first identify a list of “pervasive restrictions” (Plaintiffs’ Opposition Brief at 6-7), but these purported restrictions do not align the Garden’s lease with the lease that the Court of Appeals found created a usufruct in *Diversified Golf, LLC v. Hart County Board of Tax Assessors*, 267 Ga. App. 8, 11, 598 S.E.2d 791, 794 (2004). For example, the *Diversified* lease “did not specifically state in the lease whether they intended an estate for years or a usufruct.” *Id.* at 11, 794. But the Garden’s lease states that it transfers a “leasehold estate”<sup>2</sup> from the City of Atlanta to the Garden. Exhibit A at p. 19, Section 12.4. The *Diversified* lease specifically gave the LLC mere “possession, use or occupancy” of the golf course (which the court noted “suggests a usufruct”). *Id.* But the Garden’s lease goes beyond that to grant “quiet enjoyment” and “exclusive control and management” of the property to the Garden. Exhibit A at

---

<sup>2</sup> Georgia law distinguishes between a usufruct and a leasehold estate, noting that a usufruct exists when a lease “pass[es] no estate out of the landlord.” O.C.G.A. § 44-7-1(b).

p. 5, Section 3.1; p. 6, Section 5.5. Most importantly, the *Diversified Golf* decision found that the “most important restriction” in determining that the interest was a usufruct was that Diversified “must accept all treated municipal waste water sent to it and spray it on the property.” 267 Ga. App. at 12, 598 S.E.2d at 795. The court found that, because of this extremely burdensome requirement, “Diversified’s use is severely restricted and always subject to use as a wastewater spray field.” *Id.* at 16, 797-98. No restriction in the Garden’s lease is remotely comparable.

Rather, the terms in the Garden’s lease are consistent with the terms that led the Court of Appeals to hold that the lease in *Jekyll Development Associates L.P. v. Glynn County Board of Tax Assessors* was an estate for years. Plaintiffs list features of the *Jekyll* lease that the Court of Appeals found to be more consistent with a usufruct, unintentionally providing additional support for the Garden’s lease conveying an estate for years. Plaintiffs’ Opposition Brief at 11-13. For example, Plaintiffs highlight that the *Jekyll* lease prohibited cutting trees and required maintenance of the “natural characteristics” and landscaping already on the property. Plaintiffs’ Opposition Brief at 12. The Garden lease contains no such restrictions – merely requiring that the Garden maintain the property as a botanical garden, with no limitation on maintaining current landscaping, trees, or the natural characteristics of the land. Exhibit A at 1. Similarly, while the *Jekyll* lease was comparable to a usufruct because the lessor placed restrictions on the room rates the

hotel could charge and required a minimum amount to be spent on repairs (Plaintiffs' Opposition Brief at 12), the Garden's lease contains no comparable provisions.

The sole term in the Garden's lease that appears to be more consistent with a usufruct than the equivalent in *Jekyll* is the prohibition on assignments by the lessee in the Garden's lease. Exhibit A at 3, Section 1.12. However, the equivalent term in the *Jekyll* lease – which *permits* assignments or mortgages by the lessee – is flagged by Plaintiffs as being consistent with a usufruct because it granted the *Jekyll* lessor power to approve or deny any mortgage loans and required the lessor's consent for any assignments. Plaintiffs' Opposition Brief at 13. Ultimately, both the *Jekyll* lease and the Garden's lease have limitations on the lessee's ability to assign or mortgage the property – which makes these provisions immaterial to the analysis of whether the Garden's lease creates an estate for years.

Finally, Plaintiffs continue to press the false statement that the Garden's lease is “silent on creating a leasehold estate.” Plaintiffs' Opposition Brief at 11. Much like the *Jekyll* lease, the Garden's lease explicitly states that it creates a leasehold estate. *See* Exhibit A at 19, Section 12.4 (“It is mutually covenanted, understood and agreed by and between Lessor and Lessee that this Agreement **and the leasehold estate created hereby** shall be governed, performed and enforced in accordance with the laws of the State of Georgia”) (emphasis added).

Plaintiffs' brief ultimately bolsters the comparison between the *Jekyll* and Garden leases by pointing out that, consistent with an estate for years, both the Garden and *Jekyll* leases require the lessee to make all necessary repairs to the premises, maintain broad insurance coverage, have 50+ year terms (terms that either can be extended [*Jekyll*] or have been extended [the Garden]), and both do not explicitly relieve the lessee of its obligations if the property is destroyed.

Plaintiffs argue that there are too many differences between the Garden's lease and the *Jekyll* lease for the Garden to rely on that Court of Appeals' decision in *Jekyll*. Plaintiffs' Opposition Brief at 13. However, in attempting to draw distinctions between the Garden and *Jekyll* leases, Plaintiffs have actually shown that the Garden's lease is *more* consistent with an estate for years than the estate for years conveyed in *Jekyll*. Consistent with the Court of Appeals' ruling in *Jekyll*, the Garden's lease creates an estate for years as a matter of law, and the Garden's motion for summary judgment should therefore be granted.

### **C. The Lease's Tax Provision is Consistent with an Estate for Years**

The City of Atlanta's and the Garden's intent to create an estate for years is further demonstrated by the lease's tax provision under Section 3.4, which states:

3.4 Ad Valorem Taxes. Lessor covenants and agrees that throughout the Lease Term neither the Demised Premises, nor Lessee's leasehold interest therein pursuant to this Agreement shall be subject to ad valorem taxes or assessments or any other Imposition imposed by the City.

Exhibit A at 5.

Plaintiffs' Opposition Brief claims that this provision is "dispositive of the case" because they allege that "the City of Atlanta only can state that the Garden does not have to pay taxes if the Garden's interest is a usufruct and not an estate for years." Plaintiffs' Opposition Brief at 7. Plaintiffs are incorrect. Under Georgia law, entities in possession of an estate for years can receive exemptions from the obligation to pay *ad valorem* taxes on their leasehold estate. O.C.G.A. § 48-5-41 outlines the different types of properties that "shall be exempt from all ad valorem property taxes in this state." Additionally, Atlanta's City Council may consider exemptions to the obligation to pay *ad valorem* taxes as outlined in Section 146-37 of the City's Code of Ordinances (attached as **Exhibit B**). Plaintiffs ignore the existence of lawful statutory exemptions to *ad valorem* taxes and instead engage in wild speculation that the City of Atlanta and the Botanical Garden, a nonprofit corporation, have entered into an "illegal, unconstitutional" contract to exempt the Garden. Plaintiffs' Opposition Brief at 9.

To support their baseless theory, Plaintiffs cite to a 110-year old case from the Supreme Court of Georgia, *Tarver v. Mayor & Council of Dalton*, 134 Ga. 462, 468-69, 67 S.E. 929 (1910), wherein the owner of a cotton mill granted the City of Dalton access to water on his property in return for an \$850 annual limit on any taxes owed to the city. *Id.* The Supreme Court held that a municipality cannot grant a tax

exemption in return for valuable consideration. *Id.* at 468-69 (“A contract, however, which purports to bind the city to collect no taxes from the owner of property, in return for a valuable consideration, is clearly a sale of an exemption of such property by way of commutation of the tax, and is illegal under the provisions of the constitution above referred to.”) The *Tarver* contract bears no resemblance to the present matter. The Garden’s lease states that the Garden’s leasehold interest is exempted from *ad valorem* taxes. The Garden’s lease does *not* trade a tax exemption for valuable consideration like in *Tarver*, and Plaintiffs appear to wholly ignore the fact that Georgia law and the City of Atlanta’s Code of Ordinances permit lawful exemptions to *ad valorem* taxation.<sup>3</sup>

Even if the tax provision in the Garden’s lease were found void, such a result would be immaterial to the Court’s analysis. Because the City of Atlanta conveyed an estate for years to the Garden, the City of Atlanta apparently felt it needed to affirmatively state that the Garden was exempted from its *ad valorem* tax obligation

---

<sup>3</sup> Plaintiffs spend considerable energy calculating hypothetical back taxes that the Garden could owe if their interest was not exempt from *ad valorem* taxation. As explained above, this exercise is immaterial to the Court’s analysis in this matter, but it is also legally baseless. It is well established under Georgia law that cities and counties are prohibited from making retroactive assessment of *ad valorem* taxes. *See e.g. Douglas Cty. Bd. of Assessors v. Denyse*, 314 Ga. App. 266, 268-271, 723 S.E.2d 705, 707-709 (2012) (reiterating prior decades of holdings rejecting a county’s ability to issue reassessments of *ad valorem* taxes other than correction of a clerical error).

on its leasehold estate. If the parties intended to create a usufruct, this provision would be entirely superfluous, but, instead, it further confirms the parties' intent to create a taxable estate for years.

Ultimately, Plaintiffs' focus on the Garden's tax exemption is a distraction from the sole legal issue remaining in this matter: whether the Garden's lease creates a leasehold estate. The lease's 50-year term creates and carries a presumption that the lease creates a leasehold estate. *See Eastern Air Lines, Inc. v. Joint City-Cty. Bd. of Tax Assessors*, 253 Ga. 18, 19, 315 S.E.2d 890, 891 (1984). The lease states that it creates a leasehold estate. Exhibit A at 19 ("It is mutually covenanted, understood and agreed by and between Lessor and Lessee that this Agreement **and the leasehold estate created hereby** shall be governed, performed and enforced in accordance with the laws of the State of Georgia.") (emphasis added). And it has been black letter law in Georgia for decades that a leasehold estate is a taxable interest and a usufruct is not. *See e.g. Camp v. Delta Air Lines, Inc.*, 232 Ga. 37, 39, 205 S.E.2d 194, 196 (1974). Hence, the parties included language in the lease acknowledging the City's decision to exempt the property from *ad valorem* taxes, evidencing their intent that the lease creates an estate for years.

### III. CONCLUSION

The Garden respectfully requests that the Court grant this motion for summary judgment and grant judgment as a matter of law to the Garden on all of Plaintiffs' claims.

This 11th day of September 2020.

/s/ James C. Grant

James C. Grant

Georgia Bar No. 305410

David B. Carpenter

Georgia Bar No. 292101

ALSTON & BIRD LLP

1201 West Peachtree Street

Atlanta, Georgia 30309-3424

Telephone: (404) 881-7000

Facsimile: (404) 881-7777

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document on counsel of record via the Court's e-filing system and via United States First Class Mail, postage prepaid, at the following address:

John R. Monroe  
156 Robert Jones Road  
Dawsonville, GA 30534

Respectfully submitted this 11th day of September 2020.

s:\ James C. Grant  
James C. Grant

# **EXHIBIT A**

CITY OF ATLANTA  
INDENTURE OF LEASE FOR THE ATLANTA BOTANICAL  
GARDENS, INC



KASIM REED

MAYOR

AMY PHUONG

COMMISSIONER

DPR

STATE OF GEORGIA

COUNTY OF FULTON

**INDENTURE OF LEASE**

THIS INDENTURE OF LEASE (this "Agreement") made this 17<sup>th</sup> day of August, 2017 by and between THE CITY OF ATLANTA, a municipal corporation chartered pursuant to the laws of the State of Georgia ("Lessor"), and THE ATLANTA BOTANICAL GARDEN, INC., a non-profit corporation created pursuant to the laws of the State of Georgia ("Lessee").

WITNESSETH:

WHEREAS, on March 28, 1980, Lessor and Lessee entered into an Indenture of Lease pursuant to which Lessee has established a botanical garden located on a site being approximately thirty-one and forty-four hundredths (31.44) acres located within the City of Atlanta, as hereinafter more particularly described; said Indenture of Lease having been amended from time to time (as so amended, the "Original Lease"); and

WHEREAS, Lessee has developed and intends to continue to develop the said botanical garden under a Master Plan (as hereinafter defined) as a public botanical garden for the purpose of collection and display of plant materials and trees, and for such other purposes as are incidental thereto, said purposes being more fully described in a Statement of Purposes of the Garden attached hereto as Exhibit "A" and made a part hereof by reference (the "Statement of Purposes"); and

WHEREAS, Lessor and Lessee desire to terminate the Original Lease in its entirety; and

WHEREAS, by ordinance adopted by the City Council on the 20<sup>th</sup> day of March, 2017 and approved by operation of law on the 29<sup>th</sup> day of March, 2017 (a copy of said resolution being attached hereto as Exhibit "B" and made a part hereof by reference) the Mayor is authorized to enter into this Agreement on behalf of the City.

NOW, THEREFORE, for and in consideration of the above recited premises and the mutual covenants hereinafter contained, Lessor and Lessee hereby covenant and agree that the Original Lease is hereby terminated in its entirety and of no further force or effect and further covenant and agree as hereinafter provided.

1. **Definitions.** For the purposes of this agreement, the

1.1 "City" means the City of Atlanta, a municipal corporation chartered pursuant to the laws of the State of Georgia, together with its successors and assigns.

1.2 "City Council" means the City Council of the City or, if the City Council is hereafter abolished or modified, "City Council" shall mean the body or group having

substantially the same duties and responsibilities on behalf of the City as the City Council has as of today; provided, however, that if the City shall cease to be the Lessor hereunder, then "City Council" shall mean and refer to the individual, body or group from time to time designated by such successor Lessor for the purpose of this Agreement.

1.3 "Commissioner" means the City of Atlanta Commissioner of the Department of Parks and Recreation and Cultural Affairs or, if the position of Commissioner of the Department of Parks and Recreation and Cultural Affairs is hereafter abolished or modified, "Commissioner" shall mean the individual having substantially the same duties and responsibilities on behalf of the City as the Commissioner has as of today; provided, however, that if the City shall cease to be Lessor hereunder, then "Commissioner" shall mean and refer to the individual or individuals from time to time designated by such successor Lessor for the purpose of this Agreement.

1.4 "Conservancy" means the Piedmont Park Conservancy, the nonprofit organization working with the City for the preservation of Piedmont Park or, if the Conservancy is no longer a party to a memorandum of understanding with the City regarding Piedmont Park, then "Conservancy" shall mean the nonprofit organization designated by the City as successor to the Piedmont Park Conservancy having substantially the same purpose, duties and responsibilities as the Piedmont Park Conservancy has as of today; provided, however, that if the City shall cease to be the Lessor hereunder, the "Conservancy" shall mean and refer to the nonprofit organization from time to time designated by such successor Lessor for the purpose of this Agreement.

1.5 "Demised Improvements" means those buildings, structures and other constructs and improvements now and hereafter located on the Property, including, without limitation, the Parking Facility.

1.6 "Demised Premises" means the Property, all fixtures thereon, the Demised Improvements and all rights, members, easements and appurtenances appertaining thereto.

1.7 "DWM Driveway" means that certain driveway located on the DWM Property and more particularly described in the License Agreement as hereinafter described in Section 8.2.1, below.

1.8 "DWM Property" means that certain property specifically operated and maintained by and through Department of Watershed Management as a combined sewer treatment facility, known as the Clear Creek CSO Treatment Facility, including a treatment facility building, parking area, a driveway accessed from the public road, known as Monroe Drive, that extends to the eastern boundary of property owned by The Atlanta Development Authority, a Georgia public body corporate and politic, and certain other above ground and below ground wastewater tunnels, wastewater collection and conveyance pipes and pump stations and other facilities, appurtenances and assets, which property is more particularly described in that certain legal description attached and incorporated herein as Exhibit "H".

1.9 “Garden” means the public botanical garden contemplated by the Master Plan.

1.10 “Impositions” means any and all ad valorem taxes, special assessments for public improvements, street and sewer levies upon the Property and the Demised Improvements or any portion thereof which are due or constitute liens upon the Property and the Demised Improvements or any portion thereof.

1.11 “Lease Term” means the period of time commencing upon the date of this Agreement and concluding upon the Termination of this Agreement.

1.12 “Lessee” means The Atlanta Botanical Garden, Inc., a non-profit corporation created pursuant to the laws of the State of Georgia. No assignment of this Agreement by Lessee shall be permitted.

1.13 “Lessor” means the City and all successors and assigns of the reversionary interest in the Demised Premises under this Agreement.

1.14 “Master Plan” means the plan for development of the Garden attached hereto as Exhibit “C” and made a part hereof by reference, as the same may be amended, expanded, revised or replaced in accordance with the terms of this Agreement.

1.15 “Mayor” means the Mayor of the City of Atlanta or, alternatively, any individual or individuals as he or she may from time to time designate for the purposes of this Agreement; provided, however, that in the event the City of Atlanta shall cease to be Lessor hereunder, then “Mayor” shall mean and refer to the individual or individuals from time to time designated by such successor Lessor for the purpose of this Agreement.

1.16 “Notice” means a written advice or notification, given in the form and manner prescribed by Section 11.1 of this Agreement, required or permitted by this Agreement to be served by Lessor or Lessee upon the other.

1.17 “Parking Facility” means the first class parking facilities located on the Property as shown on the Master Plan and including all structural and vertical improvements for the parking facility building structure and all equipment, system and personal property located therein or thereon as contemplated by the Master Plan.

1.18 “Property” means that tract or parcel of land in the County of Fulton, State of Georgia, more particularly described on Exhibit “D” attached hereto and made a part hereof by reference.

1.19 “Termination” or “Terminate” shall refer to the end of the Lease Term, whether due to the expiration thereof or an earlier end of this Agreement.

1.20 "Transplantable Plant Material" means all trees, shrubs, flowers, crops, and other plants now or hereafter located on the Property or any part or parcel thereof, which are transplantable in nature.

1.21 "Zoning and Other Encumbrances" means those matters, other than Impositions neither delinquent nor in default, affecting title to the Property and the Demised Improvements on the date of this Agreement (more particularly described in Exhibit "E" attached hereto and made a part hereof by reference).

## 2. Premises and Term.

2.1 Premises. Lessor, for and in consideration of the covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be kept and performed by Lessee, has demised, leased and rented, and by these presents does demise, lease and rent unto Lessee, and Lessee hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the Demised Premises, subject only to the Zoning and Other Encumbrances. As of the date of this Agreement, the Demised Premises consist of the Property and the Demised Improvements thereon as of the date hereof.

2.2 Title to Improvements and Personal Property. Demised Improvements during the Lease Term shall be in Lessor, and the terms and conditions of this Agreement shall govern the use and operation of the Demised Improvements and the exercise of all of Lessee's rights with respect thereto and Lessee's interest in and to the Demised Improvements. Notwithstanding anything to the contrary contained herein, title to the Transplantable Plant Material and all equipment, machinery, trade fixtures, furniture, furnishings, inventory and all personal property of Lessee shall at all times be in Lessee, and Lessee shall have the right, at any time during or upon the Termination of this Agreement (and within sixty (60) days after any early Termination of this Agreement), to remove all Transplantable Plant Material and all equipment, machinery, trade fixtures, furniture, furnishings, inventory and all personal property of Lessee regardless of whether attached in any manner to the Demised Premises and such items shall not become the property of Lessor. The provisions of this paragraph shall survive the Termination of this Agreement.

2.3 Related Easements. The parties acknowledge that the legal description attached hereto as said Exhibit "D" includes certain non-exclusive easements related to the operation of the improvements contemplated by the Master Plan and a service drive off of Westminster Drive to serve a portion of the Demised Premises. Lessee and its officers, directors, employees, agents and independent contractors and subcontractors shall have, and Lessor does hereby grant, convey, declare, and confirm to Lessee, the non-exclusive easements contemplated by said Exhibit "D". No improvements thereafter constructed or conditions allowed to exist on Lessor's property within such easement areas shall adversely impact the structural integrity of the Parking Facility and other improvements contemplated by the Master Plan or unreasonably interfere with Lessee's access over such area to the Parking Facility to perform any necessary maintenance, repair or, in the event of material casualty damage or threat of structural failure, replacement of the Parking Facility.

2.4 Lease Term. The Lease Term shall commence on the date of this Agreement and shall expire at midnight, local time in the City, on the date which is fifty (50) years after the date of this Agreement, subject to such being sooner terminated as provided in this Agreement.

2.5 Conveyance. TO HAVE AND TO HOLD the Demised Premises unto Lessee, together with the appurtenances thereunto belonging or appertaining, including all interests of Lessor in and to the air rights over the Demised Premises, and any easements of Lessor now or hereafter existing in, to or under adjacent streets, sidewalks, alleys and party walls, for the full Lease Term in accordance with and in compliance with the provisions, covenants, terms and conditions of this Agreement.

**3. Covenants and Warranties by Lessor.**

3.1 Quiet Enjoyment. Lessee fully performing and observing the covenants, duties and obligations by Lessee to be performed, observed and kept in accordance with this Agreement, may peaceably possess, hold, enjoy and use the Demised Premises with the exclusive control, possession and enjoyment thereof during the Lease Term.

3.2 Title. Lessor has fee simple title to the Property and the Demised Improvements thereon as of the date hereof, and the Property and the Demised Improvements thereon as of the date hereof have been delivered to Lessee free and clear of all claims, demands, obligations, mortgages, liens and encumbrances of any nature or kind, except for Zoning and Other Encumbrances.

3.3 Public Records. Pursuant to the provisions of Official Code of Georgia Annotated Section 50-18-70 through Section 50-18-77, Lessor hereby agrees to make available to Lessee any public records concerning the Demised Premises or any other matter directly or indirectly involving the Demised Premises or any portion thereof.

3.4 Ad Valorem Taxes. Lessor covenants and agrees that throughout the Lease Term neither the Demised Premises, nor Lessee's leasehold interest therein pursuant to this Agreement, shall be subject to ad valorem taxes or assessments or any other Imposition imposed by the City.

**4. Rent.**

4.1 It being understood that the consideration for this Agreement is in the premises and the mutual promises expressly set forth herein, no rent shall be due or owing from Lessee for the term of this Agreement or any extension thereof.

**5. Purposes and Management of Garden.**

5.1 Purpose. Lessee shall use the Demised Premises and manage the Garden in accordance with the Statement of Purposes.

5.2 Planning and Development of the Garden. Lessee has developed and shall continue to develop and maintain the Garden substantially in accordance with the Master Plan. It is hereby agreed that substantial modifications of the Master Plan must first be approved in writing by the Mayor and the City Council before such modifications shall be put into effect; provided, however, that Lessor hereby expressly acknowledges, confirms and consents to the development of the Demised Premises contemplated by the Master Plan. Lessee shall not increase the rate of flow of storm water currently emanating from the Demised Premises and draining into Piedmont Park.

5.3 Fund Raising. Lessee agrees to use commercially reasonable efforts to secure gifts of trees, shrubs and plants, as well as to secure gifts of cash, services and endowments for the purpose of fulfilling its obligations hereunder. Any funds raised for the Garden by Lessee shall be used in a manner which is consistent with the Statement of Purpose, which shall include, but not be limited to expending such funds for the purpose of equipping and maintaining the Garden, for the improvement of real property, for the general maintenance of the Garden, or for any other purpose designated by Lessee.

5.4 Admission to the Public. Lessee agrees that the Garden will be maintained for the benefit of the City and all the citizens of the City, and that it will not discriminate in any way in making available such benefits to any person on account of the race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation or gender identity of such person.

5.5 Control. Subject to the terms and conditions of this Agreement, Lessor agrees that Lessee shall have exclusive control and management of the Demised Premises and the Garden and, subject to the provisions of the Equal Opportunity Ordinance hereinafter set forth and the obligations of Lessor to provide certain services to the Garden, Lessee shall appoint and employ, direct, control, promote or remove all persons engaged in the management, care or operation of the Garden, and shall fix and pay their respective salaries and compensation, including any provisions for pension, retirement or other benefits.

5.6 Laws. Lessee shall conform to, obey and comply with all present and future laws and ordinances and all lawful requirements, rules and regulations of all legally constituted authorities existing at the commencement of the Lease Term or during the continuance of the Lease Term, which in any way affect the Demised Premises or the use of the Demised Premises or any repair, replacement, demolition, renovation, construction, restoration or excavation being done on or to the Demised Premises, or in any way affecting this Agreement. The right to contest the validity thereof in good faith, at Lessee's sole cost and expense and in Lessee's own name, is hereby reserved to Lessee.

5.7 Exclusion of Persons. To the extent permitted by law, and subject to Section 5.4 of this Article 5, Lessee may exclude any objectionable person or persons from the Garden.

**6. Maintenance and Construction.**

6.1 Maintenance. During the Lease Term, Lessee shall continue to develop and maintain the Garden, including all cultivated collections and other personal property therein, as well as all Demised Improvements, in a reasonably clean and sanitary condition and state of repair.

6.2 Construction. In connection with any construction undertaken by Lessee in connection with the Demised Premises, Lessee shall obtain from the applicable governmental authorities having jurisdiction over the work being performed at the Demised Premises all required governmental permits, licenses and approvals with respect to such work. Lessor shall cooperate with Lessee to facilitate issuance (e.g. execution of permit applications as property owner, if necessary) of all necessary permits, licenses and approvals required for the performance of such work.

**7. Additional Obligations of Lessee.**

7.1 Services. Lessee shall provide regular and appropriate routine maintenance of the following on the Property:

- (a) Lawn and turf care, except for that area of the Garden that is not fenced in;
- (b) Disease, pest and tree care of all woody plants;
- (c) Removal to and placement for collection of rubbish, litter and debris outside of cultivated collections; and
- (d) Roadways, parking lots, and all other manmade facilities to control vehicular traffic.

7.2 Signs. Any signs (temporary or permanent) shall be placed or removed by Lessee in compliance with the City of Atlanta Code of Ordinances in effect from time to time.

7.3 Security. Lessee may provide security for the Property in addition to any security provided by Lessor, including fencing and other protective structures contemplated by the Master Plan, and private security officers with the power of arrest in compliance with the laws of Georgia and municipal ordinances. Control of vehicular and pedestrian traffic, for both access and exit to the Garden, shall be under the direction and control of Lessee, including control of public traffic through the Garden to contiguous areas of Piedmont Park. Such traffic control by Lessee, however shall be compatible with any present or future lawful use of Piedmont Park. Lessee agrees not to restrict unreasonably access to other areas of Piedmont Park.

## **8. Operation and Maintenance of the Parking Facility.**

8.1 Generally. Throughout the Lease Term, but subject to the terms of this Agreement, Lessee shall operate, maintain, repair, renovate and replace (but only to the extent of the insurance proceeds actually received by Lessee for any casualty resulting in need of a repair, renovation or replacement) the Parking Facility, the Support Facilities, the Road Improvements, the Pathway Improvements and the Exterior Improvements (as such terms are defined on Exhibit "D") (collectively, the "Project Maintenance Areas"), in the manner of a first-class green parking facility (i) in good condition and repair, (ii) in compliance with all applicable laws, rules, regulations and ordinances, (iii) in accordance with the landscape, operational and maintenance standards attached hereto on said Exhibit "G", and (iv) at its sole cost and expense. Lessor and Lessee acknowledge that the Project Maintenance Areas include, without limitation, (i) the tunnel providing access to the lowest level of the Parking Facility, (ii) the portion of the access road leaving the lowest level of the Parking Facility towards Monroe Drive up to the point of its intersection with the east boundary of the railroad right of way traversing Piedmont Park, and (iii) the ticket booth located at the Monroe Drive entrance to Piedmont Park. Lessee may operate the Parking Facility through its own employees or by engaging the services of a third party parking company selected by Lessee ("Parking Manager"). The costs and expenses of any Parking Manager shall be considered a Parking Facility Operating Expense (as hereinafter defined). If Lessee shall use its own employees to perform any maintenance or repairs or other work necessary or appropriate in order to operate and maintain the Parking Facility in accordance with the standards of this Agreement, then so long as the costs and expenses allocated to the Parking Facility are not in excess of amounts that would be incurred if the work had been performed by unaffiliated third parties, the costs, expenses, salaries and benefits of such personnel shall be equitably allocated to the Parking Facility and paid by Lessee as an operating expense. As used throughout this Agreement, any reference to the replacement of the Parking Facility shall mean replacement required as a result of material casualty damage or threat of structural failure. Any replacement of the Parking Facility shall be in accordance with the Master Plan.

### **8.2 Parking Facility Access and Parking Rights.**

8.2.1 Access. The Parking Facility, which consists of seven (7) levels, is served by two (2) access roads. One such access road provides access, and shall continue to provide access, between the upper most levels of the Parking Facility and Piedmont Road (the "Garden Entrance") and has signage, and shall continue to have signage, indicating that the Garden Entrance is for the use of Lessee and its members, officers, directors, employees, agents, patrons and other parties accessing the Garden ("Garden Users"). The other access road provides access, and shall continue to provide access, between the lowest level of the Parking Facility and Monroe Drive (the "Park Entrance") and has signage, and shall continue to have signage, indicating that the Park Entrance is for the use of Lessor, the Conservancy and their respective members, officers, directors, employees, agents, patrons and other parties accessing Piedmont Park ("Park Users"). Signage in the interior of the Parking Facility encourages, and shall continue to encourage, Park Users and Garden Users to make use of their respective portions of the Parking Facility. The Park Entrance and the Garden Entrance shall be open pursuant to the terms of this Agreement, subject, however, to temporary closure of either access road as required

by the City or the Georgia Department of Transportation for maintenance or repair purpose or as may be necessary or appropriate for the performance of maintenance or repair by Lessee with respect to the Garden Entrance or Lessor or the Conservancy with respect to the Park Entrance or to prevent the accrual of rights to any third parties through adverse possession or otherwise. Further, the Conservancy or Lessor shall have the right to temporarily close the Park Entrance from time to time as shall be necessary or appropriate during the delivery of chemicals, equipment, supplies or services to the combined sewer overflow facilities within Piedmont Park. If one (1) entrance shall be closed for any of the aforesaid reasons and the other entrance is not closed for any of the aforesaid reasons, the other entrance shall be made available for all Park Users and Garden Users during such closure.

Prior to the date hereof, Lessor authorized the use of the DWM Driveway for the limited purpose of allowing access to the Parking Facility by the Garden Users, Park Users and other persons authorized to use the DWM Driveway who are not Garden Users, while expressly reserving the primary rights and interests of owning, maintaining and operating the DWM Property for its water and sewer purposes and has obtained consent from its bond holders for the same, as included in the Fifth Supplemental Bond Ordinance, effective November 27, 2007 as Ordinance No. 07-O-2421 ("DWM Ordinance"). Said DWM Ordinance was expressly subject to that certain Declaration of Easements recorded in the records of Fulton County at Deed Book 47769 Page 84 and attached and incorporated herein as Exhibit "I" ("Declaration of Easements"), which expressly reserved the superior use of the DWM Property for water and sewer purposes and expressly provides that access to the Parking Facility over the DWM Driveway is not anticipated to be an Inconsistent Use (as the same is defined in the Declaration of Easements) with the superior water and sewer use of the DWM Property. Subject to, and governed by the terms and conditions contained in that certain License Agreement, as executed by Lessor, Lessee and the Conservancy, on March 6, 2009, and attached and incorporated herein by reference to this Agreement as Exhibit "J" (the "License Agreement"), Lessor has granted a non-exclusive license to Lessee over the DWM Driveway for the purpose of providing ingress and egress to the Park Entrance through, over and across the DWM Driveway for Garden Users and other authorized agents, representatives or licensees of Lessee and for the purpose of allowing Lessee to construct, install and operate a certain ticket booth on the DWM Driveway. Pursuant to such License Agreement, the Conservancy shall remain solely responsible for the operations and maintenance of the DWM Driveway and Lessee shall remain responsible for the operation of the DWM Driveway for the purpose of controlling vehicular ingress and egress to the Parking Facility.

8.2.2 Parking Rights. Subject to the further provisions of this Agreement, Lessee shall be entitled to use fifty percent (50%) of the parking spaces in the Parking Facility for use by Garden Users ("Garden Spaces") and Lessor and the Conservancy shall be entitled to use fifty percent (50%) of the parking spaces in the Parking Facility for use by Park Users ("Park Spaces"). Lessor and Lessee acknowledge and agree that the Parking Facility is designed to allow the free flow of vehicles and pedestrians between the two entrances referenced in Section 8.2.1, above, and all levels of the Parking Facility and shall initially be operated as a free flowing parking structure without any parking spaces restricted to use by only Garden Users or Park Users, it being anticipated that the natural inclination of Garden Users will be to park in the upper portion of the Parking Facility and the natural inclination of Park Users

will be to park in the lower portions of the Parking Facility. The Garden Spaces and the Park Spaces shall each include a proportionate number of the total number of handicapped parking spaces required to be located in the Parking Facility. To the extent necessary to facilitate the foregoing parking rights and access to and from Piedmont Park through the Parking Facility, Lessee does hereby grant to Lessor and the Conservancy a non-exclusive license for pedestrian and vehicular access, ingress and egress and parking across the driveways and sidewalks on the Demised Premises that lead to the Parking Facility from Piedmont Road (including the pedestrian path identified in the Master Plan, which path is referred to herein as the "Prado Path") and within the Parking Facility during the Lease Term. Such license shall run to the benefit of Park Users and shall be irrevocable by Lessee during the Lease Term; provided, however, if the Conversion Rights (as hereinafter defined) are exercised and in effect as provided herein, then (i) the license for vehicular access, ingress and egress through the Garden Portion of the Parking Facility (as hereinafter defined) shall terminate subject to the provisions set forth herein and (ii) the license for pedestrian access, ingress and egress shall be unaffected and continue in effect to benefit Lessor, the Conservancy and the Park Users.

Notwithstanding anything contained herein to the contrary, Lessee and Lessor shall each have the right (the "Conversion Rights") (a) exercisable in their sole discretion at any time and from time to time that Lessee or Lessor determines that Lessee has scheduled for the Garden, or Lessor or the Conservancy have scheduled for Piedmont Park, as the case may be, special events, exhibits or functions (e.g. Chihuly exhibit at Garden, Dogwood Festival at Park, scheduled weddings with known capacity requirements at the Garden or in Piedmont Park etc.) that will result in the need for either the Park Spaces or the Garden Spaces to be designated for the exclusive use of either Park Users or Garden Users to provide such known capacity requirements or to prevent an overuse by the other party (a "Temporary Capacity Situation") or (b) exercisable in their reasonable discretion at any time and from time to time that Lessee or Lessor determines that the Park Users or Garden Users, as the case may be, are regularly making use of more than their allocated share of the parking spaces in the Parking Facility and such over use interferes with the other party's use of its allocable share (a "Permanent Capacity Situation") to (i) designate for Garden Users' exclusive use up to the maximum number of Garden Spaces in the Parking Facility, which shall be contiguous parking spaces on Levels 4 through 7 (the "Garden Portion of the Parking Facility") on a 24 hour per day and 7 days per week basis or during certain hours of the day and/or days of the week as Lessee may determine in its sole discretion, (ii) designate for Park Users' exclusive use up to the maximum number of Park Spaces in the Parking Facility, which shall be contiguous parking spaces on levels 1 through 4 (the "Park Portion of the Parking Facility") on a 24 hour per day and 7 day per week basis when Piedmont Park is open and (iii) implement such rights by designating the Garden Spaces and the Park Spaces for exclusive use by appropriate signage designed and installed within the Parking Facility and/or installing barriers across the drive lanes within the Parking Facility between the Garden Portion of the Parking Facility and the Park Portion of the Parking Facility. Lessee shall have the right to enforce such exclusive use rights through ticketing, fines, booting or towing of vehicles and, at the request of Lessor, shall enforce such exclusive use rights with respect to the Park Spaces; provided, however, if the Park Entrance is closed pursuant to any of the provisions of this Agreement, any such barriers would be removed during such time to facilitate ingress and egress to and from the Parking Facility. If the exercise of the forgoing rights is a result of a Temporary Capacity Situation, then the rights and procedures set forth above shall be

implemented on a temporary basis for the duration of such events, exhibits or functions (the "Temporary Conversion Rights"). If the exercise of the forgoing rights is a result of a Permanent Capacity Situation, then the rights and procedures set forth above shall be implemented on a permanent basis, subject to the further provisions of this Agreement (the "Permanent Conversion Rights"). It is understood and acknowledged that so long as the Conversion Rights have not been exercised, if a party is not making use of its allocable share of parking spaces, such available spaces will be available for use by the other party and the Garden Users or the Park Users, as the case may be, on a first-come first-served basis.

Prior to either Lessor or Lessee implementing the Permanent Conversion Rights, Lessor and Lessee shall use their reasonable good faith efforts to resolve the over use issues through mutually acceptable means. If, despite such good faith efforts the over use issues are not resolved to the reasonable satisfaction of the aggrieved party, then the Conversion Rights shall be exercisable. If Lessee or Lessor shall invoke the Permanent Conversion Rights, Lessee and Lessor shall thereafter continue to use their good faith efforts to negotiate the terms, conditions and procedures under which the Parking Facility would be returned to a free flowing operation in a manner designed to protect Lessee's rights to access and use the Garden Spaces and Lessor's right to access and use the Park Spaces. Any approval of terms, conditions or procedures to facilitate such free flowing operation of the Parking Facility shall not limit the ability of either party to exercise its Temporary Conversion Rights from time to time or thereafter exercise additional Permanent Conversion Rights if approved procedures are ineffective or a Permanent Capacity Situation continues or re-occurs.

Lessee shall maintain signage and rules and procedures to prohibit vehicular parking along the roadway comprising the Garden Entrance; provided, however, bus parking for groups of Garden patrons and parking for special event staging for major events at the Garden shall be allowed along such roadway. A driveway sometimes referred to as the "Ramp Road" is depicted on the Master Plan and located within the Garden extending in a Southerly direction from the driveway circle at the end of the Garden Entrance road toward the boundary line between the Garden and Piedmont Park near the location of the tennis courts within Piedmont Park (the "Ramp Road"). The following provisions shall apply to the Ramp Road: (i) Lessor and Park Users shall have the right to use the Ramp Road for pedestrian access and use during all hours that Piedmont Park is open; (ii) for a period of ten (10) years after completion of the Parking Facility (which was May 1, 2009), the Ramp Road shall not be used by Lessee or Lessor for vehicular parking; and (iii) after ten (10) years from the completion for the Parking Facility (which was May 1, 2009), Lessee shall have the right to use the Ramp Road for overflow parking of vehicles at such times as the Parking Facility is full; provided, however, Lessee shall reasonably coordinate such use of the Ramp Road described in this clause (iii) with the pedestrian use of the Ramp Road described in clause (i) above. Notwithstanding the provisions outlined above, Lessee may at all times utilize the Ramp Road for bus parking for groups of Garden patrons and for parking for special event staging for major events at the Garden, provided Lessee implements and enforces sufficient security and management practices to avoid conflict between such uses and the pedestrian uses described in clause (i) above.

8.3 Parking Facility Operating Hours. The Parking Facility shall be open for use by Garden Users and Park Users during the hours that either the Garden or Piedmont Park are open

to the public and during such other hours as events are being hosted at either the Garden or Piedmont Park. Notwithstanding the foregoing, to the extent reasonably necessary in connection with the performance of any maintenance, repair, replacement or restoration in connection with the Parking Facility, Lessee shall have the right to temporarily close or restrict access to all or the necessary portions of the Parking Facility for such periods as Lessee shall deem necessary to facilitate such maintenance, repair, replacement or restoration.

8.4 Assignment of Parking Rights. Except as otherwise stated in Section 8.2.2 above, neither Lessee nor Lessor shall sell, sublet, assign or otherwise transfer any right to use parking spaces within the Parking Facility, except as may be mutually agreed upon in writing from time to time. Any assignment or transfer by Lessor or the Conservancy or Lessee not in compliance with the terms of this Section 8.4 shall be null and void and of no force or effect.

8.5 Parking Facility Rules and Regulations. The Parking Facility and access control mechanisms related thereto shall be managed by Lessee either through its own employees or the Parking Manager. Lessee shall have the right to implement and thereafter modify from time to time rules and regulations for the operation of the Parking Facility in the exercise of its reasonable good faith discretion; provided such rules and regulations shall not modify or supersede the terms of this Agreement and reasonable notice shall be provided to Lessor and the Conservancy thereof.

8.6 Parking Fees. Lessee shall have the right to establish, charge and collect parking fees for the use of the spaces in the Parking Facility by Garden Users and Park Users. The current parking rate structure is set forth on Exhibit "K" attached hereto and made a part hereof. Changes to the parking fee structure set forth on said Exhibit "K" shall require the approval of the Commissioner and the Conservancy, which shall not be unreasonably withheld.

8.7 Annual Revenue Charge. Subject to the provisions of this Agreement, the Parking Facility shall be open for use by Park Users and Garden Users, for the Lease Term on a fee basis. Lessee shall pay to the Conservancy and Lessor an annual revenue charge (the "Annual Revenue Charge") equal to forty-five percent (45%) and ten percent (10%), respectively, of the Parking Facility's Net Operating Revenue (as hereinafter defined). The Annual Revenue Charge paid to Lessor shall be paid specifically to the Department of Parks, Recreation, and Cultural Affairs, and shall be deposited in the Piedmont Park Trust for use consistent with other amounts deposited in such trust. The Conservancy and Lessor shall be intended third party beneficiaries of this provision. Within ninety (90) days after the end of each calendar year (or partial calendar year) of the Lease Term, Lessee shall (i) furnish the Conservancy and Lessor with a reconciliation statement (the "Annual Statement") detailing all Parking Facility Gross Revenues (as hereinafter defined) received and Parking Facility Operating Expenses (as hereinafter defined) paid or accrued by Lessee for such period and setting forth the amount of the Annual Revenue Charge for such period and (ii) pay to the Conservancy and Lessor the amount of the Annual Revenue Charge payable to the Conservancy and Lessor.

As used herein, the term "Net Operating Revenue" shall mean all revenue generated in the operation of the Parking Facility ("Parking Facility Gross Revenues") less Parking Facility Operating Expenses. Parking Facility Gross Revenues shall first be used to pay Parking Facility

Operating Expenses. As used herein, the term "Parking Facility Operating Expenses" shall mean all reasonable costs and expenses incurred or accrued by Lessee in connection with the operation, maintenance, replacement, renovation, improvement and financing (subject to the provisions of Section 8.9 hereof) of the Parking Facility, including without limitation: (i) proportionate share(s) of salaries for Lessee's employees and/or the actual cost of any third party horticulturalist or other person(s) engaged for the maintenance of the plants and landscaping incorporated in the Parking Facility; (ii) payment of principal, interest and fees on any Parking Facility Financing; (iii) salaries, costs and fees payable to personnel of Lessee in the event Lessee shall use its own personnel or hire individuals to operate and manage the Parking Facility, including, without limitation, security personnel, subject to the limitations set forth in Section 8.1; (iv) salaries, costs and fees payable to any Parking Manager engaged by Lessee to operate the Parking Facility; (v) insurance premiums; (vi) the costs of repairs, maintenance, replacements and renovations of the Project Maintenance Areas, the road improvements comprising the Garden Entrance, the Parking Facility, and the equipment, improvements, lighting and plants located therein, and the shared fence along the common boundary line of the Garden and Piedmont Park, provided any expenditures of a capital nature which are funded from previously established reserves shall not be included as Parking Facility Operating Expenses; (vii) reasonable reserves for future capital expenditures; provided, however, the capital repair budget shall be subject to the approval of the Commissioner and the Conservancy, which approval shall not be unreasonably withheld or delayed; (viii) the costs of any equipment required for the operation and maintenance of the Parking Facility from time to time; (ix) utility costs, if any; and (x) Impositions. Notwithstanding anything contained herein to the contrary, if Lessee shall fund any Parking Facility Operating Expenses that exceed Parking Facility Gross Revenues in any year, then Lessee shall have the right to charge such shortfall against Parking Facility Gross Revenues in later years.

Lessor shall have the right to audit Lessee's books, with respect to the calculation of Net Operating Revenue, provided all of the following conditions are met: (i) Lessor must provide written notice at least fifteen (15) business days prior to the day it desires to conduct the audit; (ii) the audit shall be conducted at Lessor's sole expense during normal hours at Lessee's office where the books are kept; (iii) the audit shall be conducted using generally accepted auditing standards and coordinated by Lessor's central accounting personnel or by an independent and certified public accounting firm so long as such personnel or firm does not conduct such audits on a contingent fee basis; (iv) Lessor may not audit any Annual Statement or related books and records more than two (2) years after Lessee delivers the Annual Statement to Lessor; and (v) Lessor shall provide Lessee a report of the results of such audit. If it is determined that the Annual Revenue Charge was miscalculated, then Lessor, the Conservancy and Lessee shall promptly adjust such discrepancy between themselves and make any payments necessary to properly account for such adjustments. If Lessor does not properly and timely exercise the aforesaid right to audit, Lessor shall be deemed to have accepted such statement as true and correct and shall be deemed to have waived any right to audit or dispute the calculation of the Annual Revenue Charge pursuant to that Annual Statement. Lessor may assign Lessor's rights set forth in this paragraph to the Conservancy.

8.8 Casualty of Parking Facility. Lessee shall have an obligation to repair and rebuild the Parking Facility, but only to the extent of the insurance proceeds actually received by Lessee

for such casualty. If fifty percent (50%) or more of the square footage in the Parking Facility is damaged or destroyed by casualty during the last two (2) years of the Lease Term or by the mutual agreement of Lessor and Lessee, Lessee shall be under no obligation to rebuild the Parking Facility or keep it open to the Garden Users or the Park Users, but shall be obligated to repair, renovate or restore such portions of the Parking Facility as shall be necessary to put the remaining Parking Facility in a safe condition, in which event Lessee shall be required to pay to Lessor any net insurance proceeds received by Lessee and not applied to such restoration. In the event, as described in the previous sentence, that Lessee shall choose not to rebuild the Parking Facility and Lessor shall affirmatively elect to undertake the restoration of the Parking Facility in writing, Lessor shall have the right to receive all of the insurance proceeds from Lessee in order to rebuild the Parking Facility. This Section 8.8 shall be the sole provision applicable in this Agreement to a casualty affecting the Parking Facility.

8.9 Parking Facility Financing. Prior to the date hereof, Lessee borrowed funds to pay the costs and expenses of constructing the Parking Facility and the other on and off site improvements (the "Construction Loan"), and the portion of such Construction Loan payable as a Parking Facility Operating Expense is Seven Million and No/100 Dollars (\$7,000,000) and has not less than a twenty (20) year amortization period (the "Allocable Financing"). Debt service during the construction of the Parking Facility and the other on and off site improvements was capitalized and deemed a cost of construction of such foregoing improvements. Debt service payments on such Allocable Financing incurred or accrued after the opening of the Parking Facility shall be considered a Parking Facility Operating Expense until such debt is fully retired. Loans not to exceed Seven Million and No/100 Dollars (\$7,000,000) in the aggregate at any one time (including the outstanding balance of the Allocable Financing) may be obtained by Lessee from time to time to refinance the outstanding balance of the Allocable Financing or to obtain funds to pay any Parking Facility Operating Expenses ("Additional Allocable Financing") that can be considered capital expenditures under generally accepted accounting procedures, provided the repayment obligations shall provide for not less than the lesser of (i) a twenty (20) year amortization period or (ii) an amortization period equal to the remaining term of the Agreement. The Allocable Financing and Additional Allocable Financing contemplated by this Section 8.9 shall be referred to in this Agreement as "Parking Facility Financing." Debt service on Parking Facility Financing incurred or accrued after the opening of the Parking Facility shall be considered a Parking Facility Operating Expense.

8.10 Security Facilities. Lessee does not guarantee the safety of users of the Parking Facility and shall not be deemed to have agreed to protect or hold harmless any users of the Parking Facility from any potential risks or dangers, it being hereby acknowledged and agreed that the installation of lighting, fire safety facilities, security cameras, emergency call boxes and emergency panic buttons, fencing and other security features contemplated and such additional features as Lessee installed (the "Security Facilities") are as an accommodation to authorized users of the Parking Facility, without Lessee undertaking any duty, obligation or liability to Lessor, the Conservancy or users of the Parking Facility if any such measures shall prove to be inadequate or ineffective in any circumstance.

8.11 Deck Naming Rights. Lessee shall have the right to name its portion of the Parking Facility and install signage indicating such name on the Garden side of the Parking

Facility, but shall not have the right to indicate a Parking Facility name on the Piedmont Park side of the Parking Facility.

8.12 Use of Prado Path. Lessor and Park Users shall have the right to use the Prado Path shown on the Master Plan for pedestrian use during all hours that the Piedmont Park is open.

8.13 Bus Drop-Off for the Park. Lessor and the Conservancy shall have the right to use the Garden Entrance for bus access and the unloading of bus passengers at the Garden Entrance location designated by Lessee for all bus unloading, currently expected to be at the turn around located nearest to the Parking Facility valet entrance as designated in the Master Plan, for designated Park Users; provided, however, without the consent of Lessee, only four (4) individual buses shall be allowed in any week, each bus shall only be allowed to enter and exit the Garden a single time in a particular day and there shall be no more than four (4) bus trips in and out of the Garden in any week. Lessor or the Conservancy shall provide reasonable advance notice of the times any buses are to enter the Garden and the marginal costs and expenses of managing such bus access shall be a Parking Facility Operating Expense. Such bus access and use rights shall be exercised by Lessor and the Conservancy only in a manner that does not interfere, in any material way, with the business or operations of the Garden.

## 9. Insurance and Indemnification.

9.1 Generally. Lessee agrees to obtain and maintain during the entire term of this Agreement the insurance set forth in Appendix A, attached and incorporated herein to this Agreement. Lessee shall name Lessor as an additional insured in each policy of commercial general liability and property damage insurance, and shall furnish to Lessor a certificate of insurance showing required coverage, as set forth in Appendix A. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated. In addition to its agreement to obtain and maintain the insurance as set forth in Appendix A, Lessee agrees to the indemnification and hold harmless provisions also contained in Appendix A. The insurance and indemnification provisions contained on Appendix A, as may be amended, shall apply to the Demised Premises, including all work on, and activities and use of the Demised Premises pursuant this Agreement, as amended, and including, without limitation, Lessee's exercise of its rights with respect to the easements and easement areas described on Exhibit "D" attached hereto.

9.2 Parking Facility. In addition to insurance coverage required to be maintained by Lessee under Section 9.1 above, Lessee shall also maintain garage keeper's liability and bailee's liability insurance policies that conform to the requirements of Section 9.1, above, and such other insurance coverages as Lessee shall deem necessary or appropriate with respect to the operation of the Parking Facility. In addition to other similar requirements relating generally to insurance maintained by Lessee under the terms of this Agreement, Lessor and the Conservancy shall be each be named an additional insured on the policies of commercial general liability, garage keeper's liability and bailee's liability insurance policies maintained with respect to the Parking Facility.

9.3 **Casualty Proceeds.** Subject to Section 8.8 above, Lessee shall have no obligation to repair and rebuild the Demised Premises upon the occurrence of a casualty with regard thereto unless Lessee receives insurance proceeds in an amount Lessee deems sufficient to restore the same. Notwithstanding anything to the contrary contained herein (except as specifically provided in Section 8.8, above), upon the occurrence of a casualty with respect to all or any portion of the Demised Premises, the Transplantable Plant Material and/or the equipment, machinery, trade fixtures, furniture, furnishings, inventory and all personal property of Lessee, Lessee shall receive directly all insurance proceeds paid or to be paid by any insurer of the Demised Premises, the Transplantable Plant Material or the equipment, machinery, trade fixtures, furniture, furnishings, inventory and all personal property of Lessee, or any other part thereof. Furthermore, Lessee shall, file and prosecute the adjustment, compromise or settlement of any claim for casualty proceeds and Lessor agrees to cooperate with Lessee to cause the same to be paid directly to Lessee (subject to the terms of Section 8.8 above).

10. **Nondiscrimination.** As a contractor with Lessor, and as a supplier of services, Lessee hereby agrees with Lessor as provided in this Article 10.

10.1 We (Lessee), the supplier of goods, materials, equipment or services covered by this contract (this Agreement), will not discriminate in any way in connection with this contract (this Agreement) in the employment of persons, or refuse to continue the employment of any person, on account of the race, creed, color, sex or national origin of such person.

10.2 (Hereinafter in this Section 10.2, Lessee is referred to as the "contractor.") During the performance of this contract, the contractor agrees as follows:

(a) The contractor shall, not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. As used herein, the words "shall not discriminate" shall mean and include, without limitation, the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates or pay or other forms of compensation; selection for training, including apprenticeship; promoted; upgraded; denoted, downgraded; transferred, laid off; and terminated.

The contractor agrees to and shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the policy in this clause (a).

(b) The contractor shall in all solicitation or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for the employment without regard to race, religion, color, sex or national origin.

(c) The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contractor understanding, a notice advising the labor union or workers' representative of the contractor's commitments under the Equal Employment Opportunity Program of the City and under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor shall register all workers in the skilled trades, who are below the journeyman level, with the bureau of apprenticeship and training.

(d) The contractor shall furnish all information and reports required by the contract compliance officer pursuant to this Article, and shall permit access to the books, records and accounts during the normal business hours of the contractor by the contracting agency and the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.

(e) The contractor shall take such action with respect to any subcontractor as the City may direct as a means of enforcing the provisions of paragraph (a) through (h) herein, including penalties and sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the equal employment opportunity program of the City and, in the case of contracts receiving federal assistance, the contractor or the City may request the United States to enter into such litigation to protect the interest of the United States.

(f) The contractor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the City in the form and to the extent prescribed by the contract compliance officer of the City. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.

(g) The contractor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

(h) A finding (as hereinafter provided) that a refusal by the contractor or subcontractor to comply with any portion of this program (as herein provided and described) may subject the offending party to any or all of the following penalties:

(i) Withholding from the contractor in violation all future payments under the involved public contract until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;

(ii) Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the contractor or subcontractor

demonstrates that there has been established an there shall be carried out all of the provisions of the program as provided in this Article;

(iii) Cancellation of the public contract;

(iv) In a case in which there is substantial or material violation, or the threat of substantial or material violation, of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent, directly or indirectly, compliance with the policy as herein provided.

## 11. Notices.

11.1 Notices. All notices provided for or permitted to be given pursuant to this Agreement must be in writing and either (a) personally delivered; (b) delivered by a nationally recognized overnight delivery service providing proof of delivery or (c) delivered by registered or certified mail, return receipt request, to the appropriate address set forth in Section 11.2 below (as the same may be changed pursuant to this Section 11.1). Notice will be deemed to have been given on the date of personal delivery or the date placed in the possession of the overnight delivery service or the United States Postal Service, as applicable, but any time period provided in this Agreement for a response to the notice will not commence until the date of delivery. Any notice required or permitted to be given by Lessor or Lessee may be given by an agent, law firm or attorney acting on behalf of Lessor or Lessee. By giving notice thereof at least ten (10) business days in advance of the effective date of the change, the parties hereto shall have the right, from time to time and at any time during the term of this Agreement, to change their respective addresses.

### 11.2 Addresses.

11.2.1 All notices to Lessor shall be addressed to:

CITY OF ATLANTA  
c/o Department of Parks and Recreation  
233 Peachtree Street, NE  
Suites 1600/1700  
Atlanta, Georgia 30303  
Attention: Commissioner of Department of Parks & Recreation

11.2.2 All notices to Lessee shall be addressed to:

THE ATLANTA BOTANICAL GARDEN, INC.  
1345 Piedmont Avenue NE  
Atlanta, Georgia 30309  
Attn: President and Chief Executive Officer

## 12. Miscellaneous.

12.1. Inspections. Lessor or the agents of Lessor may, but shall be under no duty to, enter the Demised Premises at reasonable times and hours and without unreasonable interference with the use of the Demised Premises, to inspect the Demised Premises in order to determine whether or not Lessee is complying with the undertakings, duties and obligations of Lessee under this Agreement.

12.2 Zoning. Without limiting the covenants and warranties of Lessor set forth in Article 3 of this Agreement, Lessee takes the Demised Premises subject to all zoning regulations and ordinances now or hereafter in force, including, but not limited to, those as to building line and setback. Lessee, at Lessee's own expense, may in good faith, contest and litigate as to the validity of any ordinance, rule, regulation, resolution or statute of any governmental body affecting the Demised Premises or Lessee's use or occupancy thereof if said ordinance, rule, regulation, resolution or statute is considered by Lessee to be invalid.

12.3 Successors and Assigns. It is mutually covenanted, understood and agreed by and between Lessor and Lessee that each of the stipulations, expressions, phrases, provisions, covenants, terms and conditions of this Agreement shall apply, extend to, be binding upon and inure to the benefit or detriment not only of the parties hereto, but to the legal representatives, successors and assigns of Lessor and Lessee, and shall be deemed and treated as covenants real running with the Property during the Lease Term. Whenever a reference to the parties hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said party, the same as if in each case expressed.

12.4 Governing Law. It is mutually covenanted, understood and agreed by and between Lessor and Lessee that this Agreement and the leasehold estate created hereby shall be governed, construed, performed and enforced in accordance with the laws of the State of Georgia.

12.5 Complete Agreement and Termination. This Agreement constitutes the full, complete and entire agreement between and among Lessor and Lessee concerning the Demised Premises. If either party shall violate any of the material provisions of this Agreement, the other party shall have the right to terminate this Agreement by giving the party who has violated a material provision no less than ninety (90) days' written notice unless such violation is cured prior to the end of such ninety (90) day period or such longer period if such violation is of such a nature that it cannot reasonably be cured within ninety (90) days and such violating party is diligently and continuously taking all actions, including the expenditure of funds that are reasonably necessary, to cure such violation. Failure of Lessee to develop and implement the Master Plan as approved by the City Council shall be cause for termination by Lessor of this Agreement. No agent, officer or representative of Lessor or Lessee has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith modifying, adding to or changing the provisions, covenants, terms and conditions hereof. No modification or amendment of this Agreement shall be binding unless such modification or amendment shall be in writing and signed by both Lessor and Lessee. No such modification or amendment of this Agreement shall be binding upon the City, and the City shall

incur no liability with respect to such purported modification or amendment, unless same has been authorized by the City Council, and approved by the Mayor.

12.6 Terminology. Whenever the singular or plural number, or masculine, feminine or neuter gender, is used in this Agreement, it shall equally apply to, extend to and include the other.

12.7 Termination of Original Lease. Notwithstanding the termination of the Original Lease as provided herein, Lessor and Lessee hereby acknowledge and agree that neither party shall be obligated to comply with any obligations pursuant to the Original Lease or under law which may be triggered upon such termination, and title to the Transplantable Plant Material and the equipment, machinery, trade fixtures, furniture, furnishings, inventory and all personal property of Lessee shall remain vested in Lessee. Further notwithstanding the termination of the Original Lease as provided herein, Lessor and Lessee hereby acknowledge and agree that each reference in all other agreements, instruments or documents, including, without limitation, in the License Agreement, to "the Lease" or words of like import referring to the Original Lease, shall mean and be a reference to this Agreement, and for the avoidance of doubt, any agreements, instruments or documents, including, without limitation, the License Agreement, which provide for termination upon the expiration or earlier termination of the Original Lease shall continue in full force and effect for the term of this Agreement notwithstanding the termination of the Original Lease.

This Agreement shall not become binding upon the City, and the City shall incur no liability thereupon, until it has been signed by the Mayor and delivered to Lessee.

[SIGNATURES BEGIN ON NEXT PAGE]

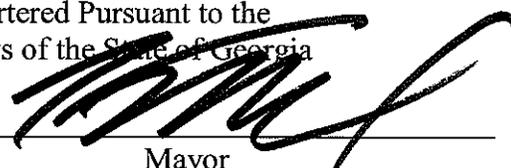
IN WITNESS WHEREOF, Lessor and Lessee, acting through their respective proper and duly authorized officers, have executed this Agreement on the day and year hereinabove first written.

LESSOR:

As to the Mayor and  
~~Deputy~~ City Clerk --  
Signed, sealed and delivered  
in the presence of:

THE CITY OF ATLANTA  
A Municipal Corporation  
Chartered Pursuant to the  
Laws of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

By:   
\_\_\_\_\_  
Mayor

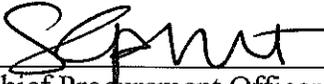
\_\_\_\_\_  
Notary Public

Attest:   
\_\_\_\_\_  
~~Deputy~~ City Clerk

[Official Seal]

Rhonda Dauphin Johnson  
Municipal Clerk  
City of Atlanta

RECOMMENDED:

  
Justin Chief Procurement Officer (Acq.)

[SIGNATURES CONTINUE ON NEXT PAGE]

As to the Officers of  
The Atlanta Botanical Garden, Inc. --  
Signed, sealed and delivered  
in the presence of:

[Signature]  
Unofficial Witness

Julie N. Eriksson  
Notary Public JULIE N ERIKSSON  
Notary Public, Fulton County, Georgia  
My Commission Expires Sept. 13, 2019

LESSEE:

THE ATLANTA BOTANICAL GARDEN, INC.  
a Non-Profit Corporation Chartered Pursuant to  
the Laws of the State of Georgia

By: [Signature]

Title: President & CEO

Attest: [Signature]

Title: Chief Operating Officer

[Corporate Seal]

APPROVED AS TO FORM  
On Behalf of the City of Atlanta.

By: [Signature]  
City Attorney Chief Counsel

APPROVED AS TO INTENT  
On Behalf of the City of Atlanta:

By: [Signature]  
Commissioner, Department  
of Parks and Recreation

Task No.  
Subtask No.

**Exhibit "A"**

**ATLANTA BOTANICAL GARDEN**

**STATEMENT OF PURPOSE**

The mission of the Atlanta Botanical Garden is to develop and maintain plant collections for display, education, conservation, research and enjoyment.

**Exhibit "B"**

**RESOLUTION ADOPTED BY THE COUNCIL OF THE CITY OF ATLANTA**

**[ATTACHED]**

17-O-1105

(Do Not Write Above This Line)

AN ORDINANCE BY FINANCE/EXECUTIVE COMMITTEE.

AN ORDINANCE AUTHORIZING THE CITY OF ATLANTA TO WAIVE THE COMPETITIVE PROCUREMENT PROVISIONS CONTAINED IN ARTICLE X, PROCUREMENT AND REAL ESTATE CODE OF THE CITY OF ATLANTA CODE OF ORDINANCES, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA ("CITY"), TO ENTER INTO AN INDENTURE OF LEASE WITH THE ATLANTA BOTANICAL GARDEN, INC. FOR CERTAIN OWNED PROPERTY COMMONLY KNOWN AS THE ATLANTA BOTANICAL GARDEN LOCATED WITHIN THE CITY'S PEDMONT PARK, AND FOR OTHER PURPOSES.

APPROVED BY

REGULAR REPORT REFER

ADVERTISE & REFER

1st ADOPT 2nd READ & REFER

PERSONAL PAPER REFER

COUNCIL

Date Referred: 3/17/17  
Referred To: Finance  
Date Referred:  
Referred To:  
Date Referred:  
Referred To:

Committee: Finance/Exec  
Date: 3/17/17  
Chair: [Signature]  
Referred To: Finance/Exec

First Reading

Committee: Finance/Exec  
Date: 3/15/17  
Chair: [Signature]  
Action: Fav, Adv, Hold  
Members: [Signatures]

Committee:  
Date:  
Chair:  
Action: Fav, Adv, Hold  
Members:  
Refer To:

Committee:  
Date:  
Chair:  
Action: Fav, Adv, Hold  
Members:  
Refer To:

Committee:  
Date:  
Chair:  
Action: Fav, Adv, Hold (see rev. side)  
Members:  
Refer To:

FINAL COUNCIL ACTION  
2nd Reading  
1st & 2nd Reading  
3rd Reading  
Consent  
V Vote  
RC Vote

CERTIFIED  
MAR 29 2017

RECEIVED  
MAR 29 2017

MAYOR'S ACTION

RETURNED WITHOUT SIGNATURE  
MAR 29 2017



**AN ORDINANCE BY  
COMMUNITY DEVELOPMENT HUMAN RESOURCES COMMITTEE**

**AN ORDINANCE AUTHORIZING THE CITY OF ATLANTA TO WAIVE THE COMPETITIVE PROCUREMENT PROVISIONS CONTAINED IN ARTICLE X, PROCUREMENT AND REAL ESTATE CODE OF THE CITY OF ATLANTA CODE OF ORDINANCES, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA ("CITY"), TO ENTER INTO AN INDENTURE OF LEASE WITH THE ATLANTA BOTANICAL GARDEN, INC., FOR CERTAIN CITY OWNED PROPERTY COMMONLY KNOWN AS THE ATLANTA BOTANICAL GARDEN LOCATED WITHIN THE CITY'S PIEDMONT PARK; AND FOR OTHER PURPOSES**

**WHEREAS**, on March 28, 1980, the City of Atlanta ("City") and the Atlanta Botanical Garden, Inc., ("ABG") entered into an Indenture of Lease pursuant to which ABG established a botanical garden and arboretum located on a site being approximately thirty (30) acres located within the City's Piedmont Park (the "Garden"), said Indenture of Lease having been amended from time to time (as so amended, the "Original Lease"); and

**WHEREAS**, ABG is a non-profit corporation created pursuant to the laws of the State of Georgia whose sole purpose is to operate the Garden for the benefit of Atlanta residents and visitors; and

**WHEREAS**, since 1980 ABG has raised has raised substantial funding and made significant capital improvements to the Garden at no cost to the City; and

**WHEREAS**, ABG is conducting a capital campaign for the purpose of raising funding to be used toward additional capital improvements in the Garden (the "Project"); and

**WHEREAS**, the Original Lease expires on March 31, 2030 and ABG desires to enter into a new lease with the City for a term of fifty (50) years in order to secure donations and financing in support of the Project and the Garden; and

**WHEREAS**, for various reasons, including the size and design of the Garden and budgetary challenges impacting the City, the City cannot complete the Project or operate the Garden without ABG's assistance and expertise; and

**WHEREAS**, it is in the best interests of the City, its residents and visitors for the City to terminate the Original Lease in its entirety and enter into a new lease for the Garden.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA  
HEREBY ORDAINS, as follows:**



**SECTION 1:** That the requirements of the City of Atlanta Code of Ordinances Article X, Procurement and Real Estate Code, are hereby waived.

**SECTION 2:** That the Mayor is hereby authorized, on behalf of the City, to enter into a new lease with ABG for the Garden in substantially similar form as attached hereto as Exhibit A.

**SECTION 3:** That the services provided under the new lease by ABG shall be at no cost to the City.

**SECTION 4:** That to the extent ABG is donating goods and/or services to the City, the City appreciates and accepts said donation(s).

**SECTION 5:** That all ordinances and parts of ordinances in conflict herewith are hereby waived for purposes of this ordinance only, and only to the extent of the conflict.

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

MAR 20, 2017  
MAR 29, 2017

**EXHIBIT A**

RCS# 2710  
3/20/17  
3:26 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I: ALL ITEMS  
17-R-3388, 17-R-3311 AND 17-R-3335  
ADOPT

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	B Moore	Y Bond
Y Hall	Y Wan	Y Martin	NV Norwood
Y Young	Y Shock	Y Bottoms	Y Dickens
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

+

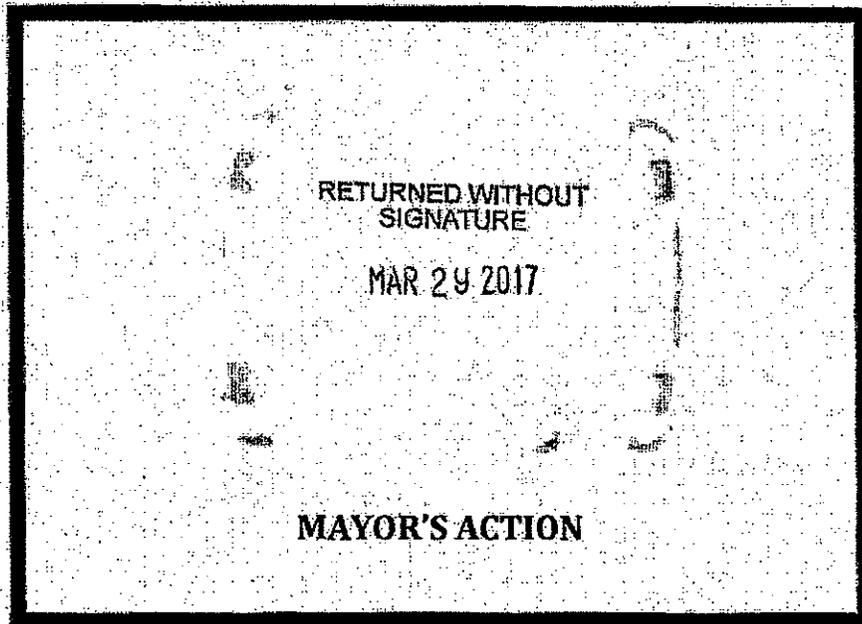
		03-20-17
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 17-O-1130	43. 17-R-3324	84. 17-R-3370
2. 17-O-1099	44. 17-R-3312	85. 17-R-3371
3. 17-O-1100	45. 17-R-3314	86. 17-R-3372
4. 17-O-1101	46. 17-R-3325	87. 17-R-3373
5. 17-O-1103	47. 17-R-3327	88. 17-R-3374
6. 17-O-1106	48. 17-R-3389	89. 17-R-3375
7. 17-O-1108	49. 17-R-3390	90. 17-R-3376
8. 17-O-1109	50. 17-R-3336	91. 17-R-3377
9. 17-O-1116	51. 17-R-3337	92. 17-R-3378
10. 17-O-1088	52. 17-R-3338	93. 17-R-3379
11. 17-O-1105	53. 17-R-3339	94. 17-R-3380
12. 17-O-1110	54. 17-R-3340	95. 17-R-3381
13. 17-O-1111	55. 17-R-3341	
14. 17-O-1122	56. 17-R-3342	
15. 17-O-1125	57. 17-R-3343	
16. 17-O-1121	58. 17-R-3344	
17. 17-O-1078	59. 17-R-3345	
18. 17-O-1123	60. 17-R-3346	
19. 17-O-1126	61. 17-R-3347	
20. 17-R-3382	62. 17-R-3348	
21. 17-R-3383		
22. 17-R-3384	adversed on consent	
23. 17-R-3385	63. 17-R-3349	
24. 17-R-3387	64. 17-R-3350	
25. 17-R-3329	65. 17-R-3351	
26. 17-R-3330	66. 17-R-3352	
27. 17-R-3331	67. 17-R-3353	
28. 17-R-3332	68. 17-R-3354	
29. 17-R-3333	69. 17-R-3355	
30. 17-R-3386	70. 17-R-3356	
31. 17-R-3229	71. 17-R-3357	
32. 17-R-3307	72. 17-R-3358	
33. 17-R-3310	73. 17-R-3359	
34. 17-R-3316	74. 17-R-3360	
35. 17-R-3334	75. 17-R-3361	
36. 17-R-3308	76. 17-R-3362	
37. 17-R-3318	77. 17-R-3363	
38. 17-R-3319	78. 17-R-3364	
39. 17-R-3320	79. 17-R-3365	
40. 17-R-3321	80. 17-R-3366	
41. 17-R-3322	81. 17-R-3367	
42. 17-R-3323	82. 17-R-3368	
	83. 17-R-3369	

**MAYOR'S ACTION AUTHENTICATION PAGE**



**17-O-1105**

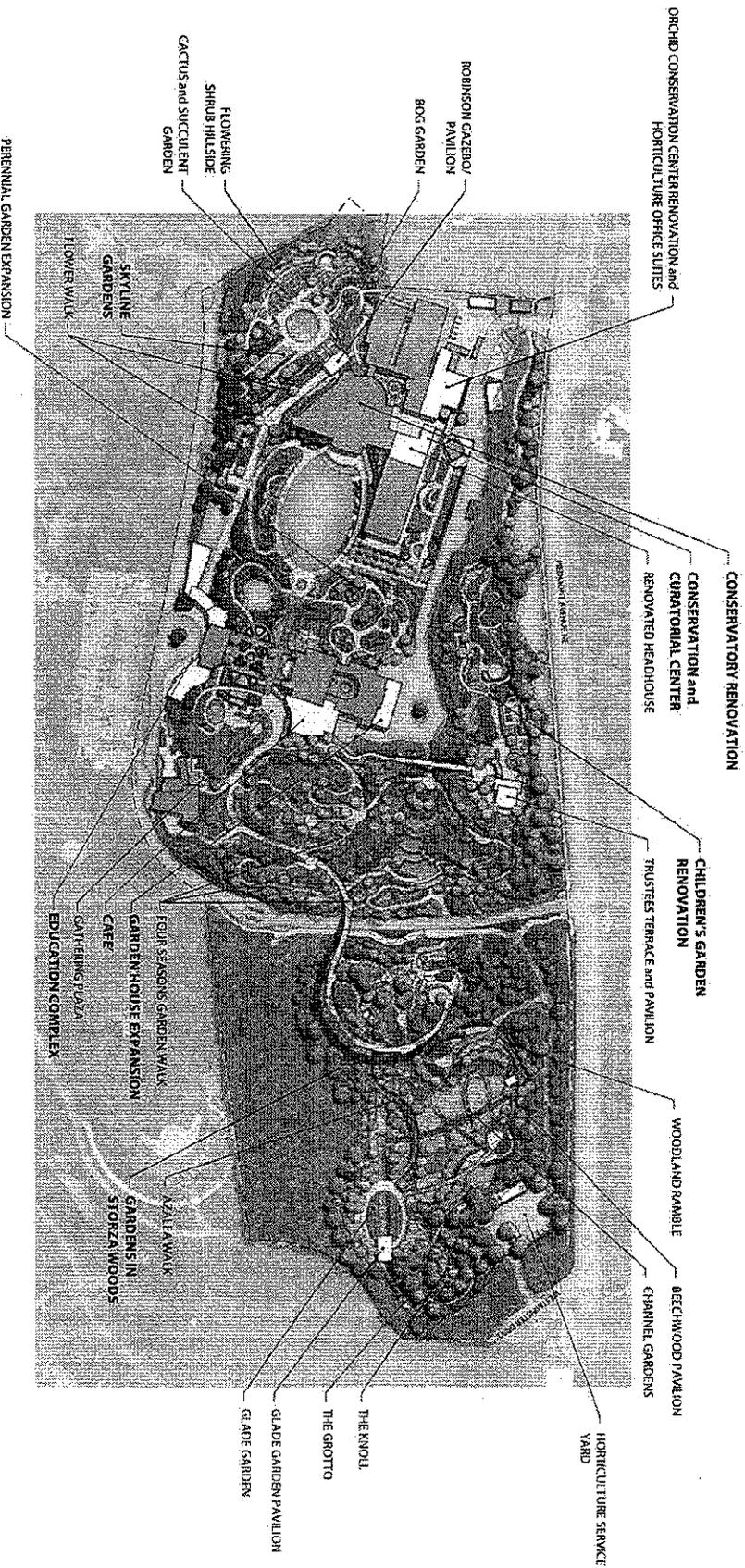
**Adopted by the Atlanta City Council  
March 20, 2017**



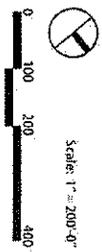
**Exhibit "C"**

**MASTER PLAN**

**[ATTACHED]**



**Master Plan**  
**Atlanta Botanical Garden**  
 Atlanta, GA  
 December 18, 2013



**Exhibit "D"**

**PROPERTY**

To find the TRUE POINT OF BEGINNING commence at a 1/2" rebar set at the intersection of Eastern right-of-way of Piedmont Road (70' R/W) and the Southern right-of-way of Westminster Drive (50' R/W) thence south 67.68' along the Western Right-of-Way of Piedmont Road to THE TRUE POINT OF BEGINNING; thence leaving said right-of-way S 51°08'54" E a distance of 30.79' to a point; thence S 86°18'21" E a distance of 64.05' to a point; thence S 59°13'42" E a distance of 19.92' to a point; thence S 80°57'23" E a distance of 18.10' to a point; thence S 80°57'23" E a distance of 17.41' to a point; thence N 64°23'58" E a distance of 26.85' to a point; thence N 51°07'52" E a distance of 16.07' to a point; thence N 88°37'00" E a distance of 28.08'; thence N 88°37'00" E a distance of 28.08' to a point; thence N 79°15'34" E a distance of 24.62' to a point; thence S 81°58'56" E a distance of 40.14' to a point; thence N 80°41'34" E a distance of 42.00' to a point; thence S 55°11'04" E a distance of 39.66' to a point; thence S 04°04'15" E a distance of 68.47' to a point; thence S 10°49'57" W a distance of 37.35' to a point; thence S 01°16'54" E a distance of 65.79' to a point; thence S 19°03'12" E a distance of 58.61' to a point; thence S 35°26'11" E a distance of 62.90' to a point; thence S 48°45'36" E a distance of 77.89' to a point on the former lease line; thence along said lease line S 31°08'53" W a distance of 656.69' to a 1/2" rebar set; thence continuing along said line S 15°29'51" E a distance of 91.67' to a point; thence along said lease line with a curve turning to the right with an arc length of 87.32', with a radius of 199.29', with a chord bearing of S 06°45'14" W, with a chord length of 86.62' to a point, thence leaving former lease line S 11°26'36" W a distance of 103.84' to a point; thence S 44°36'40" E a distance of 39.20' to a point; thence S 45°23'53" W a distance of 14.17' to a point; thence S 44°36'07" E a distance of 41.75' to a point; thence S 45°23'53" W a distance of 44.75' to a point; thence S 44°36'07" E a distance of 19.00' to a point; thence S 45°23'53" W a distance of 325.24' to a point; thence N 44°36'07" W a distance of 126.99' to a point; thence N 45°23'53" E a distance of 3.00' to a point; thence N 44°36'07" W a distance of 21.85' to a point on the former lease line; thence continuing along said lease line with a curve turning to the left with an arc length of 229.37', with a radius of 10147.34', with a chord bearing of S 48°47'23" W, with a chord length of 229.37' to a point, thence with a curve turning to the left with an arc length of 267.32', with a radius of 2452.50', with a chord bearing of S 45°14'04" W, with a chord length of 267.19' to a point, thence S 34°16'52" W a distance of 67.87' to a 1/2" rebar found; thence N 79°53'02" W a distance of 260.06' to a 1/2" rebar found; thence with a curve turning to the left with an arc length of 60.09', with a radius of 125.00', with a chord bearing of N 86°07'42" W, with a chord length of 59.52' to a point, thence N 08°14'34" W a distance of 35.26' to a 1/2" rebar set; thence N 52°12'42" W a distance of 24.63' to a 1/2" rebar set; thence N 44°44'01" W a distance of 21.45' to a 1/2" rebar set; thence N 46°36'53" E a distance of 121.23' to a 1/2" rebar set; thence N 46°20'04" W a distance of 310.20' to a 1/2" rebar found; thence N 67°48'12" W a distance of 15.41' to a 1/2" rebar found; thence N 46°05'25" W a distance of 13.23' to a 1/2" rebar found on the East right-of-way of Piedmont Road; thence along said right-of-way N 50°01'07" E a distance of 76.28' to a point; thence along said right-of-way N 43°49'41" E a distance of 179.50' to a point; thence along said right-of-way with a curve turning to the left with an arc length of 161.29', with a radius of 934.73', with

a chord bearing of N 39°00'27" E, with a chord length of 161.09' to a point, thence along said right-of-way N 34°11'13" E a distance of 782.90'; thence along said right-of-way with a curve turning to the right with an arc length of 173.33', with a radius of 1900.00', with a chord bearing of N 36°47'13" E, with a chord length of 173.27' to a point, thence along said right-of-way N 39°23'13" E a distance of 402.01' to a ½" rebar set; which is the point of beginning, having an area of 1470192.49 square feet, 33.751 acres and being more particularly shown on a survey prepared by Georgia Land Surveying Co. dated 10-13-05 and attached hereto as Exhibit D-8.

Together with a non-exclusive easement during the Lease Term over, under, across and through the property described or depicted on Exhibit D-1 attached hereto and made a part hereof for the structural and lateral support of the Parking Facility (the "Support Easement"), including without limitation, the repair, maintenance and replacement of the foundations and footings of the Parking Facility and the repair, maintenance and replacement of the sloping and filling of the ground adjacent to the Parking Facility (the "Support Facilities"). These easement rights are intended to provide for the repair, maintenance and replacement of the exterior of the Parking Facility and the structural and lateral support necessary to maintain the structural integrity and support of the Parking Facility including its foundations and footings.

Also, together with a non-exclusive easement during the Lease Term over, under, across and through the property described or depicted on Exhibit D-2 attached hereto and made a part hereof (the "Road Improvements Easement") for the use, repair, maintenance and replacement of the road improvements, including, without limitation, the road and underground tunnel (and excluding fill and above ground foliage and landscaping above the underground tunnel itself) leading from the eastern end of the Parking Facility to the eastern boundary of the railroad right of way traversing Piedmont Park a/k/a the Beltline (the "Road Improvements").

Also, together with a non-exclusive easement during the Lease Term over, under, across and through the property described or depicted on Exhibit D-4 attached hereto and made a part hereof for the use, repair, maintenance and replacement of the pedestrian pathways and landscape improvements (the "Pathway Easement"), including, without limitation, hardscapes, pylons, banners, lighting, safety rails and site furniture (the "Pathway Improvements").

Also, together with a non-exclusive easement (the "Westminster Service Drive Easement") during the Lease Term over, under, across and through the property described or depicted on Exhibit D-5 attached hereto and made a part hereof for the use, repair, maintenance and replacement of the service drive (the "Westminster Service Drive") in order for Lessee to access the Storza Woods and other portions of the Garden from Westminster Drive for service, maintenance and construction purposes.

Also, together with a non-exclusive easement during the Lease Term over, under, across and through (a) the property described or depicted on Exhibit D-7 attached hereto and made a part hereof (the "Exterior Improvements Easement") for the use, repair, maintenance and replacement of the areaway and walls that are located outside of the base structure of the Parking Facility which are used as access ways around and to and from the

three sides of the Parking Facility away from the hill into which the Parking Facility was constructed and which are designed to facilitate light and air into the lower levels of the Parking Facility, exterior stairs at the southeast corner of the Parking Facility, the irrigation facilities in the "berm area" located to the east of the Parking Facility, and the improvements comprising the exit on the north end of the second floor of the Parking Facility to the outside edge of the areaway, and (b) the Piedmont Park access and maintenance roads leading to the Park Entrance ticket booth and the area within fifteen (15) feet of the Park Entrance ticket booth for the use, repair, maintenance and replacement of the Park Entrance ticket booth (collectively, the "Exterior Improvements").

The areas covered by the Support Easement, the Road Improvements Easement, the Pathway Easement, the Westminster Service Drive Easement, and the Exterior Improvements Easement shall specifically exclude any areas within the Demised Premises and are herein referred to as the "Garden Easement Areas." Lessor hereby expressly reserves for itself and its successors-in-title to the Garden Easement Areas and the Conservancy, all rights and privileges incident to the ownership of the fee simple estate of such property as are not inconsistent with nor materially interfere with the rights and privileges herein granted, including without limitation, the right to construct improvements, paths and install plants, trees, shrubs and other landscaping over, across or above any of the easement areas described herein and the right to grant additional non-exclusive easements to third parties over, under and across the easement areas described herein for access, ingress, egress and the construction, use and maintenance of utilities as Lessor shall deem necessary or appropriate. In the event that Lessee shall access any of the Garden Easement Areas in order to exercise its easement rights hereinabove granted, Lessee shall do so in a manner consistent with the construction standards imposed upon Lessee in connection with the initial development of the Parking Facility.

Exhibit D-3 and Exhibit D-6: NOT USED

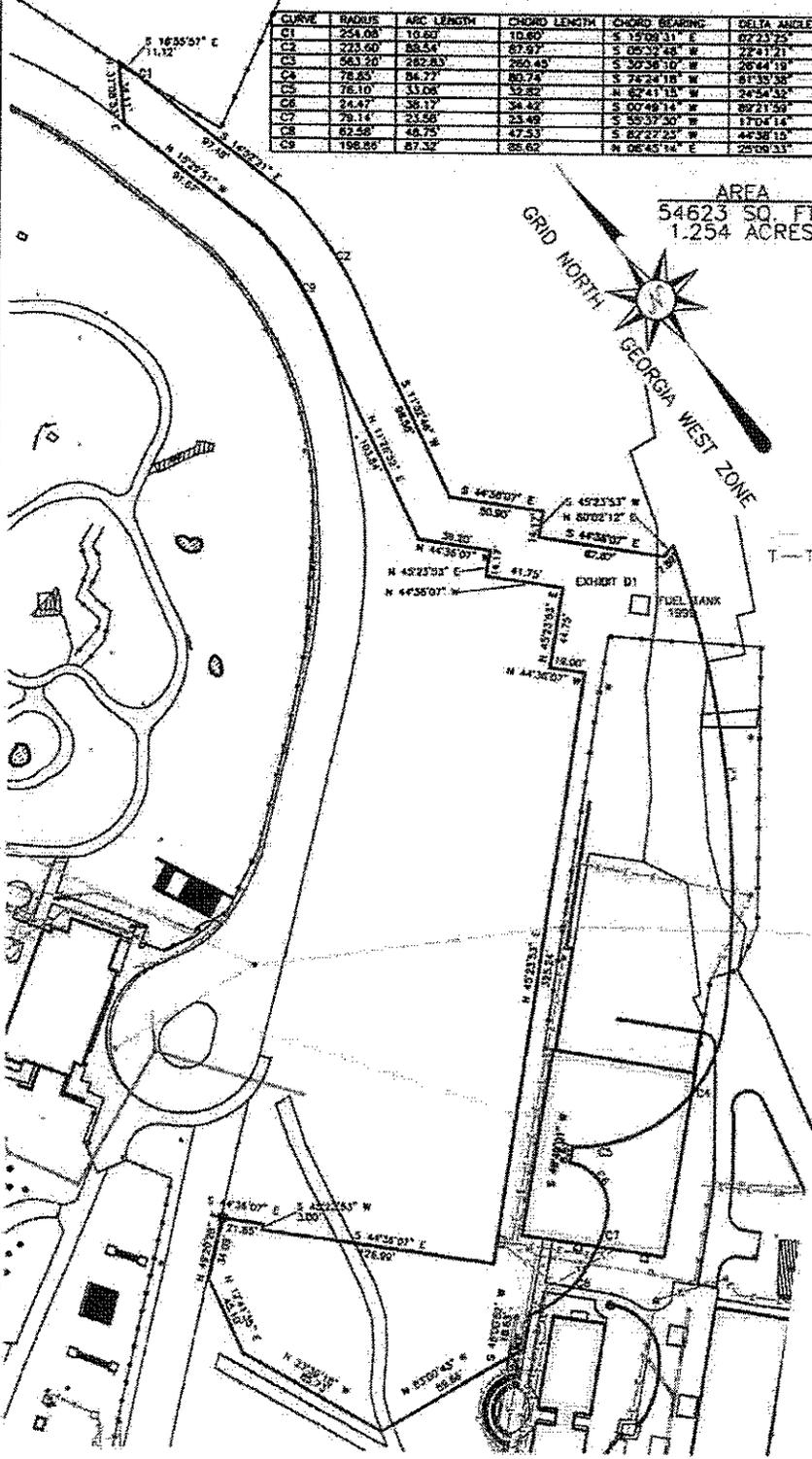
EXHIBIT D1  
 PERMANENT EASEMENT FOR PARKING  
 DECK FOOTINGS AND LATERAL  
 SUPPORT INSTALLATION/ MAINTENANCE

LEGEND

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	254.06	10.60	10.60	S 15°09'31" E	02°23'52"
C2	223.60	88.54	87.97	S 05°32'28" W	2°21'21"
C3	563.20	282.83	260.43	S 30°38'10" W	2°44'18"
C4	78.85	36.77	80.74	S 74°24'18" W	61°30'38"
C5	76.10	33.06	52.82	N 62°41'18" W	2°54'32"
C6	24.47	36.17	34.42	S 07°48'14" W	89°21'39"
C7	28.14	23.56	23.49	S 59°37'50" W	17°04'14"
C8	82.58	48.75	47.53	S 82°27'25" W	44°38'10"
C9	196.85	87.52	88.62	N 06°43'14" E	25°08'33"

These standard symbols will be found in the drawing.

- IRON PIN SET
- IRON PIN FOUND
- ⊕ CATCH BASIN
- ⊖ DRAIN
- ⊞ ELECTRIC BOX
- ⊟ LANDSCAPE LIGHT
- ⊠ FIRE HYDRANT
- ⊡ GUY WIRE
- ⊙ LIGHT POLE
- ⊚ JUNCTION BOX
- ⊛ MANHOLE
- ⊜ POWER POLE
- ⊝ SIGN
- ⊞ UTILITY POLE
- ⊟ VALVE
- ⊠ WATER SPICKET
- ⊡ GAS METER
- ⊙ WATER METER
- ⊚ SEWER CLEAN OUT
- ⊛ TREES (HARD WOOD)
- ⊜ PINE TREES
- ⊝ GAS LINE
- ⊞ TELEPHONE



AREA  
 54623 SQ. FT.  
 1.254 ACRES

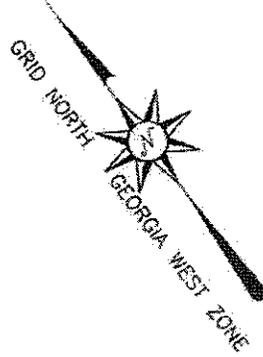


SHEET NO. 1000 BOOK NO. 17577	PLAT PREPARED FOR: <b>ATLANTA BOTANICAL GARDEN</b>		DATE 10-13-05	<b>GA. LAND SURVEYING CO., INC.</b>		REVISION: drawing amount: \$11.6 DATE
	LAND LOT 54      17TH DISTRICT      SECTION		FULTON COUNTY, GEORGIA	LAND SURVEYING ~ LAND PLANNING		
	LOT      BLOCK      UNIT		PARTY CHIEF:	155 CLIFWOOD DRIVE ATLANTA, GEORGIA, 30328		
	SUBDIVISION		PHONE (404) 255-4871	FAX (404) 255-6807		
	SUBDIVISION		PARTY CHIEF:	155 CLIFWOOD DRIVE ATLANTA, GEORGIA, 30328		

# LEGEND

These standard symbols will be found in the drawing.

- IRON PIN SET
- IRON PIN FOUND
- ▲ CATCH BASIN
- ▣ DRAIN
- ▢ ELECTRIC BOX
- LANDSCAPE LIGHT
- ⊕ FIRE HYDRANT
- + GUY WIRE
- ⊙ LIGHT POLE
- ⊙ JUNCTION BOX
- ⊙ MANHOLE
- ⊙ POWER POLE
- ⊙ SIGN
- ⊙ UTILITY POLE
- ⊙ VALVE
- ⊙ WATER SPICKET
- ⊙ GAS METER
- ⊙ WATER METER
- ⊙ SEWER CLEAN OUT
- TREES (HARD WOOD)
- PINE TREES
- GAS LINE
- - - TELEPHONE

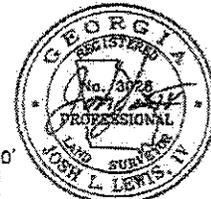
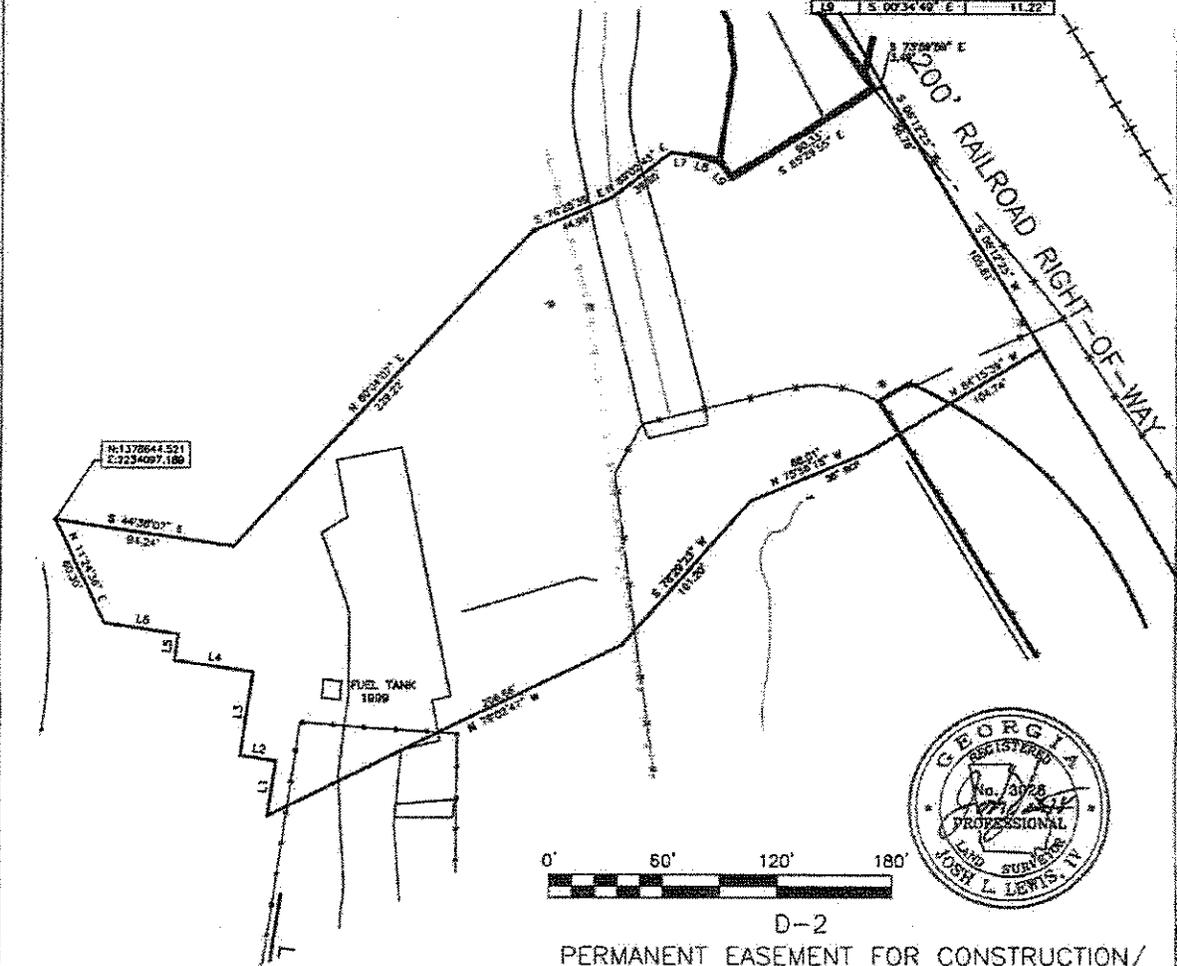


## AREA

80915 SQ. FT.  
1.858 ACRES

## LINE TABLE

LINE	BEARING	DISTANCE
L1	N 42°35'33" E	28.87
L2	N 44°30'07" W	19.00
L3	N 42°35'33" E	44.75
L4	N 44°30'07" W	41.75
L5	N 42°35'33" E	14.17
L6	N 44°30'07" W	26.20
L7	S 44°39'44" E	10.00
L8	S 37°34'41" E	15.87
L9	S 00°34'40" E	11.22



D-2  
PERMANENT EASEMENT FOR CONSTRUCTION/  
MAINTENANCE OF TUNNEL AND ROAD

SHEET NO. 113774	PLAT PREPARED FOR:	DATE	10-13-05	GA. LAND SURVEYING CO., INC.	REVISION
	ATLANTA BOTANICAL GARDEN	SCALE	1" = 60'		
	LAND LOT 54 17TH DISTRICT SECTION	FULTON COUNTY, GEORGIA	LAND SURVEYING ~ LAND PLANNING		
	LOT BLOCK UNIT	PARTY CHART	155 CLIFTWOOD DRIVE ATLANTA, GEORGIA 30328 PHONE (404) 255-4671 FAX (404) 255-6607		
SUBDIVISION					DATE

# LEGEND

These standard symbols will be found in the drawing.

- IRON PIN SET
- IRON PIN FOUND
- ▲ CATCH BASIN
- ▣ DRAIN
- ▢ ELECTRIC BOX
- LANDSCAPE LIGHT
- ⊕ FIRE HYDRANT
- ⊙ GUY WIRE
- ⊗ LIGHT POLE
- ⊘ JUNCTION BOX
- ⊙ MANHOLE
- ⊙ POWER POLE
- ⊙ SIGN
- ⊙ UTILITY POLE
- ⊙ VALVE
- ⊙ WATER SPICKET
- ⊙ GAS METER
- ⊙ WATER METER
- ⊙ SEWER CLEAN OUT
- TREES (HARD WOOD)
- PINE TREES
- T — T — GAS LINE
- T — T — TELEPHONE

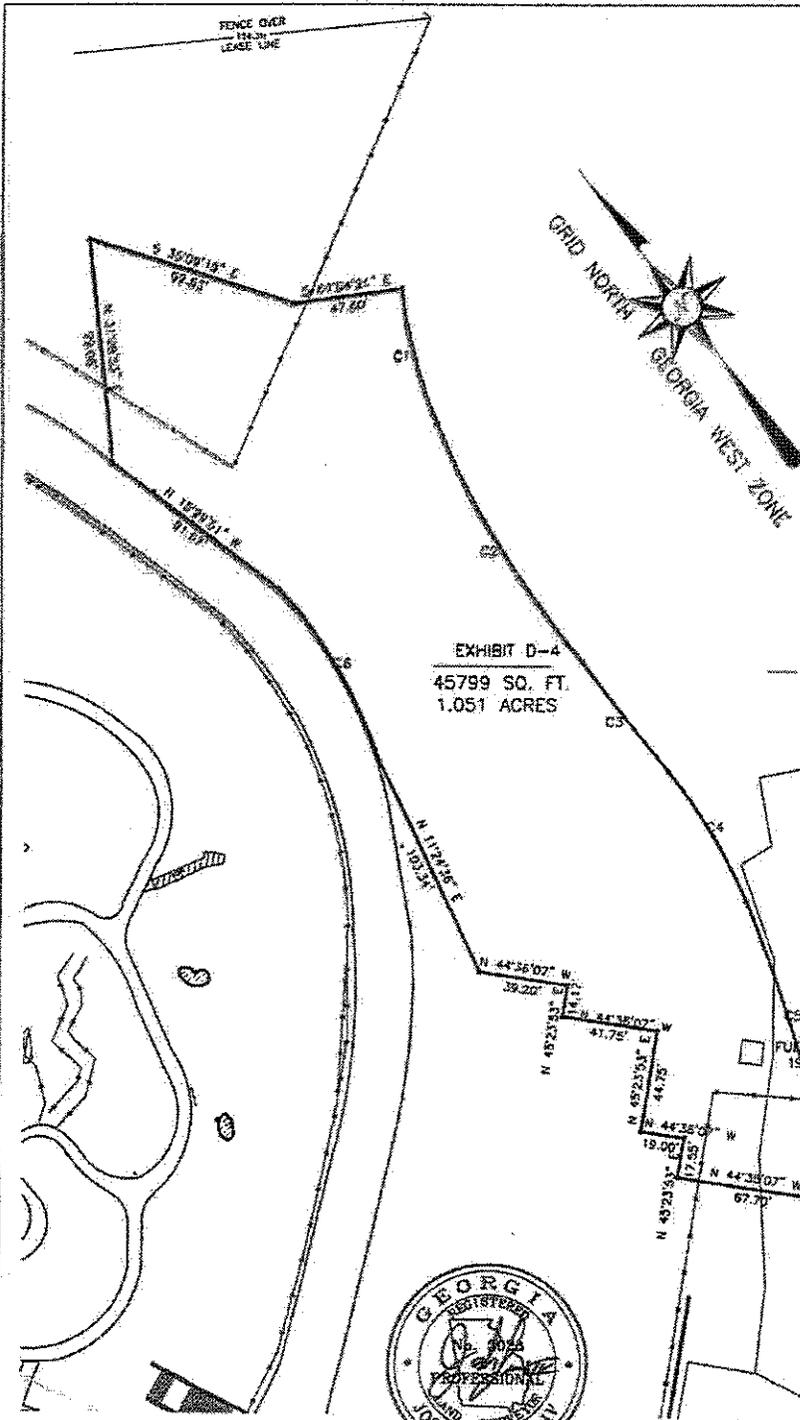


EXHIBIT D-4  
45799 SQ. FT.  
1.051 ACRES

## CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	209.99'	61.73'	61.51'	S 22°21'06" W	16°50'34"
C2	405.93'	123.18'	122.71'	S 05°19'25" W	17°23'10"
C3	2084.19'	61.60'	61.60'	S 01°11'12" E	01°41'36"
C4	249.99'	66.73'	66.53'	S 06°06'50" W	15°17'36"
C5	577.76'	112.54'	112.36'	S 19°30'57" W	11°09'37"
C6	199.91'	87.82'	87.11'	N 06°49'06" E	29°13'07"



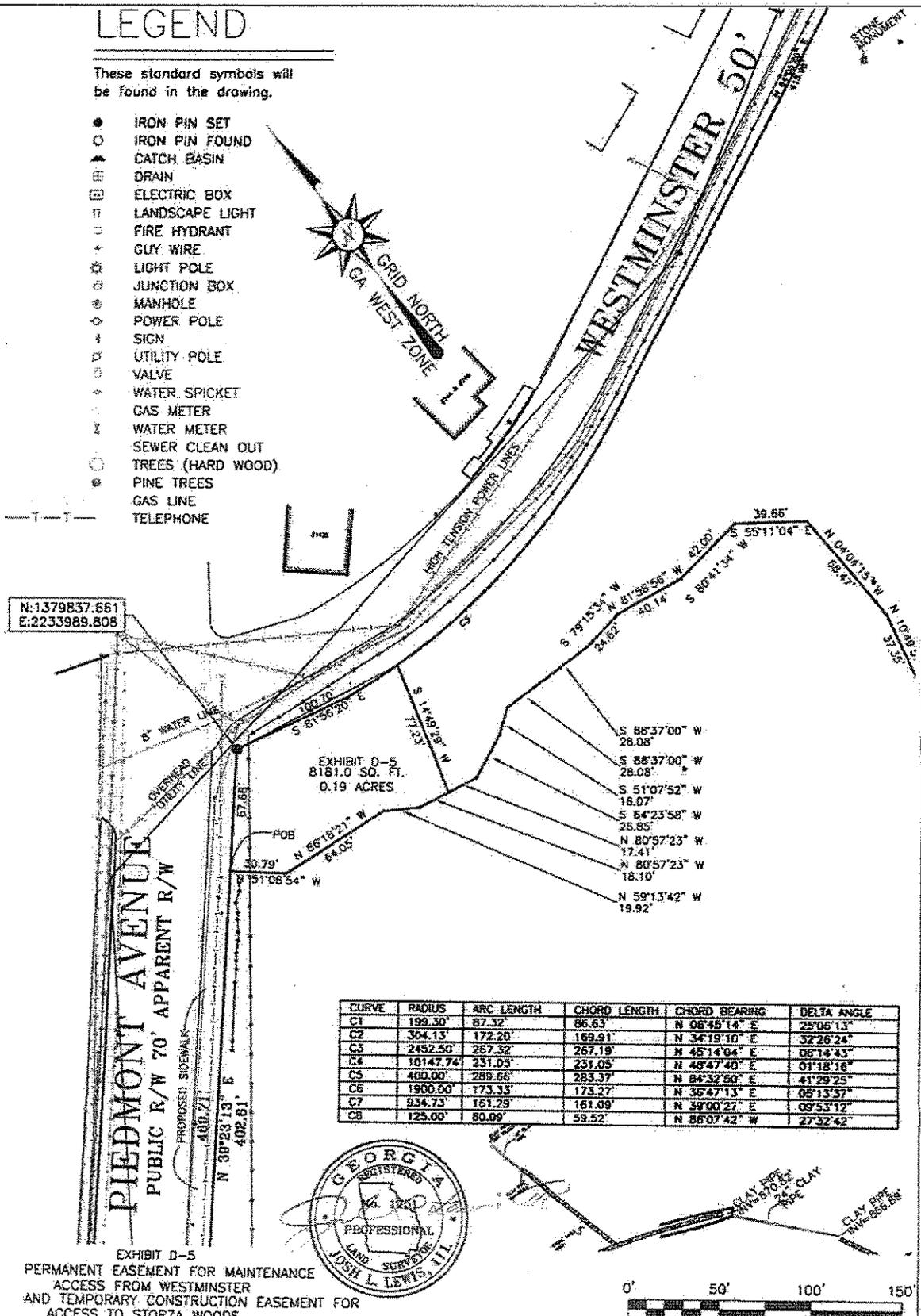
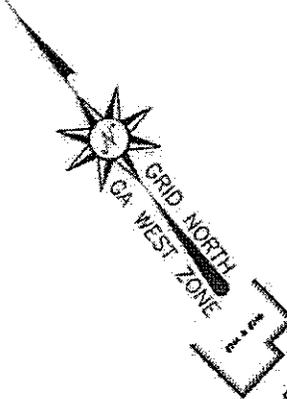
EXHIBIT D-4  
PERMANENT EASEMENT FOR CONSTRUCTION AND  
MAINTENANCE OF PEDESTRIAN PATH AND LANDSCAPING,  
(INCLUDING HARDSCAPE, PYLONS, BANNERS,  
LIGHTING, SAFETY RAIL AND SITE FURNITURE)

PLAT PREPARED FOR:		DATE 10-13-05	GA. LAND SURVEYING CO., INC.
ATLANTA BOTANICAL GARDEN		SCALE 1" = 50'	
LAND LOT 54	17TH DISTRICT	SECTION	LAND SURVEYING ~ LAND PLANNING 155 CLIFTWOOD DRIVE ATLANTA, GEORGIA, 30328 PHONE (404) 255-4671 FAX (404) 255-6607
LOT	BLOCK	FULTON COUNTY, GEORGIA	
SUBDIVISION	LOT	PARTY CHIEF:	DATE:

# LEGEND

These standard symbols will be found in the drawing.

- IRON PIN SET
- IRON PIN FOUND
- ▲ CATCH BASIN
- ▣ DRAIN
- ▢ ELECTRIC BOX
- ⌈ LANDSCAPE LIGHT
- ⊕ FIRE HYDRANT
- ⊕ GUY WIRE
- ⊙ LIGHT POLE
- ⊙ JUNCTION BOX
- ⊙ MANHOLE
- ⊙ POWER POLE
- ⊕ SIGN
- ⊕ UTILITY POLE
- ⊕ VALVE
- ⊕ WATER SPICKET
- ⊕ GAS METER
- ⊕ WATER METER
- ⊕ SEWER CLEAN OUT
- TREES (HARD WOOD)
- PINE TREES
- GAS LINE
- TELEPHONE



N:1379837.661  
E:2233989.808

EXHIBIT D-5  
8181.0 SQ. FT.  
0.19 ACRES

PIEDMONT AVENUE  
PUBLIC R/W 70' APPARENT R/W

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	199.30'	87.32'	86.63'	N 08°45'14" E	25°06'13"
C2	304.13'	172.20'	169.91'	N 34°19'10" E	32°26'24"
C3	2452.50'	257.32'	267.19'	N 45°14'04" E	06°14'43"
C4	10147.74'	231.05'	231.05'	N 48°47'40" E	01°18'16"
C5	400.00'	289.66'	283.37'	N 84°32'50" E	41°29'25"
C6	1900.00'	173.33'	173.27'	N 35°47'13" E	05°13'37"
C7	834.73'	161.29'	161.09'	N 39°00'27" E	09°53'12"
C8	125.00'	80.09'	59.52'	N 86°07'42" W	27°32'42"

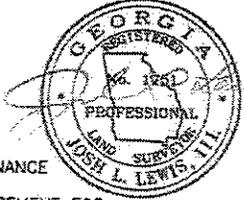


EXHIBIT D-5  
PERMANENT EASEMENT FOR MAINTENANCE  
ACCESS FROM WESTMINSTER  
AND TEMPORARY CONSTRUCTION EASEMENT FOR  
ACCESS TO STORZA WOODS



SHEET 1 OF 1	PLAT PREPARED FOR:		DATE	GA. LAND SURVEYING CO., INC.
	ATLANTA BOTANICAL GARDEN		10-13-05	
	LAND LOT 54	17TH DISTRICT	SCALE 1" = 50'	
LOT	BLOCK	SECTION	FULTON COUNTY, GEORGIA	LAND SURVEYING ~ LAND PLANNING
SUBDIVISION		URST	PARTY CHIEF:	155 CLIFTWOOD DRIVE ATLANTA, GEORGIA 30328 PHONE (404) 255-4671 FAX (404) 255-6607



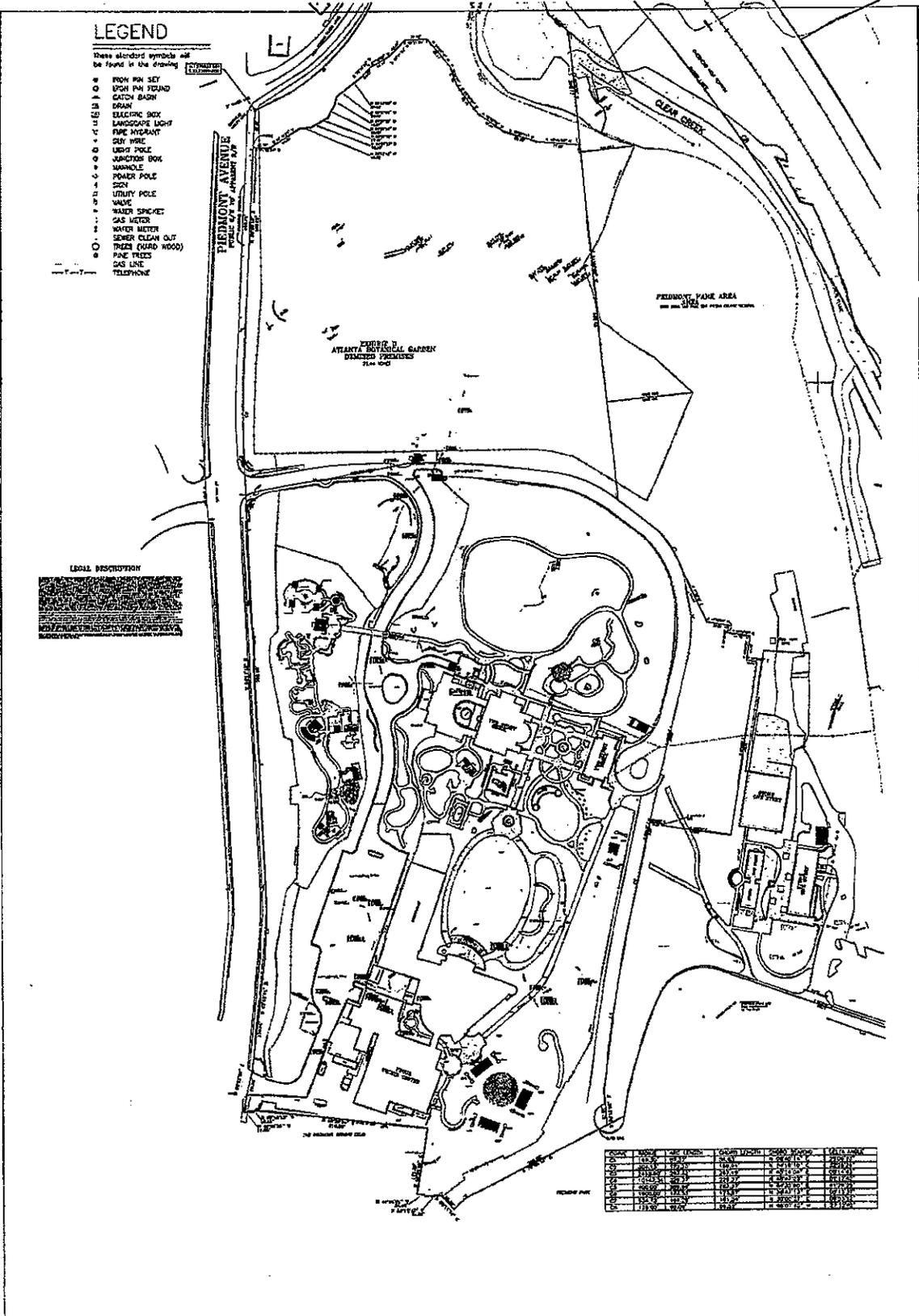
Exhibit D-8

[ATTACHED]

**LEGEND**

These standard symbols will be found in the drawing

- IRON PIN SET
- UPHN PIN FOUND
- CATCH BASIN
- ROOM
- ELECTRIC BOX
- LANDSCAPE LIGHT
- FIRE HYDRANT
- SINK WIRE
- LIGHT POLE
- JUNCTION BOX
- MANHOLE
- POWER POLE
- SIGN
- UTILITY POLE
- VALVE
- WATER SPRINKLER
- GAS METER
- WATER METER
- SEWER CLEAN OUT
- TREE (SHED WOOD)
- PINE TREES
- GAS LINE
- TELEPHONE



NO.	DESCRIPTION	DATE	BY	CHKD.
1	PREPARED	10-23-05		
2	REVISED			
3	REVISED			
4	REVISED			
5	REVISED			
6	REVISED			
7	REVISED			
8	REVISED			
9	REVISED			
10	REVISED			
11	REVISED			
12	REVISED			
13	REVISED			
14	REVISED			
15	REVISED			
16	REVISED			
17	REVISED			
18	REVISED			
19	REVISED			
20	REVISED			
21	REVISED			
22	REVISED			
23	REVISED			
24	REVISED			
25	REVISED			
26	REVISED			
27	REVISED			
28	REVISED			
29	REVISED			
30	REVISED			
31	REVISED			
32	REVISED			
33	REVISED			
34	REVISED			
35	REVISED			
36	REVISED			
37	REVISED			
38	REVISED			
39	REVISED			
40	REVISED			
41	REVISED			
42	REVISED			
43	REVISED			
44	REVISED			
45	REVISED			
46	REVISED			
47	REVISED			
48	REVISED			
49	REVISED			
50	REVISED			

	PLAN PREPARED FOR <b>ATLANTA BOTANICAL GARDEN</b>	DATE 10-23-05 SCALE 1" = 80'	<b>GA. LAND SURVEYING CO., INC.</b> 125 CUTHWOOD DRIVE ATLANTA GEORGIA 30328 TELEPHONE (404) 255-4871, FAX (404) 255-0607
	JOB NO. 54 SHEET 17 OF 17 DATE 10-23-05	FULTON COUNTY DISTRICT SECTION 20 TOWNSHIP 32 N RANGE 80 W	
PLAN BOOK PAGE DEED BOOK PAGE	DRAWN BY CHECKED BY DATE	SHEET 17 OF 17	

**Exhibit "E"**

**ZONING AND OTHER ENCUMBRANCES**

1. The lien of taxes and assessments not yet due and payable
2. All covenants, conditions, easements, deeds, restrictions and other matters of record affecting title to the Property and the Demised Improvements, except to the extent that the same are caused or created by Lessor in violation of or inconsistent with the terms of the Original Lease or this Agreement
3. Applicable zoning and building ordinances and land use regulations

**Exhibit "F"**

**NOT USED**

## Exhibit "G"

### LANDSCAPE, OPERATIONAL AND MAINTENANCE STANDARDS

The following maintenance standards are intended to cover the most typical aspects of maintenance related to cleaning, safety, equipment and structure.

E

#### **Cleaning**

##### Daily

- Local sweeping
- Empty trash cans
- Cashier booths (floors, fixtures, walls)
- Elevators (floors, door tracks, etc.)
- Stairs (floors, handrails, windows)
- Office (floors, windows)

##### Weekly

- Sweeping all areas (including curbs)
- Expansion joints
- Parking control equipment

##### Semi-annual

- Pressure wash floors

#### **Inspection of Doors and Hardware**

##### Daily

- Doors close and latch properly
- Mechanized doors
- Panic hardware at security doors

##### Monthly

- Lubricate mechanized doors

#### **Electrical System**

##### Weekly

- Check light fixtures and exposed conduit
- Relamp fixtures

##### Semi-annually

- Inspect distribution panels

#### **Elevators**

##### Daily

- Check for normal operation
- Check indicators and other lights

##### Annually

- Preventive maintenance service

#### **HVAC**

##### Weekly

- Check for proper operation

##### Quarterly

- Preventative maintenance service

#### **Parking Control Equipment**

##### Daily

- Check for proper operation
- Per manufacturer's specifications
- Preventive maintenance inspection

#### **Painting**

##### Monthly

- Check for appearance-touch up paint (stripping, signs, walls, curbs)

##### Quarterly

- Check for rust spots (doors and door frames, handrails, pipe guards, exposed pipes and conduit, other metals)
- Clean, Prep and repaint as required

#### **Plumbing/Drainage Systems**

##### Daily

- Check for/remove ice patches (seasonal)

##### Weekly

- Check for proper operation of:
  - Irrigation
  - Floor drains
  - Sump pump
  - Fire Protection systems

##### Annually

- Winterize water systems

#### **Roofing and Waterproofing**

##### Monthly

- Check for leaks:
  - Roofing
  - Joint sealant in floors
  - Expansion joints
  - Windows, doors and walls
  - Floor membrane areas
- Check for wear and deterioration

#### **Safety Checks**

##### Daily

- Handrails and guardrails
- Exit lights
- Trip hazards
- Proper operation of cameras, call stations and other security equipment

##### Weekly

- Carbon monoxide monitor

#### **Horticulture**

##### Weekly

- Water and deadhead all plants

##### Monthly

- Fertilize
- Light pruning

##### Semi-annually

- Plant annuals

- Mulch

##### Annually

- Prune

**Exhibit "H"**

**DWM PROPERTY**

**[ATTACHED]**

EXHIBIT "A"

LEGAL DESCRIPTION

WEST PROPERTY

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE CITY OF ATLANTA AND BEING A PORTION OF LAND LOT 52 AND LAND LOT 55 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL AT THE BACK OF A CURVE LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF FIDELITY AVENUE (WIDTH VARIES) THAT IS 369.9 FEET SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY FROM THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (80 FEET WIDE) AND FROM SAID POINT OF BEGINNING THUS ESTABLISHED AND LEAVING SAID RIGHT-OF-WAY;

RUN SOUTH 53 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 120.00 FEET TO AN IRON PIN ON THE BANK OF CLEAR CREEK;

THENCE RUN SOUTH 37 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 61.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 30 DEGREES 34 MINUTES 50 SECONDS EAST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 254.95 FEET TO A POINT;

THENCE LEAVING THE CENTER OF SAID CREEK, RUN NORTH 51 DEGREES 19 MINUTES 43 SECONDS EAST FOR A DISTANCE OF 276.00 FEET TO A POINT AT THE NORTHWESTERLY CORNER OF LOT 41 OF THE WEST SUBDIVISION;

THENCE RUN NORTH 51 DEGREES 19 MINUTES 43 SECONDS EAST ALONG THE NORTHWESTERLY SIDE OF SAID LOT 41 FOR A DISTANCE OF 150.09 FEET TO AN OPEN TOP PIPE ON THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (60 FEET WIDE);

THENCE RUN SOUTH 38 DEGREES 40 MINUTES 09 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY FOR A DISTANCE OF 180.14 FEET TO A REINFORCING BAR AT THE NORTHWEST CORNER OF LOT 38 OF THE WEST SUBDIVISION;

THENCE LEAVING SAID RIGHT-OF-WAY, RUN SOUTH 51 DEGREES 22 MINUTES 59 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 38 FOR A DISTANCE OF 149.94 FEET TO A CRIMP TOP PIPE;

THENCE RUN SOUTH 38 DEGREES 43 MINUTES 08 SECONDS EAST ALONG THE REAR OF LOT 38 AND LOT 37 OF THE WEST SUBDIVISION FOR A DISTANCE OF 58.53 FEET TO AN IRON PIN;

THENCE RUN SOUTH 09 DEGREES 32 MINUTES 44 SECONDS EAST ALONG THE WESTERLY LINE OF THE WEST SUBDIVISION FOR A DISTANCE OF 424.50 FEET TO AN IRON PIN ON THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE (60 FEET WIDE);

THENCE RUN SOUTH 87 DEGREES 17 MINUTES 18 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE FOR A DISTANCE OF 45.69 FEET TO A POINT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 110.86 FEET, BEING SUBTENDED BY A CHORD OF NORTH 82 DEGREES 07 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 110.23 FEET TO AN IRON PIN;

THENCE RUN SOUTH 09 DEGREES 39 MINUTES 22 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY OF DUTCH VALLEY PLACE (60 FEET WIDE) FOR A DISTANCE OF 55.58 FEET TO A CRIMP TOP PIPE;

THENCE LEAVING SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET AND AN ARC LENGTH OF 84.40 FEET, BEING SUBTENDED BY A CHORD OF NORTH 65 DEGREES 55 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 84.20 FEET TO A POINT;

THENCE RUN NORTH 62 DEGREES 22 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 133.60 FEET TO AN IRON PIN ON THE SOUTHEASTERLY BANK OF CLEAR CREEK;

THENCE ALONG SAID SOUTHEASTERLY BANK OF CLEAR CREEK, RUN SOUTH 31 DEGREES 41 MINUTES 28 SECONDS WEST FOR A DISTANCE OF 78.15 FEET TO A POINT;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET AND AN ARC LENGTH OF 116.23 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 45 DEGREES 42 MINUTES 13 SECONDS WEST FOR A DISTANCE OF 115.27 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 136.80 FEET AND AN ARC LENGTH OF 108.21 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 79 DEGREES 03 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 105.41 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET AND AN ARC LENGTH OF 77.09 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 76 DEGREES 06 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 75.77 FEET TO AN IRON PIN ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN NORTH 12 DEGREES 25 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 40.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 49 DEGREES 23 MINUTES 07 SECONDS WEST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 38.50 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF SOUTHERN RAILWAY (65 FEET FROM CENTERLINE);

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2842.52 FEET AND AN ARC LENGTH OF 552.00 FEET, BEING SUBTENDED BY A CHORD OF NORTH 19 DEGREES 01 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 650.57 FEET TO A NAIL ON THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE (WIDTH VARIES);

THENCE RUN NORTH 36 DEGREES 49 MINUTES 13 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE FOR A DISTANCE OF 309.60 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN SOUTH 52 DEGREES 59 MINUTES 47 SECONDS EAST FOR A DISTANCE OF 4.90 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN NORTH 36 DEGREES 59 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 118.00 FEET TO A NAIL IN THE BACK OF A CURB, SAID NAIL BEING THE POINT OF BEGINNING.

TOGETHER WITH EASEMENTS AND RESTRICTIONS OF RECORD, SAID PROPERTY CONTAINS 12.3276 ACRES.

"EXHIBIT A"

WEST PROPERTY

ALL THAT TRACT or parcel of land lying in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the southwesterly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.R.") with the southeasterly right-of-way of Piedmont Avenue (right-of-way varies); THENCE proceed southwesterly along said southeasterly right-of-way of Piedmont Avenue for a distance of 369.9 feet to a drill hole at a point, said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, depart said southeasterly right-of-way of Piedmont Avenue South 50 degrees 16 minutes 04 seconds East for a distance of 120.00 feet to 5/8" reinforcing bar;

THENCE South 39 degrees 43 minutes 56 seconds West for a distance of 63.00 feet to a point;

THENCE South 27 degrees 50 minutes 54 seconds East for a distance of 254.95 feet to a point;

THENCE North 54 degrees 03 minutes 44 seconds East for a distance of 425.52 feet to a 1/2" open-top pipe at the afore-mentioned southwesterly right-of-way of Monroe Drive;

THENCE proceed along said southwesterly right-of-way of Monroe Drive South 36 degrees 04 minutes 22 seconds East for a distance of 180.14 feet to a 5/8" reinforcing bar;

THENCE depart said southwesterly right-of-way of Monroe Drive South 54 degrees 06 minutes 55 seconds West for a distance of 150.09 feet to a 1/2" crimped-top pipe;

THENCE South 35 degrees 59 minutes 13 seconds East for a distance of 58.53 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 48 minutes 48 seconds East for a distance of 494.50 feet to a 5/8" reinforcing bar;

THENCE North 89 degrees 53 minutes 46 seconds West for a distance of 45.69 feet to the point of curvature of an arc;

THENCE 110.86 feet along said arc of a curve to the right having a radius of 300.00 feet and chord bearing North 79 degrees 23 minutes 31 seconds West for a distance of 110.23 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 55 minutes 26 seconds East for distance of 55.58 feet to a 1" pipe to a 1" crimped-top pipe;

THENCE 84.40 feet along the arc of a curve to the right having a radius of 350.00 feet and a chord bearing North 66 degrees 11 minutes 24 seconds West for a distance of 84.20 feet to the point of tangency of said arc;

THENCE North 59 degrees 38 minutes 26 seconds West for a distance of 133.80 feet to a 5/8" reinforcing bar;

175887094

THENCE South 34 degrees 25 minutes 22 seconds West for a distance of 78.15 feet to the point of curvature of an arc;

THENCE 116.23 feet along said arc of a curve to the right having a radius of 260.00 feet and a chord bearing South 43 degrees 26 07 seconds West for a distance of 115.27 feet to the point of compound curvature with an adjoining arc;

THENCE 108.21 feet along said arc of a curve to the right having a radius of 136.83 feet and a chord bearing South 81 degrees 47 minutes 43 seconds West for a distance of 105.41 feet to the point of reverse curvature of an adjoining arc;

THENCE 77.09 feet along said arc of a curve to the left having a radius of 120.00 feet and a chord bearing South 78 degrees 50 minutes 23 seconds West for a distance of 75.77 feet to a 5/8" reinforcing bar on the northeasterly right-of-way of Southern Railroad at which point said northeasterly right-of-way is 100 feet from the centerline of Southern Railroad, being also the point of curvature of an adjoining arc;

THENCE along said northeasterly right-of-way of Southern Railroad 40.00 feet along said arc of a curve to the left having a radius of 2,876.62 feet and a chord bearing North 09 degrees 41 minutes 07 seconds West for a distance of 40.00 feet to the end of said arc, at which point said northeasterly right-of-way of Southern Railroad ceases to be 100 feet from the centerline of same;

THENCE South 52 degrees 07 minutes 03 seconds West for a distance of 38.50 feet to a point on the northeasterly right-of-way of Southern Railroad being 66 feet from the centerline of same;

THENCE continue along said northeasterly right-of-way of Southern Railroad, said right-of-way being and remaining 66 feet from the centerline of same for 652.00 feet along the arc of a curve to the left having a radius of 2,842.62 feet and a chord bearing North 16 degrees 17 minutes 33 seconds West for a distance of 650.57 feet to a 5/8" reinforcing bar at the intersection of said northeasterly right-of-way of Southern Railroad with the southeasterly right-of-way of Piedmont Avenue;

THENCE depart said northeasterly right-of-way of Southern Railroad and proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 33 minutes 09 seconds East for a distance of 309.60 feet to a nail at the point where the width of said southeasterly right-of-way does increase from the centerline of same;

THENCE South 50 degrees 15 minutes 52 seconds East for a distance of 4.90 feet to a drill hole where the width of said southeasterly right-of-way of Piedmont Avenue has thus increased from the centerline of same;

THENCE proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 43 minutes 25 seconds East for a distance of 118.00 feet to the POINT OF BEGINNING.

This property contains 12.3273 acres, more or less.

176887095

EXHIBIT "A"  
HALPERN  
LEGAL DESCRIPTION

TRACT I

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way); THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE North 80 degrees 21 minutes 15 seconds West for a distance of 10.02 feet to a 1/2" reinforcing bar at the intersection of said southerly right-of-way of Worchester Drive with the westerly line of said 10 foot alley; said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE proceed along the west line of said 10 foot alley South 06 degrees 34 minutes 33 seconds West for a distance of 122.57 feet to the point of curvature of an arc;

THENCE continue along said westerly line of a 10 foot alley 299.58 feet along the arc of a curve to the left having a radius of 3645.57 feet and a chord bearing South 04 degrees 00 minutes 09 seconds West for a distance of 299.50 feet to a point;

THENCE depart said westerly line of a 10 foot alley North 89 degrees 52 minutes 16 seconds West for a distance of 199.75 feet to a point at the westerly right-of-way of Evelyn Street (50 foot right-of-way, street closed);

THENCE proceed along said westerly right-of-way of Evelyn Street 53.65 feet along the arc of a curve to the left having a radius of 3845.25 feet and a chord bearing South 01 degree 10 minutes 11 seconds West for a distance of 53.65 feet to a 3/4" crimped-top pipe, said pipe being 446.42 feet northerly along said westerly right-of-way of Evelyn Street from its intersection with Amsterdam Avenue (50 foot right-of-way);

THENCE North 83 degrees 39 minutes 31 seconds West for a distance of 237.10 feet to a point;

THENCE North 21 degrees 20 minutes 29 seconds East for a distance of 23.70 feet to a point;

THENCE North 48 degrees 57 minutes 29 seconds East for a distance of 126.45 feet to a point;

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 42.05 feet to a point;

THENCE North 52 degrees 04 minutes 07 seconds West for a distance of 1.70 feet to a point;

BOOK 18145 PAGE 197

LEGAL DESCRIPTION

TRACT I

(Page 2)

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 2.90 feet to a point;  
 THENCE South 52 degrees 04 minutes 08 seconds East for a distance of 1.70 feet to a point;  
 THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 82.45 feet to a point;  
 THENCE North 31 degrees 36 minutes 08 seconds East for a distance of 10.20 feet to a point;  
 THENCE North 24 degrees 19 minutes 08 seconds East for a distance of 37.59 feet to a point;  
 THENCE North 83 degrees 39 minutes 52 seconds West for a distance of 33.09 feet to a point;  
 THENCE North 13 degrees 58 minutes 59 seconds East for a distance of 40.00 feet to a point;  
 THENCE North 83 degrees 22 minutes 17 seconds West for a distance of 40.14 feet to a nail;  
 THENCE North 13 degrees 48 minutes 09 seconds East for a distance of 31.95 feet to a nail;  
 THENCE North 83 degrees 40 minutes 45 seconds West for a distance of 214.87 feet to a 1/2" reinforcing bar;  
 THENCE North 11 degrees 54 minutes 19 seconds West for a distance of 33.53 feet to a 1/2" reinforcing bar;  
 THENCE North 83 degrees 37 minutes 56 seconds West for a distance of 123.16 feet to a 1/2" reinforcing bar on the easterly right-of-way of Southern Railroad (200 foot right-of-way);  
 THENCE proceed along said westerly right-of-way of Southern Railroad North 06 degrees 17 minutes 54 seconds East for a distance of 195.24 feet to the point of curvature of an arc;  
 THENCE continue along said easterly right-of-way of Southern Railroad 184.96 feet along said arc of a curve to the left, said curve having a radius of 3583.00 feet and a chord bearing North 04 degrees 51 minutes 35 seconds East for a distance of 184.94 feet to a point at the intersection of said easterly right-of-way of Southern Railroad with the centerline of a creek;  
 THENCE run the following courses and distances along the centerline of said creek:  
 South 82 degrees 14 minutes 05 seconds East for a distance of 75.94 feet to a point;  
 THENCE South 75 degrees 25 minutes 17 seconds East for a distance of 96.59 feet to a point;  
 THENCE South 82 degrees 04 minutes 06 seconds East for a distance of 111.25 feet to a point;  
 THENCE North 89 degrees 27 minutes 51 seconds East for a distance of 56.48 feet to a point;  
 THENCE South 64 degrees 22 minutes 04 seconds East for a distance of 56.87 feet to a point;  
 THENCE South 42 degrees 43 minutes 55 seconds East for a distance of 52.16 feet to a point;  
 THENCE South 65 degrees 37 minutes 39 seconds East for a distance of 47.51 feet to a point;

BOOK 18145 PAGE 198

LEGAL DESCRIPTION

TRACT I

(Page 3)

THENCE South 81 degrees 39 minutes 48 seconds East for a distance of 198.10 feet to a point;

THENCE South 56 degrees 38 minutes 11 seconds East for a distance of 37.44 feet to a point;

THENCE South 69 degrees 57 minutes 24 seconds East for a distance of 119.38 feet to a point at the intersection of said centerline of a creek with the afore-mentioned westerly right-of-way of Monroe Drive;

THENCE depart said centerline of a creek and proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 79.00 feet to a point at the intersection of said westerly right-of-way of Monroe Drive with the northerly right-of-way of Worchester Drive (50 foot right-of-way);

THENCE North 82 degrees 01 minutes 11 seconds West for a distance of 150.18 feet to a 1/2" reinforcing bar;

THENCE North 80 degrees 22 minutes 19 seconds West for a distance of 139.36 feet to a nail at the present-day terminus of Worchester Drive;

THENCE South 08 degrees 18 minutes 23 seconds West for a distance of 50.01 feet to a 1" open-top pipe at the westerly right-of-way of said Worchester Drive at its present-day terminus;

THENCE South 80 degrees 22 minutes 19 seconds East for a distance of 130.19 feet to the POINT OF BEGINNING;

Said property contains 7.9951 acres, more or less.

BOOK 18145 PAGE 199

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT III

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way), said point being the POINT OF BEGINNING;

THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 39 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE proceed along said southerly right-of-way of Worchester Drive South 82 degrees 01 minute 10 seconds East for a distance of 150.11 feet to the POINT OF BEGINNING;

Said property contains 0.3787 acre or 16,498 square feet, more or less.

EXHIBIT "A"

HALPERN PROPERTY TRACT-II

All that tract or parcel of land lying and being in Land Lots 52 and 55 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING AT THE POINT of intersection of the western right-of-way of Monroe Drive (having a 60 foot right-of-way and being formerly known as Boulevard and Boulevard, N.E.) and the southern right-of-way of Worchester Drive (having a 50 foot right-of-way); then run South 09 degrees 37 minutes 49 seconds West a distance of 100.51 feet to a one-inch crimp top found; thence leaving the western right-of-way of Monroe Drive run North 87 degrees 29 minutes 32 seconds West along the northern property line of property now or formerly owned by J.H. McBrook, Jr. a distance of 149.48 feet to a one-half inch hollow-top pipe found on the eastern right-of-way of a 10-foot alley; thence run North 08 degrees 47 minutes 16 seconds East along the eastern right-of-way of said 10-foot alley a distance of 120.53 feet to an iron pin set on the southern right-of-way of Worchester Drive; thence run North 78 degrees 09 minutes 36 seconds West along the southern right-of-way of Worchester Drive a distance of 10.01 feet to an iron pin set at its intersection with the western right-of-way of said 10-foot alley; thence run South 08 degrees 47 minutes 16 seconds West along the western right-of-way of said 10-foot alley a distance of 122.57 feet to a one-half inch hollow-top pipe found; thence continue to run along the western right-of-way of said 10-foot alley along the arc of a curve to the left an arc distance of 299.58 feet to an iron pin set (said arc having a radius of 3645.57 feet and being subtended by a chord bearing South 06 degrees 12 minutes 52 seconds West and having a length of 299.50 feet); thence leaving the western right-of-way of said 10-foot alley run North 87 degrees 39 minutes 33 seconds West a distance of 199.75 feet to a point; thence run along the arc of a curve to the left an arc distance of 53.65 feet to a one-inch crimp top found (said arc having a radius of 3645.25 feet and being subtended by a chord bearing South 03 degrees 22 minutes 54 seconds West and having a length of 53.65 feet); thence run North 81 degrees 26 minutes 48 seconds West a distance of 237.10 feet to a nail set; thence run North 23 degrees 33 minutes 12 seconds East a distance of 23.70 feet to a point; thence run North 51 degrees 10 minutes 12 seconds East a distance of 126.45 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 42.05 feet to a point; thence run North 49 degrees 51 minutes 24 seconds West a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 2.90 feet to a point; thence run South 49 degrees 51 minutes 24 seconds East a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 82.45 feet to a point; thence run North 33 degrees 48 minutes 51 seconds East a distance of 10.20 feet to a point; thence run North 26 degrees 31 minutes 51 seconds East a distance of 37.59 feet to a point; thence run North 81 degrees 27 minutes 48 seconds West a distance of 23.09 feet to a point; thence

BOOK 18145 PAGE 189

**Exhibit "I"**

**DECLARATION OF EASEMENTS RECORDED IN THE RECORDS OF  
FULTON COUNTY AT DEED BOOK 47769 PAGE 84**

**[ATTACHED]**



**WHEREAS**, the Declarant also floods a portion of the Property from time to time, in connection with its use of a portion of the Property as a storm overflow drainage area; and

**WHEREAS**, the Declarant desires to allow the Property to be used for Park purposes and activities (including, but not limited to, those activities set forth in that certain North Woods Master Plan Amendment, adopted by the City Council and approved by the Mayor in November 2001, as it may be amended from time to time (the "Master Plan"), as long as the use of the Property for Park purposes and activities does not interfere or conflict with the use of the Property for the operation, maintenance, repair, improvement, or expansion of the Utility; and

**WHEREAS**, it is necessary, beneficial, and desirable for the Property to be subjected to certain easements, privileges, and rights for the benefit of the Utility and to provide notice to the public of these easements, privileges, and rights;

**NOW, THEREFORE**, the Declarant does hereby subject the Property (that is, the property described in Exhibit "A" attached to this Declaration) to the easements, privileges, and rights hereinafter stated, upon the terms and conditions hereinafter stated:

1. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant for the benefit of the Utility, a perpetual, exclusive easement from time to time for the acquisition, construction, installation, replacement, alteration, renewal, rebuilding, reconstruction, improvement, upgrading, enhancement, change, addition, and removal of such wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems (including, but not necessarily limited to, mains, pipes, pump stations, tunnels, culverts, treatment facilities, equipment, lines, machinery, apparatus, fixtures, and intercepting sewers of every nature and description) and facilities over, under, on, in, across, and through the Property as the Declarant, and the successors, receivers, and assigns of the Declarant, or any one or more of them, shall deem, in its or their sole discretion, to be reasonably desirable or beneficial for purposes of the operation, maintenance, repair, improvement, or expansion of the Utility.

2. The Declarant does hereby subject the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, a perpetual, non-exclusive easement for the maintenance, repair, operation, inspection, testing, and use of all wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems and facilities as are presently located on the Property, and for the maintenance, repair, operation, inspection, testing, and use of such wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems and facilities as may be acquired, constructed, or installed on the Property in the future, and the right to flood any portion of the Property in connection with storm overflow drainage activities of the Declarant.

3. The Declarant does hereby subject all portions of the Property to, and hereby reserves to itself, its successors, receivers, and assigns, for the benefit of the Utility, a perpetual, non-exclusive easement of unrestricted and free access, ingress, and egress on, over, and through the Property, and the right to close or restrict access to any roads, streets, drives, parking lots,

and paved surfaces now or hereafter located on the Property as may be necessary or desirable to operate, maintain, repair, improve, or expand the Utility.

4. The Declarant acknowledges that a certain existing driveway serves the needs of the Utility's existing facilities, known as the Clear Creek CSO Facility, that the exact location of the driveway may be altered from time to time, and that the Declarant will permit shared access of the driveway, whether existing or modified, with the general public for the benefit of Park uses (specifically for access to certain Park facilities as further described in the Master Plan), subject to the Utility's uses as set forth herein. To the extent that such access roads and driveways must be closed, obstructed, or otherwise affected to serve Utility purposes, such closure, obstruction, or other activity affecting the access roads and driveways shall be temporary and as brief as is reasonably possible and shall create as little inconvenience as is reasonably possible to the users of the Park.

5. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, an easement for the paving of such portions of the Property as are necessary or desirable in order to access any portion of the Utility.

6. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, all other rights, privileges, and easements necessary or convenient for the full enjoyment and use of the Utility and the easements, rights, and privileges granted in this Declaration.

7. Any activities performed pursuant to the easements created by this Declaration shall cause as little inconvenience or interference as is reasonably possible to the users and improvements associated with the Park, and such individual or entity performing such activity or work shall timely repair and restore the property on which such work or activity takes place (and any areas of the property disturbed or damaged by such work) to a condition as nearly as practicable to the condition of the property as it existed prior to the commencement of such activity, at the sole expense of the Utility; provided, however, the Utility shall provide reasonable notice to the Declarant's Department of Parks, Recreation, and Cultural Affairs and shall consult with such Department in a reasonable manner, prior to conducting any activities described herein.

8. The Property is expressly dedicated for Utility purposes, and any use of the Property for Park purposes or activities shall be subject to this Declaration and subordinate to the use of the Property for Utility purposes described herein.

9. The Declarant shall have the right to cut, remove, clear, and keep all trees, branches, undergrowth, and other obstructions from the Property as the Declarant may deem necessary or desirable from time to time for the use of the easements granted in this Declaration and for the safe operation, repair, and maintenance of and access to the Utility. The Declarant is hereby entitled to the use of the Property for the purposes set forth in this Declaration, and any use or activity by any other party that is inconsistent with the permitted uses of the Declarant for the benefit of the Utility is strictly prohibited. With respect to any future use of the Property that the Declarant may determine to pursue for the benefit of the Utility, in the event that any existing use

of the Property by any party interferes or is inconsistent with such future-use (the "Inconsistent Use"), the Inconsistent Use shall immediately be discontinued, and all obstructions, including, without limitation, all facilities, buildings, and other structures, associated with the Inconsistent Use, shall be removed from the Property to the extent necessary to avoid interference with the Declarant's use of the Property for the benefit of the Utility, and all costs and expenses associated with discontinuing such Inconsistent Use and removing any obstructions shall be borne by the entity that caused the Inconsistent Use or obstruction. Notwithstanding the foregoing, the Utility acknowledges that the Declarant has approved the Master Plan and that the uses and activities set forth therein are not an Inconsistent Use.

10. The provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually. Any of the provisions of this Declaration may be modified or amended only by following the procedure for amendments set forth in the Declarant's bond ordinance securing any outstanding revenue bonds of the Declarant secured by revenues of the Utility.

[Signature and Seal To Follow]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its Mayor, and its official seal to be affixed hereto and attested by its Municipal Clerk, the day and year first above written.

CITY OF ATLANTA

By: *Andy L. Ladd*  
Mayor

(SEAL)

Attest:

*Foris Webb III*  
Municipal Clerk  
**FORIS WEBB III**  
**DEPUTY MUNICIPAL CLERK**

Approved As To Form:

*Louie Shepard*  
City Attorney

Signed, sealed, and delivered  
in the presence of:

*Dwight Marshall*  
Unofficial Witness  
*Alicia N. Williams*  
Notary Public

My Commission Expires: 1/14/2011  
(date)



**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

[Attached]

LEGAL DESCRIPTION WEST PROPERTY

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE CITY OF ATLANTA AND BEING A PORTION OF LAND LOT 52 AND LAND LOT 55 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL AT THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF FLEMING AVENUE (WIDTH VARIES) THAT IS 369.9 FEET SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY FROM THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (60 FEET WIDE) AND FROM SAID POINT OF BEGINNING TRUS ESTABLISHED AND LEAVING SAID RIGHT-OF-WAY;

RUN SOUTH 53 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 120.00 FEET TO AN IRON PIN ON THE BANK OF CLEAR CREEK;

THENCE RUN SOUTH 37 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 63.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 30 DEGREES 34 MINUTES 50 SECONDS EAST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 254.95 FEET TO A POINT;

THENCE LEAVING THE CENTER OF SAID CREEK, RUN NORTH 51 DEGREES 19 MINUTES 45 SECONDS EAST FOR A DISTANCE OF 276.00 FEET TO A POINT AT THE NORTHWESTERLY CORNER OF LOT 41 OF THE WEST SUBDIVISION;

THENCE RUN NORTH 51 DEGREES 19 MINUTES 45 SECONDS EAST ALONG THE NORTHWESTERLY SIDE OF SAID LOT 41 FOR A DISTANCE OF 150.09 FEET TO AN OPEN TOP PIPE ON THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (60 FEET WIDE);

THENCE RUN SOUTH 35 DEGREES 40 MINUTES 09 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY FOR A DISTANCE OF 180.14 FEET TO A REINFORCING BAR AT THE NORTHEAST CORNER OF LOT 38 OF THE WEST SUBDIVISION;

THENCE LEAVING SAID RIGHT-OF-WAY, RUN SOUTH 51 DEGREES 22 MINUTES 59 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 38 FOR A DISTANCE OF 149.94 FEET TO A CRIMP TOP PIPE;

THENCE RUN SOUTH 35 DEGREES 43 MINUTES 06 SECONDS EAST ALONG THE REAR OF LOT 38 AND LOT 37 OF THE WEST SUBDIVISION FOR A DISTANCE OF 58.53 FEET TO AN IRON PIN;

THENCE RUN SOUTH 09 DEGREES 32 MINUTES 44 SECONDS EAST ALONG THE WESTERLY LINE OF THE WEST SUBDIVISION FOR A DISTANCE OF 484.50 FEET TO AN IRON PIN ON THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE (60 FEET WIDE);

THENCE RUN SOUTH 07 DEGREES 17 MINUTES 18 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE FOR A DISTANCE OF 45.69 FEET TO A POINT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 110.86 FEET, BEING SUBTENDED BY A CHORD OF NORTH 82 DEGREES 07 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 110.23 FEET TO AN IRON PIN;

THENCE RUN SOUTH 09 DEGREES 39 MINUTES 22 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY OF DUTCH VALLEY PLACE (60 FEET WIDE) FOR A DISTANCE OF 55.58 FEET TO A CRIMP TOP PIPE;

THENCE LEAVING SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET AND AN ARC LENGTH OF 84.40 FEET, BEING SUBTENDED BY A CHORD OF NORTH 68 DEGREES 55 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 84.20 FEET TO A POINT;

THENCE RUN NORTH 62 DEGREES 22 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 133.80 FEET TO AN IRON PIN ON THE SOUTHEASTERLY BANK OF CLEAR CREEK;

THENCE ALONG SAID SOUTHEASTERLY BANK OF CLEAR CREEK, RUN SOUTH 31 DEGREES 41 MINUTES 26 SECONDS WEST FOR A DISTANCE OF 78.15 FEET TO A POINT;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 260.00 FEET AND AN ARC LENGTH OF 116.23 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 45 DEGREES 42 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 115.27 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 136.30 FEET AND AN ARC LENGTH OF 108.21 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 79 DEGREES 03 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 105.41 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET AND AN ARC LENGTH OF 77.09 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 76 DEGREES 08 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 75.77 FEET TO AN IRON PIN ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN NORTH 12 DEGREES 25 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 40.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 49 DEGREES 23 MINUTES 07 SECONDS WEST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 38.30 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF SOUTHERN RAILWAY (66 FEET FROM CENTERLINE);

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2842.52 FEET AND AN ARC LENGTH OF 652.00 FEET, BEING SUBTENDED BY A CHORD OF NORTH 19 DEGREES 01 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 650.57 FEET TO A NAIL ON THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE (WIDTH VARIES);

THENCE RUN NORTH 36 DEGREES 49 MINUTES 13 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE FOR A DISTANCE OF 389.60 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN SOUTH 52 DEGREES 59 MINUTES 47 SECONDS EAST FOR A DISTANCE OF 4.90 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN NORTH 36 DEGREES 59 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 118.00 FEET TO A NAIL IN THE BACK OF A CURB, SAID NAIL BEING THE POINT OF BEGINNING,

TOGETHER WITH EASEMENTS AND RESTRICTIONS OF RECORD,  
 SAID PROPERTY CONTAINS 12.3276 ACRES.

"EXHIBIT A"  
WEST PROPERTY

ALL THAT TRACT or parcel of land lying in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the southwesterly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southeasterly right-of-way of Piedmont Avenue (right-of-way varies); THENCE proceed southwesterly along said southeasterly right-of-way of Piedmont Avenue for a distance of 369.9 feet to a drill hole at a point, said point being the POINT OF BEGINNING;

THE POINT OF BEGINNING thus established, depart said southeasterly right-of-way of Piedmont Avenue South 50 degrees 16 minutes 04 seconds East for a distance of 120.00 feet to a 5/8" reinforcing bar;

THENCE South 39 degrees 43 minutes 56 seconds West for a distance of 63.00 feet to a point;

THENCE South 27 degrees 50 minutes 54 seconds East for a distance of 254.95 feet to a point;

THENCE North 54 degrees 03 minutes 44 seconds East for a distance of 425.82 feet to a 1/2" open-top pipe at the afore-mentioned southwesterly right-of-way of Monroe Drive;

THENCE proceed along said southwesterly right-of-way of Monroe Drive South 36 degrees 04 minutes 22 seconds East for a distance of 180.16 feet to a 5/8" reinforcing bar;

THENCE depart said southwesterly right-of-way of Monroe Drive South 54 degrees 06 minutes 55 seconds West for a distance of 150.09 feet to a 1/2" crimped-top pipe;

THENCE South 35 degrees 59 minutes 13 seconds East for a distance of 58.55 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 46 minutes 48 seconds East for a distance of 484.50 feet to a 5/8" reinforcing bar;

THENCE North 89 degrees 58 minutes 46 seconds West for a distance of 45.69 feet to the point of curvature of an arc;

THENCE 110.96 feet along said arc of a curve to the right having a radius of 300.00 feet and chord bearing North 79 degrees 23 minutes 31 seconds West for a distance of 110.23 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 55 minutes 26 seconds East for distance of 65.58 feet to a 1" pipe to a 1" crimped-top pipe;

THENCE 84.40 feet along the arc of a curve to the right having a radius of 350.00 feet and a chord bearing North 66 degrees 11 minutes 24 seconds West for a distance of 84.20 feet to the point of tangency of said arc;

THENCE North 59 degrees 38 minutes 26 seconds West for a distance of 133.80 feet to a 5/8" reinforcing bar;

THENCE South 34 degrees 23 minutes 22 seconds West for a distance of 78.15 feet to the point of curvature of an arc;

THENCE 116.23 feet along said arc of a curve to the right having a radius of 260.00 feet and a chord bearing South 48 degrees 26 07 seconds West for a distance of 115.27 feet to the point of compound curvature with an adjoining arc;

THENCE 108.21 feet along said arc of a curve to the right having a radius of 136.83 feet and a chord bearing South 81 degrees 47 minutes 43 seconds West for a distance of 105.41 feet to the point of reverse curvature of an adjoining arc;

THENCE 77.09 feet along said arc of a curve to the left having a radius of 120.00 feet and a chord bearing South 78 degrees 30 minutes 23 seconds West for a distance of 75.77 feet to a 3/8" reinforcing bar on the northeasterly right-of-way of Southern Railroad at which point said northeasterly right-of-way is 100 feet from the centerline of Southern Railroad, being also the point of curvature of an adjoining arc;

THENCE along said northeasterly right-of-way of Southern Railroad 40.00 feet along said arc of a curve to the left having a radius of 2,876.62 feet and a chord bearing North 09 degrees 41 minutes 07 seconds West for a distance of 40.00 feet to the end of said arc, at which point said northeasterly right-of-way of Southern Railroad ceases to be 100 feet from the centerline of same;

THENCE South 52 degrees 07 minutes 43 seconds West for a distance of 32.50 feet to a point on the northeasterly right-of-way of Southern Railroad being 66 feet from the centerline of same;

THENCE continue along said northeasterly right-of-way of Southern Railroad, said right-of-way being and remaining 66 feet from the centerline of same for 652.00 feet along the arc of a curve to the left having a radius of 2,842.62 feet and a chord bearing North 16 degrees 17 minutes 33 seconds West for a distance of 650.57 feet to a 5/8" reinforcing bar at the intersection of said northeasterly right-of-way of Southern Railroad with the southeasterly right-of-way of Piedmont Avenue;

THENCE depart said northeasterly right-of-way of Southern Railroad and proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 39 minutes 09 seconds East for a distance of 309.60 feet to a wall at the point where the width of said southeasterly right-of-way does increase from the centerline of same;

THENCE South 50 degrees 15 minutes 52 seconds East for a distance of 4.90 feet to a drill hole where the width of said southeasterly right-of-way of Piedmont Avenue has thus increased from the centerline of same;

THENCE proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 43 minutes 35 seconds East for a distance of 118.00 feet to the POINT OF BEGINNING.

This property contains 12.3273 acres, more or less.

EXHIBIT "A"  
HALPERN  
 LEGAL DESCRIPTION

TRACT I

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worcester Drive (50 foot right-of-way); THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worcester Drive;

THENCE North 80 degrees 21 minutes 15 seconds West for a distance of 10.02 feet to a 1/2" reinforcing bar at the intersection of said southerly right-of-way of Worcester Drive with the westerly line of said 10 foot alley; said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE proceed along the west line of said 10 foot alley South 06 degrees 34 minutes 33 seconds West for a distance of 122.57 feet to the point of curvature of an arc;

THENCE continue along said westerly line of a 10 foot alley 299.58 feet along the arc of a curve to the left having a radius of 3645.57 feet and a chord bearing South 04 degrees 00 minutes 09 seconds West for a distance of 299.58 feet to a point;

THENCE depart said westerly line of a 10 foot alley North 89 degrees 52 minutes 16 seconds West for a distance of 199.75 feet to a point at the westerly right-of-way of Evelyn Street (50 foot right-of-way, street closed);

THENCE proceed along said westerly right-of-way of Evelyn Street 53.65 feet along the arc of a curve to the left having a radius of 3845.25 feet and a chord bearing South 01 degree 10 minutes 11 seconds West for a distance of 53.65 feet to a 3/4" crimped-top pipe, said pipe being 446.42 feet northerly along said westerly right-of-way of Evelyn Street from its intersection with Amsterdam Avenue (50 foot right-of-way);

THENCE North 85 degrees 39 minutes 31 seconds West for a distance of 237.40 feet to a point;

THENCE North 21 degrees 20 minutes 29 seconds East for a distance of 23.70 feet to a point;

THENCE North 48 degrees 57 minutes 29 seconds East for a distance of 126.45 feet to a point;

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 42.05 feet to a point;

THENCE North 52 degrees 04 minutes 07 seconds West for a distance of 1.70 feet to a point;

## LEGAL DESCRIPTION

## TRACT I

(Page 2)

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 2.90 feet to a point;  
 THENCE South 52 degrees 04 minutes 08 seconds East for a distance of 1.70 feet to a point;  
 THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 82.45 feet to a point;  
 THENCE North 31 degrees 36 minutes 08 seconds East for a distance of 10.20 feet to a point;  
 THENCE North 24 degrees 19 minutes 08 seconds East for a distance of 37.59 feet to a point;  
 THENCE North 83 degrees 39 minutes 52 seconds West for a distance of 33.09 feet to a point;  
 THENCE North 13 degrees 58 minutes 59 seconds East for a distance of 40.00 feet to a point;  
 THENCE North 83 degrees 22 minutes 17 seconds West for a distance of 40.14 feet to a nail;  
 THENCE North 13 degrees 48 minutes 09 seconds East for a distance of 31.95 feet to a nail;  
 THENCE North 83 degrees 40 minutes 45 seconds West for a distance of 214.87 feet to a 1/2" reinforcing bar;  
 THENCE North 1 degrees 54 minutes 19 seconds West for a distance of 33.53 feet to a 1/2" reinforcing bar;  
 THENCE North 83 degrees 37 minutes 56 seconds West for a distance of 123.16 feet to a 1/2" reinforcing bar on the easterly right-of-way of Southern Railroad (200 foot right-of-way);  
 THENCE proceed along said westerly right-of-way of Southern Railroad North 06 degrees 17 minutes 54 seconds East for a distance of 195.24 feet to the point of curvature of an arc;  
 THENCE continue along said easterly right-of-way of Southern Railroad 184.96 feet along said arc of a curve to the left, said curve having a radius of 3683.00 feet and a chord bearing North 04 degrees 51 minutes 35 seconds East for a distance of 184.94 feet to a point at the intersection of said easterly right-of-way of Southern Railroad with the centerline of a creek;  
 THENCE run the following courses and distances along the centerline of said creek:  
 South 82 degrees 14 minutes 05 seconds East for a distance of 75.94 feet to a point;  
 THENCE South 75 degrees 25 minutes 17 seconds East for a distance of 96.59 feet to a point;  
 THENCE South 82 degrees 04 minutes 06 seconds East for a distance of 111.25 feet to a point;  
 THENCE North 89 degrees 27 minutes 51 seconds East for a distance of 56.48 feet to a point;  
 THENCE South 64 degrees 22 minutes 04 seconds East for a distance of 56.87 feet to a point;  
 THENCE South 42 degrees 43 minutes 55 seconds East for a distance of 52.16 feet to a point;  
 THENCE South 65 degrees 37 minutes 39 seconds East for a distance of 47.51 feet to a point;

LEGAL DESCRIPTION

TRACT I

(Page 3)

THENCE South 81 degrees 39 minutes 48 seconds East for a distance of 198.10 feet to a point;  
 THENCE South 56 degrees 38 minutes 11 seconds East for a distance of 37.44 feet to a point;  
 THENCE South 69 degrees 57 minutes 24 seconds East for a distance of 119.38 feet to a point at the intersection of said centerline of a creek with the afore-mentioned westerly right-of-way of Monroe Drive;  
 THENCE depart said centerline of a creek and proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 79.00 feet to a point at the intersection of said westerly right-of-way of Monroe Drive with the northerly right-of-way of Worchester Drive (50 foot right-of-way);  
 THENCE North 82 degrees 01 minutes 11 seconds West for a distance of 150.18 feet to a 1/2" reinforcing bar;  
 THENCE North 80 degrees 22 minutes 19 seconds West for a distance of 139.36 feet to a nail at the present-day terminus of Worchester Drive;  
 THENCE South 08 degrees 18 minutes 23 seconds West for a distance of 50.01 feet to a 1" open-top pipe at the westerly right-of-way of said Worchester Drive at its present-day terminus;  
 THENCE South 80 degrees 22 minutes 19 seconds East for a distance of 130.19 feet to the POINT OF BEGINNING;

Said property contains 7.9951 acres, more or less.

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT III

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way), said point being the POINT OF BEGINNING; THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE proceed along said southerly right-of-way of Worchester Drive South 82 degrees 01 minute 10 seconds East for a distance of 150.11 feet to the POINT OF BEGINNING;

Said property contains 0.3787 acre or 16,498 square feet, more or less.

EXHIBIT "A"  
HALPERN PROPERTY TRACT-II

All that tract or parcel of land lying and being in Land Lots 52 and 53 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING AT THE POINT of intersection of the western right-of-way of Monroe Drive (having a 60 foot right-of-way and being formerly known as Boulevard and Boulevard, N.E.) and the southern right-of-way of Worcester Drive (having a 50-foot right-of-way); then run South 09 degrees 37 minutes 49 seconds West a distance of 100.51 feet to a one-inch crimp top found; thence leaving the western right-of-way of Monroe Drive run North 87 degrees 29 minutes 32 seconds West along the northern property line of property now or formerly owned by J.H. McBrook, Jr. a distance of 149.48 feet to a one-half inch hollow-top pipe found on the eastern right-of-way of a 10-foot alley; thence run North 08 degrees 47 minutes 16 seconds East along the eastern right-of-way of said 10-foot alley a distance of 120.53 feet to an iron pin set on the southern right-of-way of Worcester Drive; thence run North 78 degrees 09 minutes 36 seconds West along the southern right-of-way of Worcester Drive a distance of 10.01 feet to an iron pin set at its intersection with the western right-of-way of said 10-foot alley; thence run South 08 degrees 47 minutes 16 seconds West along the western right-of-way of said 10-foot alley a distance of 122.57 feet to a one-half inch hollow-top pipe found; thence continue to run along the western right-of-way of said 10-foot alley along the arc of a curve to the left an arc distance of 299.58 feet to an iron pin set (said arc having a radius of 3645.57 feet and being subtended by a chord bearing South 06 degrees 12 minutes 52 seconds West and having a length of 299.58 feet); thence leaving the western right-of-way of said 10-foot alley run North 87 degrees 39 minutes 33 seconds West a distance of 199.75 feet to a point; thence run along the arc of a curve to the left an arc distance of 53.65 feet to a one-inch crimp top found (said arc having a radius of 3845.25 feet and being subtended by a chord bearing South 03 degrees 22 minutes 54 seconds West and having a length of 53.65 feet); thence run North 81 degrees 26 minutes 48 seconds West a distance of 237.10 feet to a nail set; thence run North 23 degrees 33 minutes 12 seconds East a distance of 23.70 feet to a point; thence run North 51 degrees 10 minutes 12 seconds East a distance of 126.45 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 42.05 feet to a point; thence run North 49 degrees 51 minutes 24 seconds West a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 2.90 feet to a point; thence run South 49 degrees 51 minutes 24 seconds East a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 82.45 feet to a point; thence run North 33 degrees 48 minutes 51 seconds East a distance of 10.20 feet to a point; thence run North 26 degrees 31 minutes 51 seconds East a distance of 37.59 feet to a point; thence run North 81 degrees 27 minutes 09 seconds West a distance of 33.02 feet to a point; thence

**Exhibit "J"**

**LICENSE AGREEMENT**

**[ATTACHED]**

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made and entered into this 6th day of March, 2009 ("Effective Date"), by and between the City of Atlanta, a municipal corporation of the State of Georgia ("Licensor") and The Atlanta Botanical Garden, Inc., a non-profit corporation created pursuant to the laws of the State of Georgia ("ABG") and the Piedmont Park Conservancy, Inc., a Georgia non-profit corporation ("PPC"; ABG and PPC are collectively referred to herein as "Licensee").

### WITNESSETH

WHEREAS, Licensor and ABG entered into that certain Indenture of Lease ("Original Lease"), dated March 31, 1980 for a period of fifty (50) years relating to the lease of certain public property, commonly known as the Atlanta Botanical Garden ("Garden"), which is located within a Licensor owned and operated park, known as Piedmont Park (the "Park"), as amended by Lease Amendment No. 1 dated April 27, 1988; as further amended by Lease Amendment No. 2 dated July 27, 1989; as further amended by Lease Amendment No. 3 dated January 24, 1990; as further amended by Lease Amendment No. 4 dated May 3, 1990; as further amended by Lease Amendment No. 5 dated August 1, 2000; as further amended by Lease Amendment No. 6 dated October 26, 2006 ("Amendment No. 6"); and as further amended by Lease Amendment No. 7 dated on or about the date hereof (the Indenture of Lease, as amended by the foregoing amendments, the "Lease"); and

WHEREAS, Amendment No. 6 was for the purpose of adding an additional parcel to the Lease; to provide for the construction and operation of a certain parking facility, as more particularly defined therein as "Parking Facility"; to provide for certain other improvements as green space; to provide for an amendment to the Master Plan; to provide for access to the Parking Facility; and for other purposes, which terms are more particularly described therein; and

WHEREAS, Amendment No. 6 specifically contemplates access to the Parking Facility from the lowest level of the Parking Facility to the public road, known as Monroe Drive, across and through certain property owned and maintained by Licensor by and through the Department of Watershed Management ("DWM"; all references to DWM throughout this License shall refer to Licensor and include Licensor's Department of Watershed Management or any successor entity or department that Licensor may create to operate and/or maintain the DWM Property for water and sewer purposes) for water and sewer purposes, said access point being defined and referred to within Amendment No. 6 as the "Park Entrance"; and

**WHEREAS**, Licensor and PPC have created a cooperative collaboration with each other for the purpose of preserving, restoring, developing, enhancing, rehabilitating and maintaining the Park, the terms and conditions of such collaboration being set forth in a Memorandum of Understanding, dated May 18, 2006, authorized by Ordinance adopted by the City Council of Atlanta on February 20, 2006 and approved by the Mayor of the City of Atlanta on February 28, 2006 (the "MOU"); and

**WHEREAS**, Licensor, through its Department of Parks, Recreation and Cultural Affairs, and PPC are currently negotiating the terms of a Master Operating Agreement for the purpose of defining PPC's obligations related to the operations of certain Park facilities, including Magnolia Hall, the Visitors Center, Greystone and other facilities in the Park, which agreement may be amended or appended to include the installation and construction of certain improvements to the DWM Property for Park Purposes, as included in the Master Plan, dated ("Master Operating Agreement"); and

**WHEREAS**, the property through which the DWM Driveway (as defined below) runs is specifically operated and maintained by and through DWM as a combined sewer treatment facility, known as the Clear Creek CSO Treatment Facility ("Clear Creek CSO"), and includes without limitation, a treatment facility building, parking area, a driveway accessed from the public road, known as Monroe Drive, that extends to the eastern boundary of property owned by the Atlanta Development Authority, a Georgia public body corporate and politic, and certain other above ground and below ground wastewater tunnels, wastewater collection and conveyance pipes and pump stations and other facilities, appurtenances and assets, which property is more particularly described in that certain legal description attached and incorporated herein as Exhibit "A" plus certain wastewater conveyance systems and/or concrete culverts located within the Park or the property described in Exhibit "A" ("DWM Property"); and

**WHEREAS**, it is contemplated in Amendment No. 6 that (a)(i) ABG, its agents, representatives, contractors, licensees and (ii) the Garden Users (as defined in the Lease) ((a)(i) and (ii) collectively, the "Garden Users"); and (b)(i) PPC, its agents, representatives, contractors, licensees and (ii) other persons who are entering the Parking Facility solely for the purpose of using portions of the Park or its facilities ((b)(i) and (ii) collectively, "Park Users"; hereinafter for purposes of the License only, the term "Garden Users" shall also include any persons who, during the same visit to the Parking Facility, meet the qualifications to be both a Park User and a Garden User, otherwise, the term Garden Users shall expressly exclude all Park Users, regardless of whether they are considered a licensee or invitee of ABG with regard to their use of the Parking Facility) shall have non-exclusive rights of ingress and egress over, across and through that certain driveway located on the DWM Property for the purpose of accessing the Parking Facility, as such driveway has been or is being improved by PPC's construction of the DWM Driveway Improvements (described in the

immediately following recital paragraph below) subject to DWM's operation and maintenance of the DWM Property for water and sewer purposes in a safe and efficient manner and in accordance with applicable laws and regulations ("DWM Driveway"); and

**WHEREAS**, certain improvements to the DWM Driveway have been or are in the process of being performed by PPC as of the date of this License at its sole cost and expense and in accordance with those certain final plans and specifications included in the building permit issued to PPC for such improvements, referenced as Building Permit #1C, as such final plans and specifications may be modified, pursuant to a permit modification issued by Licensor and which are listed and described on Exhibit "B-1" as of the date of this License incorporated herein (the "DWM Driveway Improvements"); and

**WHEREAS**, PPC is responsible at its sole cost and expense for the installation and construction of certain improvements (other than the DWM Driveway Improvements) to the Park and DWM Property for park uses, which said improvements are generally described in the Park Master Plan and more particularly described in this plan and specifications, described in the building permits referenced on Exhibit "B-2" ("Park Improvements"), and which Park Improvements, to the extent located on the DWM Property, will be subject to the terms and conditions of a separate License Agreement to be entered into between Licensor and PPC; and

**WHEREAS**, PPC desires to use the Premises (as defined in Section 1 below) as a construction entrance to access construction areas involved with the construction and installation of the Park Improvements on certain portions of the DWM Property ("Construction Activities");

**WHEREAS**, Licensor has authorized the use of the DWM Driveway for the limited purpose of allowing ingress and egress to the Parking Facility by the Garden Users, the Park Users and other persons authorized to use the DWM Driveway, while expressly reserving the primary rights and interests of owning, maintaining and operating the DWM Property for its water and sewer purposes and has obtained consent from its bond holders for the same, as included in the Fifth Supplemental Bond Ordinance, effective November 27, 2007 as Ordinance No. 07-O-2421 ("Ordinance"); and

**WHEREAS**, said Ordinance was expressly subject to the certain Declaration of Easements recorded in the records of Fulton County, Georgia at Deed Book 47769 Page 84, a copy of which is attached and incorporated herein as Exhibit "C" ("Declaration of Easements"), which expressly reserved the superior use of the DWM Property for water and sewer purposes and provides that access to the Parking Facility over the DWM Driveway is not anticipated to be an Inconsistent Use (as the same is defined in the Declaration of Easements) with the superior water and sewer use of the DWM Property; and

**WHEREAS**, consistent with and subject to the Declaration of Easements, the Ordinance, and the Lease, the parties desire to more particularly define the rights, obligations and privileges associated with Licensee's use of the DWM Driveway, in accordance with the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements contained in this License, the Parties do hereby agree as follows:

**1. Grant of License.** Licensor does hereby grant a license and Licensee hereby accepts the license granted by Licensor, for Licensee, and ABG's and PPC's respective officers, agents, representatives, employees, sublessees, sublicensees and invitees, licensees and guests, including, without limitation, the Garden Users and Park Users, to use the DWM Driveway and such other areas outside the DWM Driveway on the DWM Property reasonably necessary for Licensee's uses described herein (hereinafter, the "Premises") for the purposes, uses and subject to the terms and conditions contained herein. This License and the license granted pursuant to this Section 1 shall only be terminable pursuant to the express termination provisions contained herein.

All licenses and privileges granted herein are specifically subject to the Declaration of Easements.

**2. Term.** The term of this License shall be for a period commencing on the Effective Date of this License and ending (i) as to ABG and Garden Users, at such time as the Lease is terminated or otherwise expires pursuant to the terms contained therein (as such terms may be modified or as the term may be extended), or (ii) as to the PPC and Park Users, at such time as PPC no longer has any agreements in place with Licensor for the operation of any facilities in the Park and the MOU has expired or been terminated; provided however, Section 2(i) and (ii) shall be subject to this License being sooner terminated, according to the express terms contained herein.

**3. Use of the Premises; Purpose and Permitted Activities.** This License authorizes Licensee, and ABG's and PPC's respective officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including, without limitation, the Garden Users and the Park Users, to use the Premises solely for the purposes of 1) vehicular access, ingress and egress to and from the Parking Facility and the public road, known as Monroe Drive; 2) performing maintenance or repairs to the Driveway Improvements on the Premises; and 3) to construct, operate and maintain a certain ticket booth on the Premises. In addition, this License authorizes and permits PPC, its officers, agents, employees, representatives, and contractors to

use the Premises as may be necessary to complete the Construction Activities (as hereinafter defined). Licensee agrees to use said Premises in such a manner that will not adversely interfere in any material manner with Licensor's activities and facilities as may now or hereafter exist; provided, however, that Licensor hereby acknowledges and agrees that the use of the Premises for the above described purposes in a manner consistent with this License is not anticipated to so interfere with such activities and facilities as they currently exist. Licensee's use of the Premises shall be at the sole risk and expense of Licensee and Licensor is specifically relieved of any responsibility for damage to facilities and property of Licensee located on the Premises resulting or occurring from the use of the Premises by Licensee, except to the extent caused by the gross negligence or willful misconduct of Licensor or its agents, employees, contractors or representatives, and Licensee covenants not to sue Licensor in such case, unless caused by the gross negligence or willful misconduct Licensor or its agents or employees. Notwithstanding anything contained herein to the contrary, Licensee shall have the right to pursue such remedies it may have at law or in equity for Licensor's breach of its express obligations under this License: Notwithstanding anything to the contrary, (a) ABG agrees to reimburse Licensor for all costs and expenses it has incurred for any damage to Licensor's facilities located on or near the Premises resulting from ABG's use, including its officers, agents, employees, representatives, sublessees, and sublicensees and invitees, licensees and guests, including, without limitation, the Garden Users of the Premises; provided, however, that the reimbursement obligation in this item (a) shall in no event extend to damage caused by Park Users who do not qualify as Garden Users at the time such damage occurs and (b) PPC agrees to reimburse Licensor for all costs and expenses for any damage to Licensor's facilities or property located on or near the Premises resulting from PPC's use, including its officers, agents, employees, representatives, sublessees, and sublicensees and invitees, licensees and guests, including, without limitation, the Park Users, of the Premises.

PPC will be responsible for all aspects of its and its agents, contractors, and subcontractors actions within the Premises and must exercise the appropriate degree of care and control of, and accepts responsibility for, the performance of such contractors and subcontractors while on the Premises. ABG will be responsible for all aspects of its and its agents, contractors, and subcontractors actions within the Premises and must exercise the appropriate degree of care and control of, and accepts responsibility for, the performance of such contractors and subcontractors while on the Premises.

Licensee agrees and acknowledges that its use, including its officers, agents, employees, representatives, sublessees, and sublicensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users, of the Premises is expressly conditioned upon Licensee's uses, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including, without limitation, the Garden

Users, and the Park Users, not interfering with the safe and efficient operation and maintenance of the DWM Property, Clear Creek CSO or any other water or sewer facility located within the DWM Property, as may now or hereafter exist, for water and sewer purposes in compliance with all applicable laws and regulations; provided, however, that Licensor's ability to terminate, revoke or suspend this License or the use rights of Licensee granted by this License shall be limited to procedures expressly set forth in the other provisions of this License.

**3.1 DWM Driveway.** Access to the Parking Facility through the Park Entrance using the Premises shall be and remain under the operational control of DWM for the primary purpose of the safe and efficient operations and maintenance of the Clear Creek CSO and the DWM Property for water and sewer purposes, subject to the terms of this License and the reasonable rules, regulations and standard operating procedures ("SOPs") attached hereto as Exhibit "D", as the same may be reasonably amended by the DWM Commissioner, or his/her designee, at Licensor's sole discretion (in consultation with and reasonably taking into consideration the comments of ABG and PPC) from time to time, in writing, and provided to Licensee at least ten (10) business days prior to such amendment taking effect where practicable. Licensor and Licensee acknowledge and agree that for the purposes of managing the operations of ingress and egress to the Parking Facility through the Premises, Licensee, including its officers, agents, employees, representatives, sublessees, and sublicensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users, shall be responsible for adhering to all applicable requirements contained herein. Licensee shall not use the Premises in a manner that materially obstructs Licensor's access to its facilities on the DWM Property. Licensee shall hold Licensor harmless for any injury or damage to Licensee's Facilities (as defined below) in the event that such injury or damage to Licensee's facilities is a result of Licensee or its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users materially obstructing Licensor's access to Licensor's Facilities on the DWM Property in violation of this License or the SOPs.

**3.1.1 DWM Driveway Closure.** Licensor shall have the right to suspend Licensee's use, and its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users, of the Premises and require the closure of the Park Entrance when necessary and appropriate for the purpose of using the Premises for water and sewer purposes, specifically including without limitation for a Rain Event (as hereinafter defined); Emergency Event (as hereinafter defined); the delivery of chemicals to the DWM Property; or the operations, repair, improvement and maintenance of the Clear Creek CSO or Licensor's facilities as may now or hereafter be located on the DMW Property for water and sewer purposes ("Operation Activity") (collectively, Rain Event, Emergency Event, Operation Activity and chemical deliveries are

referred to as "Closure Event"), all as determined by Licensor in the exercise of its discretion or as may be required or authorized by the express provisions of this License. Licensee acknowledges and agrees that the Park Entrance shall be closed upon Licensee's receipt of one of the following notifications from an authorized DWM representative (each individually or collectively, a "Closure Notice"):

1. Electronic Closure Notice (as hereinafter defined) of a "Rain Event" or an Emergency Event (as hereinafter defined);;

2. Written Closure Notice (as hereinafter defined) of a Closure Event.

3. Verbal (Telephone or in person) Closure Notice of an Emergency Event; provided, however, that a Verbal Closure Notice shall only be given directly to C. Benjamin Bradley or the senior on-site employee of the parking management company engaged by ABG to operate the Parking Facility while such persons are actually on the Demised Premises or in the Parking Facility. Verbal Closure Notices (a) shall only be given in case of an Emergency Event and (b) shall not be deemed to have been delivered by leaving messages on voice mail or other mechanical message devices, with receptionists or secretaries or in any manner other than through direct and live communication with the applicable person.

Upon Licensor's valid delivery of a Closure Notice, ABG shall be responsible for closing the Park Entrance for vehicular ingress and egress within thirty (30) minutes after Licensor's valid delivery of a Closure Notice or sooner if so directed by the DWM authorized representative, which shall be subject to the provisions of the last sentence of Section 3.1.3 hereof after ABG's receipt of a Closure Notice. Upon a Closure Event, ABG shall take all reasonable measures to cease all ingress to and egress from the Parking Facility through the DWM Driveway, in accordance with the procedures included in the SOPs and this License. For purposes of this License, "Rain Event" shall mean that precipitation has fallen in an amount that is or is expected to be adequate to cause the Clear Creek CSO to commence the treatment of combined sewer and water overflow ("Water Treatment Operations"). Notwithstanding any provision to the contrary, Licensor reserves the right, and Licensee hereby waives any claims against Licensor for the same, to close the Park Entrance temporarily and take other reasonable measures to prohibit Licensee's, its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users, use of the Premises temporarily for the purpose of protecting the public health, safety and imminent threat to property ("Emergency Event") or in the event that ABG fails to perform its obligations with respect to a Closure Event.

**3.1.2 Electronic Closure Notice.** Upon the occurrence of a Rain Event, Licensor shall transmit an electronic signal to the Parking Facility by and

through ABG's Parking Facility operator in accordance with the SOPs ("Electronic Closure Notice"). ABG will notify PPC (by telephone and email to PPC's President) promptly after its receipt of any Electronic Closure Notice. Licensor may, at its discretion, also transmit an Electronic Closure Notice for an Emergency Event. Licensor shall not be responsible for any defects or malfunctions in the system delivering the Electronic Closure Notice, provided, that such defects or malfunctions were through no fault of Licensor. However, if Licensor learns of any such defects or malfunctions in the system, Licensor will notify ABG of such malfunction and provide a Closure Notice to Licensee pursuant to such other notice methods provided for pursuant to Section 3.1.1.

**3.1.3 Written Closure Notice.** ABG shall close the Park Entrance at the time specified in a written notice by email, facsimile or mail (a "Written Closure Notice") from Licensor of a Closure Event. Notice shall be deemed validly delivered by Licensor if properly transmitted and addressed by Licensor and sent to the emails or facsimile numbers in Section 13 or on the date 3 business days after the date on which the Written Closure Notice was deposited by Licensor in the U.S. mail (return receipt requested) and properly addressed to the individuals named below, pursuant to the notice provision contained in Section 13, which may be updated by PPC and ABG in writing to Licensor. Each Written Closure Notice shall specify the time at which the Park Entrance must be closed by (provided however in no event shall the time specified to close the Park Entrance be less than 30 minutes after Licensee's receipt of a Closure Notice, unless DWM determines that it is necessary to immediately close the Park Entrance for the safe and efficient operations of the Clear Creek CSO, DWM Property or the other facilities located on the DWM Property or for the protection of person and property in the case of an Emergency Event; in the event of such a determination by DWM ABG shall exercise all reasonable and good faith efforts to comply with such directive) and the estimated time by which Licensor believes the operation, maintenance or improvement causing the closure will be completed.

**3.1.4 Termination of Closure.** DWM shall as soon as reasonably possible send to Licensee notice of the conclusion of its activities attributed to the Closure Event by telephone, fax, email or other mutually established means of notification pursuant to Section 3.1.1, after which the DWM Driveway shall again be available for use by Licensee. Licensee shall be permitted to reopen the Park Entrance and make use of the Premises upon the conclusion of any Closure Event. Licensor will use all reasonable efforts to complete or correct, as soon as reasonably possible, the event or condition which requires the closure pursuant to a Closure Notice, and to conclude its operations, as soon as reasonably possible, following a Rain Event or other Closure Event, so that, in both cases, the Park Entrance can be re-opened and the DWM Driveway placed back into service as soon as reasonably possible.

**3.1.5 Closure for Chemical Deliveries.** Licensor agrees to coordinate Park Entrance closures with Licensee for such chemical deliveries, including, but not limited to working in good faith to coordinate the delivery times of chemicals with non-peak times for use of the Parking Facility and providing at least twenty-four hours advance notice to Licensee of anticipated chemical deliveries, to the extent that such advance notice is practical, it being hereby acknowledged and agreed that DWM shall have the right, exercisable in its sole discretion to deliver chemicals to Clear Creek CSO as and when it deems necessary or appropriate. Licensor will use all reasonable efforts to minimize the time period required for closure due to chemical deliveries.

**3.1.6 Standard Operating Procedures.** From time to time, Licensor may develop new commercially reasonable SOPs or amend existing SOPs (in a reasonable manner) governing Licensee's use of the Premises and closure of the Park Entrance to ensure the protection of the public, the Clear Creek CSO facilities and operations and Licensor's facilities located on the DWM Property, which SOPs shall be made part of this License by reference. In developing any new SOPs, or amending the existing SOPs, Licensor agrees to consult with PPC and ABG and to reasonably consider any comments/suggestions such parties may have with respect to the new SOPs or any revisions to the existing SOPs. Licensee shall incorporate such SOPs into its operations of the Premises and its Parking Facility.

**3.1.7 Construction, Maintenance and Repair of the DWM Driveway and Driveway Improvements.** PPC shall construct, maintain and repair the Driveway Improvements in accordance with the final plans and specifications contained in Exhibit "B-1". Furthermore, the maintenance and repair of the DWM Driveway shall be at the sole cost and expense of PPC, including any defects in the construction of the Driveway Improvements; provided, however, to the extent such maintenance or repair costs are incurred to repair damage caused by the gross negligence or willful misconduct of Licensor, its agents, employees, contractors or representatives, Licensor shall be obligated to pay for (or reimburse PPC for) all maintenance and repair costs so caused. The DWM Driveway shall be maintained and repaired in a condition necessary to support the load of DWM's operational vehicles for the Clear Creek CSO. PPC shall be specifically responsible for any additional costs to maintain or repair the Driveway Improvements due to its Construction Activities or Licensor's use of the Premises for its operational activities and Licensor shall be held harmless for the same, except to the extent such maintenance or repair costs are incurred to repair damage caused by the gross negligence or willful misconduct of Licensor, its agents, employees, contractors or representatives, in which case Licensor shall be obligated to pay for (or reimburse PPC for) all maintenance and repair costs so caused.

**3.1.8 Obligation to Provide Closure Notices.** Notwithstanding anything contained herein to the contrary, the Parties hereto acknowledge and

agree that (i) the closure procedures noted above have been designed to limit the interaction between Park Users and Garden Users and DWM operations, personnel, equipment and vehicles and (ii) Licensor agrees to provide Closure Notices in time for Licensee to implement the closure procedures as and when outlined above prior to accessing the Premises for Closure Events; provided, however, that failure to provide a Closure Notice shall in no event inhibit or restrict DWM or Licensor from accessing the Premises for any purposes.

**3.2 Chemicals.** Licensee acknowledges that Licensor's use of the Premises specifically includes the use of the Premises for the delivery of certain chemicals and substances that may be considered hazardous materials and which may pose a danger to the health and safety of the public if exposed ("Chemicals").

**3.3 Changes to Licensor's Facilities.** In the event that Licensor shall make any changes, alterations, construction, additions to its facilities or operations within the Premises or DWM Property that would impact Licensee's use of the Premises (a "Modification"), Licensor, where practicable, shall provide Licensee written notice of a Modification thirty (30) days prior to beginning work for such Modification. In connection with any Modification, Licensor shall have the right to require changes to the improvements within the Premises, the SOPs or a relocation of the Premises to another location on the DWM Property if Licensee's use of the Premises, in Licensor's opinion, would otherwise interfere with the safe and efficient performance of the Modification or the operations of the DWM Property after the Modifications are complete as Licensor shall deem necessary or appropriate in the exercise of its reasonable discretion; provided that Licensor shall take reasonable steps to ensure that any disruption to Licensee's use of the Premises is as minimal as practicable. Such reasonable steps shall include, but not be limited to Licensor providing Licensee with a means of ingress and egress during the Modification from Monroe Drive to the Parking Facilities if a reasonable means of ingress and egress exists on Licensor's property and does not materially interfere with DWM's use of the Premises for water and sewer purposes at Licensor's discretion. It shall be the obligation of PPC to make such changes in the location and operation of the DWM Driveway Improvements, pursuant to a separate written amendment to this License between Licensor, ABG and PPC, at PPC's sole cost and expense, as Licensor deems in its sole but reasonable discretion and opinion is necessary or appropriate to accommodate the Modification. In no event shall Licensee be obligated to Licensor for any of Licensor's costs or expenses related to a Modification. Any such requested changes in Licensee's use of the Premises will be deemed necessary and appropriate if Licensee's prior authorized use of the Premises materially frustrates the purposes of DWM's use of the Premises for water and sewer purposes, but shall not include any changes made arbitrarily or unreasonably.

**3.4 Improvements to Clear Creek CSO Culvert.** Pursuant to and related to the improvements contemplated in the Lease, ABG has made certain improvements to what is known as the "Clear Creek CSO Culvert" in order to support the weight load of dirt and improvements to the surface road traversing what is known as the Clear Creek CSO channel, which will operate as a bridge across the Clear Creek CSO channel upon the operation of the Parking Facility. Said improvements were made, pursuant to the final plans and specification included in the building permit issued by Licensor for the Clear Creek CSO Culvert and pursuant to the Lease. Within a reasonable time after completion of the Parking Facility and said improvements, ABG agrees to provide DWM with as-built drawings of said improvements which improvements and as-built drawings shall be inspected and reviewed by DWM. ABG agrees to cure any defect in the construction of said improvements for a period of one (1) year from the later to occur of (i) the date of substantial completion of said improvements and (ii) the date ABG shall provide such as-built drawings to Licensor. ABG shall indemnify and hold Licensor harmless for ABG's use, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation the Garden Users of such improvement subject to the indemnification requirements of Section 12, below, and excluding any damage or injury resulting from the gross negligence or willful misconduct of Licensor or DWM or their respective agents, employees, contractors or representatives; provided, however, that ABG's indemnity obligations shall in no event extend to any use of such improvements by Park Users who do not qualify as Garden Users at the time of such use of said improvements. The Parties specifically agree that the improvements to the Clear Creek CSO culvert are expressly a part of this License.

**3.5 PPC's Construction Activities.** PPC's use, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation the Park Users, of the Premises for Construction Activities shall be limited to those areas and times that are reasonably necessary to complete the Park Improvements and not merely for the convenience of PPC. PPC shall maintain a safety and hauling plan for all of its or its contractor's Construction Activities on DWM Property (as permitted herein) in substantial form as the plan attached and incorporated herein as Exhibit "F".

**3.6 Park Improvements.** PPC shall perform all work associated with the Park Improvements located on the DWM Property in accordance with the plans and specifications referenced in Exhibit "B-2" and the terms of the separate License Agreement to be entered into between Licensor and PPC. The DWM Driveway shall remain the property of Licensor, including any and all DWM Driveway Improvements that have or may be performed by PPC.

**3.7 Modification to DWM Driveway Improvements.** PPC shall have the right to make improvements and modifications to the Driveway Improvements,

subject to the prior written approval of Licensor, which approval shall not be unreasonably withheld or delayed by Licensor so long as such modifications or improvements will not interfere with DWM's safe and efficient operations and maintenance of the DWM Property for water and sewer purposes in accordance with applicable laws, in Licensor's discretion.

**4. Installation of Facilities on Premises.** ABG shall, at its sole cost, risk and expense, be permitted to construct, operate and maintain a certain ticket booth on the Premises, through its agents and contractors, at the location and in the manner depicted on the plan attached and incorporated herein as Exhibit "E" ("Ticket Booth") or such other location as may result from a Modification contemplated by Section 3.3 above. Other than the DWM Driveway Improvements the Ticket Booth and any additional equipment or facilities contemplated hereby, no additional facilities shall be located on the Premises without Licensor's express written approval (the Ticket Booth and other approved facilities are collectively referred to as "Licensee's Facilities"). Licensee's Facilities shall be maintained in such a manner as will not adversely interfere in any material manner with the operations of the Premises for water and sewer purposes and shall be constructed, operated and maintained in good order and repair at the sole cost and expense of Licensee, provided that PPC shall be responsible for the DWM Driveway Improvements and PPC's use of the Premises, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation the Park Users, in connection with the Construction Activities and ABG shall be responsible for the Ticket Booth in accordance with and subject to the terms of this License. The DWM Driveway Improvements shall be maintained by PPC to accommodate, at a minimum, large chemical tanker trucks, hauling trucks and large loads associated with the Clear Creek CSO and Licensor has reviewed and permitted the plans and specifications submitted by PPC, which are referenced on Exhibit "B-1", and confirms that, so long as they have been constructed in accordance with such plans and specifications, the DWM Driveway Improvements are anticipated to address these requirements.

All of Licensee's Facilities are and shall remain the personal property of Licensee. Upon the expiration, revocation or termination of this License, Licensee may, or if requested to do so in writing by Licensor shall, remove Licensee's Facilities (other than improvements to the Clear Creek CSO culvert and other improvements in the nature of paving, curb, gutter etc. for roadway improvements, which Licensee shall have no right or obligation to remove) from the Premises within thirty (30) days after the effective date of such expiration, revocation or termination at its sole cost and expense. In performing such removal of such portion of Licensee's Facilities, unless otherwise directed in writing by Licensor, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Licensee's Facilities, reasonable wear and tear excepted. In the event Licensee is not required to so remove any of Licensee's Facilities or shall fail to so remove Licensee's Facilities or restore

the Premises, Licensee's Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Licensor; provided that in the event that Licensor shall elect to remove such portion of Licensee's Facilities that Licensee is obligated to remove, Licensor shall reserve all rights and remedies to recover all actual and reasonable costs incurred by Licensor for such removal against Licensee.

Prior to the commencement of any work on the Premises, Licensee shall notify Licensor within seventy (72) hours to provide for any necessary coordination of such work with Licensor in light of any water and sewer purposes on the Premises.

**5. Liens; Taxes.** Licensee will not cause any mechanic's liens or other liens to be placed upon the Premises as a result of its use, operation, repair or maintenance of the Premises; provided however if Licensee permits anything to be done which creates a lien upon the Premises, Licensee will discharge or bond such lien as an encumbrance to Licensor's title to the Premises within thirty (30) days after receipt by Licensee of written notice thereof.

**6. Preservation of all public and private utility easements.** Licensee acknowledges that, in addition to the Declaration of Easements, the Premises may be burdened by private and public utilities and related facilities and appurtenances and agrees to be responsible for the identification and avoidance of any and all utilities or structures on the Premises and any damages related thereto that may be caused by reason of Licensee's use, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation the Garden Users and the Park Users, of and activities conducted on the Premises.

**7. No Interest; No Lease.** Licensee hereby acknowledges and agrees that the use of the Premises as provided herein shall in no way affect the validity of Licensor's ownership interest in the Premises and shall in no way modify or restrict the use or rights of Licensor to use the Premises for water and sewer purposes. Licensor acknowledges Licensor's right and title to said Premises and the priority of Licensor's use of the Premises specifically for water and sewer purposes and hereby agrees not to resist or assail said priority.

Licensee further acknowledges and agrees that the rights and privileges granted by Licensor herein, do not confer upon Licensee any real property interest, notwithstanding any improvements made to said Premises and Licensee agrees to waive any claims to the same; provided, however, that this License shall be specifically enforceable in accordance with its terms.

Licensee further acknowledges and Parties agree that this License is revocable pursuant to the terms and conditions contained in Section 8 below and does not constitute a lease and does not entitle Licensor to possession of the

Premises, but is merely an authorization to use the Premises as described herein. Licensee shall have no vested real property interest in the Premises and no rights other than those vested by this License.

Parties further acknowledge and agree that the License granted herein shall not be considered a part of the Demised Premises (as defined in the Lease) or the Easements contained in "Exhibit D" of Amendment No. 6 but shall be considered separate and apart from the Demised Premises.

#### **8. Termination or revocation of License.**

**8.1. Corrections by Licensor.** If either of the Parties comprising Licensee fails to timely perform its obligations under this License, and, upon receipt of written notice from Licensor, does not promptly commence and diligently pursue to completion, as soon as reasonably possible, the curing of such failure, or if an emergency situation is presented which, in Licensor's sole discretion and opinion, requires immediate actions to correct any disruption to Licensor's facilities, Licensor may undertake such corrective measures or repairs as it deems necessary or appropriate and if the particular Party comprising Licensee was otherwise responsible for payment or performance of such obligations, such work by Licensor shall be at such Licensee's expense.

**8.2. Suspension of Licensee's uses in lieu of termination.** If Licensor makes a Determination (as hereinafter defined), Licensor reserves the right, in its reasonable discretion, to (1) temporarily suspend Licensee's use of the Premises without terminating this License until such time as procedures have been agreed upon by Licensor and Licensee which result in Licensee's use of the Premises no longer interfering with Licensor's use of the Premises for water and sewer purposes; or (2) enter into an agreement with Licensee amending Licensee's use of the Premises in a manner that would not interfere with Licensor's use of the Premises, which said amendment shall be reduced to a written document, executed by the Parties and shall be made a part of this License by reference. Licensor agrees that any suspension of Licensee's use of the Premises shall not be in an arbitrary or capricious manner.

**8.3 Termination for frustrated uses.** Licensor, by and through DWM, specifically reserves the right to revoke and otherwise terminate this License, upon a determination by Licensor that Licensee's use, including its officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guests, including without limitation, the Garden Users and the Park Users, of the Premises frustrates the purposes of Licensor's primary use of the Premises for water and sewer purposes (a "Determination"); provided, however, in each instance in this License in which Licensor has the right to terminate, suspend or revoke this License or the use rights granted hereby, if Licensee's the inappropriate use or breach at issue is caused solely by PPC or Park Users such termination rights shall only apply to PPC and Park Users and

if the use at issue is caused solely by ABG or Garden Users, such termination rights shall only apply to ABG and Park Users. In the event that Licensor makes a Determination, Licensor shall provide Licensee written notice of its intent to terminate or revoke this License, provided, however, that Licensee may propose modification or alterations to Licensee's use to cure such frustration of uses and Licensor shall make every reasonable effort to consider and implement such changes, as may cure the frustrated uses for a period of up to sixty (60) days so long as Licensor's safe and efficient operations of the DWM Property for water and sewer purposes are not in jeopardy during such sixty (60) day period.

**8.4 Termination for material breach.** Licensor, by and through DWM, specifically reserves the right to revoke and otherwise terminate this license in the event of a material breach of Licensee's obligations under this License. In such an event, Licensor shall provide Licensee thirty (30) days written notice of such material breach to allow Licensee an opportunity to cure such breach. Notwithstanding anything contained herein to the contrary, this License shall not be revoked or terminated (a) in the event of a Determination, if Licensee shall make changes in its operational procedures to cure the frustrated uses within the 60 day period noted above by implementing such practices, policies or procedures as shall be necessary or appropriate to cure such frustrated uses and avoid any similar conflicts of such nature in the future and (b) in the event of a material breach, if Licensee shall cure such material breach of this Agreement within such 30 day period, including, without limitation, if applicable, implementing such practices, policies or procedures as shall be necessary or appropriate to cure such material breach and avoid any similar material breach of such nature in the future.

**8.5 Termination when License is expired, terminated or revoked for one Licensee.** In the event that this License expires pursuant to Section 2, is terminated or is otherwise revoked, pursuant to the terms of this License, as to ABG or PPC and not to the other, then this License shall continue in full force in effect with respect to the non-continuing Party only in the event that this License is amended to include that the continuing Party assumes all of the obligations related to the operation and maintenance of the DWM Driveway that were assumed by the other Party under this License prior to the expiration, termination or revocation, unless otherwise agreed upon by Licensor; provided, however, that ABG would continue to have the right to pursue PPC for the breach of its obligation to maintain the DWM Driveway Improvements and (ii) in no event will ABG be obligated to assume any indemnification, insurance or other obligations or liabilities related to (A) the use of the Premises by PPC, its agents, representatives, contractors, licensees, Park Users or (B) any construction activities on any portion of the DWM Property. In the event that this License is not so amended, then this License shall terminate.

**9. As is.** Licensee acknowledges that it has fully inspected the Premises and accepts the condition of the Premises "as is." Licensor acknowledges that it has reviewed and permitted the plans and specifications for the Driveway Improvements described on Exhibit "B-1" and agrees to accept the Driveway Improvements as being in compliance with this License so long as they have been completed in accordance with such permitted plans and specifications and this License.

**10. Compliance with Law.** The Parties comprising Licensee each agree, at their own expense, to conduct all of their respective operations on and use of the Premises in full compliance with all applicable laws, ordinances, rules, regulations, orders or directives of any governmental authority; provided, however, that ABG shall only be responsible for use of the Premises by Garden Users and PPC shall only be responsible for Park Users and (except as provided in Section 8) in no event shall ABG have any responsibility or liability related to PPC use of the Premises for construction related activities or maintenance and repairs performed by PPC. Without limiting the above, Licensee's use of the Premises shall not be used for the treatment, disposal or storage of any rubble, debris or waste (including but not limited to hazardous wastes as defined by the Resource Conservation and Recovery Act of 1975, as amended). Licensee agrees to secure at their sole cost and expense all necessary permits, letters, certificates of approval or authorization for Licensee's use of the Premises pursuant to this License, and assume all liability for such Party's its failure to so comply or secure such necessary permits, approvals and authorizations related to its use of the Premises, and shall defend, indemnify and hold Licensor, its, officials, employees and representatives harmless from any violation, charge or fine and all costs of defense or compliance costs for any such failure; provided, however, that (except as provided in Section 8) ABG shall only be obligated to indemnify Licensor for matters related to its use of the Premises and which arise out of the failure of ABG, its agents, employees or contractors with respect to the matters described above in this Section 10; and (except as provided in Section 8) PPC shall only be obligated to indemnify Licensor for matters related to its use of the Premises and which arise out of the failure of PPC, its agents, employees or contractors with respect to the matters described above in this Section 10 and (except as provided in Section 8) in no event shall ABG have any responsibility or liability related to PPC use of the Premises for Construction Activities or maintenance and repairs performed by PPC, nor shall PPC have any responsibility or liability related to ABG's construction or maintenance and repair obligations under this License.

**11. Right to inspection and entry by Licensor.** Licensor shall have the right to enter onto the Premises at all times for the purpose of operating and maintaining its water and sewer facilities located on the Premises or DWM Property and for the purpose of inspecting the Premises or DWM Property to ensure that Licensee's use of the Premises is consistent with the terms granted herein.

## **12. Indemnification and Insurance.**

**12.1.A. From ABG.** Notwithstanding anything contained in the Lease or in this License, ABG shall indemnify, defend and hold harmless Licensor, its officials, employees, agents and representatives, including but not limited to reasonable attorney's fees, which Licensor may incur or pay out by reason of any injuries to person or damage to property in connection with the use of the Premises or construction of the improvements to the Clear Creek CSO Culvert (subject to the survival limitation in Section 3.4), to the extent caused by, related to or arising from any acts or omissions of ABG, officers, agents, employees, representatives, sub lessees, and sub licensees and their invitees, licensees and guest, including without limitation the Garden Users. In no event shall such indemnity apply to injuries to person or damage to property to the extent caused by any acts or omissions of PPC or Park Users. Further, the indemnity contemplated hereby shall not apply to the extent of any injuries to person or damage to property resulting from the gross negligence or willful misconduct of Licensor its respective agents, employees, contractors or representatives.

Without limiting the foregoing, ABG agrees to defend, indemnify and hold harmless Licensor, its officials, employees, agents and representatives from all claims, costs and expenses, (including reasonable attorneys fees) as consequence of any incident resulting in the pollution of air, water, land and/or ground water to the extent resulting from the negligent acts or omissions or willful misconduct of ABG its contractors, agents, employees, or the Garden Users in connection with the use or occupation of the Premises, including any claim or liability arising under federal, state or local law dealing with the pollution of air, water land and/or ground water or the remedy thereof or from ABG's failure to secure and comply with applicable law or permits.

ABG's obligations to indemnify Licensor under this License with respect to matters arising prior to the effective date of any expiration, revocation or termination of this License shall survive the expiration, termination or revocation of this License.

**12.1.B. From PPC.** Notwithstanding anything contained in the Lease or in this License, PPC shall indemnify, defend and hold harmless Licensor, its officials, employees, agents and representatives, including but not limited to reasonable attorney's fees, which Licensor may incur or pay out by reason of any injuries to person or damage to property in connection with the use of the Premises, to the extent (i) caused by, related to or arising from any acts or omissions of PPC, its contractors, agents, employees, (ii) arising out of its use of the Premises in connection with the Construction Activities, or (iii) caused by any defects in the DWM Driveway Improvements or by PPC's failure to comply with its maintenance and repair obligations with respect to the DWM Driveway Improvements; provided however in no event shall such indemnity apply to

injuries to person or damage to property caused in whole or in part by any acts or omissions of ABG or the Garden Users.

Without limiting the foregoing, PPC agrees to defend, indemnify and hold harmless Licensor, its officials, employees, agents and representatives from all claims, costs and expenses, (including reasonable attorneys fees) as consequence of any incident resulting in the pollution of air, water, land and/or ground water to the extent resulting from the negligent acts or omissions or willful misconduct of PPC, its contractors, agents, or employees, in connection with the use or occupation of the Premises, including any claim or liability arising under federal, state or local law dealing with the pollution of air, water land and/or ground water or the remedy thereof or from PPC's failure to secure and comply with applicable law or permits.

PPC's obligations to indemnify Licensor under this License with respect to matters arising prior to the effective date of any expiration, revocation or termination of this License shall survive the expiration, termination or revocation of this License; provided, however, PPC shall not indemnify, hold harmless or defend Licensor for the gross negligence or willful misconduct of Licensor, DWM or their respective agents, employees, contractors or representatives.

**12.1.C. PPC's Insurance Obligation.** In addition to covering PPC's indemnity obligations under Section 12.1.B above, the commercial general liability insurance which PPC is obligated to carry pursuant to Section 12.2 below shall cover, as PPC's responsibility (and with Licensor listed as Additional Insured), all claims, costs and expenses (including reasonable attorneys fees) incurred by Licensor which arise out of any events or occurrences on the DWM Driveway (i) that are not covered by any of the indemnities provided by ABG and PPC in Sections 12.1.A and 12.1.B above, and (ii) that do not arise out of the gross negligence or willful misconduct of Licensor or its respective agents, employees, contractors or representatives; or (iii) or that arise solely out of the operations of DWM on the DWM Property. In no event shall PPC's liability under this Section 12.1.C (i) extend to matters that are excluded from coverage under a commercial general liability policy of the type required to be carried by PPC pursuant to Section 12.2 below, or (ii) exceed, for each occurrence, the \$1,000,000 liability limits specified in Section 12.2 below.

**12.2. Insurance Requirements.** ABG and PPC each shall procure, and cause its contractors and subcontractors to procure, at their sole cost and expense, during the full term of this License the following insurance requirements for purposes of this License. All insurance required by this License must be maintained during the term of the License. Licensor shall be named as an Additional Insured under all required policies and such insurance must be primary with respect to the Additional Insured to the extent Licensee had an obligation to indemnify Licensor or DWM with respect to a matter covered by such insurance, in such event vesting with Licensor all rights under the insurance

policies that the primary insured has. Licensee's liability under this License shall in no way be limited by the limits of the insurance requirements herein.

#### General Liability Insurance

ABG and PPC each must procure and maintain Commercial General Liability Insurance in an amount not less than \$1,000,000.00 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage must be provided:

1. Comprehensive Form;
2. Contractual Insurance-(Blanket or specific applicable to this agreement);
3. Personal Injury;
4. Broad Form Property Damage;
5. Premises - Operations; and
6. Products Completed- Operations.

#### Automobile Liability Insurance

ABG and PPC must each procure and maintain Automobile Liability Insurance with not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage must be provided:

1. Comprehensive Form and
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

Licensee understands and agrees that Licensor is not maintaining any insurance or other indemnification instruments protecting Licensee with respect to its actions and use of the Premises.

**13. General Provisions.** This License may not be altered, changed or amended, except by instrument in writing signed by ABG, PPC and Licensor (each individually a "Party" and collectively referred to herein as the "Parties"). The terms and conditions contained in this License shall apply to, inure to the benefit of, and be binding upon the Parties, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

No failure of any Party hereto to exercise any right or power granted under this License or to insist upon strict compliance by the other Parties of the terms and conditions of this License, shall constitute a waiver of any Party's right to demand exact and strict compliance by the other Parties hereto with the terms and conditions of the License, unless such waiver is in writing signed by the Party which the waiver shall be enforced against. Nor shall any custom or practice that may evolve between the Parties in the administration of the terms

hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Parties in strict accordance with the terms hereof.

This License shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia. Should any provision of this License require judicial interpretation, it is agreed and stipulated by and among the Parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one Party by reason of the rule of construction that an instrument is to be construed more strictly against the Party who prepared the same.

The termination of this License shall not operate to cut off any claims or causes of action in favor of Licensor, ABG or PPC which occurred or arose prior to the effective date of such termination for a period of one (1) year following such termination.

ABG and PPC, each individually, hereby acknowledges that it has not been induced by, nor has it relied on, any representation, statement, or warranty made or given by Licensor including, but not limited to, representations or warranties with respect to title to Premises or the condition or suitability thereof for Licensee's purpose.

Each of the undersigned individuals hereby warrants and represents that he or she is duly authorized to execute and deliver this License on behalf of the applicable Party.

This License supersedes all prior negotiations, discussions, statements and agreements between the Parties governing the use of the Premises. Together with the Lease as amended, this License constitutes the full, complete and entire agreement between ABG and Licensor with respect to the above-described uses of the Premises; no member, officer, employee, representative or agent of Licensor or ABG has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this License. No modification of or amendment to this License shall be binding on any Party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by Licensor and Licensee and incorporated in and by reference made a part hereof. This License is in addition to the MOU or any other agreements between Licensor and PPC.

This License and the Parties' agreement and obligations hereunder are independent of any other obligation or agreement regarding release, indemnity and hold harmless as may exist between the Parties. This License shall not in any way alter, limit or restrict any other obligation or duty of ABG or PPC,

whether at common law or by any other agreement or document in favor of Licensor.

This License is not intended to and shall not create any agency or partnership relationship between Licensor and Licensee

If any provision of this License is held, by a court of competent jurisdiction, to be illegal, invalid or unenforceable, said provision shall be deemed to be severed and deleted; and neither such provision, its severance, nor deletion shall affect the validity of the remaining provisions of this License.

References throughout this document to Licensor's determinations, discretions and decisions which are in "Licensor's discretion", "Licensor's opinion" and/or other similar terms and phrases, shall require Licensor to make any such determinations, decisions or exercise such discretion in a manner which is not arbitrary or capricious.

#### **Notices**

Whenever notice shall or may be given to any of the Parties by the other, each such notice shall be by personal delivery (via commercial courier or otherwise) or registered or certified mail, return receipt requested, addressed as follows; provided, however, that a Closure Notice, Closure Termination Notices or such other notices provided for in Section 3 of this License may be provided as contained therein or by such other means of communications so long as the procedure for such communications shall have been approved in writing by Licensor and Licensee:

If to Licensor:           Attention: Robert J. Hunter  
Department of Watershed Management  
55 Trinity Avenue, Suite 5400  
Atlanta GA, 30303  
Telephone: 404-330-6081  
Facsimile: 404-658-7194  
Email: rhunter@atlantaga.gov

If to ABG:               Atlanta Botanical Garden, Inc.  
1345 Piedmont Avenue NE  
Atlanta, Georgia 30309  
Attn: C. Benjamin Bradley  
Telephone: 404-591-1553  
Facsimile: 404-876-7472  
Email: bbradley@atlantabotanicalgarden.org

If to PPC:               Piedmont Park Conservancy, Inc.

P.O. Box 7795  
Atlanta, Georgia 30357  
Attn: President/CEO  
Telephone: 404-875-0565  
Facsimile: 404-875-0530  
Email: [ybowden@piedmontpark.org](mailto:ybowden@piedmontpark.org)

AND

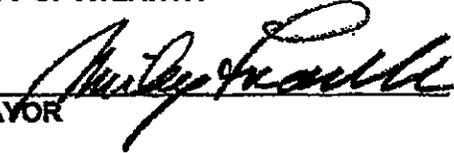
Attn: Chris Nelson  
Telephone: 404-667-2123  
Facsimile: 404-875-0530  
Email: [cnelson@piedmontpark.org](mailto:cnelson@piedmontpark.org)

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

CITY OF ATLANTA

ATTEST:

  
MAYOR

  
Municipal Clerk (SEAL)  
FORIS WEBB III  
DEPUTY MUNICIPAL CLERK

APPROVED:

  
Commissioner,  
Dept. of Parks, Recreation and  
Cultural Affairs

  
Commissioner,  
Dept. of Watershed Management

Approved as to form:

  
City Attorney

THE ATLANTA BOTANICAL  
GARDEN, INC., a Georgia non-  
profit corporation

By:   
Name: MARY PAT MATHESON  
Title: EXECUTIVE DIRECTOR

**PIEDMONT PARK  
CONSERVANCY, INC., a  
Georgia not-for-profit corporation**

By: \_\_\_\_\_

Name: V. E. Young

Title: President / CEO

**EXHIBIT "A"**

**DWM PROPERTY**

**[SEE ATTACHED]**

EXHIBIT "A"

LEGAL DESCRIPTION

WEST PROPERTY

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE CITY OF ATLANTA AND BEING A PORTION OF LAND LOT 52 AND LAND LOT 55 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL AT THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE (WIDTH VARIES) THAT IS 369.9 FEET SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY FROM THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (80 FEET WIDE) AND FROM SAID POINT OF BEGINNING THUS ESTABLISHED AND LEAVING SAID RIGHT-OF-WAY,  
RUN SOUTH 53 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 120.00 FEET TO AN IRON PIN ON THE BANK OF CLEAR CREEK;  
THENCE RUN SOUTH 37 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 63.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;  
THENCE RUN SOUTH 30 DEGREES 34 MINUTES 50 SECONDS EAST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 254.95 FEET TO A POINT;  
THENCE LEAVING THE CENTER OF SAID CREEK, RUN NORTH 51 DEGREES 19 MINUTES 45 SECONDS EAST FOR A DISTANCE OF 276.00 FEET TO A POINT AT THE NORTHWESTERLY CORNER OF LOT 41 OF THE WEST SUBDIVISION;  
THENCE RUN NORTH 51 DEGREES 19 MINUTES 45 SECONDS EAST ALONG THE NORTHWESTERLY SIDE OF SAID LOT 41 FOR A DISTANCE OF 150.09 FEET TO AN OPEN TOP PIPE ON THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (80 FEET WIDE);  
THENCE RUN SOUTH 38 DEGREES 40 MINUTES 09 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY FOR A DISTANCE OF 180.14 FEET TO A REINFORCING BAR AT THE NORTHERNMOST CORNER OF LOT 38 OF THE WEST SUBDIVISION;  
THENCE LEAVING SAID RIGHT-OF-WAY, RUN SOUTH 51 DEGREES 22 MINUTES 59 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 38 FOR A DISTANCE OF 145.94 FEET TO A CRIMP TOP PIPE;  
THENCE RUN SOUTH 38 DEGREES 43 MINUTES 08 SECONDS EAST ALONG THE REAR OF LOT 38 AND LOT 37 OF THE WEST SUBDIVISION FOR A DISTANCE OF 58.53 FEET TO AN IRON PIN;  
THENCE RUN SOUTH 09 DEGREES 32 MINUTES 44 SECONDS EAST ALONG THE WESTERLY LINE OF THE WEST SUBDIVISION FOR A DISTANCE OF 484.50 FEET TO AN IRON PIN ON THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE (60 FEET WIDE);  
THENCE RUN SOUTH 87 DEGREES 17 MINUTES 18 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE FOR A DISTANCE OF 45.69 FEET TO A POINT;  
THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 110.86 FEET, BEING SUBTENDED BY A CHORD OF NORTH 62 DEGREES 07 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 110.23 FEET TO AN IRON PIN;  
THENCE RUN SOUTH 09 DEGREES 39 MINUTES 22 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY OF DUTCH VALLEY PLACE (60 FEET WIDE) FOR A DISTANCE OF 55.58 FEET TO A CRIMP TOP PIPE;  
THENCE LEAVING SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET AND AN ARC LENGTH OF 84.40 FEET, BEING SUBTENDED BY A CHORD OF NORTH 68 DEGREES 55 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 84.20 FEET TO A POINT;  
THENCE RUN NORTH 62 DEGREES 22 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 133.80 FEET TO AN IRON PIN ON THE SOUTHEASTERLY BANK OF CLEAR CREEK;

THENCE ALONG SAID SOUTHEASTERLY BANK OF CLEAR CREEK, RUN SOUTH 31 DEGREES 41 MINUTES 26 SECONDS WEST FOR A DISTANCE OF 78.15 FEET TO A POINT;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 260.00 FEET AND AN ARC LENGTH OF 116.23 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 45 DEGREES 42 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 115.27 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 136.80 FEET AND AN ARC LENGTH OF 106.21 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 79 DEGREES 03 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 105.41 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET AND AN ARC LENGTH OF 77.09 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 76 DEGREE 08 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 75.77 FEET TO AN IRON PIN ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN NORTH 12 DEGREES 25 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 40.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 49 DEGREES 23 MINUTES 07 SECONDS WEST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 38.38 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF SOUTHERN RAILWAY (66 FEET FROM CENTERLINE);

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2842.62 FEET AND AN ARC LENGTH OF 652.00 FEET, BEING SUBTENDED BY A CHORD OF NORTH 19 DEGREES 01 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 650.57 FEET TO A NAIL ON THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE (WIDTH VARIES);

THENCE RUN NORTH 36 DEGREES 49 MINUTES 13 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF PIEDMONT AVENUE FOR A DISTANCE OF 309.60 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN SOUTH 52 DEGREES 59 MINUTES 47 SECONDS EAST FOR A DISTANCE OF 4.90 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN NORTH 36 DEGREES 59 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 118.00 FEET TO A NAIL IN THE BACK OF A CURB, SAID NAIL BEING THE POINT OF BEGINNING.

TOGETHER WITH EASEMENTS AND RESTRICTIONS OF RECORD.  
SAID PROPERTY CONTAINS 12.3276 ACRES.

"EXHIBIT A"

WEST PROPERTY

ALL THAT TRACT or parcel of land lying in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the southwesterly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southeasterly right-of-way of Piedmont Avenue (right-of-way varies); THENCE proceed southwesterly along said southeasterly right-of-way of Piedmont Avenue for a distance of 369.9 feet to a drill hole at a point, said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, depart said southeasterly right-of-way of Piedmont Avenue South 50 degrees 16 minutes 04 seconds East for a distance of 120.00 feet to 5/8" reinforcing bar;

THENCE South 39 degrees 43 minutes 56 seconds West for a distance of 63.00 feet to a point;

THENCE South 27 degrees 50 minutes 54 seconds East for a distance of 254.95 feet to a point;

THENCE North 54 degrees 03 minutes 44 seconds East for a distance of 425.82 feet to a 1/2" open-top pipe at the afore-mentioned southwesterly right-of-way of Monroe Drive;

THENCE proceed along said southwesterly right-of-way of Monroe Drive South 36 degrees 04 minutes 22 seconds East for a distance of 180.14 feet to a 5/8" reinforcing bar;

THENCE depart said southwesterly right-of-way of Monroe Drive South 54 degrees 06 minutes 55 seconds West for a distance of 150.09 feet to a 1/2" crimped-top pipe;

THENCE South 35 degrees 59 minutes 13 seconds East for a distance of 58.53 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 48 minutes 48 seconds East for a distance of 484.50 feet to a 5/8" reinforcing bar;

THENCE North 89 degrees 58 minutes 46 seconds West for a distance of 45.69 feet to the point of curvature of an arc;

THENCE 110.86 feet along said arc of a curve to the right having a radius of 300.00 feet and chord bearing North 79 degrees 23 minutes 31 seconds West for a distance of 110.23 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 55 minutes 26 seconds East for distance of 55.58 feet to a 1" pipe to a 1" crimped-top pipe;

THENCE 84.40 feet along the arc of a curve to the right having a radius of 350.00 feet and a chord bearing North 66 degrees 11 minutes 24 seconds West for a distance of 84.20 feet to the point of tangency of said arc;

THENCE North 59 degrees 38 minutes 26 seconds West for a distance of 133.80 feet to a 5/8" reinforcing bar;

175887094

THENCE South 34 degrees 25 minutes 22 seconds West for a distance of 78.15 feet to the point of curvature of an arc;

THENCE 116.23 feet along said arc of a curve to the right having a radius of 260.00 feet and a chord bearing South 48 degrees 26 07 seconds West for a distance of 115.27 feet to the point of compound curvature with an adjoining arc;

THENCE 108.21 feet along said arc of a curve to the right having a radius of 136.83 feet and a chord bearing South 81 degrees 47 minutes 43 seconds West for a distance of 105.41 feet to the point of reverse curvature of an adjoining arc;

THENCE 77.09 feet along said arc of a curve to the left having a radius of 120.80 feet and a chord bearing South 78 degrees 50 minutes 23 seconds West for a distance of 75.77 feet to a 3/8" reinforcing bar on the northeasterly right-of-way of Southern Railroad at which point said northeasterly right-of-way is 100 feet from the centerline of Southern Railroad, being also the point of curvature of an adjoining arc;

THENCE along said northeasterly right-of-way of Southern Railroad 40.00 feet along said arc of a curve to the left having a radius of 2,876.62 feet and a chord bearing North 09 degrees 41 minutes 07 seconds West for a distance of 40.00 feet to the end of said arc, at which point said northeasterly right-of-way of Southern Railroad ceases to be 100 feet from the centerline of same;

THENCE South 52 degrees 07 minutes 03 seconds West for a distance of 38.50 feet to a point on the northeasterly right-of-way of Southern Railroad being 66 feet from the centerline of same;

THENCE continue along said northeasterly right-of-way of Southern Railroad, said right-of-way being and remaining 66 feet from the centerline of same for 652.00 feet along the arc of a curve to the left having a radius of 2,842.62 feet and a chord bearing North 16 degrees 17 minutes 33 seconds West for a distance of 650.57 feet to a 5/8" reinforcing bar at the intersection of said northeasterly right-of-way of Southern Railroad with the southeasterly right-of-way of Piedmont Avenue;

THENCE depart said northeasterly right-of-way of Southern Railroad and proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 33 minutes 09 seconds East for a distance of 309.60 feet to a nail at the point where the width of said southeasterly right-of-way does increase from the centerline of same;

THENCE South 50 degrees 15 minutes 52 seconds East for a distance of 4.90 feet to a drill hole where the width of said southeasterly right-of-way of Piedmont Avenue has thus increased from the centerline of same;

THENCE proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 43 minutes 25 seconds East for a distance of 118.00 feet to the POINT OF BEGINNING.

This property contains 12.3273 acres, more or less.

176887095

EXHIBIT "A"  
HALPERN  
LEGAL DESCRIPTION

TRACT I

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way); THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE North 80 degrees 21 minutes 15 seconds West for a distance of 10.02 feet to a 1/2" reinforcing bar at the intersection of said southerly right-of-way of Worchester Drive with the westerly line of said 10 foot alley; said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE proceed along the west line of said 10 foot alley South 06 degrees 34 minutes 33 seconds West for a distance of 122.57 feet to the point of curvature of an arc;

THENCE continue along said westerly line of a 10 foot alley 299.58 feet along the arc of a curve to the left having a radius of 3645.57 feet and a chord bearing South 04 degrees 00 minutes 09 seconds West for a distance of 299.50 feet to a point;

THENCE depart said westerly line of a 10 foot alley North 89 degrees 52 minutes 16 seconds West for a distance of 199.75 feet to a point at the westerly right-of-way of Evelyn Street (50 foot right-of-way, street closed);

THENCE proceed along said westerly right-of-way of Evelyn Street 53.65 feet along the arc of a curve to the left having a radius of 3845.25 feet and a chord bearing South 01 degree 10 minutes 11 seconds West for a distance of 53.65 feet to a 3/4" crimped-top pipe, said pipe being 446.42 feet northerly along said westerly right-of-way of Evelyn Street from its intersection with Amsterdam Avenue (50 foot right-of-way);

THENCE North 83 degrees 39 minutes 31 seconds West for a distance of 237.10 feet to a point;

THENCE North 21 degrees 20 minutes 29 seconds East for a distance of 23.70 feet to a point;

THENCE North 48 degrees 57 minutes 29 seconds East for a distance of 126.45 feet to a point;

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 42.05 feet to a point;

THENCE North 52 degrees 04 minutes 07 seconds West for a distance of 1.70 feet to a point;

BOOK 18145 PAGE 197

LEGAL DESCRIPTION

TRACT I

(Page 2)

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 2.90 feet to a point;  
 THENCE South 52 degrees 04 minutes 08 seconds East for a distance of 1.70 feet to a point;  
 THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 82.45 feet to a point;  
 THENCE North 31 degrees 36 minutes 08 seconds East for a distance of 10.20 feet to a point;  
 THENCE North 24 degrees 19 minutes 08 seconds East for a distance of 17.59 feet to a point;  
 THENCE North 83 degrees 39 minutes 52 seconds West for a distance of 33.09 feet to a point;  
 THENCE North 13 degrees 58 minutes 59 seconds East for a distance of 40.00 feet to a point;  
 THENCE North 83 degrees 22 minutes 17 seconds West for a distance of 40.14 feet to a nail;  
 THENCE North 13 degrees 48 minutes 09 seconds East for a distance of 31.95 feet to a nail;  
 THENCE North 83 degrees 40 minutes 45 seconds West for a distance of 214.87 feet to a 1/2" reinforcing bar;  
 THENCE North 11 degrees 54 minutes 19 seconds West for a distance of 33.53 feet to a 1/2" reinforcing bar;  
 THENCE North 83 degrees 37 minutes 56 seconds West for a distance of 123.16 feet to a 1/2" reinforcing bar on the easterly right-of-way of Southern Railroad (200 foot right-of-way);  
 THENCE proceed along said westerly right-of-way of Southern Railroad North 06 degrees 17 minutes 54 seconds East for a distance of 195.24 feet to the point of curvature of an arc;  
 THENCE continue along said easterly right-of-way of Southern Railroad 184.96 feet along said arc of a curve to the left, said curve having a radius of 3683.00 feet and a chord bearing North 04 degrees 51 minutes 35 seconds East for a distance of 184.94 feet to a point at the intersection of said easterly right-of-way of Southern Railroad with the centerline of a creek;  
 THENCE run the following courses and distances along the centerline of said creek:  
 South 82 degrees 14 minutes 05 seconds East for a distance of 75.94 feet to a point;  
 THENCE South 75 degrees 25 minutes 17 seconds East for a distance of 96.59 feet to a point;  
 THENCE South 82 degrees 04 minutes 06 seconds East for a distance of 111.25 feet to a point;  
 THENCE North 89 degrees 27 minutes 51 seconds East for a distance of 56.48 feet to a point;  
 THENCE South 64 degrees 22 minutes 04 seconds East for a distance of 56.87 feet to a point;  
 THENCE South 42 degrees 43 minutes 55 seconds East for a distance of 52.16 feet to a point;  
 THENCE South 65 degrees 37 minutes 39 seconds East for a distance of 47.51 feet to a point;

BOOK 18145 PAGE 198

LEGAL DESCRIPTION

TRACT I

(Page 3)

THENCE South 81 degrees 39 minutes 48 seconds East for a distance of 198.10 feet to a point;

THENCE South 56 degrees 38 minutes 11 seconds East for a distance of 37.44 feet to a point;

THENCE South 69 degrees 57 minutes 24 seconds East for a distance of 119.38 feet to a point at the intersection of said centerline of a creek with the afore-mentioned westerly right-of-way of Monroe Drive;

THENCE depart said centerline of a creek and proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 79.00 feet to a point at the intersection of said westerly right-of-way of Monroe Drive with the northerly right-of-way of Worchester Drive (50 foot right-of-way);

THENCE North 82 degrees 01 minutes 11 seconds West for a distance of 150.18 feet to a 1/2" reinforcing bar;

THENCE North 80 degrees 22 minutes 19 seconds West for a distance of 139.36 feet to a nail at the present-day terminus of Worchester Drive;

THENCE South 08 degrees 18 minutes 23 seconds West for a distance of 50.01 feet to a 1" open-top pipe at the westerly right-of-way of said Worchester Drive at its present-day terminus;

THENCE South 80 degrees 22 minutes 19 seconds East for a distance of 130.19 feet to the POINT OF BEGINNING;

Said property contains 7.9951 acres, more or less.

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT III

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way), said point being the POINT OF BEGINNING;

THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE proceed along said southerly right-of-way of Worchester Drive South 82 degrees 01 minute 10 seconds East for a distance of 150.11 feet to the POINT OF BEGINNING;

Said property contains 0.3787 acre or 16,498 square feet, more or less.

EXHIBIT "A"

HALPERN PROPERTY TRACT-II

All that tract or parcel of land lying and being in Land Lots 52 and 55 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING AT THE POINT of intersection of the western right-of-way of Monroe Drive (having a 60 foot right-of-way and being formerly known as Boulevard and Boulevard, N.E.) and the southern right-of-way of Worchester Drive (having a 50 foot right-of-way); then run South 09 degrees 37 minutes 49 seconds West a distance of 100.51 feet to a one-inch crimp top found; thence leaving the western right-of-way of Monroe Drive run North 87 degrees 29 minutes 32 seconds West along the northern property line of property now or formerly owned by J.H. McBrook, Jr. a distance of 149.48 feet to a one-half inch hollow-top pipe found on the eastern right-of-way of a 10-foot alley; thence run North 03 degrees 47 minutes 16 seconds East along the eastern right-of-way of said 10-foot alley a distance of 120.53 feet to an iron pin set on the southern right-of-way of Worchester Drive; thence run North 78 degrees 09 minutes 36 seconds West along the southern right-of-way of Worchester Drive a distance of 10.01 feet to an iron pin set at its intersection with the western right-of-way of said 10-foot alley; thence run South 08 degrees 47 minutes 16 seconds West along the western right-of-way of said 10-foot alley a distance of 122.57 feet to a one-half inch hollow-top pipe found; thence continue to run along the western right-of-way of said 10-foot alley along the arc of a curve to the left an arc distance of 299.58 feet to an iron pin set (said arc having a radius of 3645.57 feet and being subtended by a chord bearing South 06 degrees 12 minutes 52 seconds West and having a length of 299.50 feet); thence leaving the western right-of-way of said 10-foot alley run North 87 degrees 39 minutes 33 seconds West a distance of 199.75 feet to a point; thence run along the arc of a curve to the left an arc distance of 53.65 feet to a one-inch crimp top found (said arc having a radius of 3645.25 feet and being subtended by a chord bearing South 03 degrees 22 minutes 54 seconds West and having a length of 53.65 feet); thence run North 81 degrees 26 minutes 48 seconds West a distance of 237.10 feet to a nail set; thence run North 23 degrees 33 minutes 12 seconds East a distance of 23.70 feet to a point; thence run North 51 degrees 10 minutes 12 seconds East a distance of 126.45 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 42.05 feet to a point; thence run North 49 degrees 51 minutes 24 seconds West a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 2.90 feet to a point; thence run South 49 degrees 51 minutes 24 seconds East a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 82.45 feet to a point; thence run North 33 degrees 48 minutes 51 seconds East a distance of 10.20 feet to a point; thence run North 26 degrees 31 minutes 51 seconds East a distance of 37.59 feet to a point; thence run North 81 degrees 27 minutes 48 seconds West a distance of 33.09 feet to a point; thence

BOOK 18145 PAGE 189

**EXHIBIT "B-1"**

**DWM DRIVEWAY IMPROVEMENTS**

**Those certain plans and specifications for the Piedmont Park Northwoods Expansion – Phase 1 C Park Deck Plaza and Access Road, Prepared by Kimley-Horn and Associates, Inc., dated 10/22/2008 and last revised 2/23/2009**

**Civil Documents Sheet #'s:**

**C0-00-C – C0-04-C**  
**C1-00-C – C1-02-C**  
**C2-00-C – C2-02-C C3-01-C – C3-02-C**  
**C4-01-C – C4-02-C**  
**C5-01-C – C5-02-C**  
**C5-11-C – C5-12-C**  
**C5-21-C – C5-22-C**  
**C5-30-C – C5-32-C**  
**C6-01-C – C6-02-C**  
**C7-01-C – C7-03-C**  
**C8-00-C – C8-05-C**

**Landscape/Hardscape Sheet #'s:**

**L1-00-C – L1-01-C**  
**L2-00-C**  
**L3-00-C – L3-01-C**  
**L4-00-C – L4-04-C**  
**I-01 – I-02**  
**E-4**

**EXHIBIT "B-2"**

**PARK IMPROVEMENTS**

## Permitted Construction Activity adjacent to Clear Creek CSO

Item Number	Category / Facility Modification Requested	Permit Application Number (s)	Permit Drawing Project Phase	Permit Drawing Page #	DWG Revision #	Site Development Actions / Comments
1	Proposed Hydraulic Changes to Channel (Analysis)	BL1 200802133	Phase 1A	C4-00-A	3	100-Year Flood Study Approved. MOU and permanent Belline access easement to be submitted within 60 days.
2	Proposed Concrete Channel Modifications	BL1 200802133	Phase 1A	C5-02-A	4	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
2a	Removal & Replacement of Concrete lined channel with Boulders	BL1 200802133	Phase 1A	C2-00-A	4	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
2b	Positive Drainage of Boulder Area (underdrain?)	BL1 200802133	Phase 1A	C4-00-A	4	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
2c	Erosion Control Modifications / Permit Concerns	BL1 200802133	Phase 1A	C5-01-A, C5-02-A, C5-03-A, 4	4	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3	Proposed Grading / Backfill Modifications	BL1 200900188	Halpern	C4-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3a	Halpern North Fill (Stockpile Removal/relocation)	BL1 200900188	Halpern	C5-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3b	Halpern South Fill (Stockpile Removal/relocation)	BL1 200900188	Halpern	C5-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3c	Haul Route	_____	_____	_____	_____	_____
3d	Haul Plan	BL1 200900188	Halpern	C5-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3e	Culvert Overburden / Live Load Structure Analysis (due to hauling)	BL1 200900188	Halpern	C5-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
3f	Temporary Rock Stockpile locations "A, B, C, D"	BL1 200900188	Halpern	C5-00	3	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.

## Permitted Construction Activity adjacent to Clear Creek CSO

Item Number	Category / Facility Modification Requested	Permit Application Number (s)	Permit Drawing Project Phase	Permit Drawing Page #	DWG Revision #	Site Development Actions / Comments
3g	Temporary Detention Removal / Timing / Funding - With or Without PH2	BL1 200900188, BL1200802353	Phase 1C, Hesper, Phase 3	---	3	CONDITIONAL APPROVAL - Temporary stormwater detention to be relocated during Phase 3, and within 15 months.
3i	Field Change - 23Apr09 - Contractor provides follow-up information, drawings, and narrative to provide full information required to properly evaluate the entire request. (Not all information provided by Silverman in item #4h request). Full scope includes; an added construction road; revised limits of disturbance; barrier fencing added to protect areas that are not to be accessed; a new construction entrance (all in addition to the requests approved by item 4h)	BB 200900658, BB 200900654	Phase 1A, Phase 1B	C5-02-A, C5-03 A, C5-04A-B, C5-04B-B, Supplemental 1A-AI, Supplemental 1B-AI	1A-6, 1B-6, Supplemental 1A-7, Supplemental 1B-6	Revisions submitted to Site Development on 4/23/09, and APPROVED on 4/24/09. Supplemental sets including all previous revisions submitted and APPROVED on 5/8/09.
4	Proposed Access Road Modifications / Re-alignment	BLCS 20082636	Supplement to ABG Parking Deck	C4	2	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
4a	Re-alignment of Road	BLCS 20082636	Supplement to ABG Parking Deck	C4	2	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
4b	Additional Storm Drainage pipe System	BLCS 20082636	Supplement to ABG Parking Deck	C4	2	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
4c	Parking area - Ph 1 Turnaround	BL1 200802353	Phase 1C	C4-01-C	5	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
4d	Parking area - Ph 2 Parking Lot	BL1 200802353	Phase 1C	C4-02-C	5	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.
4e	Field change #1 - Adjustments to storm sewer system due to unforeseen field condition (represented in 1Apr09 email narrative with revised drawings C7-02-C, and C7-01-C	BB200800856	Phase 1C	C7-01-C, C7-02-C	5	Revisions submitted 3/31/09 (Denied) - comments given to Joe Davis. Plans resubmitted and APPROVED as field revision on 4/1/09.
4f	Field change #2 - Adjustments to storm sewer system due to unforeseen field condition (represented in 8Apr09 email narrative with revised drawings C7-02 rev 6, C7-02 rev 6, C4-01 rev 6.	BB200800856	Phase 1C	C4-01-C, C7-01 C, C7-02-C	6	APPROVED - 4/21/09
5	Streambank Restoration and Wetlands Creation	BB200900654	Phase 1B	All	1	CONDITIONAL APPROVAL - 2/25/09 - MOU and permanent Belline access easement to be submitted within 60 days.

**EXHIBIT "C"**

**DECLARATION OF EASEMENTS**

Deed Book 47769 Pg 84  
Filed and Recorded Mar-31-2009 01:29pm  
2009-0068758  
Real Estate Transfer Tax \$0.00  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia

-----Space Above This Line for Recorder's Use-----

After recording, please return to:  
Kilpatrick Stockton LLP  
1100 Peachtree Street - Suite 2800  
Atlanta, Georgia 30309-4530  
Attn: Eunice S. Smith

STATE OF GEORGIA )  
                          )  
COUNTY OF FULTON )

**DECLARATION OF EASEMENTS**

This **DECLARATION OF EASEMENTS** (this "Declaration"), is made this \_\_\_\_ day of February 2009, by the City of Atlanta (the "Declarant"), a municipal corporation created and existing under the laws of the State of Georgia;

**WITNESSETH:**

**WHEREAS**, the Declarant owns the real property described on Exhibit "A" attached hereto and made a part hereof (the "Property"), which it purchased and improved using revenues derived from the ownership and operation of its water and wastewater system (the "Utility") and proceeds of revenue bonds secured by revenues derived from the ownership and operation of the Utility; and

**WHEREAS**, the Declarant also owns Piedmont Park (the "Park"), which is contiguous to or adjoins the Property; and

**WHEREAS**, the Utility assets presently existing on the Property consist of a combined sewer overflow treatment facility, an environmental education center, connecting wastewater tunnels, wastewater collection and conveyance pipes and pump stations, roads to access these assets, and parking areas to serve these assets; and

WHEREAS, the Declarant also floods a portion of the Property from time to time, in connection with its use of a portion of the Property as a storm overflow drainage area; and

WHEREAS, the Declarant desires to allow the Property to be used for Park purposes and activities (including, but not limited to, those activities set forth in that certain North Woods Master Plan Amendment, adopted by the City Council and approved by the Mayor in November 2001, as it may be amended from time to time (the "Master Plan"), as long as the use of the Property for Park purposes and activities does not interfere or conflict with the use of the Property for the operation, maintenance, repair, improvement, or expansion of the Utility; and

WHEREAS, it is necessary, beneficial, and desirable for the Property to be subjected to certain easements, privileges, and rights for the benefit of the Utility and to provide notice to the public of these easements, privileges, and rights;

NOW, THEREFORE, the Declarant does hereby subject the Property (that is, the property described in Exhibit "A" attached to this Declaration) to the easements, privileges, and rights hereinafter stated, upon the terms and conditions hereinafter stated:

1. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant for the benefit of the Utility, a perpetual, exclusive easement from time to time for the acquisition, construction, installation, replacement, alteration, renewal, rebuilding, reconstruction, improvement, upgrading, enhancement, change, addition, and removal of such wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems (including, but not necessarily limited to, mains, pipes, pump stations, tunnels, culverts, treatment facilities, equipment, lines, machinery, apparatus, fixtures, and intercepting sewers of every nature and description) and facilities over, under, on, in, across, and through the Property as the Declarant, and the successors, receivers, and assigns of the Declarant, or any one or more of them, shall deem, in its or their sole discretion, to be reasonably desirable or beneficial for purposes of the operation, maintenance, repair, improvement, or expansion of the Utility.

2. The Declarant does hereby subject the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, a perpetual, non-exclusive easement for the maintenance, repair, operation, inspection, testing, and use of all wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems and facilities as are presently located on the Property, and for the maintenance, repair, operation, inspection, testing, and use of such wastewater disposal, storm overflow drainage, and wastewater collection, conveyance, and treatment systems and facilities as may be acquired, constructed, or installed on the Property in the future, and the right to flood any portion of the Property in connection with storm overflow drainage activities of the Declarant.

3. The Declarant does hereby subject all portions of the Property to, and hereby reserves to itself, its successors, receivers, and assigns, for the benefit of the Utility, a perpetual, non-exclusive easement of unrestricted and free access, ingress, and egress on, over, and through the Property, and the right to close or restrict access to any roads, streets, drives, parking lots,

and paved surfaces now or hereafter located on the Property as may be necessary or desirable to operate, maintain, repair, improve, or expand the Utility.

4. The Declarant acknowledges that a certain existing driveway serves the needs of the Utility's existing facilities, known as the Clear Creek CSO Facility, that the exact location of the driveway may be altered from time to time, and that the Declarant will permit shared access of the driveway, whether existing or modified, with the general public for the benefit of Park uses (specifically for access to certain Park facilities as further described in the Master Plan), subject to the Utility's uses as set forth herein. To the extent that such access roads and driveways must be closed, obstructed, or otherwise affected to serve Utility purposes, such closure, obstruction, or other activity affecting the access roads and driveways shall be temporary and as brief as is reasonably possible and shall create as little inconvenience as is reasonably possible to the users of the Park.

5. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, an easement for the paving of such portions of the Property as are necessary or desirable in order to access any portion of the Utility.

6. The Declarant does hereby subject all of the Property to, and hereby reserves to the Declarant, and to the successors, receivers, and assigns of the Declarant, for the benefit of the Utility, all other rights, privileges, and easements necessary or convenient for the full enjoyment and use of the Utility and the easements, rights, and privileges granted in this Declaration.

7. Any activities performed pursuant to the easements created by this Declaration shall cause as little inconvenience or interference as is reasonably possible to the users and improvements associated with the Park, and such individual or entity performing such activity or work shall timely repair and restore the property on which such work or activity takes place (and any areas of the property disturbed or damaged by such work) to a condition as nearly as practicable to the condition of the property as it existed prior to the commencement of such activity, at the sole expense of the Utility; provided, however, the Utility shall provide reasonable notice to the Declarant's Department of Parks, Recreation, and Cultural Affairs and shall consult with such Department in a reasonable manner, prior to conducting any activities described herein.

8. The Property is expressly dedicated for Utility purposes, and any use of the Property for Park purposes or activities shall be subject to this Declaration and subordinate to the use of the Property for Utility purposes described herein.

9. The Declarant shall have the right to cut, remove, clear, and keep all trees, branches, undergrowth, and other obstructions from the Property as the Declarant may deem necessary or desirable from time to time for the use of the easements granted in this Declaration and for the safe operation, repair, and maintenance of and access to the Utility. The Declarant is hereby entitled to the use of the Property for the purposes set forth in this Declaration, and any use or activity by any other party that is inconsistent with the permitted uses of the Declarant for the benefit of the Utility is strictly prohibited. With respect to any future use of the Property that the Declarant may determine to pursue for the benefit of the Utility, in the event that any existing use

of the Property by any party interferes or is inconsistent with such future use (the "Inconsistent Use"), the Inconsistent Use shall immediately be discontinued, and all obstructions, including, without limitation, all facilities, buildings, and other structures, associated with the Inconsistent Use, shall be removed from the Property to the extent necessary to avoid interference with the Declarant's use of the Property for the benefit of the Utility, and all costs and expenses associated with discontinuing such Inconsistent Use and removing any obstructions shall be borne by the entity that caused the Inconsistent Use or obstruction. Notwithstanding the foregoing, the Utility acknowledges that the Declarant has approved the Master Plan and that the uses and activities set forth therein are not an Inconsistent Use.

10. The provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually. Any of the provisions of this Declaration may be modified or amended only by following the procedure for amendments set forth in the Declarant's bond ordinance securing any outstanding revenue bonds of the Declarant secured by revenues of the Utility.

[Signature and Seal To Follow]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its Mayor, and its official seal to be affixed hereto and attested by its Municipal Clerk, the day and year first above written.

CITY OF ATLANTA

(SEAL)

By: *Andy Lead*  
Mayor

Attest:

*Foris Webb III*  
Municipal Clerk  
**FORIS WEBB III  
DEPUTY MUNICIPAL CLERK**

Approved As To Form:

*Ronnie Lead*  
City Attorney

Signed, sealed, and delivered  
in the presence of:

*James C. Marshall*  
Official Witness

*Alicia Williams*  
Notary Public

My Commission Expires: 1/14/2011  
(date)



**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

[Attached]

LEGAL DESCRIPTION WEST PROPERTY

ALL THAT TRACT OR PARCEL OF LAND LYING IN THE CITY OF ATLANTA AND BEING A PORTION OF LAND LOT 52 AND LAND LOT 55 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL AT THE BACK OF A CURB LINK ON THE SOUTHEASTERLY RIGHT-OF-WAY OF FIDELITY AVENUE (NORTH YARDS) THAT IS 369.9 FEET SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY FROM THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (60 FEET WIDE) AND FROM SAID POINT OF BEGINNING THUS ESTABLISHED AND LEAVING SAID RIGHT-OF-WAY:

RUN SOUTH 53 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 120.00 FEET TO AN IRON PIN ON THE BANK OF CLEAR CREEK

THENCE RUN SOUTH 37 DEGREES 00 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 63.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK

THENCE RUN SOUTH 30 DEGREES 34 MINUTES 50 SECONDS EAST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 254.95 FEET TO A POINT

THENCE LEAVING THE CENTER OF SAID CREEK, RUN NORTH 51 DEGREE 19 MINUTE 48 SECONDS EAST FOR A DISTANCE OF 276.00 FEET TO A POINT AT THE NORTHWESTERLY CORNER OF LOT 41 OF THE WEST SUBDIVISION

THENCE RUN NORTH 51 DEGREE 19 MINUTE 48 SECONDS EAST ALONG THE NORTHWESTERLY SIDE OF SAID LOT 41 FOR A DISTANCE OF 130.09 FEET TO AN OPEN TOP PIPE ON THE SOUTHWESTERLY RIGHT-OF-WAY OF MONROE DRIVE (60 FEET WIDE)

THENCE RUN SOUTH 38 DEGREE 40 MINUTE 09 SECONDS EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY FOR A DISTANCE OF 180.24 FEET TO A REINFORCING BAR AT THE NORTHWEST CORNER OF LOT 38 OF THE WEST SUBDIVISION

THENCE LEAVING SAID RIGHT-OF-WAY, RUN SOUTH 51 DEGREE 22 MINUTE 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 38 FOR A DISTANCE OF 149.94 FEET TO A GRIP TOP PIPE

THENCE RUN SOUTH 33 DEGREE 43 MINUTE 08 SECONDS EAST ALONG THE REAR OF LOT 38 AND LOT 37 OF THE WEST SUBDIVISION FOR A DISTANCE OF 58.53 FEET TO AN IRON PIN

THENCE RUN SOUTH 09 DEGREE 32 MINUTE 44 SECONDS EAST ALONG THE WESTERLY LINE OF THE WEST SUBDIVISION FOR A DISTANCE OF 484.50 FEET TO AN IRON PIN ON THE NORTHEASTLY RIGHT-OF-WAY OF WESTMINSTER DRIVE (60 FEET WIDE)

THENCE RUN SOUTH 87 DEGREE 17 MINUTE 18 SECONDS WEST ALONG THE NORTHERLY RIGHT-OF-WAY OF WESTMINSTER DRIVE FOR A DISTANCE OF 45.69 FEET TO A POINT

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET AND AN ARC LENGTH OF 110.56 FEET, BEING SUSTAINED BY A CHORD OF NORTH 62 DEGREE 07 MINUTE 31 SECONDS WEST FOR A DISTANCE OF 110.23 FEET TO AN IRON PIN

THENCE RUN SOUTH 09 DEGREE 39 MINUTE 22 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY OF DUTCH VALLEY PLACE (60 FEET WIDE) FOR A DISTANCE OF 55.58 FEET TO A GRIP TOP PIPE

THENCE LEAVING SAID RIGHT-OF-WAY, RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET AND AN ARC LENGTH OF 84.40 FEET, BEING SUSTAINED BY A CHORD OF NORTH 68 DEGREE 55 MINUTE 20 SECONDS WEST FOR A DISTANCE OF 84.20 FEET TO A POINT

THENCE RUN NORTH 62 DEGREE 22 MINUTE 22 SECONDS WEST FOR A DISTANCE OF 133.80 FEET TO AN IRON PIN ON THE SOUTHEASTERLY BANK OF CLEAR CREEK

THENCE ALONG SAID SOUTHEASTERLY BANK OF CLEAR CREEK, RUN SOUTH 31 DEGREES 41 MINUTES 26 SECONDS WEST FOR A DISTANCE OF 78.15 FEET TO A POINT;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 260.00 FEET AND AN ARC LENGTH OF 115.23 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 45 DEGREES 42 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 115.27 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 156.80 FEET AND AN ARC LENGTH OF 108.21 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 79 DEGREES 03 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 105.41 FEET TO A POINT ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET AND AN ARC LENGTH OF 77.09 FEET, BEING SUBTENDED BY A CHORD OF SOUTH 75 DEGREES 06 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 75.77 FEET TO AN IRON PIN ON THE SOUTHERLY BANK OF CLEAR CREEK;

THENCE RUN NORTH 12 DEGREES 25 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 40.00 FEET TO A POINT IN THE CENTER OF CLEAR CREEK;

THENCE RUN SOUTH 49 DEGREES 23 MINUTES 07 SECONDS WEST ALONG THE CENTERLINE OF CLEAR CREEK FOR A DISTANCE OF 38.50 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF SOUTHERN RAILWAY (66 FEET FROM CENTERLINE);

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, RUN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2842.82 FEET AND AN ARC LENGTH OF 652.80 FEET, BEING SUBTENDED BY A CHORD OF NORTH 19 DEGREES 01 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 650.57 FEET TO A NAIL ON THE BACK OF A CURB LINE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF FIREHORN AVENUE (WIDTH VARIES);

THENCE RUN NORTH 36 DEGREES 49 MINUTES 13 SECONDS EAST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF FIREHORN AVENUE FOR A DISTANCE OF 309.60 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN SOUTH 52 DEGREES 59 MINUTES 47 SECONDS EAST FOR A DISTANCE OF 4.90 FEET TO A NAIL IN PAVEMENT;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, RUN NORTH 36 DEGREES 59 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 118.00 FEET TO A NAIL IN THE BACK OF A CURB, SAID NAIL BEING THE POINT OF BEGINNING.

TOGETHER WITH EASEMENTS AND RESTRICTIONS OF RECORD.  
SAID PROPERTY CONTAINS 12.3276 ACRES.

"EXHIBIT A"

WEST PROPERTY

ALL THAT TRACT or parcel of land lying in Land Lot 52 and Land Lot 55 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the southwesterly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southeasterly right-of-way of Piedmont Avenue (right-of-way varied); THENCE proceed southwesterly along said southeasterly right-of-way of Piedmont Avenue for a distance of 369.9 feet to a drill hole at a point, said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, depart said southeasterly right-of-way of Piedmont Avenue South 50 degrees 16 minutes 04 seconds East for a distance of 120.00 feet to 5/8" reinforcing bar;

THENCE South 39 degrees 43 minutes 36 seconds West for a distance of 65.00 feet to a point;

THENCE South 27 degrees 50 minutes 54 seconds East for a distance of 254.95 feet to a point;

THENCE North 34 degrees 03 minutes 44 seconds East for a distance of 425.82 feet to a 1/2" open-top pipe at the afore-mentioned southwesterly right-of-way of Monroe Drive;

THENCE proceed along said southwesterly right-of-way of Monroe Drive South 36 degrees 04 minutes 22 seconds East for a distance of 180.14 feet to a 5/8" reinforcing bar;

THENCE depart said southwesterly right-of-way of Monroe Drive South 54 degrees 06 minutes 55 seconds West for a distance of 150.09 feet to a 1/2" crimped-top pipe;

THENCE South 35 degrees 59 minutes 13 seconds East for a distance of 58.53 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 48 minutes 48 seconds East for a distance of 484.50 feet to a 5/8" reinforcing bar;

THENCE North 89 degrees 58 minutes 46 seconds West for a distance of 45.69 feet to the point of curvature of an arc;

THENCE 110.86 feet along said arc of a curve to the right having a radius of 300.00 feet and chord bearing North 79 degrees 23 minutes 31 seconds West for a distance of 110.23 feet to a 5/8" reinforcing bar;

THENCE South 06 degrees 53 minutes 26 seconds East for distance of 55.59 feet to a 1" crimped-top pipe;

THENCE 84.49 feet along the arc of a curve to the right having a radius of 350.00 feet and a chord bearing North 66 degrees 11 minutes 24 seconds West for a distance of 84.20 feet to the point of tangency of said arc;

THENCE North 59 degrees 38 minutes 26 seconds West for a distance of 133.80 feet to a 5/8" reinforcing bar;

THENCE South 34 degrees 25 minutes 22 seconds West for a distance of 78.15 feet to the point of curvature of an arc;

THENCE 116.23 feet along said arc of a curve to the right having a radius of 260.00 feet and a chord bearing South 48 degrees 26 07 seconds West for a distance of 115.27 feet to the point of compound curvature with an adjoining arc;

THENCE 108.21 feet along said arc of a curve to the right having a radius of 136.63 feet and a chord bearing South 81 degrees 47 minutes 43 seconds West for a distance of 105.41 feet to the point of reverse curvature of an adjoining arc;

THENCE 77.09 feet along said arc of a curve to the left having a radius of 120.00 feet and a chord bearing South 78 degrees 50 minutes 23 seconds West for a distance of 75.77 feet to a 5/8" reinforcing bar on the northeasterly right-of-way of Southern Railroad at which point said northeasterly right-of-way is 100 feet from the centerline of Southern Railroad, being also the point of curvature of an adjoining arc;

THENCE along said northeasterly right-of-way of Southern Railroad 40.00 feet along said arc of a curve to the left having a radius of 2,476.62 feet and a chord bearing North 09 degrees 41 minutes 07 seconds West for a distance of 40.00 feet to the end of said arc, at which point said northeasterly right-of-way of Southern Railroad ceases to be 100 feet from the centerline of same;

THENCE South 52 degrees 07 minutes 03 seconds West for a distance of 38.50 feet to a point on the northeasterly right-of-way of Southern Railroad being 66 feet from the centerline of same;

THENCE continue along said northeasterly right-of-way of Southern Railroad, said right-of-way being and remaining 66 feet from the centerline of same for 652.00 feet along the arc of a curve to the left having a radius of 2,642.62 feet and a chord bearing North 16 degrees 17 minutes 33 seconds West for a distance of 650.57 feet to a 5/8" reinforcing bar at the intersection of said northeasterly right-of-way of Southern Railroad with the southeasterly right-of-way of Piedmont Avenue;

THENCE depart said northeasterly right-of-way of Southern Railroad and proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 33 minutes 09 seconds East for a distance of 309.60 feet to a nail at the point where the width of said southeasterly right-of-way does increase from the centerline of same;

THENCE South 50 degrees 15 minutes 52 seconds East for a distance of 4.90 feet to a drill hole where the width of said southeasterly right-of-way of Piedmont Avenue has thus increased from the centerline of same;

THENCE proceed along said southeasterly right-of-way of Piedmont Avenue North 39 degrees 43 minutes 25 seconds East for a distance of 118.00 feet to the POINT OF BEGINNING.

This property contains 12.3273 acres, more or less.

EXHIBIT "A"  
HALPERN  
 LEGAL DESCRIPTION

TRACT I

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 and Land Lot 55 3 $\frac{1}{2}$ ths. 17th District, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worcester Drive (50 foot right-of-way);

THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worcester Drive;

THENCE North 80 degrees 21 minutes 15 seconds West for a distance of 10.02 feet to a 1/2" reinforcing bar at the intersection of said southerly right-of-way of Worcester Drive with the westerly line of said 10 foot alley; said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE proceed along the west line of said 10 foot alley South 06 degrees 34 minutes 33 seconds West for a distance of 122.57 feet to the point of curvature of an arc;

THENCE continue along said westerly line of a 10 foot alley 299.58 feet along the arc of a curve to the left having a radius of 3645.57 feet and a chord bearing South 04 degrees 00 minutes 09 seconds West for a distance of 299.50 feet to a point;

THENCE depart said westerly line of a 10 foot alley North 89 degrees 52 minutes 16 seconds West for a distance of 199.75 feet to a point at the westerly right-of-way of Evelyn Street (50 foot right-of-way, street closed);

THENCE proceed along said westerly right-of-way of Evelyn Street 53.45 feet along the arc of a curve to the left having a radius of 3845.25 feet and a chord bearing South 01 degree 10 minutes 11 seconds West for a distance of 53.65 feet to a 3/4" crimped-top pipe, said pipe being 446.42 feet northerly along said westerly right-of-way of Evelyn Street from its intersection with Amsterdam Avenue (50 foot right-of-way);

THENCE North 83 degrees 39 minutes 31 seconds West for a distance of 237.10 feet to a point;

THENCE North 21 degrees 20 minutes 29 seconds East for a distance of 23.70 feet to a point;

THENCE North 48 degrees 57 minutes 29 seconds East for a distance of 126.45 feet to a point;

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 42.05 feet to a point;

THENCE North 52 degrees 04 minutes 07 seconds West for a distance of 1.70 feet to a point;

## LEGAL DESCRIPTION

## TRACT I

(Page 2)

THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 2.90 feet to a point;  
 THENCE South 52 degrees 04 minutes 08 seconds East for a distance of 1.70 feet to a point;  
 THENCE North 37 degrees 55 minutes 53 seconds East for a distance of 82.45 feet to a point;  
 THENCE North 31 degrees 36 minutes 08 seconds East for a distance of 10.20 feet to a point;  
 THENCE North 24 degrees 19 minutes 08 seconds East for a distance of 37.59 feet to a point;  
 THENCE North 83 degrees 39 minutes 52 seconds West for a distance of 33.09 feet to a point;  
 THENCE North 13 degrees 58 minutes 59 seconds East for a distance of 40.00 feet to a point;  
 THENCE North 83 degrees 22 minutes 17 seconds West for a distance of 40.14 feet to a nail;  
 THENCE North 13 degrees 48 minutes 09 seconds East for a distance of 31.95 feet to a nail;  
 THENCE North 83 degrees 40 minutes 45 seconds West for a distance of 214.87 feet to a 1/2" reinforcing bar;  
 THENCE North 11 degrees 54 minutes 19 seconds West for a distance of 33.53 feet to a 1/2" reinforcing bar;  
 THENCE North 83 degrees 37 minutes 56 seconds West for a distance of 123.16 feet to a 1/2" reinforcing bar on the easterly right-of-way of Southern Railroad (200 foot right-of-way);  
 THENCE proceed along said westerly right-of-way of Southern Railroad North 06 degrees 17 minutes 54 seconds East for a distance of 195.24 feet to the point of curvature of an arc;  
 THENCE continue along said easterly right-of-way of Southern Railroad 184.96 feet along said arc of a curve to the left, said curve having a radius of 3683.00 feet and a chord bearing North 04 degrees 51 minutes 35 seconds East for a distance of 184.94 feet to a point at the intersection of said easterly right-of-way of Southern Railroad with the centerline of a creek;  
 THENCE run the following courses and distances along the centerline of said creek:  
 South 82 degrees 14 minutes 05 seconds East for a distance of 75.94 feet to a point;  
 THENCE South 75 degrees 25 minutes 17 seconds East for a distance of 96.59 feet to a point;  
 THENCE South 82 degrees 04 minutes 06 seconds East for a distance of 111.25 feet to a point;  
 THENCE North 89 degrees 27 minutes 51 seconds East for a distance of 56.48 feet to a point;  
 THENCE South 64 degrees 22 minutes 04 seconds East for a distance of 56.87 feet to a point;  
 THENCE South 42 degrees 43 minutes 55 seconds East for a distance of 52.16 feet to a point;  
 THENCE South 65 degrees 37 minutes 39 seconds East for a distance of 47.51 feet to a point;

LEGAL DESCRIPTION

TRACT I

(Page 3)

THENCE South 81 degrees 39 minutes 48 seconds East for a distance of 198.40 feet to a point;  
THENCE South 56 degrees 38 minutes 11 seconds East for a distance of 37.44 feet to a point;  
THENCE South 69 degrees 57 minutes 24 seconds East for a distance of 119.38 feet to a point at the intersection of said centerline of a creek with the afore-mentioned westerly right-of-way of Monroe Drive;  
THENCE depart said centerline of a creek and proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 79.00 feet to a point at the intersection of said westerly right-of-way of Monroe Drive with the northerly right-of-way of Worchester Drive (50 foot right-of-way);  
THENCE North 82 degrees 01 minutes 11 seconds West for a distance of 150.18 feet to a 1/2" reinforcing bar;  
THENCE North 80 degrees 22 minutes 19 seconds West for a distance of 139.36 feet to a nail at the present-day terminus of Worchester Drive;  
THENCE South 08 degrees 18 minutes 23 seconds West for a distance of 50.01 feet to a 1" open-top pipe at the westerly right-of-way of said Worchester Drive at its present-day terminus;  
THENCE South 80 degrees 22 minutes 19 seconds East for a distance of 130.19 feet to the POINT OF BEGINNING;

Said property contains 7.9951 acres, more or less.

EXHIBIT "A"

LEGAL DESCRIPTION

TRACT III

ALL THAT TRACT or parcel of land lying in or being in Land Lot 52 of the 17th District, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the westerly right-of-way of Monroe Drive (60 foot right-of-way; formerly known as "Boulevard" and "Boulevard, N.E.") with the southerly right-of-way of Worchester Drive (50 foot right-of-way), said point being the POINT OF BEGINNING;

THENCE proceed along said westerly right-of-way of Monroe Drive South 07 degrees 25 minutes 06 seconds West for a distance of 100.51 feet to a point;

THENCE depart said westerly right-of-way of Monroe Drive North 89 degrees 42 minutes 15 seconds West for a distance of 149.48 feet to a 1/2" open-top pipe at the easterly line of a 10 foot alley;

THENCE proceed along said easterly line of a 10 foot alley North 06 degrees 34 minutes 33 seconds East for a distance of 120.53 feet to a 1/2" reinforcing bar at the intersection of said easterly line of a 10 foot alley with said southerly right-of-way of Worchester Drive;

THENCE proceed along said southerly right-of-way of Worchester Drive South 82 degrees 01 minute 10 seconds East for a distance of 150.11 feet to the POINT OF BEGINNING;

Said property contains 0.3787 acre or 16,498 square feet, more or less.

Deed Book 47769 Pg 98  
Catherine Robinson  
Clerk of Superior Court  
Fulton County, Georgia

EXHIBIT "A"  
HALPERN PROPERTY TRACT-II

All that tract or parcel of land lying and being in Land Lots 52 and 53 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING AT THE POINT of intersection of the western right-of-way of Monroe Drive (having a 60 foot right-of-way and being formerly known as Boulevard and Boulevard, N.E.) and the southern right-of-way of Worcester Drive (having a 50 foot right-of-way); then run South 09 degrees 37 minutes 49 seconds West a distance of 190.51 feet to a one-inch crisp top found; thence leaving the western right-of-way of Monroe Drive run North 87 degrees 29 minutes 32 seconds West along the northern property line of property now or formerly owned by J.H. McBroom, Jr. a distance of 149.48 feet to a one-half inch hollow-top pipe found on the eastern right-of-way of a 10-foot alley; thence run North 08 degrees 47 minutes 16 seconds East along the eastern right-of-way of said 10-foot alley a distance of 120.53 feet to an iron pin set on the southern right-of-way of Worcester Drive; thence run North 78 degrees 09 minutes 36 seconds West along the southern right-of-way of Worcester Drive a distance of 10.01 feet to an iron pin set at its intersection with the western right-of-way of said 10-foot alley; thence run South 08 degrees 47 minutes 16 seconds West along the western right-of-way of said 10-foot alley a distance of 122.57 feet to a one-half inch hollow-top pipe found; thence continue to run along the western right-of-way of said 10-foot alley along the arc of a curve to the left an arc distance of 299.58 feet to an iron pin set (said arc having a radius of 3645.57 feet and being subtended by a chord bearing South 06 degrees 12 minutes 52 seconds West and having a length of 299.50 feet); thence leaving the western right-of-way of said 10-foot alley run North 87 degrees 39 minutes 33 seconds West a distance of 199.75 feet to a point; thence run along the arc of a curve to the left an arc distance of 53.65 feet to a one-inch crisp top found (said arc having a radius of 3645.25 feet and being subtended by a chord bearing South 03 degrees 22 minutes 54 seconds West and having a length of 53.65 feet); thence run North 81 degrees 26 minutes 48 seconds West a distance of 237.10 feet to a nail set; thence run North 23 degrees 33 minutes 12 seconds East a distance of 23.70 feet to a point; thence run North 51 degrees 10 minutes 12 seconds East a distance of 126.45 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 42.05 feet to a point; thence run North 49 degrees 51 minutes 24 seconds West a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 2.90 feet to a point; thence run South 49 degrees 51 minutes 24 seconds East a distance of 1.70 feet to a point; thence run North 40 degrees 08 minutes 36 seconds East a distance of 82.45 feet to a point; thence run North 33 degrees 48 minutes 51 seconds East a distance of 10.20 feet to a point; thence run North 26 degrees 31 minutes 51 seconds East a distance of 37.59 feet to a point; thence run North 81 degrees 27 minutes 55 seconds West a distance of 33.02 feet to a point; thence

**EXHIBIT "D"**

**STANDARD OPERATING PROCEDURES**

**SAGE**  
PARKING FACILITY  
-----  
ATLANTA BOTANICAL GARDEN  
-----  
PIEDMONT PARK

**RAIN EVENT PROCEDURES**

**During deck operating hours (6:00AM – 11:00PM)**

1. When the CSO float switch is activated, the park entrance equipment will shut down. Only persons with special access cards (DWM/CSO Workers) will be able to gain access beyond the entry gate.
2. A text message will be sent to all applicable person's cell phone to notify them a Rain Event is engaged and the entrance has been shut down.
3. A signal will also turn on in the booth, letting the Ambassador know that the equipment has been shut off.
4. The Parking manager on-duty will call the Atlanta Botanical Garden security cell phone to let them know of the action being taken and if assistance will be needed.
5. The Ambassador at the Park entrance will place the closed signs at the ticket dispenser, directing patrons to the Garden entrance on Piedmont Ave to access the parking facility.
6. Lancor Parking (Lancor Parking Solutions) manager / maintenance personnel will place signage at all pedestrian entry point from the park, informing them that the lower exit is closed and to use the upper exit.
7. Lancor manager/maintenance will place barricades and additional signage at the top of the tunnel directing people to use the Garden exit.
8. After ensuring that all signage has been put in place, Lancor Manager will lower the roll-down gate at the bottom of the tunnel.

**During Deck Non-Operating Hours (11:00PM – 6:00AM)**

1. When the treatment plant becomes live, the park entrance equipment will shut down. Only persons with special access cards (DWM/CSO Workers) will be able to gain access beyond the entry point.
2. A signal will be sent to all applicable person's cell phone to notify them a Rain Event is engaged and the entrance has been shut down.
3. Security will ensure that the roll-down gate is still down and will not raise the gate at 6:00AM, until the rain event is over.
4. When Lancor arrives, they will place all applicable signage in the garage and entrance of the facility.

**After Rain Event – During Operating Hours (11:00PM – 6:00AM)**

1. When the CSO Float switch is deactivated, all parking equipment will return to its on-line status.
2. A text message will be sent to all applicable person's cell phone to notify them that the Rain Event is over and the entrance is back online.
3. Lancor Manager will contact Atlanta Botanical Garden Security, to discuss the course of action being taken.
4. The barricades and signage at the top of the tunnel will be removed by Lancor.
5. The roll down gate will be raised by Lancor Manager or security.
6. The entrance closed sign will be removed to officially open the entrance.
7. All applicable signage in the Parking Facility will be removed and normal operations will resume.

EXHIBIT "E"

TICKET BOOTH DRAWING



**EXHIBIT "F"**

**SAFETY AND HANDLING PLAN**



**Piedmont Park Expansion  
ABG Access Road  
Construction Safety & Material Haul Route Plan  
Brasfield & Gorrie, LLC  
May 20, 2009**

**Construction Safety Plan**

This Brasfield & Gorrie construction safety plan is to identify and combat commingling of Public, DWM and Construction traffic on Worchester Drive (ABG Access road) specifically as it relates to safety and accident prevention on the now open road. Please see attached Exhibit A and the construction access points off of the ABG Access Road that will be used by the Brasfield & Gorrie construction team to enter the zones and limits of disturbance that are under construction. The access points shown on Exhibit A are outlined individually below to reflect the safety precautions and measures that will be implemented.

- A. Access Point A will be manned by a City of Atlanta Police Officer to monitor all vehicles travelling in and out where construction activities are occurring. The Officer will also be monitoring the traffic signal at Worchester Dr. to ensure that a safe and steady flow of traffic is coming in and out of the jobsite, but that the public use of Monroe Dr. is not impeded. Scheduled duration for this Access Point is through September 2009.
- B. Access Point B will be guarded by a cable gate. This cable will not have a deadbolt or lock in order to allow the CSO Facility to use this access road in any case that they may need to. This construction road when in use for construction will have a flagman guarding the gate to direct traffic at this Access Point. Scheduled duration for this Access Point is through September 2009.
- C. Access Point C will be guarded by a cable gate that will be locked when not in use. A flagman will be at the gate directing traffic anytime this entrance is in use.
- D. Access Point D will be guarded by a cable gate that will be locked when not in use. This access point will also have orange construction fence that shows the boundaries of our limits of disturbance at the Access Point. A flagman will be at the gate directing traffic anytime that this access point is in use. Scheduled duration for this Access Point is through August 2009.
- E. Access Point E will be guarded by a cable gate that will be locked when not in use. This access point will also have orange construction fence showing the boundaries of our limits of disturbance at the Access Point. A flagman will be at the gate directing traffic anytime that this access point is in use. Scheduled duration for this Access Point is through September 2009.



Traffic interaction between Public & DWM vehicles and Construction traffic will be addressed as follows; Each Flagmen at the construction access points will monitor all traffic flow. The flagman will be responsible for keeping traffic moving on the ABG Access road in a safe manner and will keep safe distances between Public & DWM traffic and construction traffic. The flagman will keep two-way traffic flowing on Worchester Drive. Construction traffic entering the ABG road from the construction entrances will be held until public traffic passes.

Any areas that are not clearly defined as construction zones along Worchester Drive will be marked with orange construction fence and will be posted with signs along the boundary and at each Access Point stating "Keep Out" or "Construction Entrance Only." This plan will be in effect the entire time that this road is in use by our construction team. At no time during the use of these construction access points will the construction activities restrict DWM's access to their facility (front or back on the building) or Public access to the ABG Parking Deck. Although use of these access points is scheduled through September 2009, the final topping coat on Worchester Drive will not be installed until all phases are impacting this area is complete which is presently scheduled for August 2010. At that time all parties will review the existing asphalt for any repairs or remedial work that will be done by Brasfield & Gorrie prior to the final topping going down. Brasfield & Gorrie will coordinate the schedule of the final topping coat with PPC, Silverman, DWM and the City of Atlanta.



## *Existing Material Stockpile Haul Route Plan on Action*

Brasfield & Gorrie, LLC respectfully submits our proposed plan of act for hauling the stockpiled material presently adjacent to the ABG/PPC Parking Deck to the Halpern Site (adjacent to DWM's CSO Facility).

1. Erosion Control prior to and during hauling: Installed and supplemented erosion control measures in and around the stockpiled material as identified by the Civil Engineers erosion control plans and as needed in keeping with BMPs shall be in place prior to starting the hauling process. Erosion control measures shall also be in place along the on-site haul route and within the area material is placed on the CSO site. These erosion control measures will be monitored and maintained daily during the course of operations.
2. Haul routes: The haul route would be utilizing the existing temporary road off of Westminster traveling on road from Westminster to Piedmont Road to Monroe and coming into Worchester Drive (ABG Access road) (which connects the ABG/PP Parking Deck to Monroe Dr.). Flagmen will be present at each location as trucks are entering roadways that have mixed use traffic (non-construction). There would be tire cleaning stations for truck entering the roadways. Manpower and Street Sweepers would be used as needed to keep dirt off the roadways.
3. Tandem on-road trucks will be used for transport material to the CSO site. Flagman will control Trucks entering and leaving the site as outlined in the Safety Plan listed above.
4. Brasfield & Gorrie will have supervision on site at all times while construction activities are taking place.
5. Shutting down hauling operations during a rain event: Brasfield & Gorrie understands during a rain event that all hauling over the CSO structure shall stop and there shall be unimpeded drive access for Watershed Management vehicles to their facility. The manager of the toll booths (Lanier Parking) will notify B&G through their automated notification system of imminent shutdown and at such time the shut down plan of action shall go into effect. If there is an event whether scheduled or not which the automated system is not used but the road needs to be shut down upon notification to Brasfield & Gorrie from DWM or Lanier Parking on behalf of DWM construction traffic on Worchester Drive will be suspended. B&G will coordinate and work together with PPC and Watershed Management on procedures to ensure this process flows as smoothly as possible for all parties.
6. The process of moving the existing stockpiled material is anticipated to take up to 4 months.



**Exhibit "K"**

**PARKING FEE STRUCTURE**

**PROPOSED HOURLY PARKING FEES**

0-30 Minutes	Free
31-60 Minutes	\$2.00
Each additional 30 minutes	\$1.00
Max Daily Rate	\$15.00
Lost Ticket Fee	\$15.00

**PROPOSED FACILITY RENTAL PARKING FEES**

Piedmont Park Conservancy and Atlanta Botanical Garden Facility Rentals      Up to \$5.00 per vehicle

**PROPOSED FESTIVAL PARKING FEES**

Up to \$15.00 per vehicle

**PROPOSED MULTI-USE CARD FEES**

**(Does not guarantee space availability – not valid for Class A Events)**

Multi-Use Card

	<b>Member</b>	<b>Non-Member</b>
<b>\$20</b>	6 Uses	5 Uses
<b>\$40</b>	13 Uses	11 Uses
<b>\$60</b>	21 Uses	21 Uses
<b>\$80</b>	31 Uses	31 Uses
<b>\$100</b>	40 Uses	40 Uses

**VALIDATION STAMPS** - Same as "Proposed Hourly Parking Fees" set forth above

**PARKING PASSES**

Staff      \$15.00 per month per vehicle

## APPENDIX A

### INSURANCE REQUIREMENTS

#### A. Preamble

Lessee agrees to obtain and maintain during the Lease Term the insurance set forth in this Appendix A. The following requirements apply to all work performed by Lessee under the terms of this Lease. Compliance is required by Lessee. To the extent permitted by applicable law, Lessor reserves the right to adjust or waive any insurance or bonding requirements contained in this Appendix A and applicable to this Lease; so long as such adjustments are commercially reasonable in light of the permitted uses of the Demised Premises, including, without limitation, construction, development, renovation, maintenance and repair work undertaken under the terms of this Lease.

#### 1. Evidence of Insurance Required Before Work Begins

**No work under this Lease may be commenced after the date of this Lease until all insurance and bonding requirements contained in this Appendix A, or required by applicable law, have been complied with and evidence of such compliance satisfactory to Lessor as to form and content has been submitted to Lessor.** Lessee must provide Lessor with a Certificate(s) of Insurance that Lessor determines evidences that Lessee has complied with all insurance and bonding requirements set forth in this Appendix A at the time Lessee submits to Lessor this Lease executed by Lessee. In the event that Lessee does not comply with such submittal requirements prior to the time Lessee submits to Lessor this Lease executed by Lessee, such failure may delay executing this Lease until such time as Lessee submits a Certificate of Insurance, and/or other documents required by Lessor's Office of Risk Management, complying with Section 1 of this Appendix A. Lessor acknowledges and agrees that it shall not act in an arbitrary or capricious manner when determining whether Lessee has complied with all insurance and bonding requirements contained in this Appendix A or when determining whether Lessee's Certificate(s) of Insurance evidence that Lessee has complied with the same.

#### 2. Minimum Financial Security Requirements

All companies providing insurance required by this Appendix A must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Certificate of Insurance provided by Lessee to Lessor which certifies Lessor determines adequately evidences that all insurance and bonding requirements set forth in this Appendix A and applicable to this Lease have been satisfied; provided however, in no event shall Lessor's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence Lessee's compliance with these conditions.

Companies providing insurance or bonds to Lessee to meet the requirements of this Lease must meet the following requirements:

- i) Best's Rating not less than A-,
- ii) Best's Financial Size Category not less than Class IX, and
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.
- iv) All bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to Lessor, Lessor will notify Lessee in writing. Within ten (10) business days after Lessee's receipt of such notice, Lessee must obtain a new policy or bond issued by an insurer complying with the requirements set forth above in Section 2 of this Appendix A and submit to Lessor evidence in the form of a Certificate of Insurance, and/or other documents required by Lessor's Office of Risk Management, of its compliance with these conditions; provided however, in no event shall Lessors Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence Lessee's compliance with these conditions.

Lessee's failure to comply with all insurance and bonding requirements set forth in this Appendix A and applicable to this Lease will not relieve Lessee from any liability under this Lease. Lessee's obligations to comply with all insurance and bonding requirements set forth in Appendix A and applicable to this Lease will not be construed to conflict with or limit Lessee's indemnification obligations under this Lease.

3. Insurance Required for Duration of Contract

All insurance and bonds required by this Appendix A must be maintained during the entire Lease Term, including any renewal or extension terms, or, if applicable, until all work for which such insurance was required has been completed as required by this Lease.

4. Notices of Cancellation & Renewal

Lessee must, within five (5) business days of receipt, forward to Lessor, at the address listed below by (a) United States mail, postpaid, registered or certified mail, return receipt requested, (b) hand-delivery (c) nationally recognized overnight delivery service providing proof of delivery or (d) facsimile transmission, all notices received from all insurance carriers providing insurance coverages required under this Lease and Appendix A that concern the proposed cancellation, or termination of coverage of any insurance policies. All notices to Lessor under this provision shall be sent to:

City of Atlanta  
68 Mitchell St. Suite 9100  
Atlanta, GA 30303  
Attention: Risk Management  
Facsimile No. (404) 658-7450

Lessor may amend such notice address by sending written notice to Lessee at least five (5) business days prior to the effective date of such change pursuant to the requirements set forth in Section 4 of this Appendix A.

Lessee shall provide Lessor with a Certificate of Insurance evidencing the required insurance prior to the date Lessee submits to Lessor this Lease executed by Lessee, and, thereafter, Lessee shall provide an updated Certificate of Insurance and/or other documents required by Lessor's Office of Risk Management evidencing renewals or changes to required policies of insurance at least fifteen (15) calendar days prior to the expiration of the applicable insurance policy evidenced on the previously provided Certificate(s) of Insurance; provided however, in no event shall Lessor's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the updated Certificate of Insurance and/or other documents, if any, evidence such renewals or changes to the required policies of insurance.

5. Certificate Holder

The **City of Atlanta** must be named as certificate holder for all policies required by this Appendix A. All insurance related notices to the Lessor under this Lease must be mailed to the attention of **Risk Management** at the address above in Section 4 of this Appendix A, as the same may be amended.

6. Additional Insured Endorsements

Lessor must be covered as Additional Insured under all insurance (except worker's compensation and professional liability) required by this Appendix A and such insurance must be primary with respect to the Additional Insured. Confirmation of Lessor's status as an Additional Insured under the insurance policies required hereunder must appear on any Certificate of Insurance and/or other documents required by Lessor's Office of Risk Management provided by Lessee as evidence of its compliance with this Appendix A; provided however, in no event shall Lessor's Office of Risk Management act in a manner which is arbitrary or capricious when determining if the Certificate of Insurance and/or the other documents, if any, evidence Lessee's compliance with this Appendix A. **Lessee must also submit to Lessor an Additional Insured Endorsement evidencing Lessor's rights as an Additional Insured for each policy of insurance under which it is required to be an additional Insured pursuant to this Appendix A. The Lessor shall not have liability for any premiums charged for such coverage.**

7. Mandatory Sub-consultant Compliance

Lessee must require that all contractors (including without limitation consultants) and subcontractors (including without limitation subconsultants) at all tiers, performing work arising from this Lease are sufficiently insured/bonded consistent with commercially reasonable risk management practices.

8. Excess or Umbrella Liability Insurance

Lessee may procure and maintain Excess or Umbrella Liability Insurance to comply with the minimum Commercial General Liability Insurance and Commercial Automobile Liability Insurance limits specified below. Such Excess or Umbrella Liability Insurance shall cover the same insurance risks covered under the primary policy(ies) required hereby.

**B. Workers' Compensation and Employer's Liability Insurance**

Lessee must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is engaged in work arising from this Lease:

Workers' Compensation/Employer's Liability ..... Statutory  
Bodily Injury by Accident/Disease **\$100,000 each accident**  
Bodily Injury by Accident/Disease **\$100,000 each employee**  
Bodily Injury by Accident/Disease **\$500,000 policy limit**

Pursuant to Georgia state law, any employer employing three (3) or more employees must provide worker's compensation coverage. If Lessee or its contractors or subcontractors do not employ at least three (3) employees, a statement on the applicable agency/company letterhead must be submitted to Lessor indicating such.

**C. Commercial General Liability Insurance**

Lessee must procure and maintain Commercial General Liability Insurance in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate policy limit**. The following indicated extensions of coverage must be provided:

Contractual Liability  
Broad Form Property Damage  
Personal Injury  
Advertising Injury  
Fire Legal Liability  
Medical Expense  
Premises Operations  
Independent Contractors/Subcontractors  
Products — Completed Operations  
Additional Insured Endorsement\* (written on a primary, non-contributing basis)

**D. Commercial Automobile Liability Insurance**

Lessee must procure and maintain Automobile Liability Insurance in an amount not less than **\$500,000 bodily injury and property damage combined single limit**. The following indicated extensions of coverage must be provided:

Owned, Non-owned & Hired Vehicles  
Additional Insured Endorsement\* (primary, non-contributing basis)

If Lessee does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Lessee's personal automobile policy or

the Commercial General Liability coverage required under this Appendix A.

E. Property Insurance

Lessee shall procure and maintain Property Insurance covering all forms of risk on any and all interests related to this Lease, including inventory, supplies, and other property of Lessee located in the Garden, insuring against the perils of fire, lightning, extended coverage, and the perils of vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the **full replacement value** of any and all interests of Lessee and property of the Lessor in the care, custody and control of Lessee located in the Garden.

F. Builder's Risk Insurance

Lessee shall cause any contractors and/or subcontractors performing work in the Garden to procure and maintain Builder's Risk Insurance which provides "All-Risk" coverage on the buildings, structure or work and property of the Lessor in the care, custody and control of the Lessee. The amount of such insurance shall at all times be equal to **100 percent of the replacement value**.

G. Hold Harmless Agreement

In addition to its agreement to obtain and maintain the insurance as set forth herein above, Lessee agrees to indemnify and hold harmless Lessor, its officers, agents and employees from: 1) any and all losses, expenses, demands, damages, and claims against Lessor, and/or its officials, agents and/or employees, which arise out of any intentional bad act or omission, or out of any negligent act or omission of Lessee, or of any contractor or subcontractor of Lessee, or of any of Lessee's officers, agents, or employees; and 2) any and all losses, expenses, demands, damages, and claims which result from any condition within the Demised Premises created and/or maintained by Lessee, or by any contractor or subcontractor of Lessee, or by any of Lessee's officers, agents, or employees, which condition was not contemplated by this Lease. Lessee's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall not apply to the extent that liability is caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Lessee further agrees that its agreement to indemnify and hold harmless the Lessor, its officers, agents and employees shall not be limited to the limits of the liability insurance required under this Lease and the Insurance & Bonding Requirements set forth herein above. Lessee shall incorporate a copy of these Indemnification and Hold Harmless requirements in each and every contract with each and every contractor and subcontractor of any tier, except that the name of the contractor or subcontractor shall be substituted for the word "Lessee", and "City of Atlanta" shall be substituted for the word "Lessor". This Paragraph G shall survive any termination or expiration of this Lease with respect to the actions and/or omissions of Lessee that took place on or prior to the effective date of such termination.



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Berends Hendricks Stuit, Inc. 3055 44th St SW Grandville, MI 49418	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (616) 531-1900		FAX (A/C, No): (616) 574-3317
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b>  The Atlanta Botanical Garden 1345 Piedmont Ave NE Atlanta, GA 30309-3366	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> The Hartford		22357
	<b>INSURER B:</b>		
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		81UUNZA7799	11/01/2016	11/01/2017	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COM/PO/AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			81UUNZA7799	11/01/2016	11/01/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			81XHUZA4689	11/01/2016	11/01/2017	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$
							Gen'l Agg	\$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	81WEBU0579	11/01/2016	11/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 500,000
							E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 The City of Atlanta is Additional Insured relative to General Liability per the insured's coverage form.

## CERTIFICATE HOLDER

## CANCELLATION

City of Atlanta  
 68 Mitchell St., Suite 9100 SW  
 Atlanta, GA 30303

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED  
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<p><b>Name Of Additional Insured Person(s) Or Organization(s):</b>  City of Atlanta  68 Mitchell St., Suite 9100 SW  Atlanta GA 30303</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

# **EXHIBIT B**

## Chapter 146 - TAXATION

*Footnotes:*

--- (1) ---

**Cross reference**— Finance, § 2-906 et seq.; alcoholic beverage excise taxes, § 10-141 et seq.; businesses, ch. 30.

## ARTICLE I. - IN GENERAL

## Sec. 146-1. - Financial institutions business license tax.

- (a) As used in this section, the term "gross receipts" means the same as defined in O.C.G.A. § 48-6-93.
- (b) Pursuant to O.C.G.A. § 48-6-93, there is levied an annual business license tax upon state and national banking associations, federal savings and loan associations and state building and loan associations a business license tax at the rate of 0.25 percent of the gross receipts of such institutions. Notwithstanding any other section of chapter 30 pertaining to businesses, the minimum amount of business license tax due from any depository financial institution pursuant to this section shall be \$1,000.00 per year.
- (c) Each depository financial institution within the city shall file a return of its gross receipts with the city on March 1 of the year following the year in which such gross receipts were measured. The returns shall be in the manner and in the form prescribed by the commissioner of the department of banking and shall be based upon the allocation method set forth in O.C.G.A. § 48-6-93(d). The tax levied pursuant to this section shall be assessed and collected based upon the information provided in the return.
- (d) The due date of taxes levied by this section shall be April 1 of each subsequent year.

(Code 1977, §§ 14-12001, 14-12002)

## Sec. 146-2. - Gross premises tax on life insurers.

There is levied an annual tax based solely upon gross direct premium upon each insurer writing life, accident and sickness insurance within the city in an amount equal to one percent of the gross direct premiums received during the calendar year in accordance with O.C.G.A. § 33-8-8.1. As used in this section, the term "gross direct premiums" means gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by chapter 30, article XIV of this Code.

(Code 1977, § 14-5181(d))

## Sec. 146-3. - Gross premiums tax on other insurers.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Gross direct premiums* means gross direct premiums as used in O.C.G.A. § 33-8-8.2(a).

*Insurer* means any insurer other than an insurer transacting business in the class of insurance designated in O.C.G.A. § 33-3-5(1).

- (b) *Levy.* In accordance with O.C.G.A. § 33-8-8.2, there is levied an annual tax based upon the gross direct premiums on each insurer doing business in the city at the rate of 2.5 percent of the gross direct premiums received during the calendar year.

(Code 1977, § 14-5181(e))

Secs. 146-4—146-25. - Reserved.

## ARTICLE II. - AD VALOREM TAXES

### Footnotes:

--- (2) ---

**Cross reference**— *Nontaxable status of urban homesteading property, § 54-64.*

**State Law reference**— *Ad valorem taxation of property, O.C.G.A. § 48-5-1 et seq.*

## DIVISION 1. - GENERALLY

Sec. 146-26. - Levy.

- (a) *Purposes.* For the purposes of raising revenues for the support and maintenance of the city government, for the purpose of raising revenue for the payment of principal and interest on the bonded indebtedness of the city, for the purpose of providing improvements for the public parks and for the purpose of raising revenue for the support and maintenance of education, the taxes set forth in this article are levied and assessed, such levies and assessments to continue each year until amended or repealed.
- (b) *General levy.* An ad valorem tax at the rate of 11.32 mills, less an amount equal to 3.47 mills for the rollback of 2018 sales tax revenue, plus an amount equal to 0.27 mills for millage equivalent rate rollback, less an amount equal to 0.27 mills for City of Atlanta approved rollback, to yield a net ad valorem tax at the rate of 7.85 mills on every \$1,000.00 or any part thereof of the value of all real and personal property which under the laws of this state is subject to taxation within the corporate limits of the city for this purpose, is hereby levied.
- (c) *Bonded indebtedness.* An ad valorem tax at the rate of 1.88 mills on every \$1,000.00 or any part thereof of the value of all real and personal property, which, under the laws of this state is subject to taxation within the corporate limits of the city for the purpose of raising revenue for the payment of principal and interest on bonded indebtedness for the City of Atlanta, is here by levied. An ad valorem tax at the rate of zero mills on every \$1,000.00 or part thereof of the value of all real and personal property, which, under the laws of this state is subject to taxation within the corporate limits of the city for the purpose of raising revenue for the payment of principal and interest on bonded indebtedness for the Atlanta Board of Education, is hereby levied.
- (d) *Parks.* An ad valorem tax at the rate of 0.50 mills on every \$1,000.00 or any part thereof of the value of all real and personal property which under the laws of this state, is subject to taxation within the corporate limits of the city for the purpose of raising revenue for the improvement of the public parks of the city, is hereby levied.
- (e) *Education levy.* An ad valorem tax at the rate of 20.740 mills on every \$1,000.00 or any part thereof of the value of all real and personal property which under the laws of this state is subject to taxation within the corporate limits of the city for this purpose, is hereby levied.
- (f) *Special tax district.* An ad valorem tax at the rate of 1.37 mills on every \$1,000.00 or any part thereof of all real and personal property within that portion of the City of Atlanta lying in DeKalb County, which under the laws of this state is subject to taxation within the corporate limits of the City of Atlanta in DeKalb County, is hereby levied.
- (g) *Components listed on bills.* The tax commissioner of Fulton County, by copy of this section, is requested to specifically list all components of the bonded indebtedness levy of the city, and the board of education and the general levy of the city, as set forth in subsections (b), (c) and (e) of this section, on tax bills to be rendered to citizens of the city.

(Code 1977, § 7-4041; Ord. No. 1995-04, § 1, 2-27-95; Ord. No. 1996-09, § 1, 3-3-96; Ord. No. 1996-33, § 1, 6-5-96; Ord. No. 1997-11, § 1, 2-20-97; Ord. No. 1997-28, §§ 1, 2, 5-27-97; Ord. No. 1997-38, § 1, 6-18-97; Ord. No. 1998-40, § 2, 6-9-98; Ord. No. 1999-54, §§ 1, 2, 6-22-99; Ord. No. 2001-40, § 1, 6-8-01; Ord. No. 2001-49, § 1, 7-10-01; Ord. No. 2002-13, § 1, 3-5-02; Ord. No. 2002-51, § 1, 6-20-

02; Ord. No. 2003-79, § 1, 6-24-03; Ord. No. 2004-37, § 1, 6-30-04; Ord. No. 2005-36, § 1, 6-23-05; Ord. No. 2006-52, § 1, 7-24-06; Ord. No. 2007-34(07-O-0871), § 1, 6-12-07; Ord. No. 2008-54(08-O-1153), § 1, 6-27-08; Ord. No. 2010-30(10-O-0880), § 1, 6-30-10; Ord. No. 2010-55(10-O-1695), § 1, 10-12-10; Ord. No. 2011-28(11-O-0747), § 1, 7-9-11; Ord. No. 2011-41(11-O-1267), § 1, 9-28-11; Ord. No. 2012-32(12-O-0401), § 1, 6-27-12; Ord. No. 2012-33(12-O-0662), § 1, 7-11-12; Ord. No. 2013-29(12-O-1018), § 1, 6-26-13; Ord. No. 2013-37(13-O-1191), § 1, 8-28-13; Ord. No. 2014-25(14-O-1173), § 1, 6-25-14; Ord. No. 2014-39(14-O-1390), § 1, 9-11-14; Ord. No. 2015-33(15-O-1135), § 1, 6-24-15; Ord. No. 2015-39(15-O-1300), § 1, 7-22-15; Ord. No. 2016-20(16-O-1148), § 1, 6-29-2016; Ord. No. 2016-27(16-O-1356), § 1, 9-15-16; Ord. No. 2017-53(17-O-1172), § 1, 9-18-17; Ord. No. 2017-60, § 1, 10-16-17; Ord. No. 2018-22(18-O-1203), § 1, 6-27-18; Ord. No. 2018-31(18-O-8-1396), § 1, 8-15-18; Ord. No. 2018-37(18-O-1482), § 1, 8-29-18; Ord. No. 2019-37(19-O-1225), § 1, 6-26-19; Ord. No. 2019-40(19-O-1347), § 1, 8-13-19)

Sec. 146-27. - Assessment and collection of taxes.

All matters related to the assessment and collection of all taxes due the city shall be done on behalf of the city by the Tax Commissioner of Fulton County, pursuant to contract by and between the city and such county as confirmed pursuant to O.C.G.A. § 48-5-359.1 and powers attendant thereto, all in conformity with the laws of this state.

(Code 1977, § 7-4052)

Sec. 146-28. - Notice of changes of address.

- (a) *Required.* The owners of real estate located within the city are required to notify the Fulton County Tax Commissioner of a street address of the owner at which the owner may receive service of process or other legal notices. Notice shall be given upon such forms as may be approved by the Fulton County Tax Commissioner or its designee, giving all the information called for by such forms. If owners of real estate fail to provide the Fulton County Tax Commissioner with a current address for receipt of legal notices or fail to notify the Fulton County tax commissioner within ten days after any change of address, the address on file with the Fulton County Tax Commissioner will be deemed to be a valid address for service of any legal notice.
- (b) *Form of notice.* It is made the duty of the Fulton County tax commissioner or the designee thereof to develop a form to be used by owners of real estate in reporting the address information as required in this section.

(Code 1977, § 7-4043.1)

Sec. 146-29. - Collection of delinquent county taxes.

The council shall have the power and authority to authorize the chief financial officer and the chief financial officer's bureau directors to collect delinquent county taxes and to qualify as deputy tax commissioner of Fulton County if and when the city shall enter into a contract under the constitution and laws of the state to collect such taxes or to perform any incidental services in connection therewith.

(Code 1977, § 7-4010)

Sec. 146-30. - Issuance, direction and record of tax executions.

If any person who is a citizen of the city or who has property subject to taxation within the limits of the city shall fail, refuse or neglect to pay the taxes imposed according to law or this Code or the ordinances of the city, execution shall issue for the tax, which execution shall bear interest in the name of the mayor and shall be entered on the books of the department of finance. The chief financial officer shall levy on the goods, chattels, lands and tenements of the defendant or so much thereof as shall be sufficient to satisfy the demand and costs, which execution shall bind all the property of the defendant. It shall be the duty of the

chief financial officer and the city attorney jointly to review all executions for taxes and to determine which executions will be recorded. Further, it shall be the duty of the city attorney to record executions for taxes on the general execution docket in the office of the clerk of the superior court.

(Code 1977, § 7-4048)

Sec. 146-31. - Records of tax sales.

The chief financial officer shall keep a book of record of all city tax sales, showing the owner of the property, the amount bid, the amount of the tax and the amount of the cost. The chief financial officer shall also keep and carefully file the deeds made on such sales to the city, with execution attached, and copies of the newspapers in which the respective sales were advertised.

(Code 1977, § 7-4058)

Sec. 146-32. - Bidding for city at tax sale.

- (a) The municipal revenue collector shall designate some employee to attend all tax sales, who shall act for the city in bidding the amount of tax and costs on property sold by the chief financial officer or by the tax commissioner of Fulton County for taxes owed the city, where no bids in that amount are made on behalf of private individuals or corporations. When such property is sold by the tax commissioner of Fulton County, the amount as bid by the city of taxes and costs, together with expenses and commissions, shall be paid to the tax commissioner of Fulton County by the chief financial officer of the city.
- (b) The chief financial officer is further authorized to pay to the tax commissioner of Fulton County, the costs of advertising parcels of land to be sold by such tax commissioner for nonpayment of taxes owed to the city, when the sale of such parcels is not consummated due to deficiencies in the advertisement, defective legal descriptions of such parcels, court injunctions against such sales and other related reasons.

(Code 1977, § 7-4059)

Sec. 146-33. - Foreclosure of right to redeem property bought by city at tax sale.

When the city has bought property at a tax sale, the chief financial officer may give the notices provided for by O.C.G.A. § 48-4-45 to foreclose the right to redeem such property from sale.

(Code 1977, § 7-4060)

Sec. 146-34. - Disposition of property bought by city at tax sale.

After the right to redeem property bought by the city at a tax sale has been foreclosed as provided by section 146-33, it shall be added to the surplus property of the city.

(Code 1977, § 7-4061)

Sec. 146-35. - Report of property redeemed.

It shall be the duty of the chief financial officer to report to the Fulton County tax commissioner the names of all persons who redeem property through the chief financial officer, and it shall be the duty of the Fulton County tax commissioner to list such property as the property of the person so redeeming it.

(Code 1977, § 7-4063)

Sec. 146-36. - Sale of property bought by city for taxes.

- (a) *Generally.* The chief financial officer may sell all property bought by the city at tax sales after the expiration of one year from the date the property is bid in for the city on account of taxes or street improvements.
- (b) *Conduct of sale.* The sale shall be before the city hall on a regular sale day and shall be to the highest and best bidder for cash. All such property shall be sold subject to the right of any person having an interest in the property to redeem it under the laws of the state.
- (c) *Advertisement.* All such property shall be advertised once a week for four weeks in the paper authorized to carry the city's advertisements, but the advertisement shall be in abbreviated form and shall show only the deed number, the street number and the name of the last owner.

(Code 1977, § 7-4065)

Sec. 146-37. - Applications for exemption from or refund of taxes.

Before any petition or application for exemption from the payment of any kind of taxes, fi. fas. or costs or for the refund of any taxes or costs already collected by the city shall be considered by the council, the facts claimed as the basis for such exemption or refund shall be set forth in such petition or application, which shall be under oath. In the consideration of all such claims the committee having such under consideration shall be authorized to summon witnesses, including the applicant, and examine them under oath.

(Code 1977, § 7-4067)

Sec. 146-38. - Preferential assessments for landmark historic properties.

- (a) The preferential ad valorem property tax assessments for landmark properties authorized by O.C.G.A. § 48-5-7.3 shall be available to income producing property that meets all of the following criteria.
  - (1) For the purpose of this ordinance the term "landmark property" shall mean: a contributing structure located in an area designated as a Landmark District pursuant to Chapter 20 of Part 16 of this code; or a building not in a Landmark District which has been individually designated as a Landmark Building or Site pursuant to Chapter 20 of Part 16 of this Code;
  - (2) For the purpose of this ordinance, the term "income producing" shall mean a building used or intended to be used for non-residential purposes that would be permitted under the current zoning of the building; a multi-family apartment or condominium building; or a mixed use building containing both commercial and residential uses so long as the permitted commercial uses exceed 50 percent of the floor area of the structure. Single-family residential structures, duplexes or triplexes which are used as rental property or single family residential structures which rent rooms or which contain a home occupation, are specifically excluded from the definition of income producing property of the purposed of obtaining the preferential ad valorem property tax assessments for landmark properties;
  - (3) Any qualifying building must be in standard condition which for the purpose of this ordinance means a building that has no violations of the city code as to its condition and the condition of the site on which the building is located.

(Ord. No. 2009-69(09-O-1916), § 1, 11-24-09)

**Land development code reference**—Historical preservation, § 6-4041 et seq.

Sec. 146-39. - Level 1 Freeport exemptions.

- (a) In accordance with O.C.G.A. § 48-5-48.2, as it may be amended from time to time, all the following types of tangible personal property are exempted from ad valorem taxation, as provided in subsection (b) of this section, including

all such taxes levied for educational purposes and for state purposes, within the city:

- (1) Inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in the State of Georgia. The exemption provided for herein shall apply only to tangible personal property which is substantially modified, altered or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in this state.
- (2) Inventory of finished goods manufactured or produced within the State of Georgia in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods. The exemption provided for herein shall be for a period not exceeding 12 months from the date the property is produced or manufactured.
- (3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside the State of Georgia and inventory of finished goods which are shipped into the State of Georgia from outside this state and stored for transshipment to a final destination outside this state. The exemption provided for herein shall be for a period not exceeding 12 months from the date the property is stored in this state. All property that is claimed to be exempt under the provisions of this subsection shall be designated as being in transit upon the official books and records of the warehouse, dock, or wharf, whether public or private, where this property is being stored. All official books and records shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property, the date of the withdrawal of the property, the point of origin of the property, and the point of final destination of the same, if known. The official books and records of any warehouse, dock, or wharf, whether public or private, pertaining to any in transit property, shall be at all times open to the inspection of all taxing authorities of this state, the city, and the county.
- (4) As used in this section, the following words, terms and phrases are defined as follows:
  - a. Destined for shipment to a final destination outside this state means, for purposes of this Level 1 Freeport Exemption, that portion or percentage of an inventory of finished goods which the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, is reasonably anticipated to be shipped to a final destination outside this state. Such other reasonable, documented method may only be utilized in the case of a new business, in the case of a substantial change in scope of an existing business, or in other unusual situations where a historical sales or shipment analysis does not adequately reflect future anticipated shipments to a final destination outside this state. It is not necessary that the actual final destination be known as of January 1 in order to qualify for the exemption.
  - b. Finished goods means, for purposes of this Level 1 Freeport Exemption, goods, wares, and merchandise of every character and kind, but shall not include unrecovered, unextracted, or unsevered natural resources, or raw materials, or goods in the process of manufacture or production, or the stock-in-trade of a retailer.
  - c. Foreign merchandise in transit means, for purposes of a Level 1 Freeport Exemption, any goods which are in international commerce where the title has passed to a foreign purchaser and the goods are temporarily stored in this state while awaiting shipment overseas.
  - d. Raw materials means, for purposes of this Level 1 Freeport Exemption, any material whether crude or processed that can be converted by manufacture, processing, or combination into a new and useful product, but shall not include unrecovered, unextracted, or unsevered natural resources.
- (b) All types of tangible personal property as stated in subsection (a) of this section shall be exempted at 100 percent of the value of such property.
- (c) Taxpayers desiring to make application for this exemption must do so on forms provided for this purpose by the

finance department and must supply any additional information that may be requested which is necessary to determine the qualification for and amount of said exemption.

( Ord. No. 2013-66(13-O-1400), § 1, 12-11-13 )

**Editor's note**— This section shall become effective as of January 1, 2015.

Secs. 146-40—146-50. - Reserved.

## DIVISION 2. - URBAN ENTERPRISE ZONES

### *Footnotes:*

--- (3) ---

**Cross reference**— *Businesses, ch. 30; community development, ch. 54.*

*Land development code reference*—*Planning, § 6-3001 et seq.*

Sec. 146-51. - State law enactments.

The Atlanta Urban Enterprise Zone Act (Ga. L, 1998, p. 4493), as amended, is incorporated by reference into the City of Atlanta Code of Ordinances.

(Code 1977, § 7-4069(A); Ord. No. 1995-15, §§ 1, 2, 5-8-95; Ord. No. 1995-31, § 1, 6-25-95; Ord. No. 1995-33, §§ 1—5, 9, 6-25-95; Ord. No. 1996-23, §§ 1, 2, 5-28-96; Ord. No. 2005-78, §§ 1, 2, 11-14-05)

Sec. 146-52. - Local eligibility requirements for designations.

Set forth as follows are criteria which shall be used in the course of designating housing, commercial and industrial enterprise zones:

(1) *All enterprise zones.*

- a. Proposed enterprise zones shall be consistent with the currently adopted comprehensive development plan of the city prior to the creation of the zone.
- b. Proposed land use within enterprise zones shall comply with the city's zoning ordinance prior to zone creation.
- c. The applicant for an enterprise zone must demonstrate to the city's satisfaction the economic necessity for the enterprise zone designation.
- d. An existing zone may be expanded only if ten percent or more of the perimeter of the proposed addition is contiguous to the perimeter of the existing zone.
- e. All zones shall be designed in such a way as to result in minimum displacement of occupants. All relocation costs associated with displacement as defined by state law resulting directly from the creation of the zone shall be borne by the applicant.
- f. The department of planning, development and neighborhood conservation shall certify that the proposed zone has been subject to disinvestment. Such certification shall be based upon relevant, objective data, such as evidence that the ratio of new housing starts to existing inventory for the most recent five-year period is less for the census tract in which the proposed development would be located than for the city as a whole.
- g. The applicant shall demonstrate that tax abatement is necessary to the financial feasibility of the proposed development by providing evidence that one of the following conditions has been met:

1. With regard to the development of housing for sale, fewer than 20 percent of the proposed units would have tax abatement for households whose income does not exceed the low-income level defined in section 146-52(2)a.1 on reasonable assumptions as certified by the department of planning, development and neighborhood conservation.
  2. With regard to the proposed development of income-producing property (including rental housing units, fewer than 20 percent of which would be affordable for low-income households without tax abatement), the proposed development without tax abatement would generate, on a cumulative basis over the first five years, either (a) a negative cash flow, or (b) a fixed-rate debt service coverage ratio of less than 1.20, or (c) a variable-rate debt service coverage ratio equivalent to said fixed-rate ratio, based upon reasonable assumptions as certified by the department of planning, development and neighborhood conservation.
- h. No enterprise zone shall be approved if the applicant owes the city for undisputed water bills which are more than 90 days delinquent or the applicant owns real property not located within the proposed enterprise zone against which city-imposed liens are outstanding and unsatisfied.
- (2) *Housing and mixed-use residential/commercial enterprise zones.*
- a. Housing and mixed-use residential/commercial enterprise zones shall be used to promote the development of mixed-income neighborhoods.
    1. Twenty percent of the total units to be provided shall reflect the same ratio of housing type and bedroom composition that is proposed throughout the zone, and shall be within the ability to pay of those households whose annual income does not exceed 60 percent of the median family income for the Atlanta metropolitan statistical area as most recently published by the United States Department of Housing and Urban Development (HUD), and as adjusted for household size in accordance with HUD procedures. For said units, the property owner shall verify each tenant's household income at the time that said tenant initially executes a lease agreement. Furthermore, the property owner by January 31 of each year shall submit a report to the commissioner of planning, development and neighborhood conservation, indicating the household income of each tenant who executed a lease agreement during the previous calendar year.
    2. Twenty percent of the units for sale shall reflect the same ratio of housing type and bedroom composition that is proposed throughout the zone, and shall bear purchase prices which do not exceed two and one-fifth times the median family income for the Atlanta metropolitan statistical area as most recently published by the United States Department of Housing and Urban Development.
    3. Twenty percent of the units for rent, if any, shall reflect the same ratio of housing type and bedroom composition that is proposed throughout the zone, and shall bear monthly rents which do not exceed 30 percent of the low-income level defined in section 146-52(2)a.1 or, in the case of rental housing units that are being financed through federal low-income housing tax credits, said units shall bear monthly rents which do not exceed the maximum rents prescribed in Section 42, Internal Revenue Service Code, based upon the low-income level defined in section 146-52(2)a.1.
    4. Five percent of all vacant units shall be available to Atlanta police officers and their families, regardless of their household incomes, at purchase prices which do not exceed the affordable level as defined in section 146-52(2)a.2, or at monthly rents which do not exceed the affordable level as defined in section 146-52(2)a.3, consistent with any maximum income restrictions that may apply to said units by virtue of their being financed through any federal, state, or local programs that promote the development of affordable housing. Said units shall count toward meeting the 20 percent affordable housing requirement set forth in section 146-52(2)a.1.
  - b. Affordable housing as defined in section 146-51 shall be dispersed throughout the housing enterprise

zone as reflected on the approved site plan for each zone.

1. Industrial enterprise zones shall be limited geographically only by the general provisions of this section and by the requirements of subsection (2)b.1 [(2)a.1] of this section.
- c. In order to qualify for tax abatement, owners of renter-occupied units who rehabilitate or replace their units during the ten-year life of the zone, must agree to first offer the rehabilitated or replaced units for rent to the same occupants or subsequent occupants for the remaining life of the zone at monthly rents which do not exceed 80 percent of the fair market rents for the city as established by the department of planning, development and neighborhood conservation.
- d. The city shall assign preference to project-specific housing enterprise zones. However, in cases where the department of planning, development and neighborhood conservation has determined that a project-specific housing enterprise zone is not feasible, the city may create an areawide housing enterprise zone, provided that 50 percent or more of the land area in the proposed zone shall be committed to specific development projects.
- e. Each applicant shall demonstrate, with verification from two or more lending institutions, that 30 percent or more of the units to be developed in the proposed zone are ready for construction to begin during the first year of the housing enterprise zone designation.
- f. If HUD fails to publish such data for a period of one year or more, the commissioner of planning, development and neighborhood conservation shall publish annually a set of fair market rents for new construction by adjusting the most recently published HUD data in proportion to the residential rent component of the consumer price index as published annually by the United States Department of Labor, and such rents shall apply to new construction in housing enterprise zones for the purposes of this section.

(Code 1977, § 7-4069(B); Ord. No. 1995-33, §§ 6, 8, 6-25-95; Ord. No. 1997-51, §§ 1—6, 9, 10-14-97; Ord. No. 1998-22, § 1, 4-27-98; Ord. No. 2003-105, §§ 1—3, 11-10-03)

Sec. 146-53. - Local procedures for designating enterprise zones.

- (a) The administration and evaluation of enterprise zones shall be the responsibility of the department of planning, development and neighborhood conservation. The commissioner of planning, development and neighborhood conservation (referred to in this section as "the commissioner") shall receive, review and make written recommendations on each proposed enterprise zone.
- (b) All applicants for enterprise zones shall submit applications to the commissioner of planning, development and neighborhood conservation on forms prescribed and promulgated by the commissioner of planning, development and neighborhood conservation or the commissioner's designee. The commissioner of planning, development and neighborhood conservation may establish additional procedural requirements for the purpose of carrying out the intent of this division.
- (c) On the basis of such information, the department of planning, development and neighborhood conservation shall evaluate the application with respect to the requirements of this division and shall prepare a report on the results of said evaluation. The report shall include a statement from the chief financial officer assessing the fiscal impact of the proposed tax abatements, including estimates of anticipated increases in the tax digest due to the proposed development, and anticipated losses, due to abated taxes on land and improvements, for each year of the tax abatement period.
- (d) Each year, within 30 days after receipt of the previous year's tax digest from the Fulton County Tax Commissioner, the chief financial officer shall recommend a limit on the total amount of tax abatements associated with urban enterprise zones, for approval by the mayor and council through an appropriate resolution. For each urban

enterprise zone application to be considered by the mayor and council following the approval of such a resolution, the chief financial officer shall determine whether creation of the proposed urban enterprise zone would cause the total amount of tax abatements associated with urban enterprise zones to exceed said limit.

- (e) There shall be no restrictions on the number of enterprise zone applications any one developer may submit during any one calendar year.
- (f) An enterprise zone application may be filed with the commissioner of planning, development and neighborhood conservation at any point during the calendar year. However, any application for an enterprise zone which is requested to be created as of January 1 of the following year shall be submitted to the commissioner of planning, development and neighborhood conservation by June 30 to be considered for introduction in the council no later than August 31 of the current year. Any ordinance to create an enterprise zone shall contain, in the form of an attached exhibit, a statement signed by the commissioner of planning, development and neighborhood conservation certifying that the commissioner has received a complete application for the creation of the enterprise zone in accordance with the requirements of this subsection.
- (g) All enterprise zone applications filed with the commissioner of planning, development and neighborhood conservation shall contain, at a minimum, the following information:
  - (1) Name and mailing address of applicant.
  - (2) Street address of property.
  - (3) Legal description and survey plat of the property.
  - (4) Justification for creating or expanding zone based on "purpose" section of ordinance.
  - (5) Applicant's background and development/building experience.
  - (6) Financial ability to execute project.
  - (7) Site plan of proposed development; in case of areawide housing enterprise zones, the site plan of proposed development shall indicate that 50 percent or more of the land area in the proposed zone is committed to specific development projects.
  - (8) A set of preliminary architectural drawings, including but not limited to typical elevations, cross sections and identification of materials to be used.
  - (9) A construction schedule, including development phases, if any, and a statement from two or more lending institutions verifying the applicant's readiness to begin construction of 30 percent or more of the units to be developed during the first year of the development zone designation.
  - (10) On-site and off-site capital facilities required to support the project and sources of revenue for any such improvements.
  - (11) Extraordinary requirements for city services if any.
  - (12) Cost of land acquisition, if any, and sources of revenue.
  - (13) Sales price of all land and individual parcels.
  - (14) Estimate of investment, type of investment and phasing of investments.
  - (15) Statement of relation to current comprehensive development plan and zoning district classification.
  - (16) Statement of any federal, state or local government funds committed to the project.
  - (17) Statement from two or more lending institutions verifying that the tax abatement is necessary to the economic feasibility of the proposed development.
  - (18) For housing enterprise zones, the application shall also include, but not be limited to, the following information:
    - a. Type of housing (single-family, multifamily, condominium, fee simple, etc.).
    - b. Number of units to be constructed and/or renovated.

- c. Size of units.
  - d. Number of bedrooms per unit type.
  - e. Income range to be served.
  - f. Number of rental units and number of for sale units.
  - g. Sales price range and rental rate range.
  - h. Statement regarding neighborhood impact, including direct displacement of households within the zone and likelihood of future displacement of households in the immediate vicinity of the zone.
- (19) For commercial and industrial enterprise zones, the application shall also include, but not be limited to, the following information:
- a. Total square footage of proposed development;
  - b. Proposed tenant mix;
  - c. The names of any businesses which contemplate relocation into the zone, if created;
  - d. Employment forecasts for proposed development;
  - e. Number and types of jobs available on the site;
  - f. Pay ranges of number and types of jobs available on the site;
  - g. Provisions for targeting of jobs to local city and county residents;
  - h. Letters of commitment from businesses contemplating relocation into the zone or expanding within the zone to hire low-income residents to fill job vacancies;
  - i. Estimates of tax revenue from non-freeport-eligible inventory of businesses to be located in the zone;
  - j. Letter of commitment from businesses to create new jobs within one year after opening of the business in the zone; and
  - k. Letters from two lending institutions regarding economic necessity for zone designation.
- (20) A provision requiring the applicant to swear under oath and be signed by a notary, that all information is true and correct. The failure of an applicant to truthfully respond to any portion of the application shall subject the applicant to the temporary suspension of the ad valorem tax abatement in accordance with subsection (1) of this division.
- (h) Each enterprise zone application shall be referred to the neighborhood planning unit in which the proposed zone is located, and such neighborhood planning unit shall have the opportunity to comment on whether or not the proposed zone should be created.
  - (i) Subsequent to the creation of the zone, the municipal clerk shall transmit a certified copy of the ordinance creating the zone to the commissioner of planning, development and neighborhood conservation. The commissioner of planning, development and conservation shall transmit to the county the ordinance along with any other data that the county may request in the course of its review of the zone for purposes of creating a county enterprise zone for the same area as the zone created by the city.
  - (j) Subsequent to the creation of the zone, the applicant or successor property owner shall submit annual reports to the commissioner of planning, development and neighborhood conservation regarding:
    - (1) The current value of tax exemptions for each year of the abatement period.
    - (2) The current market value of all improvements in the zone as compared to that value upon the effective date of the creation of the zone.
    - (3) For housing enterprise zones and mixed use zones for commercial and residential purposes the current number of housing units, types of housing units and sales price ranges and rental rate ranges in each zone as compared to the number, type of housing units and sales price ranges and rental rate ranges in each zone as

compared to the number, types of housing and sales prices and rental rate ranges upon the effective date of the creation of the zone.

- (4) For commercial, industrial and mixed-use commercial and industrial enterprise zones, the current type and amount of developed square footage; the names of all businesses located within each zone; the current number of jobs and the number created since relocating into or expanding within the zone; and the number of low-income residents of the city and county occupying the current total number of jobs.

These data shall be transmitted to the commissioner of planning, development and neighborhood conservation by September 30 annually. The commissioner of planning, development and neighborhood conservation shall compile the data and forward a report to the municipal clerk by December 31 annually. The municipal clerk shall then prepare a final report to state and local agencies as well as to the Atlanta/Fulton County state legislative delegation as required by state law.

- (k) For housing development zones, the commissioner of planning, development and neighborhood conservation or the commissioner's designee shall annually recertify the original certificate of occupancy issued for each housing enterprise zone to ensure continued use of the property for residential purposes and compliance with affordability requirements and shall submit a report of the commissioner's findings to the city council by September 30 of each calendar year.
- (l) Failure of an applicant or successor property owner(s) to comply with the requirements of this division may result in a temporary suspension of the ad valorem tax abatement on the property or properties owned by the applicant or successor property owner. After notice, hearing and establishing a finding of fact of failure to comply, the council shall have the authority, by ordinance, to impose such sanctions against the applicant or successor property owner for each year of noncompliance. The suspension shall remain in effect until the noncompliance is remedied to the city's satisfaction and the applicant or successor property owner is reinstated in the zone by ordinance of the council and declared eligible to receive the remaining years benefits for the enterprise zone in which the property is situated. The suspension of tax abatement benefits on one or more properties shall not be construed as an action by the council to alter the size of an enterprise zone or the schedule of abatements for a zone.
- (m) The commissioner of planning, development and neighborhood conservation may establish additional procedural requirements for the purpose of carrying out the intent of this division.

(Code 1977, § 7-4069(C); Ord. No. 1995-33, §§ 7, 9, 6-25-95; Ord. No. 1997-51, §§ 7—9, 10-14-97; Ord. No. 1999-62, § 1, 8-25-99)

**Editor's note—** The following urban enterprise zones have been created. None of the ordinances creating same are repealed by adoption of the Code.

150 Northside Drive Housing Enterprise Zone. See Ord. No. 1996-01, approved 1-8-96. The zone is abolished as of December 31, 2006.

330 McGill Place Housing Urban Enterprise Zone. See Ord. No. 1986-83, approved 10-9-86 and Ord. No. 1987-98, approved 5-22-87. The zone is abolished as of December 31, 1996.

619 Edgewood Commercial Enterprise Zone. See Ord. No. 2000-28 approved 5-23-00. The zone is abolished as of December 31, 2010.

666 Metropolitan Parkway Commercial Enterprise Zone. See Ord. No. 2004-25 approved 5-25-04. The zone is abolished as of December 31, 2014.

810 Marcus Street Housing Enterprise Zone. See Ord. No. 2003-27, approved 5-21-01. The zone is abolished as of December 31, 2011.

933 Watkins Street Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1998-61, approved 9-23-98. The zone is abolished exactly ten years from the date of construction commencement.

- Adamsville Place Apartments Housing Enterprise Zone. See Ord. No. 2004-21, approved 5-25-04. The zone is abolished as of December 31, 2015.
- Adamsville Place Townhomes Phase I Housing Enterprise Zone. See Ord. No. 2004-212 approved 5-25-04. The zone is abolished as of December 31, 2014.
- Allen Temple Apartments Housing Enterprise Zone. See Ord. No. 2003-25, approved 10-10-00. The zone is abolished as of December 31, 2010.
- Alta West Housing Enterprise Zone. See Ord. No. 2003-36, approved 10-9-01. The zone expires as of December 31, 2011.
- AMAL Heights Townhomes Urban Enterprise Zone. See Ord. No. 2008-12, approved 2-25-08. The zone is effective Jan. 1, 2008; abolished as of January 1, 2018.
- AMB Industrial Urban Enterprise Zone. See Ord. No. 2008-13, approved 2-21-08. The zone is effective Jan. 1, 2008; abolished as of December 21, 2018.
- Athens Avenue Housing Enterprise Zone. See Ord. No. 2003-41, approved 11-27-01. The zone expires as of December 31, 2011.
- Arcadia Downs Apartments Housing Enterprise Zone. See Ord. No. 1998-96, approved 5-26-98. The zone is abolished as of December 31, 2008.
- Atlanta Industrial Park Enterprise Zone. See Ord. No. 1983-67, approved 4-21-83, Ord. No. 1984-62, adopted 11-21-84, Ord. No. 1988-70 approved 6-10-88, and Ord. No. 1990-12, approved 4-10-90. The zone is abolished as of December 31, 2008.
- Atlanta Industrial Park Enterprise Zone—II. See Ord. No. 1985-55, approved 9-24-85. The zone is abolished as of December 31, 2010.
- Auburn Avenue Commercial Enterprise Zone. See Ord. No. 1995-58, approved 9-24-95. The zone is abolished as of December 31, 2005.
- Auburn Avenue Warehouse Mixed-Use Residential and Commercial Enterprise Zone. See Ord. No. 1997-31, approved 5-27-97. The zone is abolished as of December 31, 2007.
- Auburn Glenn Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 2003-57, approved 4-28-03. The zone expires as of December 31, 2013.
- August Hills Apartments I LP Housing Enterprise Zone. See Ord. No. 2003-22, approved 10-10-00. The zone is abolished as of December 10, 2010.
- Bent Creek Redevelopment Housing Enterprise Zone. See Ord. No. 2003-110, approved 12-9-03. The zone is abolished as of December 31, 2013. Amended by Ord. No. 2006-89, approved December 13, 2006.
- Black Bear Lofts Housing Enterprise Zone. See Ord. No. 1998-91, approved 10-27-98. The zone is abolished exactly ten years from the date of construction commencement.
- Brookside Park Housing Enterprise Zone. See Ord. No. 2003-68 approved 5-27-03. The zone is abolished as of December 31, 2013. See Ord. No. 2007-76, approved December 11, 2007, eff. January 1, 2006. The zone is abolished as of December 31, 2016.
- Camp In-Fill Housing and Rehabilitation Housing Enterprise Zone. See Ord. No. 1999-69, approved 9-29-99. The zone is abolished exactly ten years from the January 1st date of construction commencement.
- Candler Warehouse Site Industrial Enterprise Zone. See Ord. No. 1995-59, approved 9-24-95. The zone is abolished as of December 31, 2020.
- Capitol View Industrial Enterprise Zone. See Ord. No. 1996-36, approved 6-10-96. The zone is abolished as of December 31, 2021.

- Carlyle Park Housing Enterprise Zone. See Ord. No. 2003-46, approved 10-15-02. The zone is abolished as of December 31, 2012.
- Carver Homes Housing Enterprise Zone. See Ord. No. 2000-27, approved 5-23-00. The zone is abolished as of December 31, 2010.
- Carver Homes Housing Enterprise Zone. See Ord. No. 2003-18, approved 5-23-00. The zone is abolished as of December 31, 2010.
- Castleberry Hill Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1995-63, approved 10-7-95. The zone is abolished as of December 31, 2005. See Ord. No. 2003-40, approved 10-24-01. See Ord. No. 2003-42, approved 5-14-02. The zone is abolished as of December 31, 2012.
- Centennial Park North Housing Enterprise Zone. See Ord. No. 2003-65 approved 5-27-03. The zone is abolished as of December 31, 2013.
- Centennial Place Commercial Enterprise Zone. See Ord. No. 1999-56, approved July 12, 1999. The zone shall be abolished exactly ten years from the date of construction commencement.
- Columbia-Blackshear Senior Residences Housing Enterprise Zone. See Ord. No. 2005-63, approved 10-10-05. The zone is abolished as of December 31, 2016.
- Constitution Avenue Apartments Housing Enterprise Zone See Ord. No. 2005-62, approved 10-10-05. The zone is abolished as of December 31, 2016.
- Clark Atlanta University Housing Enterprise Zone. See Ord. No. 1989-93, approved 11-20-89. The zone is abolished as of December 31, 1999.
- Colonial Square Apartments Housing Enterprise Zone. See Ord. No. 1997-30, approved 5-27-97. The zone is abolished as of December 31, 2007.
- Columbia Plaza Housing Enterprise Zone. See Ord. No. 1996-73, approved 10-14-96. The zone is abolished as of December 31, 2006.
- Columbia Plaza Phase II Housing Enterprise Zone. See Ord. No. 1998-32, approved 5-12-98. The zone is abolished as of December 31, 2006.
- Columbia Mechanicsville Apartments Housing Enterprise Zone. See Ord. No. 2005-34, approved 6-14-05. The zone is abolished as of December 31, 2016.
- Columbia Senior Residences at Edgewood Housing Enterprise Zone. See Ord. No. 2005-76, approved 11-14-05. The zone is abolished as of December 31, 2016.
- Columbia Senior Residences at Mechanicsville Housing Enterprise Zone. See Ord. No. 2005-33, approved 6-14-05. The zone is abolished as of December 31, 2016.
- Columbia Senior Residences at MLK Village Housing Enterprise Zone. See Ord. No. 2005-43, approved 7-25-05. The zone is abolished as of December 31, 2016.
- Cornerstone Terrace Housing Enterprise Zone. See Ord. No. 2003-43, approved 5-14-02. The zone is abolished as of December 31, 2013. Amended by Ord. No. 2001-19, approved 5-11-04.
- Crescent Hills/Hammond Park Housing Enterprise Zone. See Ord. No. 2003-44, approved 7-9-02. The zone is abolished as of December 31, 2013.
- Custer Avenue Subdivision Housing Enterprise Zone. See Ord. No. 2003-35, approved 10-9-01. The zone expires as of December 31, 2011. See Ord. No. 2003-45, approved 8-26-02. The zone is abolished as of December 31, 2012.

Dobbs Revitalization Project Housing Enterprise Zone. See Ord. No. 1999-84, approved 11-23-99. The zone is abolished exactly ten years from the January 1st date of construction commencement.

Dogwood Apartments Housing Enterprise Zone. See Ord. No. 2004-23, approved 5-25-04. The zone expires as of December 31, 2014. Amended by Ord. No. 2006-92, approved December 12, 2006.

Dome Commercial/Industrial Enterprise Zone. See Ord. No. 1999-39, approved 4-13-99. The zone is abolished exactly ten years from the date of construction commencement.

Enclave At Renaissance Housing Enterprise Zone. See Ord. No. 1996-67, approved 8-26-96. The zone is abolished as of December 31, 2006.

Esquire Village Apartments Housing Enterprise Zone. See Ord. No. 1997-52, approved 10-14-97. The zone is abolished as of December 31, 2007.

Etheridge Courts Apartments Housing Enterprise Zone. See Ord. No. 2003-47, approved 10-15-02. The zone is abolished as of December 31, 2012.

Fairlie-Poplar Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1997-75, approved 12-8-97. The zone is abolished as of December 31, 2006.

Fern Avenue Revitalization Project Housing Enterprise Zone. See Ord. No. 1999-68, approved 9-29-99. The zone shall be abolished exactly ten years from the January 1st date of construction commencement.

Five Points Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1995-57, approved 9-24-95. The zone is abolished as of December 31, 2005. Amended by Ord. No. 1997-02, approved 10-13-97.

Four Oaks Subdivision Housing Enterprise Zone. See Ord. No. 1989-94, approved 11-20-89. The zone is abolished as of December 31, 1999.

Freeman Ford Building Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1996-66, approved 8-26-96. The zone is abolished as of December 31, 2006.

Fulton Bag Mill Mixed Use Enterprise Zone. See Ord. No. 1995-24, approved 5-21-95. The zone is abolished as of December 31, 2006.

Gates Park Crossing, LP Housing Enterprise Zone. See Ord. No. 2004-24, approved 5-25-04. The zone is abolished as of December 31, 2014. See Ord. No. 2005-50, approved 8-15-05.

General Motors Lakewood Assembly Plant Urban Enterprise Zone. See Ord. No. 1983-80, approved 12-7-83. The zone is abolished as of December 31, 2008.

Grant Park Apartments Housing Enterprise Zone. See Ord. No. 1991-68, approved 12-10-91. The zone is abolished as of December 31, 2001.

Grant Park Village Housing Enterprise Zone. See Ord. No. 1995-72, approved 11-27-95. The zone is abolished as of December 31, 2005.

Greenlea Commons North Housing Enterprise Zone. See Ord. No. 1995-30, approved 6-12-95. The zone is abolished as of December 31, 2006.

Harris Homes Revitalization, Phases I & II, Housing Enterprise Zone. See Ord. No. 2003-69 approved 5-27-03. The zone is abolished as of December 31, 2013.

Highbury Court Apartments Housing Enterprise Zone. See Ord. No. 2004-09 approved 12-10-04. The zone is abolished as of December 31, 2013. Amended by Ord. No. 2006-91, approved December 12, 2006.

High Point Estates Housing Enterprise Zone. See Ord. No. 1999-44, approved 5-5-99. The zone is abolished ten years from the date of construction commencement.

Hill Manufacturing Company Industrial Enterprise Zone. See Ord. No. 1996-72, approved 10-14-96. The zone is abolished as of December 31, 2021.

Hill Street Lofts Housing Enterprise Zone. See Ord. No. 2003-48, approved 10-15-02. The zone is abolished as of December 31, 2012.

Hillside Park Housing Enterprise Zone. See Ord. No. 1998-36, approved 5-12-98. The zone is abolished as of December 31, 2008. Renamed as Peaks at West Atlanta Housing Enterprise Zone. See Ord. No. 2003-33, approved 7-24-01. The zone is abolished as of December 31, 2011.

Holly Ridge Apartments Housing Enterprise Zone. See Ord. No. 2003-50, approved 10-28-02. The zone is abolished as of December 31, 2012.

Hollywood Courts Apartments Housing Enterprise Zone. See Ord. No. 1998-28, approved 5-12-98. The zone is abolished as of December 31, 2008.

Hollywood West Apartments Housing Enterprise Zone. See Ord. No. 2003-67 approved 5-27-03. The zone is abolished as of December 31, 2013.

John Eagan Homes Enterprise Zone. See Ord. No. 1997-55, approved 10-14-97. The zone is abolished as of December 31, 2007. Amended by Ord. No. 1998-55, approved 9-16-98. Amended by Ord. No. 2004-18, approved 5-11-04.

John Eagan Homes Phase II Housing Enterprise Zone. See Ord. No. 1999-42, approved 5-5-99. The zone is abolished ten years from the date of construction commencement. Amended by Ord. No. 2004-18, approved 5-11-04.

John Hope Homes Housing Enterprise Zone. See Ord. No. 1997-56, approved 10-14-97. The zone is abolished as of December 31, 2007.

John Hope Homes Phase II Housing Enterprise Zone. See Ord. No. 1998-30, approved 5-12-98. The zone is abolished as of December 31, 2008.

Johnson Research and Development High-Technology Commercial/Industrial Enterprise Zone. See Ord. No. 2000-29, approved 5-23-00. The zone shall remain in existence for ten years from the first day of the calendar year immediately following the adoption of the ordinance creating the zone.

Johnson Research and Development High-Technology Commercial/Industrial Enterprise Zone. See Ord. No. 2003-21, approved 5-23-00. The zone shall remain in existence for 10 years from the first day of the calendar year immediately following the adoption of this ordinance creating the Zone.

Kimberly Courts Apartments Housing Enterprise Zone. See Ord. No. 1999-43, approved 5-5-99. The zone is abolished ten years from the date of construction commencement.

Kimberly Courts Apartments Phase II Housing Enterprise Zone. See Ord. No. 2003-26, approved 10-10-00. The zone is abolished as of December 31, 2010.

Kings Manor Housing Enterprise Zone. See Ord. No. 1998-29, approved 5-12-98. The zone is abolished as of December 31, 2008.

Kingston Townhomes Housing Enterprise Zone. See Ord. No. 2003-29, approved 5-21-01. The zone is abolished as of December 31, 2011.

Lakewood Pointe Townhomes Housing Enterprise Zone. See Ord. No. 2003-23, approved 10-10-00. The zone is abolished as of December 31, 2010.

Laurel Ridge at Bolton Road Urban Enterprise Zone. See Ord. No. 2008-11, approved 2-25-08. The zone is effective Jan. 1, 2008; abolished as of January 1, 2018.

Legacy at Centennial Olympic Park Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1997-33, approved 5-27-97. The zone is abolished as of December 31, 2008.

Legacy Superblock at Castleberry Hill Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 2003-52, approved 11-8-02. The zone is abolished as of December 31, 2012.

Lillie R. Campbell House Housing Enterprise Zone. See Ord. No. 2006-16, approved 4-25-06. The zone is abolished as of December 31, 2016.

Lofts at Underground Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 2003-28, approved 5-25-01. The zone is abolished as of December 31, 2011.

Margaret Mitchell Square Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1995-65, approved 10-7-95. The zone is abolished as of December 31, 2005.

Marietta Street Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 2003-53, approved 12-10-02. The zone is abolished as of December 31, 2012.

Martin Luther King, Jr. Landmark District Housing Enterprise Zone. See Ord. No. 1994-70, approved 9-25-94, and Ord. No. 1995-55, approved 9-24-95. The zone is abolished as of December 31, 2004.

Martin Luther King Jr. Landmark District Phase II Housing Enterprise Zone. See Ord. No. 1997-35, approved 5-27-97. The zone is abolished as of December 31, 2007.

Mattress Factory Lofts Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 1998-63, approved 9-23-98. The zone is abolished exactly ten years from the date of construction commencement.

McGill Park Condominiums Housing Urban Enterprise Zone. See Ord. No. 1987-100, approved 12-7-87. The zone is abolished as of December 31, 1997.

Mechanicsville Housing Enterprise Zone. See Ord. No. 1995-26, approved 5-21-95. The zone is abolished as of December 31, 2006.

Midtown Place Commercial Enterprise Zone. See Ord. No. 1998-62, approved 9-23-98. The zone is abolished exactly ten years from the date of construction commencement.

Mildred Place Housing Enterprise Zone. See Ord. No. 2003-37, approved 10-9-01. The zone expires as of December 31, 2011.

Milltown Lofts Housing Enterprise Zone. See Ord. No. 2003-30, approved 5-25-01. The zone is abolished as of December 31, 2011.

Misty Amber Senior Apartments Housing Enterprise Zone. See Ord. No. 2003-51, approved 11-8-02. The zone expires as of December 31, 2012.

MLK-Ashby Commercial Enterprise Zone. See Ord. No. 1995-62, approved 10-7-95. The zone is abolished as of December 31, 2005.

MLK Village Tower Housing Enterprise Zone. See Ord. No. 2005-42, approved 7-25-05. The zone is abolished as of December 31, 2016.

New Carver Homes Phase II Housing Enterprise Zone. See Ord. No. 2003-24, approved 10-10-00. The zone is abolished as of December 31, 2010.

New Carver Homes Phase III Housing Enterprise Zone. See Ord. No. 2003-32, approved 6-8-01. The zone is abolished as of December 31, 2011.

North Avenue Apartments Housing Urban Enterprise Zone. See Ord. No. 1987-1, approved 12-7-87. The zone is abolished as of December 31, 1997.

North Grant Park Housing Urban Enterprise Zone. See Ord. No. 1988-71, approved 9-8-88. The zone is abolished as of December 31, 1998.

North Grant Park II Housing Enterprise Zone. See Ord. No. 1989-93, approved 11-20-89, and Ord. No. 1991-67, approved 12-10-91. The zone (as expanded) is abolished as of December 31, 1999.

Northwest Atlanta-One Mixed-Use Commercial/Industrial Enterprise Zone. See Ord. No. 1997-54, approved 10-14-97. The zone is abolished as of December 31, 2022.

Northwest Atlanta-Two Mixed-Use Commercial/Industrial Enterprise Zone. See Ord. No. 1997-53, approved 10-14-97. The zone is abolished as of December 31, 2022.

Northwest Atlanta Two Commercial/Industrial Enterprise Zone Expansion. See Ord. No. 2003-31, approved 6-8-01. The zone is abolished as of December 31, 2011.

One West End One Housing Enterprise Zone. See Ord. No. 1995-61, approved 10-7-95. The zone is abolished as of December 31, 2005. Renamed as Cornerstone Terrace Housing Enterprise Zone. See Ord. No. 2003-43, approved 5-14-02. The zone is abolished as of December 31, 2013.

Parcel 25 Housing Enterprise Zone. See Ord. No. 1992-32, approved 6-4-92. The zone is abolished as of December 31, 2002.

Park Place South Housing Enterprise Zone. See Ord. No. 2003-38, approved 10-9-01. The zone expires as of December 31, 2011.

Park View at Coventry Station Housing Enterprise Zone. See Ord. No. 2006-10, approved 3-14-06. The zone is abolished as of December 31, 2017.

Parmalat-New Atlanta Dairies Business Enterprise Zone. See Ord. No. 1997-57, approved 10-14-97. The zone is abolished as of December 31, 2007.

Peachtree/Kessler Residential/Commercial Mixed-Use Enterprise Zone. See Ord. No. 1998-54, approved 7-13-98. The zone is abolished as of December 31, 2009.

Peaks at Martin Luther King Housing Enterprise Zone. See Ord. No. 2003-49, approved 10-15-02. The zone expires as of December 31, 2012.

Peaks at West Atlanta Housing Enterprise Zone. See Ord. No. 2003-34, approved 10-9-01. The zone expires as of December 31, 2011.

Peoples Street Housing Enterprise Zone. See Ord. No. 1989-95, approved 11-20-89. The zone is abolished as of December 31, 1999.

Piedmont Commons Housing Enterprise Zone. See Ord. No. 1997-29, approved 5-27-97. The zone is abolished as of December 31, 2007.

Pittsburg Redevelopment Housing Enterprise Zone. See Ord. No. 2003-80 approved 7-12-03. The zone is abolished as of December 31, 2013. See Ord. No. 2004-70 approved 10-18-04. The zone is abolished as of December 31, 2014. See Ord. No. 04-73 approved 10-20-04. Amended by Ord. No. 2006-94, approved December 12, 2006.

Ponce Springs Apartments Mixed-Use Residential/Commercial Enterprise Zone. See Ord. No. 2003-39, approved 10-9-01. The zone expires as of December 31, 2011. Amended by Ord. No. 2004-30, approved 5-25-04.

Post Renaissance Housing Enterprise Zone I. See Ord. No. 1990-68, approved (without mayor's signature) 10-3-90. The zone is abolished as of December 31, 2000.

Post Renaissance Housing Enterprise Zone II. See Ord. No. 1990-68, approved (without mayor's signature) 10-3-90. The zone is abolished as of December 31, 2001.

Provenance at Hollowell Housing Enterprise Zone. See Ord. No. 2004-26, approved 5-25-04. The zone is abolished as of December 31, 2014. Amended by Ord. No. 2006-93, approved December 12, 2006.

Renaissance Park, Phase III Housing Urban Enterprise Zone. See Ord. No. 1988-69, approved 4-7-88. The zone is abolished as of December 31, 1988.

Renaissance Square Housing Enterprise Zone. See Ord. No. 1997-36, approved 6-9-97. The zone is abolished as of December 31, 2007.

Reynoldstown In-Fill Housing and Rehabilitation Housing Enterprise Zone. See Ord. No. 1999-83, approved 11-23-99. the zone is abolished exactly ten years from the January 1st date of construction commencement.

St. John's Place Housing Enterprise Zone. See Ord. No. 2004-27, approved 5-25-04. The zone is abolished as of December 31, 2014.

Santa Fe Villas Housing Enterprise Zone. See Ord. No. 1995-32, approved 9-25-95. The zone is abolished as of December 31, 2006.

Savannah At Washington Park Housing Enterprise Zone. See Ord. No. 2003-20, approved 5-23-00. The zone is abolished as of December 31, 2010.

Shawnee Apartments Housing Enterprise Zone. See Ord. No. 2003-66 approved 5-27-03. The zone is abolished as of December 31, 2013.

Southside Distribution Center Commercial Enterprise Zone. See Ord. No. 1988-77, approved 10-27-88 and Ord. No. 1992-66, approved 10-27-92. The zone is abolished as of December 31, 2002.

Southside Industrial Park—I Enterprise Zone. See Ord. No. 1985-28, approved 5-28-85, and Ord. No. 1986-62, approved 11-7-86. The zone is abolished as of December 31, 2010.

Southside Industrial Park—II Enterprise Zone. See Ord. No. 1988-24, approved 6-22-88. The zone is abolished as of December 31, 2013.

Southside Industrial Park Extension Industrial Enterprise Zone. See Ord. No. 1998-93, approved 11-20-98. The zone is abolished exactly ten years from the date of construction commencement.

Space Center Industrial Enterprise Zone. See Ord. No. 1995-54, approved 9-24-95. The zone is abolished as of December 31, 2020.

Springbranch Apartments Housing Enterprise Zone. See Ord. No. 1996-32, approved 6-10-96. The zone is abolished as of December 31, 2006.

Summerdale Commons Housing Enterprise Zone. See Ord. No. 1995-56, approved 9-24-95. The zone is abolished as of December 31, 2005.

Summerhill Housing Enterprise Zone. See Ord. No. 1992-65, approved 10-27-92 and Ord. No. 1992-78, approved 10-27-92. The zone is abolished as of December 31, 2002.

Techwood/Clark Howell Phase I Housing Enterprise Zone. See Ord. No. 1995-28, approved 6-12-95. The zone is abolished as of December 31, 2006.

Techwood/Clark Howell Phase II Housing Enterprise Zone. See Ord. No. 1995-28, approved 6-12-95. The zone is abolished as of December 31, 2007.

Techwood/Clark Howell Phase III and IV Housing Enterprise Zones. See Ord. No. 1996-71, approved 10-14-96. The phase III zone is abolished as of December 31, 2007. The phase IV zone is abolished as of December 31, 2008.

Terry Street Housing Enterprise Zone. See Ord. No. 1995-29, approved 6-12-95. The zone is abolished as of December 31, 2006. Expanded by Ord. No. 1997-32, approved 5-27-97. The zone is abolished December 31, 2005.

The Ashton Village at Browns Mill Senior Housing Enterprise Zone. See Ord. No. 2008-09, approved 2-25-08. The zone is effective Jan. 1, 2008; abolished as of December 31, 2018.

The Terraces at 183 Housing Enterprise Zone. See Ord. No. 2005-77, approved 11-14-05. The zone is abolished as of December 31, 2015. Amended by Ord. No. 2006-90, approved December 12, 2006.

The Villages at Browns Mill Housing Enterprise Zone. See Ord. No. 2008-10, approved 2-25-08. The zone is effective Jan. 1, 2008; abolished as of December 31, 2018.

Tyler Place Housing Enterprise Zone. See Ord. No. 1998-31, approved 5-12-98. The zone is abolished as of December 31, 2008.

Villages at Carver Housing Enterprise Zone. See Ord. No. 2005-75, approved 11-14-05. The zone is abolished as of December 31, 2017.

Villages at Carver, Phase V Housing Enterprise Zone. See Ord. No. 2004-31, approved 6-14-04. The zone is abolished as of December 31, 2014.

Villages at Carver, Senior Building Housing Enterprise Zone. See Ord. No. 2004-32, approved 6-14-04. The zone is abolished as of December 31, 2014.

Vine City Housing Enterprise Zone. See Ord. No. 1991-66, approved 12-10-91. The zone is abolished as of December 31, 2001.

The Vineyards of Brown's Mill Housing Enterprise Zone. See Ord. No. 2004-28, approved 5-25-04. The zone is abolished as of December 31, 2014. See Ord. No. 2007-75, § 3, approved December 11, 2007.

Washington Street Apartments Housing Enterprise Zone. See Ord. No. 1998-92, approved 5-26-98. The zone is abolished as of December 31, 2008.

Welcome House SRO Housing Enterprise Zone. See Ord. No. 1991-75, approved 10-15-91. The zone is abolished as of December 31, 2001.

West Block Mixed-Use Enterprise Zone. See Ord. No. 1995-25, approved 5-21-95. The zone is abolished as of December 31, 2006.

West End Housing Enterprise Zone. See Ord. No. 1991-74, approved 10-15-91. The zone is abolished as of December 31, 2002.

Oridan at Willis Mill Housing Urban Enterprise Zone. See Ord. No. 2011-22(11-O-0362), approved 6-29-11. The zone is abolished as of December 31, 2021.

The effective date of all exemptions that were established pursuant to Ordinance 10-O-0499 shall be January 1, 2012. The Manor at Scott's Crossing Housing Urban Enterprise Zone (Phase 1), parcel number 17-0251-LL-185-0, shall expire on December 31, 2021. The Manor at Scott's Crossing Housing Urban Enterprise Zone (Phase 1) shall otherwise not be abolished except as provided in State law and shall comply with all applicable state and local UEZ law.

Secs. 146-54—146-75. - Reserved.

#### ARTICLE III. - HOTEL OR MOTEL OCCUPANCY TAX

--- (4) ---

**Cross reference**— *Hotels, lodginghouses and roominghouses, § 30-751 et seq.*

**State Law reference**— *Hotel or motel occupancy tax, O.C.G.A. § 48-13-50 et seq.*

Sec. 146-76. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bureau* means the bureau of treasury, licensing and employee benefits of the department of finance.

*Guestroom* means a room occupied or intended, arranged or designed for occupancy by one or more occupants, other than meeting rooms intended, designed and used for that purpose.

*Hotel* means any structure or any portion of a structure, including any lodginghouse, roominghouse, dormitory, turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, inn, public club or private club containing guestrooms and which is occupied or is intended or designed for occupancy by guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention or other buildings in which human beings are housed and detained under legal restraint. Furthermore, the term "hotel" shall not include any single room occupancy residence, as defined in section 170-2, in which at least 80 percent of the units to be provided bear weekly rents which do not exceed the fair market rents for the Atlanta metropolitan statistical area for single-room occupancy residences as most recently published by the United States Department of Housing and Urban Development.

*Monthly period* means the calendar months of any year.

*Occupancy* means the use or possession or the right to the use or possession of any guestroom or apartment in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

*Occupant* means any person who, for a consideration, uses, possesses or has the right to use or possess any guestroom in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

*Operator* means any person operating a hotel in the city, including but not limited to the owner or proprietor of the premises, lessee, sublessee, lender in possession, license to or any other person otherwise operating the hotel.

*Permanent resident* means any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guestroom in a hotel for at least 30 consecutive days next preceding that date. The right of occupancy for at least 30 consecutive days is clearly established through the advance payment of 30 days' rent or a lease has been signed in excess of 30 days.

*Rent* means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom.

*Return* means any return filed or required to be filed as provided in this article.

*Tax* means the tax imposed by this article.

(Code 1977, § 14-6177; Ord. No. 2011-14(11-O-0513), § 1, 5-11-11)

**Cross reference**— Definitions generally, § 1-2.

Sec. 146-77. - Administration of article.

- (a) *Authority.* The chief financial officer shall administer and enforce this article for the levy and collection of the tax.
- (b) *Rules and regulations.* The chief financial officer shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state or the constitution of this state or the United States for the administration and enforcement of this article and the collection of the taxes under this article.
- (c) *License fee review board duties.* The license review board created in [section 30-26](#) shall constitute the license fee review board referred to in this subsection. It shall be the duty of the license fee review board to accept questions or disputes concerning the administration and implementation of this article and to advise the chief financial officer, the mayor and the council of its opinion on the various questions brought before it.
- (d) *Records required.* Every operator renting a guestroom in this city to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the chief financial officer may require.
- (e) *Examination of records; audits.* The chief financial officer or any person authorized in writing by the chief financial officer may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting a guestroom to a person and any operator liable for the tax, in order to verify the accuracy of any return made or, if no return is made by the operator, to ascertain and determine the amount required to be paid.
- (f) *Authority to require reports; contents.* In administration of this article, the chief financial officer may require the filing of reports by any person having in the person's possession or custody information relating to rentals of guestrooms which are subject to the tax. The reports shall be filed with the chief financial officer when required by the chief financial officer and shall set forth the rental charged for each occupancy, the date of occupancy and such other information as the chief financial officer may require.
- (g) *Confidentiality.* The chief financial officer or any person having an administrative duty under this article shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having that administrative duty under this article, except in judicial proceedings or other proceedings necessary to collect the tax levied and assessed by this article. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the terms included in the measure and amounts of tax required to be collected, interest and penalties.

(Code 1977, § 14-6188)

Sec. 146-78. - Violations.

- (a) Any person violating this article shall be deemed guilty of an offense.
- (b) Any operator or other person who fails to register as required in this article or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the chief financial officer or who renders a false or fraudulent return shall be deemed guilty of an offense. Any person required to make, render, sign or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this article to be made, shall be deemed guilty of an offense.

(Code 1977, § 14-6190)

Sec. 146-79. - Levied.

There is levied and assessed and there shall be paid a tax of eight percent of the rent for every occupancy of a guestroom in a hotel in the city.

(Code 1977, § 14-6178; Ord. No. 2011-32(11-O-1057), § 2, 7-27-11)

**State Law reference**— Hotel/motel occupancy tax authorized, O.C.G.A. § 48-13-51.

Sec. 146-80. - Persons liable; extinguishment of liability.

Every person occupying a guestroom in a hotel in this city is liable for the tax levied in this article. The person's liability is not extinguished until the tax has been paid to the city, except that a receipt from an operator maintaining a place of business in this city or from an operator who is authorized by the chief financial officer, under such rules and regulations as the chief financial officer may prescribe, to collect the tax and who is, for the purposes of this article, regarded as an operator maintaining a place of business in this city, which receipt is given to the occupant pursuant to section 146-81, is sufficient to relieve the occupant from further liability for the tax to which the receipt refers.

(Code 1977, § 14-6179)

Sec. 146-81. - Collection by operator; receipt to occupant; rules for collection schedules.

Every operator maintaining a place of business in this city, as provided in section 146-80, and renting guestrooms in this city not exempted under section 146-82 shall, at the time of collecting the rent from the occupant and on demand, give to the occupant a receipt therefor. For all transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that those credits are incurred in accordance with the rate of tax owing on the amount thereof. The chief financial officer shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

(Code 1977, § 14-6180)

Sec. 146-82. - Unlawful advertising regarding tax.

It is unlawful for any operator to advertise or hold out or state to the public or to any guest, directly or indirectly, that the tax or any part thereof levied in this article will be assumed or absorbed by the operator or that it will not be added to the rental of the guestroom or that, if added, it or any part thereof will be refunded.

(Code 1977, § 14-6181)

Sec. 146-83. - Exemptions.

No tax pursuant to this article shall be imposed upon the following:

- (1) Permanent residents.
- (2) Georgia state or local government officials or employees while traveling on official business and using guest rooms furnished for a period of one or more days.
- (3) Persons who certify they are staying in a guest room as a result of the destruction of their home or residence by fire or other casualty.
- (4) Persons using meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge.

(Code 1977, § 14-6182; Ord. No. 2017-10(17-O-1062), § 1, 3-15-17)

Sec. 146-84. - Registration of operator; certificate of authority.

- (a) Every person engaging or about to engage in business as an operator of a hotel in this city shall immediately

register with the chief financial officer on a form provided by the chief financial officer. A separate registration shall be required for each place of business of an operator. The privilege of registration shall not relieve any person from the obligation of payment or collection of the tax levied in this article, regardless of registration.

- (b) The registration shall set forth the name under which the person transacts business or intends to transact business, the location of the person's place of business and other information which would facilitate the collection of the tax as the chief financial officer may require. The registration shall be signed by the owner if a natural person, by a member or partner if ownership is by an association or partnership or by an executive officer or some person specifically authorized by the corporation to sign the registration if ownership is by a corporation.
- (c) The chief financial officer shall, after the registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. Each certificate shall state the name and location of the business to which it is applicable and shall be prominently displayed therein so as to be seen and to come readily to the notice of all occupants and persons seeking occupancy. The certificates shall be nonassignable and nontransferable and shall be returned immediately to the chief financial officer upon the cessation of business at the location named or upon the sale or transfer of the business at that location.

(Code 1977, § 14-6183)

Sec. 146-85. - Date due; returns; deductions for operators.

- (a) *Due date.* The tax levied under this article shall become due and payable from the occupant at the time of occupancy of any hotel in this city. All amounts of such taxes collected by any operator shall be due and payable to the chief financial officer monthly on or before the 20th day of every month next succeeding each respective monthly period as set forth in section 146-76.
- (b) *Time of filing return.* On or before the 20th day of the month following each monthly period, a return for the preceding monthly period shall be filed with the chief financial officer, in such form as the chief financial officer may prescribe, by every operator liable for the payment of the tax under this article.
- (c) *Contents of return.* All returns shall show the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the related period and such other information as may be required by the chief financial officer.
- (d) *Delivery of return and remittance.* The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due, to the chief financial officer at 68 Mitchell Street, Suite 1101, Atlanta, Georgia 30303.
- (e) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under O.C.G.A. tit. 48, ch. 8, art. I (O.C.G.A. § 48-8-1 et seq.), the state Retailers' and Consumers' Sales and Use Tax Act.

(Code 1977, § 14-6184)

Sec. 146-86. - Deficiency determinations.

- (a) *Recomputation of tax.* If the chief financial officer is not satisfied with the return of the tax or the amount of the tax required to be paid to the city by any person under this article, the chief financial officer may compute and determine the amount required to be paid upon the basis of any information within the chief financial officer's possession or that may come into the chief financial officer's possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of one

percent per month or any fraction of a month from the 20th day after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

- (c) *Offsetting of overpayments.* In making a determination, the chief financial officer may offset overpayments for a period against underpayments for another period against penalties and against the interest on underpayments. The interest on underpayments shall be computed in the manner set forth in section 146-87(c).
- (d) *Penalty for negligence or disregard for rules and regulations.* If any part of the deficiency for which a deficiency determination has been made is due to negligence or disregard of rules and regulations, a penalty of 15 percent of the amount of the deficiency shall be added thereto.
- (e) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade any section of this article or other authorized rules and regulations, a penalty of 25 percent of the deficiency shall be added thereto.
- (f) *Notice of determination.* The chief financial officer or the chief financial officer's designated representative shall give to the operator written notice of the chief financial officer's determination. The notice may be served personally or by mail; if by mail the service shall be addressed to the operator at the operator's address as it appears in the records of the chief financial officer. For service by mail of any notice required by this article, the service is complete at the time of deposit in the United States post office.
- (g) *Time limit for mailing notice of deficiency determination.* Except for fraud, intent to evade this article or authorized rules or regulations or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period should last expire.

(Code 1977, § 14-6185)

Sec. 146-87. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any person fails to make a return for the tax levied in this article, the chief financial officer shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total rentals in this city which are subject to the tax. The estimate shall be made for the period in respect to which the person failed to make the return and shall be based upon any information which is or may come into the possession of the chief financial officer. Upon the basis of this estimate, the chief financial officer shall compute and determine the amount required to be paid the city, adding to the sum thus determined a penalty equal to 15 percent thereof. One or more determinations may be made for one or more periods.
- (b) *Manner of computation.* In making a determination, the chief financial officer may offset overpayments for a period against penalties and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in subsection (c) of this section.
- (c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month or any fraction of a month from the 20th day after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.
- (d) *Penalty for fraud or intent to evade.* If the failure of any person to file a return is due to fraud or an intent to evade this article or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 15 percent penalty provided in section 146-88.
- (e) *Notice.* Promptly after making the determination, the chief financial officer shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination in section 146-86(f).

(Code 1977, § 14-6186)

## Sec. 146-88. - Penalties and interest for failure to pay tax.

Any person who fails to pay the tax levied under this article to the city or who fails to pay any amount of the tax required to be collected and paid to the city within the time required shall pay a penalty of 15 percent of the tax in addition to the tax or amount of the tax, plus interest on the unpaid tax or any portion thereof as set forth in section 146-87.

(Code 1977, § 14-6187)

## Sec. 146-89. - Collection.

- (a) *Security.* The chief financial officer, whenever deemed necessary to ensure compliance with this article, may require any person subject to this article to deposit with the chief financial officer such security as the chief financial officer may determine. The amount of the security shall be fixed by the chief financial officer but shall not be greater than twice the person's estimated average liability for the period for which the person files returns, determined in such a manner as the chief financial officer deems proper or \$10,000.00 whichever amount is the lesser. The amount of the security may be increased by the chief financial officer subject to the limitations provided in this subsection. The chief financial officer may sell the security at public auction, with the approval of the mayor and council, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination in section 146-86(f) and shall be addressed to the person at the person's address as it appears in the records of the chief financial officer. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.
- (b) *Action for collection.* At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the chief financial officer may bring an action in the courts of this state, of any other state or of the United States in the name of the city to collect the amount delinquent, together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (c) *Duty of successor of operator to withhold.* If the purchaser of a business fails to withhold purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price, valued in money. Within 30 days after receiving a written request from the purchaser for a certificate, the chief financial officer shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the chief financial officer of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out the business or at the time that the determination against the operator becomes final, whichever event occurs later.
- (d) *Credit for tax, penalty or interest paid more than once or erroneously collected.* Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or unlawfully collected or received by the city under this article, it may be offset as provided in section 146-86(c). If the operator or person determines that the operator or person has overpaid or paid more than once, which fact has not been determined by the chief financial officer, the operator or person will have three years from the date of payment to file claim in writing stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved by the chief financial officer, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it was paid or the operator's or person's administrators or executors.

(Code 1977, § 14-6188)

## Secs. 146-90—146-110. - Reserved.

## ARTICLE IV. - RENTAL MOTOR VEHICLE EXCISE TAX

## Sec. 146-111. - Definitions.

For purposes of this article, the following terms shall have the following meanings respectively ascribed to them.

*Month or monthly period* shall mean the calendar months of any year.

*Rental charge* means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales taxes.

*Rental motor vehicle* means a motor vehicle designed to carry ten or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver regardless of whether such vehicle is licensed in the State of Georgia.

*Rental motor vehicle concern* means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

*Tax, Excise tax or taxes* shall mean the tax imposed by this article.

(Ord. No. 1996-25, § 1, 5-23-96)

## Sec. 146-112. - [Authority; rules and regulations; records.]

- (a) *Authority.* The chief financial officer shall administer and enforce this article for the levy and collection of the tax.
- (b) *Rules and regulations.* The chief financial officer shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state or the constitution of this state or the United States for the administration and enforcement of this article and the collection of the tax under this article.
- (c) *Records required.* Every rental motor vehicle concern subject to this article shall keep such records, receipts, invoices and other pertinent papers in such form as the chief financial officer may require.

(Ord. No. 1996-25, § 1, 5-23-96)

## Sec. 146-113. - [Excise tax levied; collection.]

- (a) There is hereby assessed and levied an excise tax upon each rental charge collected by any rental motor vehicle concern when such charge constitutes a taxable event for the purposes of the sales and use tax as provided for under O.C.G.A. ch. 8, art. I, as amended. The tax levied pursuant to this article shall be in the amount of three percent of the rental charge as defined herein. The tax levied pursuant to this article shall be imposed only at the time when and the place where a customer pays sales tax with respect to the rental charge. The customer who pays a rental charge that is subject to the tax levy as provided in this article shall be liable for the tax. The tax shall be paid by the customer to the rental motor vehicle concern. The tax shall be a debt of the customer to the rental motor vehicle concern until it is paid and shall be recoverable at law in the same manner as authorized for the recovery for other debts.
- (b) The rental motor vehicle concern collecting the tax shall remit the tax to the chief financial officer of the City of Atlanta, Georgia and the tax thus remitted shall be a credit against the tax imposed by this article on the rental motor vehicle concern. Every rental motor vehicle concern subject to the tax levied by this article shall be liable for

the tax at the rate of three percent upon the rental charges actually collected or the amount of taxes collected from the customers, whichever is greater.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-114. - [Purposes for proceeds from tax.]

The following projects and purposes for which the proceeds of the tax levied by this article are to be expended are specified as follows:

- (1) Promoting industry trade, commerce and tourism.
- (2) Capital outlay projects including but not limited to a new multipurpose enclosed arena suitable for basketball, hockey, and major entertainment events with concession facilities and in connection therewith, the acquisition construction and equipping of structured parking facilities, pedestrian plazas, pedestrian connections, the demolition of the current Omni Coliseum, the prepayment of outstanding revenue bonds used to finance or related to the Omni Coliseum, the reconfiguration of the Omni Plaza Marta entrance, and the acquisition of certain land and air rights related to any of the foregoing; and such other improvements as may be necessary to support the development of the new arena.
- (3) Maintenance and operation expenses or security and public safety expenses associated with subsection (2) of this section.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-115. - [Exceptions.]

No tax shall be imposed pursuant to this article on the rental charge associated with the rental or lease of a rental motor vehicle if either:

- (1) The customer picks up the rental motor vehicle outside the State of Georgia and returns it within the State of Georgia;
- (2) The customer picks up the rental motor vehicle in the State of Georgia and returns it outside the State of Georgia.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-116. - [Amount of tax allowed to be retained for expenses.]

Each rental motor vehicle concern collecting the tax imposed by this article shall be allowed to retain three percent of the tax due and collected and may retain that amount in the form of a deduction for expenses incurred in submitting, reporting and paying the amount of taxes due, if the amounts due are not delinquent at the time of payment.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-117. - [Statement required showing gross rental charges and taxes.]

- (a) On or before the 20th day of each month following the month of June, 1996, the rental motor vehicle concern liable for the tax provided for herein shall transmit to the chief financial officer for the city, a statement showing the gross rental charges and gross taxes collected by authority of this article for each preceding calendar month. Along with said statement, the rental motor vehicle concern shall submit to the chief financial officer the net taxes due for that particular month.
- (b) Failure to remit taxes by the due date shall subject the rental motor vehicle concern to a penalty of five percent of the tax then due and in addition to such penalty, interest thereon on the unpaid principal amount due, computed at

the rate of one percent per month.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-118. - Records.

In order to aid in the administration and enforcement of the provisions of this article and to collect all the tax imposed, all rental motor vehicle concerns are hereby required to keep a record of all rental charges for rental motor vehicles and taxes collected which are related thereto. Said records shall be open for inspection and copying by any duly authorized agent of the city during regular business hours.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-119. - [Deficiency determinations.]

- (a) If the chief financial officer is not satisfied with the return or returns of the excise tax provided for herein, or the amount of the tax required to be paid to the city by any rental motor vehicle concern he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.
- (b) The amount of the determination made by the chief financial officer shall bear interest at the rate of one percent per month or fraction thereof from the due date of the taxes found to be due by him.
- (c) The chief financial officer or his designated representative shall give to the rental motor vehicle concern a written notice of any such determination. The notice may be served personally or by mail and if by mail the service shall be addressed to the operator or the owner of the rental motor vehicle concern at the address as the same appears in the records of the chief financial officer as provided to him by each rental motor vehicle concern. Service by mail is complete when delivered by certified mail with a receipt signed by an addressee or agent of the addressee.
- (d) Except in cases of failure to make a return, every notice of deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period in which the amount proposed to be determined or within three years after the return is filed, whichever period shall expire last.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-120. - Failure to make a return.

- (a) If any rental motor vehicle concern fails to make a return, the chief financial officer shall make an estimate of the excise tax due. The estimate shall be made for the period or periods in respect to which the rental motor vehicle concern has failed to make the return and shall be based upon such information which is or may come into the possession of the chief financial officer. Written notice shall be given in the manner as prescribed above in section 146-119.
- (b) The amount of the determination shall bear interest at the rate of one percent per month or fraction thereof from the 20th day of the month following the monthly period for which the amount of any portion thereof should have been returned until the date of payment.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-121. - Audit authority.

Duly authorized employees of the city upon exhibition of identification and during regular business hours may examine and copy the books, papers, records, financial reports equipment and other facilities if necessary of any rental motor vehicle concern in order to verify the accuracy of any return made pursuant to this article, or if no return is made by the rental motor vehicle

concern, to ascertain or determine the amount of tax required to be paid.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-122. - Withholding tax on sale of business.

- (a) If any rental motor vehicle concern liable for any amount under this article transfers or sells its business or quits the business, its successors or assigns shall withhold sufficient amounts from the purchase price to cover the amount required to be paid pursuant to this article until the former owner or operator of the rental motor vehicle concern produces a receipt from the chief financial officer or his designee showing that the indebtedness has been paid or a certificate stating that no amount is due.
- (b) If the purchaser of a business or rental motor vehicle concern fails to withhold from the purchase price as required herein such purchaser shall be personally liable for the payment of the amount of the outstanding tax required to be withheld by him to the extent of such purchase price.

(Ord. No. 1996-25, § 1, 5-23-96)

Sec. 146-123. - Penalty for violation.

- (a) In addition to the interest charges and delinquent penalties specified in this article any person violating any provision of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished by the municipal court for the City of Atlanta in accordance with the limits established by the City Charter for the City of Atlanta. Such persons shall be guilty of a separate offense for each and every day during which any violation of any provision of this article is committed, continued, or permitted by that person and shall be punished accordingly.
- (b) The tax levied by this article shall be effective on the first day of June, 1996 and shall continue until its permissible existence shall expire as provided by law, or until otherwise terminated by the Georgia General Assembly or the Atlanta City Council.

(Ord. No. 1996-25, § 1, 5-23-96)