

Deed Book 57452 Pg 542
Filed and Recorded May-01-2017 08:34am
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Real Estate Transfer Tax \$0.00
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

Upon Recording, return to:
Atlanta BeltLine, Inc.
100 Peachtree Street, NW
Suite 2300
Atlanta, GA 30303
Attention: Vice President & General Counsel

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT (the "Easement") is made and entered into this 21st day of March, 2017, by and between The Delmar Group, LLC, a Georgia limited liability company (hereinafter "Grantor"), and The Atlanta Development Authority d/b/a Invest Atlanta, by and through its designated special agent, Atlanta BeltLine, Inc. ("ABI"), a Georgia nonprofit corporation (hereinafter "Grantee"). Individually, Grantor and Grantee may be referred to in this Agreement as a "**Party**" and collectively as the "**Parties.**"

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that certain tract or parcel of real property (the "Grantor Property") located in Land Lot 22 of the 14th District of Fulton County, Georgia known as at address, Fulton County, City of Atlanta, Georgia, and being more particularly described on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, Grantor, as owner of the Property, wishes to convey to Grantee a perpetual easement for the construction and maintenance of a public access point (the "Accessway") on the Grantor's property to the Atlanta BeltLine Southside Trail, (the "Atlanta Beltline Project"), more particularly described on Exhibit B of the Property (the "Easement Area").

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing and delivery of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents docs freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors, assigns and designees, a perpetual, irrevocable easement (the "Easement") on, over, across, under, and through the Easement Area for the purposes hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the Easement.

1. Rights of Grantee. To accomplish the general purpose of the Easement, Grantor, by this Easement, hereby grants, transfers, assigns, bargains, aliens, conveys and confirms to Grantee (the same being hereby accepted by Grantee) an exclusive, perpetual easement on, over, across

and through the Easement Area for the construction, use, and maintenance of a public access point (the foregoing activities being referred to herein as "Construction and Maintenance Activities") to the Atlanta BeltLine Project as provided herein. Grantee shall at all times have the right to designate third parties as additional beneficiaries of the rights granted hereunder, in whole or in part, in perpetuity or otherwise, including, without limitation, any governmental entity or members of the public at large, all at no charge. Grantee and its designees shall also have the right of vehicular access over and across the Easement Area described on Exhibit B attached hereto, (as well as other portions of the Grantor's Property needed to access the Easement Area and such additional areas being deemed a portion of the "Easement Area"), in the event of an emergency and, to the extent necessary or convenient for Construction and Maintenance Activities.

Grantee's rights hereunder shall be subject to the following:

(i) All activities of Grantee (including, without limitation, Construction and Maintenance Activities) shall be conducted in compliance with applicable law, at no cost to Grantor, except as otherwise provided herein;

(ii) The Easement Area shall also include portions of the Grantor's Property necessary to provide for access to Easement Area from the balance of the Grantor's Property at such access points as determined by the Grantee, and any such portions shall be deemed to be a portion of the "Easement Area";

(iii) To the extent necessary or desirable, Grantee or its designees shall have the right (a) to cut and level the grade of portions of the Grantor's Property (including, without limitation, the Easement Area) in order to achieve a beneficial layout for the Accessway, provided the risk of soil erosion and damage to trees is minimized as much as reasonably possible.

Included within the foregoing rights of Grantee is the right to prevent any activity on, or use of, the Easement Area that is inconsistent with the purposes of the Easement, and to require the restoration of such areas or features of the Easement Area as may be damaged by any such inconsistent activity or use.

2. Prohibited Uses. Any activity on, or use of, the Easement Area inconsistent with the purpose of the Easement is prohibited. It is mutually agreed and understood, however, that the Easement permits Grantor and its successors-in-interest to use the Easement Area for all purposes, present and future, not inconsistent with the Easement.

3. Grantor's Remedies. If Grantor determines that Grantee is in violation of the terms of this Easement or that a violation is threatened, Grantor shall give written notice to Grantee of such violation and demand corrective action sufficient to cure the violation, and, when the violation involves damage to the Accessway resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Accessway damaged. If Grantee fails

to cure such violation within ten (10) days after receipt of notice thereof from Grantor, or under circumstances where the violation cannot reasonably be cured within a ten (10)-day period, fails to begin curing such violation within the ten (10)-day period, or fails to diligently prosecute such cure to completion, Grantor may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, including, without limitation, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Accessway, at Grantee's sole cost and expense, to the condition that existed prior to any such damage. If Grantor, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Easement Area and/or Accessway, Grantor may pursue its remedies under this Paragraph 3 upon written notice to Grantee, but without waiting for the above-referenced cure period to expire. Grantor's rights under this Paragraph 3 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantee agrees that Grantor shall be entitled to seek all available remedies at law or equity. Grantor's remedies described in this Paragraph 3 shall be cumulative and shall be in addition to all other remedies now or hereafter existing at law or in equity, subject always, however, to any obligation upon Grantor to give notice or an opportunity to cure, or both, pursuant to the terms of this Paragraph.

A. Grantor's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantor, and any forbearance by Grantor in the exercise of its rights under this Easement in the event of any breach of any term hereof by Grantee shall not be deemed or construed to be a waiver by Grantor of such breach or of any subsequent breach of the same or any other term of this Easement or of any of Grantor's rights hereunder. No delay or omission by Grantor in the exercise of any right or remedy upon any breach by Grantee shall impair such right or remedy or be construed as a waiver.

B. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.

C. Acts Beyond Grantee's Control. Nothing contained in this Easement shall be construed as to entitle Grantor to bring any action against Grantee or to suggest that Grantee would have any liability for any injury to or change in the Easement Area resulting from causes beyond Grantee's control, including, without limitation, fire (to the extent not caused by Grantee), flood, storm, other acts of God, unauthorized acts of third parties or other damage beyond Grantee's control, or from any prudent action taken by Grantee under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

4. Arbitration. If a dispute arises between the Parties concerning any proposed use or activity of any Party with the purposes of this Easement, either Party may refer the dispute to arbitration by request made, in writing, upon the other. Within thirty (30) days of the receipt of such a request by the receiving Party, the Parties shall endeavor to select a single arbitrator to hear the matter. If the Parties are unable to agree on the selection of a single arbitrator within such thirty (30) day period for any reason whatsoever, then each Party shall, within five (5) days thereafter, name one (1) arbitrator, and the two (2) arbitrators thus selected shall select a third arbitrator within ten (10) days after the date of the appointment of the second arbitrator, and the

matter in dispute shall be heard by a panel of the three (3) arbitrators so selected; *provided, however,* that if either Party fails to select an arbitrator, or if the two (2) arbitrators selected by the parties fail to select the third arbitrator within ten (10) days after the appointment of the second arbitrator, then, in each such instance, either Party may apply to the Superior Court in and for Fulton County, Georgia for the appointment of the second or third arbitrator, or both, as the case may be.

5. Costs and Liabilities. Except as expressly provided herein with respect to the Accessway, Grantee retains all responsibilities and shall bear all costs and liabilities of any kind related to the Easement including, without limitation, the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by or on behalf of Grantor. Notwithstanding the foregoing, the cost of electrical power service shall be the responsibility of the contractor selected by Grantee to perform the Construction and Maintenance Activities of the Accessway, and shall be the responsibility of the successor owner Grantee upon completion of the Accessway.

A. Hold Harmless; Indemnification. Grantee agrees to hold harmless, indemnify and defend Grantor and its officers, directors, employees, agents, and independent contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, the "Indemnified Parties") from and against any and all losses, costs, expenses, judgments or liabilities, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by any of the Indemnified Parties in connection with or as a result of: (i) any injury to persons or damage to property arising from any activity on or use of the Easement Area, except with respect to (a) injuries or damage resulting exclusively as the result of use of the Accessway, provided such injury or damage is not caused in whole or in part by the negligence or intentional misconduct of Grantee its employees or agents, or (b) injuries or damage arising by reason of the negligence or intentional misconduct of Grantor, or Grantor's directors, officers, employees, agents or independent contractors; (ii) any actions or claims of any nature by third parties arising out of the granting of the rights granted in this Easement; (iii) any breach, default or violation of any term, condition, covenant or obligation on Grantor's part to be observed or performed hereunder; or (iv) any exercise by Grantor or its successors, assigns or designees of any right or remedy of enforcement of the terms of this Easement as expressly provided herein or at law or in equity. Without limiting the foregoing, the cost and expense of curing or attempting to cure any breach, default or violation of this Easement and of restoring any portion of the Easement Area affected thereby, whether such cure is effected by Grantor or Grantee, shall be borne solely by Grantee, its successors and assigns. If any such cure and/or restoration is performed or attempted to be performed by Grantor in accordance with the provisions hereof or applicable law, Grantor shall first present to Grantee the proposed cure and/or restoration and Grantee will have fourteen (14) days to execute same, at Grantee's expense. Alternatively, Grantee may authorize Grantor to execute the cure and/or restoration, with all costs assessed to Grantee, and Grantee agrees to reimburse Grantor for all such costs and expenses promptly upon demand. Any demand for reimbursement shall include copies of all applicable receipts and invoices, and shall be subject to review and approval prior to payment.

B. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges of whatever description levied on or assessed against the Grantor's Property (including, without limitation, the Easement Area) by any competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

6. Condemnation. If the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain (it being understood that any negotiated conveyance in lieu of condemnation with respect to the Easement Area may only be accomplished with the express written consent of both Grantor and Grantee), Grantee shall be entitled to compensation in accordance with applicable law and this Paragraph 6, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such condemnation, including all incidental damages.

7. Assignment. The Easement is transferable by Grantee in whole or in part. As a condition precedent to any assignment of the Easement, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Easement from each assignee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor, as applicable. No such written assumption agreement shall be necessary in connection with Grantee's designation of additional beneficiaries of the Easement. Additionally, Grantee may, at any time, abandon the Easement and terminate its rights under this Easement (an "Abandonment"). In the event Grantee assigns its rights to the Easement to another party (or causes an Abandonment), Grantee shall thereafter have no rights, obligations or liabilities hereunder accruing after the date of such assignment (or Abandonment) with respect to the portion of the Easement assigned (or abandoned) and the assignee shall, by accepting such assignment, be deemed to have assumed the obligations of Grantee as to such portion of the Easement assigned and Grantee shall have no further obligations or liabilities hereunder arising from and after the date of such assignment (or Abandonment).

8. Notices. Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other addresses as may be specified by any such Party to the other hereunder by written notice delivered in accordance with this Paragraph 8):

To Grantor:

The Delmar Group, LLC
1097 Oxford Road
Atlanta, Georgia 30306
Attn: David Decker
Telephone: 404.246.2466
Email: david@deckerlawfirm.com

To Grantee: The Atlanta Development Authority, d/b/a Invest Atlanta
133 Peachtree Street, NE, Suite 2900
Atlanta, Georgia 30303
Phone: (404) 614-8326
Email: rnewell@investatlanta.com
Attention: Senior Vice President & General Counsel

With copies to:

Atlanta BeltLine, Inc.
100 Peachtree Street, N.W.
Suite 2300
Atlanta, Georgia 30303
Phone: (404) 477-3664
Fax: (404) 477-3006
Email: spatton@atlbeltline.org
Attention: Director of Real Estate and Asset Management

Atlanta BeltLine, Inc.
100 Peachtree Street, N.W.
Suite 2300
Atlanta, Georgia 30303
Phone: (404) 477-3690
Fax: (404) 477-3006
Email: nhickson@atlbeltline.org
Attention: Vice President and General Counsel

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

10. General Provisions.

A. Controlling Law. The interpretation and performance of this Easement shall be governed by and construed in accordance with the laws of the State of Georgia.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of Grantee to effectuate the purposes hereof. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement. This Easement sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings, and agreements relating thereto, all of which are merged herein.

E. Successors and Assigns; Covenants, etc. Run With Land. Subject to the provisions of Paragraph 7 above, the covenants, terms, conditions and restrictions of this Easement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the title to Grantor's Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of any interest in Grantor's Property. The benefits herein conferred upon Grantee shall be in gross and assignable by Grantee, but only in accordance with Paragraph 7 above. The terms "Grantor" and "Grantee", when used herein, shall be deemed to refer to Grantor or Grantee, as the case may be, and its personal representatives, heirs, executors, administrators, successors and assigns.

F. Captions. The captions in this Easement have been inserted solely for convenience of reference, are not a part of this Easement and shall have no effect upon installation or interpretation.

G. Grantor's Successors-in-Title. Grantor agrees that any conveyance of the Property by Grantor will be made expressly subject to the terms, conditions, restrictions and purposes of this Agreement and the same shall be inserted by Grantor in, or incorporated by reference in, any subsequent deed or other legal instrument by which Grantor divests itself of fee simple or any other interest in the Property or any portion thereof, and Grantor hereby agrees to notify Grantee or its successors or assigns in writing of any such conveyance.

H. Grantor's Representations and Warranties. Grantor hereby represents and warrants that it is seized of Grantor's Property in fee simple and has good right to grant and convey the Easement, that the Easement area is free and clear of any and all encumbrances (including, without limitation, any mortgages, deeds to secure debt, deeds of trust, and the like), except as stated below:

- i) Declaration of Protective Covenants, Conditions, Restrictions And Easements For The Farmhouses At Ormewood Park;
- ii) (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records;

- iii) Any facts, rights, interests or claims that are not shown by the public records but that could be ascertained by an inspection of the land or that may be asserted by persons in possession of the land;
- iv) Easements, liens or encumbrances, or claims thereof, not shown by the public records;
- v) Any encroachments, encumbrances, violations, variations, or adverse circumstances affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the public records;
- vi) Any minerals or mineral rights leased, granted or retained by current or prior owners;
- vii) Taxes and assessments for the year and subsequent years, not due and payable.
- viii) Permit for anchors, Guy Poles and Wires in favor of Georgia Power Company, dated August 18, 1972, recorded in Deed Book 5647, Page 190, Fulton County, Georgia records.
- ix) Easement in favor of Georgia Power Company, dated July 10, 1996, recorded in Deed Book 21882, page 138, aforesaid records.
- x) Easements acquired by condemnation, Civil Action No. 2003-CV-76959, City of Atlanta vs. Thomas N. Rackley, et al., filed October 28, 2003, recorded in Deed Book 36359, Page 214, aforesaid records.
- xi) Easements reserved in Quit Claim Deed from City of Atlanta to Thomas N. Rackley and Johanna P. Rackley, dated and filed January 4, 2005, recorded in Deed Book 39123, Page 180, aforesaid records.
- xii) Matters of survey as shown on that certain survey prepared for the Trust for Public Land, et al, by Rawle J. Stanley, G.R.L.S. No. 2890 of Agility Surveying Co., Inc., dated January 25, 2006, last revised May 3, 2006, as follows:
 - (a) Wood fence located in southern portion of subject property encroaching onto property adjoin to the east;
 - (b) Sanitary sewer easement (DB 36359, PG 214) located on the eastern portion of subject property, with a sanitary sewer line and manhole located therein;
 - (c) Water meter and drop inlets located in the southwestern portion of subject property;
 - (d) Water meter located in the eastern portion of subject property;
 - (e) Guy wire and overhead power lines located in the eastern portion of subject property;
 - (f) Atlanta West Point railroad right of way abuts the western boundary line of subject property;
 - (g) Sign and guardrail encroaching into the eastern portion of subject property, at the termination point of Delmar Avenue;
 - (h) Gas meter located in the southern portion of subject property.

I. Recordation. Grantor and Grantee agree that this Easement may be recorded by Grantee in the Office of the Clerk of Superior Court of Fulton County, Georgia, at Grantee's sole

cost and expense. Grantee shall provide Grantor with the original, recorded Easement promptly following its receipt of same from the Clerk of the Superior Court of Fulton County, Georgia.

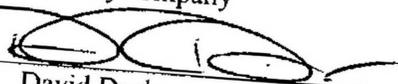
TO HAVE AND TO HOLD the Easement unto Grantee and its successors and assigns, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of Grantee, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also Grantor's personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, each of Grantor and Grantee has caused its hand and seal to be hereunto affixed by its duly authorized signatory(ies) as of the day and year first above written.

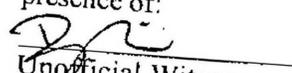
(REMAINDER OF PAGE LEFT BLANK INTENTIONALLY. SIGNATURES CONTAINED
ON NEXT PAGE.)

GRANTOR:

The Delmar Group, LLC
a Georgia limited liability company by its
manager, **C4 Developers, LLC**, a Georgia
limited liability company

By: 
David Decker
Co-Manager

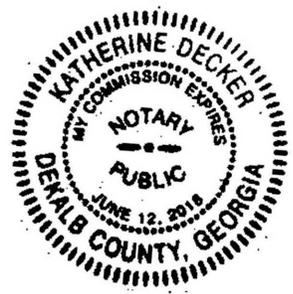
Signed, sealed and delivered in the
presence of:


Unofficial Witness


Notary Public

My commission expires: June 12, 2018

(NOTARY SEAL)



Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

GRANTEE:

**THE ATLANTA DEVELOPMENT
AUTHORITY d/b/a INVEST ATLANTA**
a Georgia public body corporate and politic
By its designated special agent, Atlanta
Beltline, Inc

By: [Signature]
Stacy Patton
Director of Real Estate

[Signature]
Notary Public

My commission expires: 2/29/20

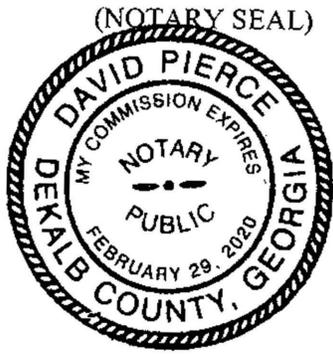


Exhibit "A"**Legal Description – Grantor Property**

All and singular that certain tract of land lying and being in Land Lots 11 and 22, 14th District, City of Atlanta, of Fulton County, Georgia, being more particularly described as follows:

COMMENCING at a point at the intersection of the southerly right-of-way line of Delmar Avenue (50' R/W) and the western right-of-way line of Ormewood Terrace (50' R/W) and run thence westerly 223.7 feet along the said southerly right-of-way line of Delmar Avenue to a 1/2" rebar set, said point being the POINT OF BEGINNING; from the TRUE POINT OF BEGINNING as thus established, leaving said southerly right-of-way line of Delmar Avenue, run south 00° 10' 54" west a distance of 437.12 feet to a 5/8" open top pipe found; thence north 85° 14' 26" west a distance of 159.79 feet to a 1/2" rebar set; thence continue north 85° 14' 26" west a distance of 410.50 feet to a concrete monument found on the easterly right-of-way line of Atlanta West Point Railroad (100' R/W); thence along the said easterly right-of-way line of Atlanta West Point Railroad, along the arc of a curve to the left a distance of 403.14 feet, said curve having a radius of 2876.61 feet and a chord bearing of north 19° 41' 12" east 402.81 feet to a 1/2" rebar found; thence continue along said easterly right-of-way line of Atlanta West Point Railroad, run north 17° 52' 38" east a distance of 52.31 feet to a 5" wide iron; thence along the said easterly right-of-way line of Atlanta West Point Railroad, along the arc of a curve to the left a distance of 298.24 feet, said curve having a radius of 6650.23 feet and a chord bearing of north 19° 42' 35" east 298.21 feet, to a 5" wide iron; thence north 84° 23' 02" east a distance of 21.31 feet to a 5" wide iron; thence leaving said easterly right-of-way line of Atlanta West Point Railroad, run south 05° 22' 26" east a distance of 278.99 feet to a 1/2" rebar set; thence north 88° 02' 26" east a distance of 101.05 feet to a 1/2" rebar found at the intersection of the northerly right-of-way line of Delmar Avenue and the westerly right-of-way line of Delmar Court (said point marks the termination of Delmar Avenue as it exists); thence along the said right-of-way termination line of Delmar Avenue, run south 01° 12' 53" east a distance of 51.85 feet to a 1/2" rebar set on the south right-of-way line of Delmar Avenue; thence along the said southerly right-of-way line of Delmar Avenue north 88° 36' 33" east a distance of 168.00 feet to a 1/2" rebar set, said point being the POINT OF BEGINNING; containing 4.682 acres, more or less, as shown on ALT/ACSM Boundary Survey for The Trust for Public Land, Chicago Title Insurance Company, and the City of Atlanta, prepared by Agility Surveying Co., Inc., dated January 25, 2006, last revised May 3, 2006, bearing the certification of Rawle J. Stanley, Georgia Registered Land Surveyor No. 2890.

Exhibit "B"

Easement Area

(ON NEXT PAGE)

**STAMP
ADDED
TO CAPTURE
IMAGE**

