



AGENDA

Gainesville Work Session
Thursday, October 11, 2018, 9:00 AM
Administration Building, Board Room
300 Henry Ward Way, 3rd Floor
Mayor or Mayor Pro Tem Presides

DEPARTMENT ISSUES

Public Works	Resolution: Transfer of a Portion of Airport Industrial Park A-8 Ground Lease and Sale of Improvements at 1080 Airport Parkway	Lisa Poole
Water Resources	Resolution: Linwood Area Improvements Project	Linda MacGregor
Water Resources	Ordinance: Amend ULDC Chapter 9-14 Pertaining to Erosion Control	Linda MacGregor

CITY MANAGER ISSUES

Resolution: Parkside Easement Agreement	Angela Sheppard
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MAYOR/COUNCIL ISSUES

Ex-Officio Report(s)

CITY ATTORNEY ISSUES

CITY CLERK ISSUES

EXECUTIVE SESSION

ADJOURNMENT

Final: Wednesday, October 10, 2018, 8:35 AM

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 10/8/2018

Presenter: Lisa Poole

Item of Business: Resolution: Transfer of a Portion of Airport Industrial Park A-8
Ground Lease and Sale of Improvements at 1080 Airport Parkway

Meeting Date: 10/11/2018

Purpose of Request:

To transfer of a portion of the Airport Industrial Park A-8 Ground Lease and sale of Improvements at 1080 Airport Parkway.

History/Background:

Merial Select has 7 ground leases with the City in the Airport Industrial Park that all expire on December 31, 2019. Merial Select has requested the lease for A-8 be reassigned and extended to correspond with the December 31, 2019 expiration date.

Facts & Issues for Consideration:

Department Recommendation:

To approve the resolution.

Department Director:

Chris Rotalsky

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Fastco Merial Lease Reassignment	Resolution

RESOLUTION BR-2018 - ____

**Transfer of a portion of the Airport Industrial Park A-8 Ground Lease and sale of
Improvements at 1080 Airport Parkway**

WHEREAS, the City of Gainesville entered into a Lease Agreement on July 20, 2009, for a portion of the Airport Industrial Park (AIP) Lot A-8 (said Lease Agreement hereinafter referred to as "the Lease") with Fastco Corporation (hereinafter referred to as "Lessee"); and

WHEREAS, Lessee and Merial Select, Inc. (hereinafter referred to as "Merial"), pursuant to Section 11 of the Lease, have notified the City of their request that the City approve the assignment of the Lease from Lessee to Merial; and

WHEREAS, Merial has requested an extension of the Lease term from June 30, 2019 to December 31, 2019, with four (4) consecutive five (5) year renewal options, such that the term and renewal options regarding the Lease shall coincide with the seven (7) existing leases at the AIP between the City and Merial; and

WHEREAS, the City has the desire to approve the requests from Lessee and Merial.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby approves: (1) the assignment of the Lease from Lessee to Merial, (2) the extension of the Lease term from June 30, 2019 to December 31, 2019, and (3) the granting of four (4) consecutive five (5) year renewal options regarding the Lease to Merial; and

BE IT FURTHER RESOLVED THAT the governing body for the City of Gainesville hereby authorizes the Mayor, City Manager, and City Attorney to sign such documents as necessary to effectuate the approvals set forth in the preceding paragraph of this Resolution.

Adopted this ____ day of _____, 2018.

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 10/2/2018
Presenter: Linda MacGregor
Item of Business: Resolution: Linwood Area Improvements Project
Meeting Date: 10/11/2018

Purpose of Request:

Authorize DWR to proceed with improvements to the gravity sewer, pump stations, force mains, and treatment works associated with the Linwood wastewater service area.

History/Background:

DWR operates and maintains sewer collection and treatment facilities in the Linwood area. Master planning efforts have indicated the need for improvements and expansion to these facilities to ensure necessary capacity and reliability.

Facts & Issues for Consideration:

This project will include improvements and new facilities to provide sewer service, pumping, and treatment.

Department Recommendation:

Authorize staff by resolution to proceed with these projects through professional services contracts, construction contracts, and other efforts.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

No

Amount Requested:

2,950,000

Source of Funds:

Department of Water Resources Capital Projects Fund

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ DWR Linwood Area Improvements Resolution	Resolution
☐ CIP Summary	Attachments/Exhibits

RESOLUTION PR-2018 - ____

DEPARTMENT OF WATER RESOURCES LINWOOD AREA IMPROVEMENTS

WHEREAS, the City of Gainesville owns and operates a wastewater system; and

WHEREAS, a portion of this wastewater system is tributary to the Linwood Water Reclamation Facility; and

WHEREAS, the Linwood wastewater service area includes gravity sewers, pump stations, force mains, treatment works and other facilities; and

WHEREAS, Master Planning efforts undertaken by the Department of Water Resources have indicated that these Linwood area wastewater facilities need improvements, maintenance, and replacement in order to meet current and future needs; and

WHEREAS, the Department of Water Resources staff recommends capital projects to maintain and enhance wastewater capacity and reliability in the Linwood area; and

WHEREAS, the Department of Water Resources Capital Improvements Project Fund has sufficient monies for this project; and

WHEREAS, the Department of Water Resources staff recommends entering into one or more Agreement(s) for Professional Services to assist with this effort.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby authorizes staff to proceed with the Linwood Area Wastewater Improvements Project for a total cost of \$2,950,000.

BE IT FURTHER RESOLVED THAT the monies shall be paid from the Department of Water Resources Capital Projects Fund.

BE IT FURTHER RESOLVED THAT the governing body for the City of Gainesville hereby authorizes the Mayor, City Manager and/or City Attorney to sign applicable documents that may be necessary to complete this project.

Adopted this ____ day of _____, 2018.

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk

DEPT OF WATER RESOURCES

CAPITAL IMPROVEMENTS PROJECT SUMMARY REQUEST

PROJECT NAME: DWR Linwood Area Improvements			
PROJECT NUMBER: _____		PROJECT DEPARTMENT Water Resources	
RESOLUTION NUMBER: _____		LOCATION: 4985.00	
PROJECT MANAGER: Myron Bennett			
CHECK ONE: NEW PROJECT: ☒ ADDITIONAL FUNDING _____			

CODE		ACCOUNT NUMBER	AMOUNT REQUEST
SWB - CITY PROVIDED PROJECT MANAGEMENT			
1100	Salaries and Wages	511100.XXX to 511150.XXX	\$30,000.00
1101	Overtime Earnings	511300.XXX to 511350.XXX	
1110	Health and Life Insurance Premiums	512100.000	
1140	Social Security and Medicare Expense	512200.000	
1171	Retirement Contribution - Plan A	512400.001	
	SUBTOTAL		\$30,000.00
PDD - PROJECT DEVELOPMENT & DESIGN			
8101	Project Development	541000.001	
8102	Facility Design/Bidding Service	541000.002	\$2,000,000.00
8103	Geotechnical	541000.003	
8104	Laboratory	541000.004	
8105	Survey	541000.005	\$20,000.00
8106	Other	541000.011	
8107	Legal Services	541000.006	\$10,000.00
	SUBTOTAL		\$2,030,000.00
LAND - LAND/EASEMENT ACQUISITION			
8201	Survey	541100.003	\$100,000.00
8202	Legal Services	541100.004	\$40,000.00
8203	Land Agent Services	541100.005	\$50,000.00
8204	Land Purchase	541100.001	\$150,000.00
8205	Easement Acquisition	541100.002	\$150,000.00
	SUBTOTAL		\$490,000.00
CON - CONSTRUCTION			
8301	Construction Admin. Services	541000.007	\$100,000.00
8302	Resident Inspection Services	541000.008	\$100,000.00
8303	Legal Services	541000.006	
8304	Contracted Construction Cost	541000.009	\$200,000.00
8305	City-Furnished Materials	541000.010	
8306	Other	541000.011	
8308	Furnishings and Equipment (Taggable Assets)	531600.002	
	SUBTOTAL		\$400,000.00
MEQ - MACHINERY AND EQUIPMENT			
2000	Equipment	542000.000	
2200	Vehicles	542200.000	
	SUBTOTAL		\$0.00
INT - INTANGIBLES			

5431	Master Plans & Studies	543000.001	
5432	Software	543000.002	
5433	Other	543000.003	
	SUBTOTAL		\$0.00
RMT - REPAIRS AND MAINTENANCE			
5201	Annual Maintenance Contracts	522200.001	
5202	General Repairs and Maintenance	522200.002	
5203	Equipment Repairs	522200.003	
5204	Vehicles	522200.004	
5205	Tires	522200.005	
5206	Streets	522200.006	
5207	Sidewalks	522200.007	
5208	Bridges	522200.008	
5209	Stormwater	522200.009	
	SUBTOTAL		\$0.00
	TOTAL		\$2,950,000.00

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 10/2/2018
Presenter: Linda MacGregor
Item of Business: Ordinance: Amend ULDC Chapter 9-14 Pertaining to Erosion Control
Meeting Date: 10/11/2018

Purpose of Request:

Amend Chapter 9-14 of the Unified Land Development Code related to erosion control to be consistent with permits issued to the City of Gainesville by the State of Georgia.

History/Background:

The State of Georgia has issued permits to the City of Gainesville with changes to definitions and requirements associated with erosion control activities. These ordinance changes are for consistency with these updated requirements.

Facts & Issues for Consideration:

Department Recommendation:

Approve proposed ordinance changes.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Amend ULDC Chapt 9-14 Re Erosion Control	Ordinance

Passed: _____

AN ORDINANCE

No. 2018-

AN ORDINANCE TO AMEND ARTICLE 9-14 OF THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF GAINESVILLE, GEORGIA BY ELIMINATING ARTICLE 9-14 IN ITS ENTIRETY AND SUBSTITUTING IN ITS PLACE THE LANGUAGE SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA AS FOLLOWS:

SECTION I.

Article 9-14 of the Unified Land Development Code of the City of Gainesville, Georgia is hereby amended to read as follows:

CHAPTER 9-14-1. - DEFINITIONS

As-built survey drawings: Drawings specifying the dimensions, location, capacities, and operational capabilities of structures and facilities as they have been constructed.

Available head: The depth of water that is present at the entrance to a pipe during a 100-year storm.

Best management practices (BMPs): These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted, a copy of which is on file in the clerk of the city.

Board: Board of Natural Resources.

Bond: A bond, letter of credit or approved surety method approved by the city manager.

Buffer: The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

Certified personnel: A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water conservation Commission.

City: The City of Gainesville, Georgia.

Commission: The Georgia Soil and Water Conservation Commission (GSWCC).

Construction: Any building or erection of a structure or preparation of a property for same.

ORDINANCE NO. 2018-

CPESC: Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.

Cut: A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface. Also known as "excavation."

Cutting: The removal of any soil or other solid material from a natural ground surface.

Department: The Georgia Department of Natural Resources (DNR).

Design head: The depth of water at the entrance to a pipe that was used in design to force a rate of flow through the pipe needed in the design.

Design professional: A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying, or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by EnviroCert, Inc. Design Professional shall practice in a manner that complies with applicable Georgia law governing professional licensure.

Detention facility: A detention basin or structure designed for the detention of stormwater runoff and gradual release of stored water at controlled rates.

Development:

- (1) A land development project involving the construction of streets, utilities, buildings, or other improvements required for the habitation or use of property, such as a residential neighborhood, an apartment complex, a store, or a shopping center;
- (2) Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials;
- (3) The act of constructing or carrying out a land development project, including the alteration of land or vegetation in preparation for construction activity.

District: The Hall County Soil and Water Conservation District.

Division: The environmental protection division (EPD) of the department of natural resources.

Drainage: A general term applied to the removal of surface or subsurface water from a given area either by gravity or by pumping; most commonly applied to surface water.

Drainage structure: A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for stormwater management, drainage control or flood control purposes.

Drainage system: The surface and subsurface system for the removal of water from the land, including both the natural elements of streams, marshes, swales and ponds, whether of an intermittent or continuous nature, and the man-made element which includes culverts, ditches, channels, detention facilities and the storm sewer system.

Elevation: The vertical height or heights above a datum plane which for purposes of this chapter shall be the mean sea level datum of the United States Coast and Geodetic Survey of 1929 or other customarily accepted source.

EPD: The environmental protection division of the state department of natural resources.

ORDINANCE NO. 2018-

EPD director: The director of the environmental protection division or an authorized representative.

Erosion: The process by which land surface is worn away by the action of wind, water, ice or gravity.

Erosion, Sedimentation and Pollution control plan: A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, as amended, that includes minimum protections at least as stringent as the state general permit, best management practices, and requirements in section 9-14-3-3 of this article.

Excavation: The mechanical removal of earth material.

Extended detention: The detention of stormwater runoff for an extended period, typically twenty-four (24) hours or greater.

Facility/site outfall: The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

Fill: A portion of land surface to which soil or other solid material has been added; the depth above the original ground or an excavation.

Filling: The placement of any soil or other solid material, either organic or inorganic, on a natural ground surface or excavation.

Final stabilization: All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, one hundred (100) percent of the soil surface is uniformly covered in permanent vegetation with a density of seventy (70) percent or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

Finished grade: The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

Grading: Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping, or any combination thereof, and shall include the land in its cut or filled condition.

Grading permit: Authorization necessary but limited to the initiation and conduct of a land-disturbing activity on a property. For purposes of this Code, a land development permit issued pursuant to chapter 9-13-7 shall constitute approval of the grading permit required by this article.

Greenway: An area along the course of any state waters to be maintained in an undisturbed and natural condition.

Ground elevation: The original elevation of the ground surface prior to cutting or filling.

Hydrologic soil group (HSG): A natural resource conservation service classification system in which soils are categorized into four (4) runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

ORDINANCE NO. 2018-

Land development: Any land change, including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

Land development or disturbance activity: Those actions or activities which comprise, facilitate or result in land development.

Land disturbance: Any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

Land development permit: The authorization necessary to carry out the planned development of land and structures, which may include authorization to initiate and conduct a land-disturbing activity. The land development permit is issued pursuant to chapter 9-13-7.

Land-disturbing activity: Any activity that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land but not including agricultural practices as described in this chapter.

Larger common plan of development or sale: A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

Live detention: The quantity of water capable of being effectively contained by a stormwater detention facility for a specified period of time.

Local Issuing Authority: The governing authority of any county or municipality which is certified pursuant to O.C.G.A. § 12-7-8(a).

Metropolitan River Protection Act (MRPA): A state law referenced as O.C.G.A. § 12-5-440 et. seq. which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins

Manual for Erosion and Sediment Control in Georgia: A publication of the same name published by the state soil and water conservation commission, and as amended or supplemented from time to time, a copy of which is on file in the office of the clerk of the city.

Natural drainage: Channels formed by the existing surface topography of the earth prior to changes made by unnatural causes.

Natural ground surface: The ground surface in its original state before any grading, excavation or filling.

Nephelometric turbidity units (NTU): Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.

NOI: A notice of intent form provided by EPD for coverage under the state general permit.

NOT: A notice of termination form provided by EPD to terminate coverage under the state general permit.

ORDINANCE NO. 2018-

One-hundred-year flood: A 100-year frequency flood that has the probability of occurring once every one hundred (100) years and thus has a one percent chance of occurring each year.

One-hundred-year flood plain: A land area adjoining a river, stream, watercourse or lake that has a probability of being flooded up to and including the 100-year flood.

Operator: The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.

Outfall: The location where stormwater in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into the receiving water.

Permit: The authorization necessary to conduct a land-disturbing activity under the provisions of this article.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the state, any interstate body or any other legal entity.

Phase or phased: Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

Project: The entire proposed development project regardless of the size of the area of land to be disturbed.

Properly designed: Designed in accordance with the design requirements and specifications contained in the Manual for Erosion and Sediment Control in Georgia (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the manual as approved by the commission up until the date of NOI submittal.

Qualified personnel: Any person who meets or exceeds the education and training requirements of O.C.G.A. 12-7-19, as amended.

Reach: A longitudinal segment of a stream or river measured along specified points on the stream or river.

Riparian: Belonging or related to the bank of a river, stream, lake, pond or impoundment.

Roadway drainage structure: A device such as a bridge, culvert or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Runoff: The portion of precipitation on the land that reaches the drainage system.

Runoff rate coefficient: The numerical factor which, when multiplied with the average slope for a particular site, will give the release rate of water from that site.

ORDINANCE NO. 2018-

Sediment: Solid material, both organic and inorganic, that is in suspension, is being transported or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

Sedimentation: The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

Slope: The degree of deviation of a surface from the horizontal, usually expressed in percent or degree.

Soil and water conservation district approved plan: An erosion and sediment control plan approved in writing by the Hall County Soil and Water Conservation District.

Soils: The upper layer of earth that can be dug or plowed; the loose surface material of the earth in which vegetation normally grows.

Stabilization: The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

State general permit: The national pollution discharge elimination system (NPDES) general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of O.C.G.A. Code Section 12-5-30, as amended.

State waters: Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership or corporation.

Static head: The depth of water at the entrance to a culvert when the depth is greater than the diameter of the pipe.

Stream: A stream is defined as beginning at:

- (a) The location of a spring, seep, or groundwater outflow that sustains streamflow;
- (b) A point in the stream channel with a drainage area of twenty-five (25) acres or more;
or
- (c) Where evidence indicates the presence of a stream in a drainage area of other than twenty-five (25) acres, the director of planning and development may require field studies to verify the existence of a stream.

Stream bank: The sloping land that contains the stream channel and the normal flows of the stream.

Stream protection buffer setback: An additional setback, measured horizontally, beyond the undisturbed stream protection buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

Stream channel: The portion of a watercourse that contains the base flow of the stream.

Stream protection buffer: The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, as measured horizontally, which facilitates the protection of water quality and aquatic habitat.

ORDINANCE NO. 2018-

Stream protection area or protection area: The combined areas of all required stream protection buffers and setbacks applicable to such stream.

Structural erosion sedimentation and pollution control practices: Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sedimentation control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures and sediment traps. Such practices can be found in the publication Manual for Erosion and Sediment Control in Georgia.

Ten-year, twenty-five-year and one-hundred-year storms: Rainfall events having a probability of occurrence once every ten (10), twenty-five (25) or one hundred (100) years, respectively, or a ten (10) percent, four (4) percent or one percent chance of occurring each year, respectively.

Trout streams: All streams or portions of streams within the watershed as designated by the wildlife resources division of the state department of natural resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20, as amended, in the Rules and Regulations for Water Quality Control Chapter 391-3-6 at www.epd.georgia.gov, as amended. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Utilities: All public and private, above or below ground, infrastructure systems providing water, stormwater, sewer, gas, telephone or cable television, and any other service controlled by the state public services commission.

Vegetation: All plant growth, such as trees, shrubs, mosses and grasses.

Vegetative erosion and sedimentation control measures: Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- (a) Permanent seeding, sprigging or planting, producing long-term vegetative cover;
- (b) Temporary seeding, producing short-term vegetative cover; or
- (c) Sodding, covering areas with a turf of perennial sod-forming grass.

Such measures can be found in the Manual for Erosion and Sediment Control in Georgia.

Watercourse: Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Wetlands: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

CHAPTER 9-14-2. - EXEMPTIONS

Sec. 9-14-2-1. - Generally.

ORDINANCE NO. 2018-

This article shall apply to any land-disturbing activity undertaken by any person on any land except for those uses specifically identified in this chapter.

Where this chapter requires compliance with chapter 9-14-3, the city shall enforce compliance with the minimum requirements as if a land development permit had been issued and any violations of said minimum requirements shall be subject to the same penalties as violations by land development permit holders.

Sec. 9-14-2-2. - Mining and quarrying.

Surface mining, as same is defined in O.C.G.A. § 12-4-72, as amended, entitled "The Georgia Surface Mining Act of 1968," and granite quarrying and land clearing for such quarrying are exempt from compliance with this article.

Sec. 9-14-2-3. - Minor activities.

Minor land-disturbing activities, such as home gardens and individual home landscaping, repairs, maintenance work fences, and other related activities, which result in minor soil erosion are exempt from compliance with this article.

Sec. 9-14-2-4. - Single-family detached dwellings.

The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however that construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6, as amended, and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a stream protection buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act, as amended. In any such stream protection buffer zone, no land disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the stream protection buffer zone shall be at least fifty (50) horizontal feet, and no variance to a smaller stream protection buffer shall be granted. For secondary trout waters, the stream protection buffer zone shall be at least fifty (50) horizontal feet, but the EPD director may grant variances to no less than twenty-five (25) feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the stream protection buffer shall be at least twenty-five (25) horizontal feet, and no variance to a smaller stream protection buffer shall be granted. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6, as amended, and the stream protection buffer zones provided by this paragraph shall be enforced by the city.

Sec. 9-14-2-5. - Agriculture.

Exempt from the requirements of this article are those agricultural operations defined in O.C.G.A. § 1-3-3, as amended, "definitions", to include raising, harvesting, or storing of products of the field or orchard; feeding, breeding, or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep and rabbits or for use in the production of poultry, including but not limited to chicken, hens, and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs, and apiarian products and farm buildings and farm ponds.

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Sec. 9-14-2-6. - Forestry land management practices.

Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a stream protection buffer, as established in section 9-14-3-3, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices.

Sec. 9-14-2-7. - NRCS projects.

Any project carried out under the technical supervision of the natural resources conservation service of the United States Department of Agriculture shall be exempt from compliance with this article.

Sec. 9-14-2-8. - Small projects.

Any project involving less than one acre of disturbed are; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within two hundred (200) feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within two hundred (200) feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further that nothing contained herein shall prevent the city from regulating any such project which is not specifically exempted by this article.

Sec. 9-14-2-9. - State projects and state/local road projects.

Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the state department of transportation, the state highway authority, or the state road and tollway authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the state department of transportation or the state road and tollway authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1, as amended; except where the state department of transportation, the state highway authority, or the state road and tollway authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the city, the city shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6, as amended, as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders.

Sec. 9-14-2-10. - Electric and public utilities.

Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy

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Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, as amended, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, as amended, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the city shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6, as amended, as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and any public water system reservoir.

CHAPTER 9-14-3. - MINIMUM REQUIREMENTS FOR EROSION AND SEDIMENTATION CONTROL

Sec. 9-14-3-1. - General provisions.

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES general permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by chapter 9-14-2 shall contain provisions for application of soil erosion and sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion and sediment control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of this chapter.

The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this article and the NPDES general permit.

Sec. 9-14-3-2. - Minimum requirements/best management practices.

- (a) *Required.* Best management practices as set forth in this section and sec. 9-14-3-3 shall be required for all land-disturbing activities unless specifically exempted by chapter 9-14-2.
- (b) *Defense to enforcement action.* Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the EPD director or to any other allegation of noncompliance with this section or any substantially similar terms contained in a land development permit for the discharge of stormwater. Issued pursuant to subsection (f) of O.C.G.A. 12-5-30, as amended, the "Georgia Water Quality Control Act."
- (c) *Definitions.* As used in this section, the terms "proper design" and "properly designed" mean in accordance with the hydraulic design specifications contained in the Manual for Erosion and Sediment Control in Georgia specified in O.C.G.A. 12-7-6 subsection (b), as amended.
- (d) *Violations.* A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed and maintained shall constitute a separate violation of any land disturbing permit issued by the city or of any state general permit issued by the division pursuant to subsection (f) of O.C.G.A. 12-5-30, as amended, the "Georgia Water Quality Control Act," for each day on which such

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discharge results in the turbidity of receiving waters being increased by more than twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the EPD director. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five (5) acres.

- (e) *Inadequate best management practices.* Failure to properly design, install or maintain best management practices shall constitute a violation of any land disturbing permit issued by the city or of any state general permit issued by the Division pursuant to subsection (f) of Code section 12-5-30, as amended, the "Georgia Water Quality Control Act," for each day on which such failure occurs.
- (f) *Requirements by EPD director.* The EPD director may require, in accordance with regulations adopted by the board of natural resources, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

Sec. 9-14-3-3. – Additional minimum requirements.

The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et seq., as amended, for the purpose of governing land-disturbing activities shall require, as minimum protections at least as stringent as the state general permit, and best management practices, including soil conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

- (a) Stripping of vegetation, re-grading and other development activities shall be conducted in a manner so as to minimize erosion.
- (b) Cut-fill operations must be kept to a minimum.
- (c) Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential.
- (d) Whenever feasible, natural vegetation shall be retained, protected and supplemented.
- (e) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.
- (f) Disturbed soil shall be stabilized as quickly as practicable.
- (g) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development.
- (h) Permanent vegetation and structural erosion control measures shall be installed as soon as practicable.
- (i) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements O.C.G.A. 12-7-1 et seq., as amended.

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- (j) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills.
- (k) Cuts and fills may not endanger adjoining property.
- (l) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners.
- (m) Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum.
- (n) No public streets, drainage systems or private property shall be restricted from normal use or operation by the scattering of earth, rock, vegetation and other debris resulting from the land disturbing activity. The permittee shall be responsible for clearing, unclogging and cleaning any such facility or lands on a daily basis.
- (o) Land-disturbing activity plans for erosion sedimentation and pollution control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in this section.
- (p) Land-disturbing activities shall not be conducted within the 100-year flood plain except in compliance with article 9-15.
- (q) Construction site operators are required to control waste at the construction site, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste.

Sec. 9-14-3-4. - Stream protection buffers.

Except as provided in section 9-14-3-5, there is established a 25-foot stream protection buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal streams flow or wave action, except where the EPD director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the EPD director pursuant to O.C.G.A. 12-2-8 as amended, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specification, and are implemented; or along any ephemeral stream. As used in the provision, the term "ephemeral stream" means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow, unless exempted as along an ephemeral stream, the stream protection buffers of at least twenty-five (25) feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act," as amended, shall remain in force unless a variance is granted by the EPD director as provided in this paragraph. The following requirements shall apply to any such stream protection buffer:

- (a) No land-disturbing activities shall be conducted within a stream protection buffer and a stream protection buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a stream protection buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-

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family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a stream protection buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

- (b) The stream protection buffer shall not apply to the following land-disturbing activities provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the stream protection buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

Sec. 9-14-3-5. - Stream protection buffers along trout streams.

There is established a 50-foot stream protection buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, as amended, the "Georgia Water Quality Control Act," except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of twenty-five (25) gallons per minute or less shall have a 25-foot stream protection buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the stream protection buffer requirements for any adjacent trout streams. The EPD director may grant a variance from such stream protection buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such stream protection buffer:

- (a) No land-disturbing activities shall be conducted within a stream protection buffer and a stream protection buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a stream protection buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a stream protection buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- (b) The stream protection buffer shall not apply to the following land-disturbing activities provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the stream protection buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

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Sec. 9-14-3-6. - Provisions regarding land disturbance activity and the disturbance of stream protection buffers.

This section shall not be construed as preventing the application of other requirements of this Code which require larger buffers along property lines than specified in this article (see Table 9-5-2 and Table 9-6-2, which may apply). Furthermore, nothing contained in O.C.G.A. 12-7-1 et seq., as amended, shall prevent the city from adopting rules and regulations, ordinances, or resolutions which contain stream protection buffer requirements that exceed the minimum requirements in this article.

See chapter 9-16-3 for provisions regarding disturbance within stream protection buffers.

The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this article or the terms of the permit.

Sec. 9-14-3-7. - Maintenance of control measures.

Owner's responsibility. Maintenance of all soil erosion and sediment control measures, whether temporary or permanent, shall be at all times the responsibility of the owner.

Sec. 9-14-3-8. - Manual adopted by reference.

Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the Manual for Erosion and Sediment Control in Georgia or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this article.

CHAPTER 9-14-4. - ADDITIONAL PROVISIONS

Sec. 9-14-4-1. - Application/permit process.

(a) *General.* The property owner, developer and designated planners and engineers shall design and review before submittal, the general development plans. The city shall review the tract to be developed and the area surrounding it. The staff of the city shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood management ordinance, this article, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the city. However, the owner and/or operator are the only parties who may obtain a permit.

(b) *Application requirements.*

(1) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the city without first obtaining a permit from the city to perform such activity and providing a copy of NOI submitted to EPD if applicable.

(2) The application for a permit shall be submitted to the city and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in this article. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of this article will be met. Applications for a permit will not be accepted unless accompanied by seven (7) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a

certification stating that the plan preparer or the designee there of visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10, as amended.

- (3) In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, as amended, provided that such fees shall not exceed eighty dollars (\$80.00) per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. Half of such fees levied shall be submitted to the division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17, as amended, shall be submitted in full to the division.
 - (4) Immediately upon receipt of an application and plan for a permit, the city shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The district shall approve or disapprove a plan within thirty-five (35) days of receipt. Failure of the district to act within thirty-five (35) days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the city. No permit will be issued unless the plan has been approved by the district, and any variances required by this article have been obtained, all fees have been paid, and bonding, if required, has been obtained. Such review will not be required if the city and the district have entered into an agreement which allows the city to conduct such review and approval of the plan without referring the application and plan to the district. The city with plan review authority shall approve or disapprove a revised plan submittal within thirty-five (35) days of receipt. Failure of the city with plan review authority to act within thirty-five (35) days shall be considered an approval of the revised plan submittal.
 - (5) If a permit applicant has had two (2) or more violations of previous permits, this article section, or the Erosion and Sedimentation Act, as amended within three (3) years prior to the date of filing the application under consideration, the city may deny the permit application.
 - (6) The city may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, three thousand dollars (\$3,000.00) per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the city may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the city with respect to alleged permit violations.
- (c) *Plan requirements.*
- (1) Plans must be prepared to meet the minimum requirements as contained in this article, or through the use of more stringent alternate design criteria which conform to sound conservation and engineering practices. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and state laws. Maps, drawings and supportive

computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the commission and in consultation with the division and stakeholder advisory board created pursuant to O.C.G.A. 12-7-20, as amended.

- (2) Data required for site plan shall include all the information required from the appropriate erosion, sedimentation and pollution control plan review checklist established by the commission as of January 1 of the year in which the land-disturbing activity was permitted. Erosion, sedimentation and pollution control plans shall include:

(a) Narrative or notes, and other information. Notes or narrative to be located on the site plan in general notes or in erosion and sediment control notes.

(b) Description of existing land use at project site and description of proposed project.

(c) Name, address, and phone number of the property owner.

(d) Name and phone number of 24-hour local contact that is responsible for erosion and sedimentation controls.

(e) Size of project, or phase under construction, in acres.

(f) Activity schedule showing anticipated starting and completion dates for the project. Include the statement in bold letters, that "the installation of erosion and sediment control measures and practices shall occur prior to or concurrent with land-disturbing activities."

(g) Stormwater and sedimentation management systems-storage capacity, hydrologic study, calculations including off-site drainage areas and other information as may be needed to satisfy the requirements of articles 9-13 and 9-14.

(h) Location of erosion and sediment control measures and practices using coding symbols from the Manual for Erosion and Sediment Control in Georgia, chapter 6, and meeting the requirements of article 9-14. Practices may include, but are not limited to:

(1) Construction exit.

(2) Sediment barrier.

(3) Sediment basin.

(4) Grassed waterway (open swale).

(5) Storm drain outlet protection.

(6) A plan for temporary and permanent vegetative and structural erosion and sediment control measures.

(i) Vegetative plan for all temporary and permanent vegetative practices, including species, planting dates, and seeding, fertilizer, lime and mulching rates. The vegetative plan should show options for year-round seeding.

(j) Detail drawings for all structural practices. Specifications may follow guidelines set forth in the *Manual for Erosion and Sediment Control in Georgia*.

(k) Maintenance statement. "Erosion and sediment control measures will be maintained at all times. Additional erosion and sediment control measures and practices will be installed if deemed necessary by on-site inspection."

(l) A description of the sediment control program and sediment control practices.

(m) An adequate description of general topographic and soil conditions of the tract as available from the Hall County Soil and Water Conservation District.

(n) A description of the maintenance program for sediment control facilities including inspection programs, vegetative establishment of exposed soils, method and frequency of removal and disposal of solid waste material removed from control facilities and disposition of temporary structural measures.

(o) Any additional requirement established by the commission.

(d) *Permits.*

- (1) Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the city of a completed application as well as all required approved plans and reports, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
- (2) No permit shall be issued by the city unless the erosion, sedimentation and pollution control plan has been approved by the district and the city has affirmatively determined that the plan is in compliance with this article, any variances required by this article are obtained, bonding requirements, if necessary, are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the city are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
- (3) Any land-disturbing activities by the city shall be subject to the same requirements of this article, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the city.
- (4) If the tract is to be developed in phases, then a separate permit shall be required for each phase.

- (5) The permit may be suspended, revoked, or modified by the city, as to all or any portion of the land affected by the plan, upon finding that the holder or that person's successor in the title is not in compliance with the approved erosion, sedimentation and pollution control plan or that the holder or his successor in title is in violation of this article. A holder of a permit shall notify any successor in title to that person as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
- (6) The city may reject a permit application if the applicant has had two (2) or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three (3) years prior to the date of the application, in light of O.C.G.A. 12-7-7(f)(1), as amended.

Sec. 9-14-4-2. - Inspection and enforcement.

- (a) The city will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the city shall regulate primary, secondary, and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this article, a written notice to comply shall be served upon that person. The notice shall set forth the necessary measures to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, that person shall be deemed in violation of this article.
- (b) The city shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- (c) No person shall refuse entry or access to any authorized representative or agent of the city, the commission, the district, or division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

Sec. 9-14-4-3. - Penalties and incentives.

- (a) *Failure to obtain a permit for land-disturbing activity.* If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this article without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the city.
- (b) Stop-work orders.

- (1) For the first and second violations of the provisions of this article, the EPD director or the city shall issue a written warning to the violator. The violator shall have five (5) days to correct the violation. If the violation is not corrected within five (5) days, the EPD director or the city shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the EPD director or the city shall issue an immediate stop-work order in lieu of a warning;
 - (2) For a third and each subsequent violation, the EPD director or the city shall issue an immediate stop-work order; and
 - (3) All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
 - (4) When a violation in the form of taking action without a permit, failure to maintain a stream protection buffer, or significant amounts of sediment, as determined by city or by the EPD director, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the city or by the EPD director. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.
- (c) Bond forfeiture. If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth necessary measures to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, may be deemed to have forfeited his performance bond for erosion, sedimentation and pollution control, if required to post one. The city may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
- (d) Any person who violates any provision of this article, or any permit condition or limitation established pursuant to this article, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the city or the EPD director issued as provided in this article shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) per day. For the purpose of enforcing the provisions of this article, notwithstanding any provisions in any City Charter or ordinance to the contrary, the municipal court of the city shall be authorized to impose a penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations, each day during which violation or failure or refusal to comply continues shall be a separate violation.

Sec. 9-14-4-4. - Education and certification.

- (a) Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as

developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20, as amended.

- (b) For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.
- (c) Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this article.
- (d) If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, as amended, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A. 12-7-19, as amended, and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Sec. 9-14-4-5. - Administrative appeal judicial review.

- (a) *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by the city upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the administrative hearing officer within thirty (30) days after receipt by the city of written notice of appeal.
- (b) *Judicial review.* Any person, aggrieved by a decision or order of the city, after exhausting his administrative remedies, shall have the right to appeal by writ of certiorari to the Superior Court of Hall County.

Sec. 9-14-4-6. - Validity and liability.

- (a) *Liability.*
 - (1) Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the city or district for damage to any person or property.
 - (2) The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of standards provided for in this article or the terms of the permit.
 - (3) No provision of this article shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder, as amended, or pollute any waters of the state as defined thereby.

SECTION II

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION III

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

SECTION IV

The effective date of this Ordinance shall be upon final approval by the governing body of the City of Gainesville, Georgia.

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 10/5/2018
Presenter: Angela Sheppard
Item of Business: Resolution: Parkside Easement Agreement
Meeting Date: 10/11/2018

Purpose of Request:

To approve the Declaration of Covenants and Grant of Easements for Parkside on the Square.

History/Background:

Gainesville Square Plaza, LLC intends to purchase and develop "Parkside on the Square" on property known as 106 Spring Street SW. Certain aspects of the development will encroach on property owned by the City of Gainesville. Also, certain public uses will encroach on property owned by Gainesville Square Plaza LLC. This Agreement identifies the location and responsibilities for these items.

Facts & Issues for Consideration:

The Declaration of Covenants and Grant of Easements document is attached as Exhibit A.

Department Recommendation:

Approve the resolution.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Parkside Easement Agreement	Resolution
☐ Parkside Easements	Contract/Agreement/MOU
☐ Exhibit B1	Attachments/Exhibits
☐ Exhibit B2	Attachments/Exhibits
☐ Exhibit C	Attachments/Exhibits
☐ Exhibit D	Attachments/Exhibits
☐ Exhibit E	Attachments/Exhibits
☐ Exhibit F	Attachments/Exhibits

RESOLUTION BR-2018 - ____

**AUTHORIZATION TO EXECUTE DECLARATION OF COVENANTS AND GRANT OF
EASEMENTS WITH GAINESVILLE SQUARE PLAZA, LLC
FOR "PARKSIDE ON THE SQUARE"**

WHEREAS, Gainesville Square Plaza, LLC intends to purchase and develop "Parkside on the Square" on property known as 106 Spring Street SW which is adjacent to the Downtown Square; and

WHEREAS, "Parkside on the Square" will be a five-story building for use as retail and residential under a condominium form of ownership and which ancillary uses and related improvements may include encroachment into property owned by the City of Gainesville (City); and

WHEREAS, City is constructing two additional levels to the Downtown Parking Deck located at 0 Main Street SW and a portion of an elevated pedestrian bridge that will connect the Downtown Parking Deck to "Parkside on the Square"; and

WHEREAS, Gainesville Square Plaza LLC and City desire to establish certain duties, obligations, covenants and liabilities with respect to the construction of the Parking Deck improvements and to establish, grant and convey certain easements, rights and privileges regarding the development of "Parkside on the Square"; and

WHEREAS, both parties have agreed to terms which have been reduced to writing in the Declaration of Covenants and Grant of Easements that is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby approves the Declaration of Covenants and Grant of Easements and authorizes the Mayor, City Manager and City Attorney to execute the document after ownership of 106 Spring Street SW is transferred to Gainesville Square Plaza LLC.

Adopted this ____ day of _____, 2018.

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk

Please return recorded document to:

Jay Y. McClure, Esq.
McClure & Kornheiser, LLC
6400 Powers Ferry Road, Suite 150
Atlanta, Georgia 30339

DECLARATION OF COVENANTS AND GRANT OF EASEMENTS

THIS DECLARATION OF COVENANTS AND GRANT OF EASEMENTS (the “**Agreement**”), is entered into as of this ____ day of _____, 2018 by **Gainesville Square Plaza, LLC**, a Georgia limited liability company (“**Parkside**”), and the **City of Gainesville**, a Georgia municipal corporation (“**City**”), for themselves, their successors, successors-in-title and assigns.

W I T N E S S E T H:

WHEREAS, Parkside is the owner of that certain real property located in Land Lot 148, 9th District, Hall County, Georgia, which tract or parcel is shown on **Exhibit “A”** attached hereto and by this reference made a part hereof (“**Parkside Property**”);

WHEREAS, Parkside desires to develop the Parkside Property and construct thereon a five-story building (the “**Building**”) and related improvements for retail, residential and ancillary uses under a condominium form of ownership, which related improvements may include, without limitation, encroachment of foundations, stairways and balconies into the City Property (hereinafter defined), installation of grease traps, backflow preventers, trash compactor and loading zone within Parkside Drive and construction of an elevated pedestrian bridge (the “**Parkside Bridge**”) extending southerly from the fourth (4th) floor elevator lobby of the Building to the northerly right of way of Parkside Drive (hereinafter defined) and connecting to the City Bridge (hereinafter defined) at the southerly boundary of the Property, which City Bridge shall extend to the northerly elevation of the proposed fifth floor of the Parking Deck Expansion (hereinafter defined), the Parkside Bridge, City Bridge and Parking Deck Expansion being depicted on **Exhibit “D”** attached hereto and by this reference made a part hereof;

WHEREAS, City is the owner of certain real property and improvements consisting of the right of way of Main Street as the same abuts the westerly boundary of the Parkside Property, the City Sidewalks, Park, Parkside Drive, and Parking Deck (each hereinafter individually

defined, and hereinafter being collectively defined as the “**City Property**”), which is more particularly depicted on “**Exhibit “B-1”**” and “**Exhibit “B-2”**” attached hereto and by this reference made a part hereof:

(a) The sidewalks (the “**City Sidewalks**”) located within the City Property and adjacent to and abutting the westerly, northerly and easterly boundaries of the Parkside Property, as such City Sidewalks are depicted on **Exhibit “B-1”**;

(b) The sidewalks (the “**Parkside Sidewalks**”) located within the Parkside Property and adjacent to and abutting the westerly, northerly and easterly sides of the Building, as such Parkside Sidewalks are depicted on **Exhibit “B-1”**;

(c) The pocket park area (the “**Park**”) located between the City Sidewalk at the easterly end of the Parkside Property and the rights of way Parkside Drive and Spring Street, as such Park is depicted on **Exhibit “B-1”**;

(d) The right of way of Parkside Drive (“**Parkside Drive**”) located on the City Property and adjacent to the southerly boundary of the Parkside Property and the easterly side of the Park and extending from the easterly right of way of Main Street to the southerly right of way of Spring Street, as such Parkside Drive is depicted on **Exhibit “B-2”**; and,

(e) The parking deck, currently consisting of a five story vehicular parking deck dedicated to the public and having direct vehicular access to Main Street and Parkside Drive, as the same shall be expanded to include the Parking Deck Expansion (collectively, the “**Parking Deck**”) located on the City Property adjacent to the easterly right of way of Main Street and the southerly right of way of Parkside Drive, and, as such Parking Deck is depicted on **Exhibit “D”**;

WHEREAS, City intends to construct a sixth (6th) and seventh (7th) story onto the Parking Deck (the “**Parking Deck Expansion**”), as well as an elevated pedestrian bridge (the “**City Bridge**”) extending northerly from the fifth story of the Parking Deck, across Parkside Drive to the northerly right of way of Parkside Drive to a point of connection with the Parkside Bridge, as such Parking Deck Expansion and City Bridge are conceptually depicted on **Exhibit “D”**;

WHEREAS, Parkside intends to submit the Parkside Property to a “Master Condominium” in accordance with O.C.G.A. § 44-3-70, *et seq.* (the “**Georgia Condominium Act**”), which Master Condominium shall be comprised of the Retail Master Unit and the Residential Master Unit and shall be subject to the Master Declaration and governed by the Master Association (each capitalized term hereinafter defined);

WHEREAS, Parkside further intends to submit the Residential Master Unit to a “Sub-condominium” in accordance with the Georgia Condominium Act (the “**Residential Condominium**”), which Residential Condominium is to be comprised of thirty-two (32) Residential Units and shall be subject to the Residential Declaration and governed by the Residential Association (each capitalized term hereinafter defined);

WHEREAS, Parkside and City desire to establish certain duties, obligations, covenants and liabilities with respect to the construction of the Parking Deck Expansion, the City Bridge, and the Parkside Bridge, and to establish, grant and convey certain easements, rights and privileges which shall burden and benefit each of the City Property the Parkside Property, respectively, and benefit the City and Parkside, their respective successors, successors in title, and assigns;

NOW, THEREFORE, for and in consideration of Ten and NO/100 Dollars (\$10.00) in hand paid by Parkside to City, and the mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby declare and agree as follows:

I. DEFINITIONS.

In addition to words or terms defined elsewhere in this Agreement, the following words and terms shall have the meaning set forth below:

1. “Declarant” shall have the meaning ascribed thereto in Section 2.22 of the Residential Declaration.

2. “Master Association” shall mean the Parkside on the Square Master Condominium Association, Inc., a Georgia nonprofit corporation, and its successor and assigns, which has or will be created in accordance with the Georgia Nonprofit Corporation Code, O.C.G.A. §14-3-101, *et seq.*, the Georgia Condominium Act, and the Master Declaration.

3. “Master Declarant” shall have the meaning ascribed thereto in Section 2.34 of the Master Declaration.

4. “Master Declaration” shall mean the Declaration of Condominium for Parkside on the Square, a Master Declaration, which has or will be recorded in the real property records of Hall County, Georgia, as may be amended.

5. “Occupants” shall have the meaning ascribed thereto in Section 2.46 of the Residential Declaration, and Section 2.49 of the Master Declaration.

6. “Owner” or “Owners” shall mean the Person or Persons who owns or holds the aggregate fee simple estate in and to the Parkside Property or the City Property, or any portion of either, as shown in the real property records of Hall County, Georgia. Notwithstanding the foregoing: (a) the grantee under a deed to secure debt encumbering such property shall not be deemed an Owner unless such grantee shall have excluded the grantor under such deed to secure debt from possession by appropriate legal proceedings following a default under such deed to secure debt, or has acquired the interest encumbered by such deed to secure debt through foreclosure; (b) a Residential Unit Owner shall not be deemed an Owner; (c) the Retail Master Unit Owner shall be deemed an Owner; (d) an Occupant shall not be deemed an Owner; (e) a Permittee shall not be deemed an Owner; (f) upon the sale and conveyance of all of the Residential Units in the Residential Condominium to Residential Unit Owners (other than

Declarant), the Residential Association shall be deemed an Owner; (g) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner; and (h) if and to the extent that more than one Person holds title to a Property, then such Persons shall designate in writing one of such owners to be the “Owner” of the Property for purposes of this Agreement.

7. “Person” shall mean an individual, partnership, joint venture, cotenancy, association, corporation, limited liability company, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, municipality, or any other legal entity, whether or not a party hereto. Notwithstanding anything herein to the contrary, an Owner shall have the right to assign its rights and obligations under this Agreement to its Permittee.

8. “Permittees” shall mean and refer to any Occupant and any officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee or contractor of (a) the Owner of the Parkside Property; (b) the Owner of the City Property; (c) the Declarant; (d) a Residential Unit Owner or a Retail Condominium Unit Owner, subject, however, to the terms and provisions of the Residential Declaration and the Master Declaration, as the case may be.

9. “Property(ies)” means individually, or collectively, as the context requires, Parkside Property and the City Property.

10. “Residential Association” shall mean the Parkside on the Square Residential Unit Association, Inc., a Georgia nonprofit corporation, and its successor and assigns, which has or will be created in accordance with the Georgia Nonprofit Corporation Code, O.C.G.A. §14-3-101, *et seq.*, the Georgia Condominium Act, and the Master Declaration.

11. “Residential Declaration” shall mean the Declaration of Condominium for Parkside on the Square, a Residential Condominium, which has or will be recorded in the real property records of Hall County, Georgia, as may be amended.

12. “Residential Unit” shall have the meaning ascribed to the term “Unit” in Section 2.62 of the Residential Declaration.

13. “Residential Unit Owner” shall have the meaning ascribed to the term “Owner” set forth in Section 2.49 of the Residential Declaration.

14. “Retail Condominium Unit” shall have the meaning ascribed thereto in Section 2.63 of the Master Declaration.

15. “Retail Condominium Unit Owner” shall have the meaning ascribed thereto in Section 2.64 of the Master Declaration.

16. “Retail Master Unit” shall have the meaning ascribed thereto in Section 2.66 of the Master Declaration.

17. “Residential Master Unit” shall have the meaning ascribed thereto in Section 2.60 of the Master Declaration.

II. EASEMENTS.

1. Temporary Construction Easement. City hereby establishes for the benefit of, and grants and conveys to, the Owner of the Parkside Property a temporary, nonexclusive easement (the “**Temporary Construction Easement**”) appurtenant to the Parkside Property over, across and upon the area (the “**Temporary Construction Easement Area**”) depicted and so designated on the Exhibit “C” for the conduct by the Owner of the Parkside Property, and its Permittees, of construction related activities necessary and appropriate to the exercise by the Owner of the Parkside Property of the rights, privileges and easements set forth in this Agreement, including, without limitation, the staging of construction materials, placement of equipment, parking of vehicles and contractor trailers, placement of temporary power poles and signage, and construction activities related to demolition, removal, and/or installation of underground and overhead improvements, facilities, landscaping and irrigation equipment within the Temporary Construction Easement Area. The Temporary Construction Easement shall terminate when the construction contemplated to be performed by the Owner of the Parkside Property as set forth in this Agreement is completed or on October 15, 2020, whichever date occurs first. At all times during the existence of the Temporary Construction Easement, the Owner of the Parkside Property hereby covenants and agrees to maintain an unobstructed pedestrian pathway and an unobstructed vehicle access area through the Temporary Construction Easement Area reasonably acceptable to the City for public pedestrian ingress, egress and access between downtown Gainesville and Roosevelt Square, for pedestrian access to the public restrooms in the Parking Deck and for vehicles to service the Hall County Courthouse Annex and Roosevelt Square. The pedestrian ingress, egress and access between downtown Gainesville and Roosevelt Square shall be maintained by the Owner of the Parkside Property within the area labeled as “Roosevelt Access” on Exhibit “C.” The pedestrian access to the public restrooms in the Parking Deck shall be maintained by the Owner of the Parkside Property within the area labeled as “Restroom Access” on Exhibit “C.” The access for vehicles to service the Hall County Courthouse Annex and Roosevelt Square shall be maintained by the Owner of the Parkside Property within the area labeled as “Vehicular Access” on Exhibit “C.”

2. Access and Parking Easements.

(a) Easement Over Parkside Drive. For so long as the Owner of the Parkside Property utilizes the Parkside Property for the retail, residential, and ancillary uses specifically set forth in this Agreement, City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for use by the Owner of the Parkside Property and Occupants and Permittees for vehicular and pedestrian access, ingress, egress and passage, upon, over and across the area (the “**Parkside Drive Easement Area**”) depicted and so designated on Exhibit “B-2”. Any provision hereof to the contrary notwithstanding, the City shall retain the right to make repairs, alterations and improvements to the Parkside Drive Easement Area that do not unreasonably interfere with the rights of Owner hereunder.

(b) Easement Over Sidewalks and Park. For so long as the Owner of the Parkside Property utilizes the Parkside Property for the retail, residential, and ancillary uses specifically set forth in this Agreement, City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for use by the Owner of the Parkside Property and Occupants and Permittees, for pedestrian access, ingress, egress and passage, as appropriate, upon, over and across those areas (the “**City Sidewalk Easement Area**” and “**Park Easement Area**”, respectively) depicted and so designated on Exhibit “B-1”; provided, however, such rights and privileges shall be subject to compliance with all applicable laws. Parkside does hereby establish for the benefit of, and grant and convey to, the City, a perpetual, nonexclusive easement appurtenant to the City Property for use by the City and the public, for pedestrian access, ingress, egress and passage, as appropriate, upon, over and across the area consisting of an existing sidewalk located along the westerly boundary of the Parkside Property adjacent to the easterly right of way of Main Street (the “**Parkside Sidewalk Easement Area**”) depicted and so designated on Exhibit “B-1”. Parkside hereby acknowledges and agrees that the Parkside Sidewalk Easement Area and the City Sidewalk Easement Area shall be utilized for pedestrian access by the general public and Parkside shall not obstruct or interfere with such access. Any provision hereof to the contrary notwithstanding, the City shall retain the right to make repairs, alterations and improvements to the Park Easement Area and City Sidewalk Easement Area that do not unreasonably interfere with the rights of Owner hereunder.

(c) City Bridge Easement. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for use by the Owner of the Parkside Property and Occupants and Permittees, for pedestrian access, ingress, egress and passage, as appropriate, and the placement of signage thereon (which signage shall be subject to approval by the City), upon, over and across the City Bridge, which City Bridge is shown in Exhibit “B-1,” upon completion of construction thereof in accordance with the terms and provisions of this Agreement.

(d) Easement Over Parking Deck – Reserved Residential Parking. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for use by the Owner of the Parkside Property and the Residential Association, for vehicular and pedestrian access, ingress, egress and passage, as appropriate, upon, over and across the Parking Deck, and a perpetual exclusive easement for parking of vehicles by Residential Unit Owners upon, over and across sixty-four (64) parking spaces in the general area within the range of numbered spaces from 509-524, 530-561, and 567-582 (the “**Residential Parking Easement Area**”) as depicted and so designated on Exhibit “F”, which parking spaces shall each be numbered and designated “Reserved – No Public Parking”. The parking space numbering and reserved parking signage shall be installed by Parkside at its expense and shall be subject to approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

(e) Easement Over Parking Deck – Downtown Reserved Retail Parking. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for passage and use by the Owner of the Parkside Property, for vehicular and pedestrian access, ingress,

egress and passage, as appropriate, upon, over and across the Parking Deck, and a perpetual limited exclusive easement for parking of vehicles owned by invitees of retail stores within, and in close proximity to, the Building upon, over and across one hundred (100) contiguous parking spaces (over and above any “Handicap Parking” spaces) within the first three (3) levels of the Parking Deck, as determined by the City (the “**Downtown Retail Parking Easement Area**”), which three (3) levels are shown on Exhibit “F”, which parking spaces shall each be reserved for, and designated as, “Downtown Retail Parking Only From 9:00 AM – 7:00 PM – 2 Hour Limit”, or such language as determined by City that substantially conveys such restriction. Parkside hereby acknowledges and agrees that the City shall have the right, but not the obligation, to enforce said parking restrictions.

3. Utility, Loading Zone, Trash Compactor, Grease Trap and Backflow Preventer, and Foundation, Stairway and Balcony Encroachment Easements.

(a) General Utility Easement. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property a perpetual, nonexclusive easement appurtenant to the Parkside Property for the purpose of construction, installation, maintenance, repair, replacement, renewing, connecting into and use by such Owner and Occupants of a generator and power lines serving any portion of the Parkside Property, within the Sidewalks, Park and Parkside Drive, in such location as approved by the City of Gainesville after submission of plans by the Owner of the Parkside Property. All such utility lines shall be installed and maintained below the ground level or surface of the City Sidewalk, Park and Parkside Drive (except for such parts thereof that cannot be and are not customarily placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the City Property.

(b) Loading Zone and Trash Compactor Easement. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property a perpetual, nonexclusive easement appurtenant to the Parkside Property for the purpose of construction, installation, maintenance, repair, replacement, renewing, and use by such Owner and Occupants of a loading zone and trash compactor within the areas (the “**Loading Zone Easement Area**” and “**Trash Compactor Easement Area**”, respectively) as depicted and so designated on Exhibit “B-1”, including installation of striping and signage (including “Loading Zone” and “No Parking” signage) related thereto.

(c) Grease Trap and Back-Flow Preventer Easement. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property a perpetual, nonexclusive easement appurtenant to the Parkside Property for the purpose of construction, installation, maintenance, repair, replacement, renewing, and use by such Owner, the Retail Master Unit Owner, and the Occupants of a Retail Master Unit of a grease trap system and back-flow preventers, including, without limitation, underground pipes and surface mounted clean-out facilities within the areas (the “**Grease Trap and Backflow Preventer Easement Area**”) as depicted and so designated on Exhibit “B-2”, including installation of striping and signage related thereto. The grease trap system shall be for the private use of the Retail Master Unit Owner and the Occupants of a Retail Master Unit, and shall be maintained in accordance with Article III, Section 3 hereof.

(d) Foundation, Stairway and Balcony Encroachment Easements. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property a perpetual, nonexclusive easement appurtenant to the Parkside Property for the purpose of construction, installation, maintenance, repair, replacement, renewing, and use by such Owner and Occupants of foundations and footers for the Building, Parkside Bridge, stairway, and balconies extending from the Building at ground level or above the ground floor level thereof within the area labeled as “Balcony Encroachment Limits,” “Slight Encroachment,” and “Footings, Stairway & Ramp Encroachment Limits” (the “**Encroachment Easement Area**”) depicted and designated on **Exhibit “E”**. To the extent any of said improvements extend from the Building into the City Property, the same shall be maintained in accordance with Article III hereof.

4. Insurance. Parkside shall deliver to City a certificate with signed declaration pages, or written proof that the attached declaration pages are a copy of the original declaration page, and attached riders and endorsements which show (i) that the City is listed as an Additional Insured on the policy and (ii) which shows to the satisfaction of the City, that the required insurance is in force. The Insurance Carrier(s) shall provide to the City at least thirty (30) days’ written notice before canceling, materially changing, or discontinuing coverage. Notice shall be sent via certified mail, return receipt requested to Bryan Lackey, City Manager, City of Gainesville, P. O. Box 2496, Gainesville, Georgia 30503. Parkside shall deliver written notice of any such cancellation, modification or termination within twenty-four (24) hours of receiving any notice thereof. Failure by the Parkside to deliver proof of insurance as provided in this Paragraph, or notice as required in this paragraph, shall constitute a material substantial breach of this Contract. All such documents shall be delivered directly to the City Manager. Each of these documents which show the required insurance coverage shall be attached to each set of the original Agreement when the documents are transmitted to the City for final execution and approval. If desired, the insurance carrier may redact the premium amount from the declaration page.

Insurance is to be placed with duly licensed or approved non-admitted insurer in the state of Georgia with an “A.M. Best” rating of no less than A-VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Parkside from potential insurer insolvency.

Commercial General Liability: The Parkside shall procure and shall maintain during the life of this Agreement, General Liability Insurance to protect the Parkside, any subcontractor performing work covered by this Agreement, and the City as an additional insured, from claims for damages for bodily injury, including accidental death, as well as from claims for property damages, which may arise from operations under this Agreement, whether such operations are by the Parkside or by any anyone directly or indirectly employed or hired by Parkside. The amount of insurance shall not be less than the following:

- Each Occurrence \$1,000,000

- Personal & Advertising Injury \$1,000,000
- Medical Expense Any One Person \$5,000
- Damage to Rented Premises \$50,000
- General Aggregate \$2,000,000
- Products(Completed/Operations Aggregate) \$2,000,000

Automobile Liability: The Parkside shall procure and shall maintain during the life of this Contract, Comprehensive Automobile Liability Insurance for bodily injury and property damage. The insurance shall include coverage for owned, non-owned and hired vehicles. Amounts shall not be less than the following:

- Combined Single Limit Per Accident \$1,000,000

Excess/Umbrella Liability: The Parkside shall procure and shall maintain during the life of this Contract Excess or Umbrella Liability Insurance over General Liability, Auto Liability and Employers Liability. Umbrella or excess liability policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf”, with defense cost payable in addition to policy limits. There shall be no cross liability exclusion of claims or suits by one insured against another. The amounts of coverage shall not be less than the following:

- Each Occurrence \$4,000,000
- Aggregate \$4,000,000

Worker’s Compensation and Employer’s Liability: The Parkside shall procure and shall maintain during the life of this Contract, Worker’s Compensation and Employer’s Liability Insurance for all of Parkside’s employees to be engaged in work on and in the Premises, and in case any such work is sublet, the Parkside shall require the subcontractor similarly to provide Worker’s Compensation Insurance for all of the subcontractor’s employees to be engaged in such work unless such employees are covered by the protection afforded by the Parkside’s Worker’s Compensation Insurance.

- Workers’ Compensation – Each Employee Statutory Limits
- Employer’s Liability – Each Employee \$1,000,000
- Employer’s Liability – Each Accident \$1,000,000

If self-insured, proof of filing with the State of Georgia and secured, set aside funds shall be required.

Additional Insured: The insurance policies required by this Agreement shall be endorsed to include “City of Gainesville, Georgia, its officers, elected or appointed officials, agents, employees, volunteers, and representatives” as Additional Insured with respect to work performed on and in the Premises. (This requirement does not apply to Worker’s Compensation, Employer’s Liability, or Professional Liability coverage). In addition to a

statement on the Certificate of Insurance, a copy of the endorsement shall be provided with Primary & Non-Contributory Basis.

Waiver of Subrogation: Parkside waives all rights against City and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.

Renewal certificates shall be provided to the City prior to the expiration date of existing coverage, and shall be provided continuously for a period of one year after the completion of the Agreement. All documents shall reference the contract name.

5. City Bridge Connection Easement. City does hereby establish for the benefit of, and grant and convey to, the Owner of the Parkside Property, a perpetual, nonexclusive easement appurtenant to the Parkside Property for connection and physical attachment of the Parkside Bridge to the City Bridge at the area (the “**City Bridge Connection Easement Area**”) located at the northerly point of terminus of the City Bridge at the common boundary of northerly right of way of Parkside Drive and the southerly side of the Parkside Property, as depicted on Exhibit “D”, upon completion of construction thereof in accordance with the terms and provisions of this Agreement, it being the express intention of the parties hereto that City shall extend the City Bridge from the northerly boundary of the fifth (5th) floor of the Parking Deck to the northerly right of way of Parkside Drive to permit connection with the Parkside Bridge an elevation consistent with the fourth (4th) floor elevator lobby of the Building.

6. Conditions for Use of Easements. The use of the easements described in this Section II is expressly conditioned upon compliance with the following requirements:

(a) Except for emergency repairs, all such work shall be performed pursuant to plans approved in writing by the Owner of the City Property, not to be unreasonably withheld, conditioned or delayed, and performed promptly and in such a manner and at such times as shall minimize, to the extent reasonably practicable, any disruption to the operation of any business on the respective easement area;

(b) Any and all damage to an easement area occasioned by any work thereon shall be promptly repaired and the such easement area shall be restored to the condition that existed immediately prior to the performance of such work by the Owner performing such work, or on whose behalf such work was performed, and the Owner performing such work, or on whose behalf such work was performed, shall indemnify and hold the Owner of the property upon which such work is performed harmless from any cost, expense, liability, claim or lien associated with such work or use (unless arising from an act or omission of the indemnified Owner). Any provision hereof to the contrary notwithstanding, the City shall have the right to modify or alter improvements located on the City Property so long as the same do not materially and adversely affect the rights and privileges benefitting the Parkside Property hereunder (i.e., redesign or relocation of curbing, surface materials, landscaping, signage, etc.);

(c) Any and all damage to the City Property, or to the improvements located upon the City Property, or to the utility facilities located upon or beneath the surface of the City Property occasioned by work performed by the Owner of the Parkside Property, or on behalf of the Owner of the Parkside Property, shall be promptly repaired and the City Property, or the improvements located upon the City Property, or the utility facilities located upon or beneath the surface of the City Property, as the case may be, shall be restored to substantially the same condition that existed immediately prior to the performance of such work by the Owner of the Parkside Property that performed the work or on whose behalf the work was performed, and such Owner of Parkside Property shall indemnify and hold the Owner of the City Property harmless from any loss, cost, expense, liability, claim or lien associated with such damage, work or use (unless arising from an act or omission of the indemnified Owner of the City Property);

(d) The Owner of the City Property may relocate, at its own expense, after reasonable notice to the owner of the Parkside Property, the utility lines and facilities located on the City Property to other portions of such City Property in a manner as would not adversely affect any Occupant on the Parkside Property; and

(e) Connections into and use of such utility lines and facilities shall not interfere with or adversely affect the operation of any business on the City Property.

7. Term. Except as otherwise expressly set forth herein, the easements contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Clerk of the Superior Court of Hall County, Georgia and remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, cancelled or terminated by the written consent of all the Owners of the City Property and the Parkside Property.

III. COVENANTS AND RESTRICTIONS.

In connection with the establishment of the easements contained herein, the Owners, their successors and assigns, do hereby establish the following covenants and restrictions:

1. Construction of Parking Deck Expansion and City Bridge. City and the Owner of the Parkside Property hereby agree that City and the Owner of the Parkside Property shall in good faith coordinate their respective efforts relative to the engineering and design of the Parking Deck Expansion and City Bridge and the interface of same with the Parkside Bridge and the Building. City hereby covenants that it shall commence construction of the Parking Deck Expansion not later than September 24, 2018, and commence construction of the City Bridge promptly after completion by the Owner of the Parkside Property of the Parkside Bridge, subject to delays caused by force majeure, such that the Owner of the Parkside Property may thereupon connect the Parkside Bridge to the City Bridge and commence utilizing the City Bridge and the Parking Deck as contemplated by Section II.2.c and d hereof.

2. Reserved Retail Parking. City hereby covenants that it shall commence placement of signage within each of the Reserved Retail Parking spaces as contemplated by Section II.2.e hereof not later than one hundred twenty (120) days after completion of construction of the

Parking Deck Expansion, subject to delays caused by force majeure, such that the Permittees may thereupon commence utilizing the Reserved Retail Parking as contemplated by Section II.2.e hereof.

3. Maintenance.

(a) Parkside Drive, City Sidewalks, Park, City Bridge and Parking Deck. Except as expressly provided herein to the contrary, the City shall maintain, repair and replace the Parkside Drive, the City Sidewalk Easement Area, the Park Easement Area, and the Parking Deck in good condition and repair; provided, however the Owner of the Parkside Property shall keep, or cause to be kept, the City Sidewalk Easement Area and City Bridge in a clean and sightly manner, free and clear of refuse resulting from the exercise by such Owner and the Occupants and Permittees of the rights and privileges contained herein. The Owner of the Parkside Property shall maintain the City Bridge (including any and all components of the City Bridge structure, including but not limited to footers, columns, canopy, railings, and connections of the City Bridge to the Parking Deck and to the Parkside Property) in good condition and repair, as well as in a clean and slightly manner, free and clear of refuse resulting from the exercise by such Owner and the Occupants and Permittees of the rights and privileges contained herein.

(b) Parkside Bridge, Parkside Sidewalk, Residential Parking Easement Area, Loading Zone, Trash Compactor, Grease Trap and Backflow Preventer, Foundations, Balconies, Stairways and Signage. Except as expressly provided herein to the contrary, the Owner of the Parkside Property shall maintain, repair and replace, or cause to be maintained, repaired and replaced, the Parkside Bridge, Parkside Sidewalk Easement Area, and any improvements installed by such Owner or any Occupant or Permittee within the Loading Zone Easement Area, Trash Compactor Easement Area, and Grease Trap and Backflow Preventer Easement Area, and maintain such areas in a clean and sightly manner, free and clear of refuse resulting from the exercise by such Owner and the Occupants and Permittees of the rights and privileges contained herein. Parkside shall install and maintain any signage located on the City Bridge as permitted under Article II, Section 2(c) hereof. To the extent any foundations, balconies, or stairways extend from the Building onto, above or below the City Property, the same shall be maintained by the Owner of the Parkside Property, the Residential Association or the Residential Unit Owner, as the case may be, in good and safe operating condition and in accordance with applicable laws. The Owner of the Parkside Property shall maintain, or cause to be maintained, the Residential Parking Easement Area in a clean and sightly condition commensurate with the remainder of the Parking Deck.

(c) Utility Lines and Facilities. Except as otherwise set forth in herein, the respective Owners of the Parkside Property and the City Property shall maintain and repair the utility lines and facilities located on the Parkside Property and City Property, respectively, in a good order and condition and properly cleaned. Notwithstanding the foregoing, in the event that any lines become clogged or otherwise require repair as a result of a failure by the Owner of the Parkside Property to properly maintain grease traps in accordance with Section 3(b) hereinabove and/or to make appropriate use of sanitary sewer or other lines, then the self-help provisions of this Section III.4 shall apply.

(d) Owner Caused Damage. Notwithstanding any contrary provision contained herein, if an Owner (or its employees, agents or contractors) causes damage to improvements located on the property of another Owner, the Owner causing such damage shall, at its sole cost and expense, repair such damage promptly in a good and workmanlike manner.

4. Self-Help. All construction and installation of improvements, and all maintenance, repair and replacement work described in this Section III shall be performed in a good, workmanlike and lien free manner, and shall be performed in such a way as to minimize interference with any business operations or use of the other Owner's property. In the event that any Owner (for purposes of this Section only, "**Defaulting Owner**") fails to fulfill its obligations pursuant to Sections II. of this Agreement, then the Owner or Occupant of the other property (for purposes of this Section only, "**Non-Defaulting Owner**"), shall have the right, but not the obligation, after first providing written notice of such default to the Defaulting Owner and a period of 30 days in which to fulfill maintenance, repair and replacement obligations, to enter the Defaulting Owner's property and perform such work at the expense of the Defaulting Owner. The Defaulting Owner shall reimburse such costs within thirty (30) days of receipt of paid invoices from the Non-Defaulting Owner. Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights contained in this Declaration, and/or (iii) the unauthorized parking of vehicles on the Non-Defaulting Owner's property, the Non-Defaulting Owner may immediately cure the same and be reimbursed by the Defaulting Owner upon demand for the reasonable cost thereof within thirty (30) days of receipt of paid invoices from the Non-Defaulting Owner.

IV. ASSIGNMENT.

Parkside shall have the right to assign its rights, privileges, duties and obligations hereunder to the Residential Association and/or the Master Association. In the event of such assignment, each Owner hereby declares, grants and conveys to the Residential Association and/or the Master Association, as the case may be, and its employees, agents and contractors a nonexclusive easement in, to, over and across each of the Parkside Property and the City Property as is reasonably necessary for the enjoyment of such rights and privileges and the performance of such duties and obligations. The Residential Association and the Master Association, as the case may be, shall be authorized to take any and all actions, including actions herein described, necessary or appropriate to enforce the covenants and restrictions of this Agreement and other agreements to which the Residential Association and the Master Association, as the case may be, is a party. The Residential Association and/or the Master Association, as the case may be, may hire a third-party contractor to perform the duties and obligations, and enforce the rights privileges of the Owner of the Parkside Property and the Residential Association and the Master Association, as the case may be, under this Agreement. To the extent Parkside has assigned its duties and obligations hereunder, Parkside shall have no further obligation or liability with respect to such duties or obligations under this Agreement arising thereafter.

V. EFFECT OF AGREEMENT.

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute a use for reciprocal benefits to and burdens upon the Parkside Property and the City Property, respectively. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Owners, their successors, successors-in-title and assigns and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parkside Property and the City Property, or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. It is the intent of the Owners that this Agreement shall remain in effect and shall not be terminated by merger unless an appropriate instrument terminating this Agreement shall be filed in Hall County, Georgia public records. Each of the rights created hereunder shall be specifically enforceable in a court of equity since an action for damages would not be an adequate remedy for a breach of this Agreement.

VI. DEDICATION.

1. Dedication of Sewer Facilities and Water Lines to City of Gainesville. The Owner of the Parkside Property shall have the right to request to dedicate sewer facilities or water lines installed within City Property up to the boundaries of the Parkside Property to the City of Gainesville, Georgia, or any other governmental authority having jurisdiction thereof and upon acceptance of such utilities together with all maintenance and repair obligations by such governmental authority, as evidenced by the recording of a deed of dedication, the easements and privileges of this Agreement with respect to such dedicated utilities shall terminate automatically and become null and void and of no further force and effect. Upon acceptance of the dedication, the Owner of the Parkside Property shall no longer have any obligation for maintenance and repair, nor the cost of maintenance and repair of such utilities nor the right to reimbursement for such costs of maintenance and repair. In the event that the City declines to accept such dedication, the City agrees to allow the Owner of the Parkside Property reasonable access to maintain the utilities within City Property.

2. No Dedication. This Agreement is not intended to and shall not be construed to dedicate to the general public any rights in the grease traps, stairways, balconies or similar improvements serving the Building that may be located within easement areas on the City Property.

VII. The Owner of the Parkside Property, the Residential Association, and the Master Association exercising its rights with respect to any right, privilege, duty or obligation granted hereunder (the "Indemnitor") shall indemnify and hold harmless the City and any agents or employees of the City (the "Indemnified Parties") harmless from and against all claims, liabilities, and expenses, including reasonable attorney's fees, relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Indemnitor or others acting on behalf of such Indemnitor.

VIII. Intentionally Omitted.

IX. REMEDIES AND ENFORCEMENT.

1. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or Occupant or any Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

2. No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement.

3. Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Sections I and/or II of this Agreement, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner, Occupant or its Permittees to suffer irreparable harm and such non-defaulting Owner, Occupant or its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Section I and/or II of this Agreement, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Section I and/or II of this Agreement.

X. MISCELLANEOUS.

1. Force Majeure. In the event the Owner of the Parkside Property or the City Property shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Owner by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of another Owner, adverse weather conditions preventing the performance of work as certified to by an architect, war or any other reason beyond such Owner's reasonable control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay, provided that such Owner has taken steps that are reasonable under the circumstances to mitigate the effects of such force majeure and further provided that such Owner shall notify any Owner materially adversely affected by such delay, hindrance or prevention, of such delay, hindrance or prevention within fifteen (15) days after the commencement thereof and within fifteen (15) days after the expiration thereof. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such Owner.

2. Invalidity. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

3. Termination of Liability. In the event that the Owner of the Parkside Property or the Owner of the City Property shall convey, transfer, assign or otherwise dispose of all of its

interest in a property, said Owner shall thereupon be released and discharged from any and all obligations and liabilities with respect to its property for the breach of any covenant arising from and after the date of the closing of such conveyance and such liabilities and obligations shall thereafter be binding upon the successor-in-title to such property; provided however, the prior Owner shall remain liable for the breach of any covenant or agreement which arose prior to the date of the closing of such conveyance.

4. Attorney's Fees. In the event any legal action is commenced by any party to enforce the terms of this Agreement, the prevailing party in such action shall, in addition to the relief granted, be entitled to the payment of reasonable attorneys' fees actually incurred by the prevailing party in connection therewith and the court having jurisdiction in such action is hereby authorized and directed to award such attorneys' fees to the prevailing party in the event that the award to such prevailing party is material. A material award shall be an award that is at least 50% of the amount originally claimed and exceeds the last monetary settlement offer amount proffered by the losing party not less than sixty (60) days prior to initiation of trial.

5. Exhibit. All Exhibits referenced herein and attached hereto are by this reference incorporated herein and made a part hereof.

6. Applicable Law; Jurisdiction; Venue. The terms of this Agreement shall be governed by the laws of the State of Georgia. The parties hereto hereby consent to jurisdiction and venue regarding enforcement of the terms of this Agreement in the superior courts of Hall County, Georgia.

7. Terminology. All personal pronouns used in this Agreement, whether used in the feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice-versa. Titles of articles and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

8. Covenants to Run with the Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create the equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

9. Notice.

(a) Form. Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon or given to any Owner shall be in writing and shall be delivered in person or sent by nationally recognized air express courier or registered or by certified mail, postage prepaid, return receipt requested, and, if to Parkside, shall be delivered to the following addresses, respectively:

If to Parkside:

Gainesville Square Plaza, LLC

2180 Satellite Boulevard, Suite 400
Duluth, Georgia 30097
Attn: Tim Knight

with a copy to:

McClure & Kornheiser, LLC
6400 Powers Ferry Road
Suite 150
Atlanta, Georgia 30339
Attn: Jay Y. McClure, Esq.

If to the City:

City of Gainesville
Bryan Lackey, City Manager
PO Box 2496
Gainesville, GA 30503

with a separately sent copy to:

Hulsey, Oliver & Mahar
Attn: Abb Hayes
PO Box 1457
Gainesville, GA 30503

(b) Change of Address. Any Owner may specify or change the place for service of notice by sending a notice to the other Owner(s), which notice shall become effective ten (10) days after delivery thereof. All such notice addresses shall be within the United States.

10. Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of the Parkside Property or the City Property, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an Agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

11. Amendment & Modification by Owners. Owners may amend or modify this Agreement without the consent and joinder of all other Owners only in the following circumstance: Should the Owner of the Parkside Property or the City Property desire to amend the restrictions, covenants or easements contained in this Agreement with respect to burdens affecting its own property, then such amendment shall be effective by written, recorded instrument executed by such Owner together with the Owner(s) of any other property directly benefited by such restriction, covenants or easements and together with Parkside and filed in the real property records of Hall County, Georgia. The execution of such an amendment by Owner(s) whose property is not directly benefited by such restriction shall not be required.

12. Independent Covenants. Each and every covenant contained herein shall be, for any and all purposes hereof, construed as separate and independent, and the breach of any covenant by any party shall not release or discharge any party of its obligations under any other covenant.

WITNESS the hand and seal of the undersigned on the day and year first set forth above.

Signed, sealed and delivered
in the presence of:

Gainesville Square Plaza, LLC, a Georgia
limited liability company

Unofficial Witness

By: _____(SEAL)

Name: Tim Knight

Title: Manager

Notary Public

My commission expires:

[NOTARY SEAL]

Signed, sealed and delivered
in the presence of:

City of Gainesville, a Georgia municipal
corporation

Unofficial Witness

By: _____(SEAL)

Name: _____

Title: _____

Notary Public

My commission expires:

[NOTARY SEAL]

ATTEST:

By: _____

Name: _____

Title: _____

EXHIBIT “A”

LEGAL DESCRIPTION OF PARKSIDE PROPERTY

All that tract or parcel of land situate, lying and being in Land Lot 154 of the 19th District, City of Gainesville, Hall County, Georgia, containing approximately 0.47 acres as shown on that certain Topographic Survey for BKJ Properties, prepared by Roger N. London, Georgia Registered Land Surveyor No.2592, dated July 14, 2017 and being more particularly described as follows:

BEGIN at a point located at the intersection of the southeasterly right of way of Spring Street and the northeasterly right of way of Main Street, said point being the Point of Beginning, thence North 57 degrees, 35 minutes, 39 seconds East for a distance of 199.79 feet to a point; thence South 31 degrees, 49 minutes, 34 Seconds East a distance of 103.56 feet to a point; thence South 57 degrees, 59 minutes, 27 seconds West a distance of 199.66 feet to a point; thence North 31 degrees, 53 minutes, 38 seconds West a distance of 102.18 feet to a point, said point being the Point of Beginning.

EXHIBIT “B-1”

**PARK, SIDEWALK, TRASH COMPACTOR & LOADING ZONE
EASEMENT AREAS**

EXHIBIT “B-2”

**LIMITS OF PARKSIDE DRIVE, GREASE TRAP & BACK FLOW
EASEMENTS**

EXHIBIT “C”

TEMPORARY CONSTRUCTION EASEMENT AREA

EXHIBIT “D”

CITY BRIDGE – PARKSIDE BRIDGE

EXHIBIT “E”

FOOTING, STAIRWAY & BALCONY ENCROACHMENT AREAS

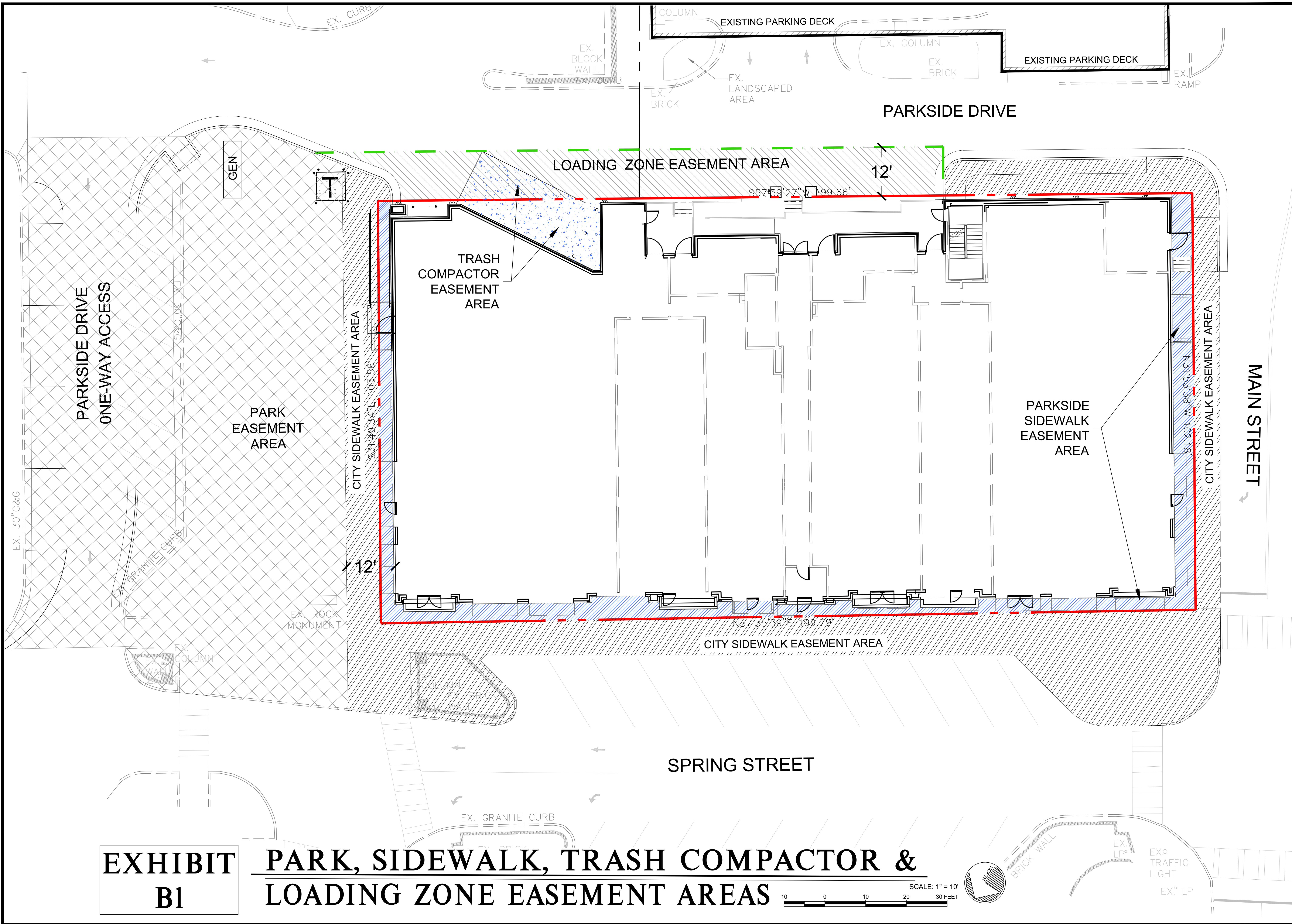
EXHIBIT “F”

RESIDENTIAL PARKING EASEMENT AREA

EXHIBIT “G”

DOWNTOWN RETAIL PARKING EASEMENT AREA

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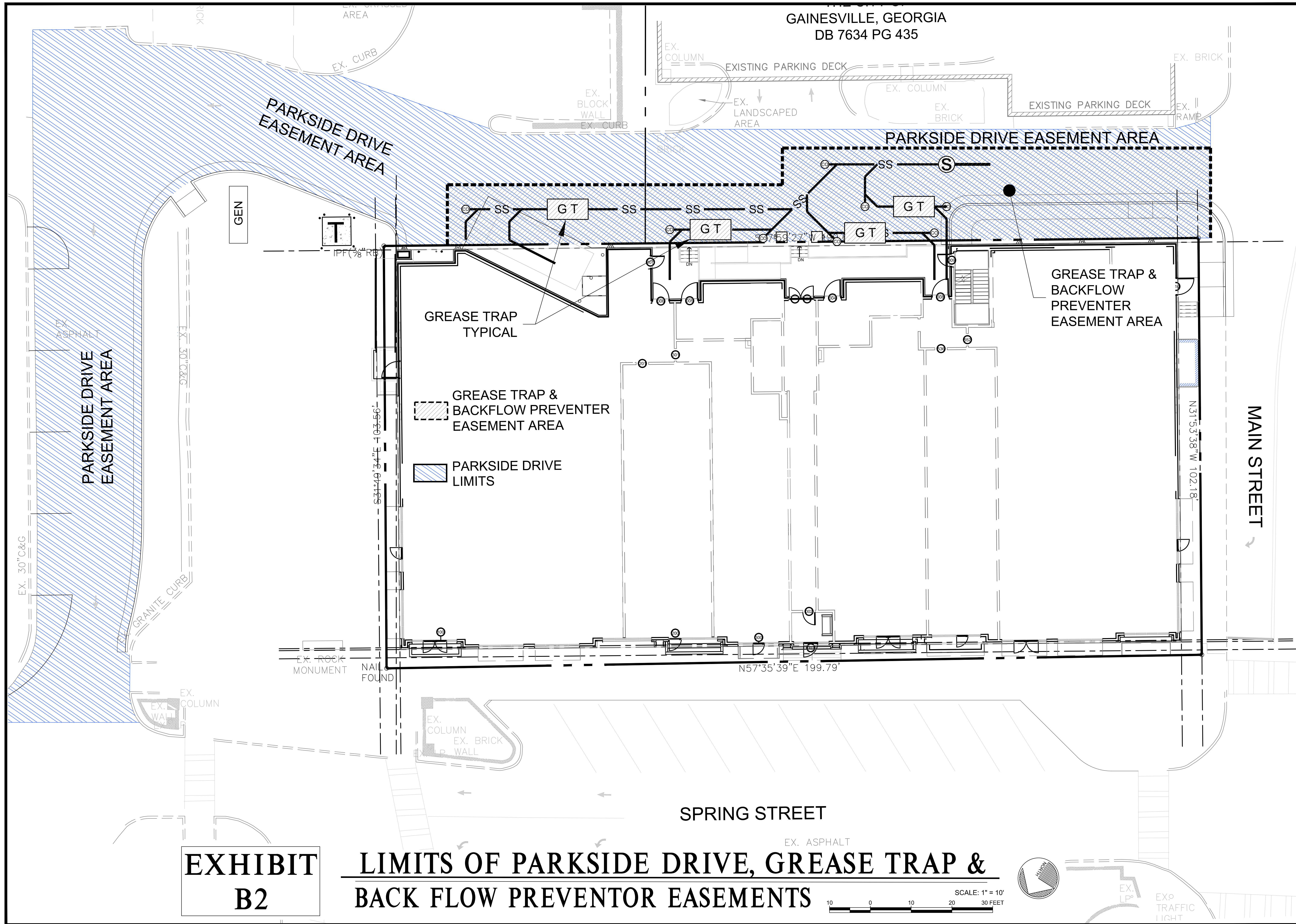
**EXHIBIT
B1**

**PARK, SIDEWALK, TRASH COMPACTOR &
LOADING ZONE EASEMENT AREAS**

SCALE: 1" = 10'
0 10 20 30 FEET

ROBERTSON LOIA ROOF ARCHITECTS & ENGINEERS 3460 Preston Ridge Road, Suite 275 - Alpharetta, GA 30005 770.574.2600 / www.rlrc.com	
PARKSIDE ON THE SQUARE 106 SPRING STREET, S.E., GAINESVILLE, GEORGIA 30501 LAND LOT 148, 9TH DISTRICT, HALL COUNTY, GEORGIA FOR: GAINESVILLE SQUARE PLAZA, LLC. 2180 SATELLITE BOULEVARD, SUITE 400, DULUTH, GA 30097 CONTACT MR. BRAD JOHNSON, PHONE: 404-217-6292	
REVISIONS	
SHEET TITLE PARK, SIDEWALK, TRASH COMPACTOR & LOADING ZONE EASEMENT AREAS	
DATE 07-26-18	PROJECT NUMBER 17-106
SHEET NUMBER EX - B1	

Tuesday, September 25, 2018 12:05:58pm (Internal)
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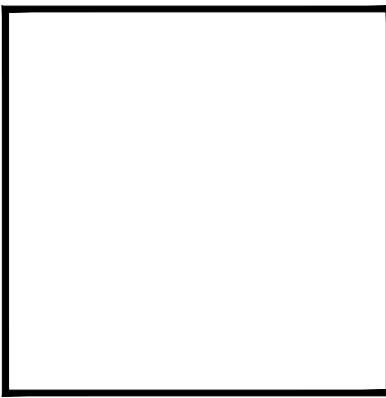


**EXHIBIT
B2**

**LIMITS OF PARKSIDE DRIVE, GREASE TRAP &
BACK FLOW PREVENTOR EASEMENTS**

SCALE: 1" = 10'
0 10 20 30 FEET

ROBERTSON LOIA ROOF
ARCHITECTS & ENGINEERS
3460 Preston Ridge Road, Suite 275 - Alpharetta, GA 30005
770.674.2600 / www.rlrc.com



PARKSIDE ON THE SQUARE
106 SPRING STREET, S.E., GAINESVILLE, GEORGIA 30501
LAND LOT 148, 9TH DISTRICT, HALL COUNTY, GEORGIA
FOR:
GAINESVILLE SQUARE PLAZA, LLC.
2180 SATELLITE BOULEVARD, SUITE 400, DULUTH, GA 30097
CONTACT MR. BRAD JOHNSON, PHONE: 404-217-6292

REVISIONS

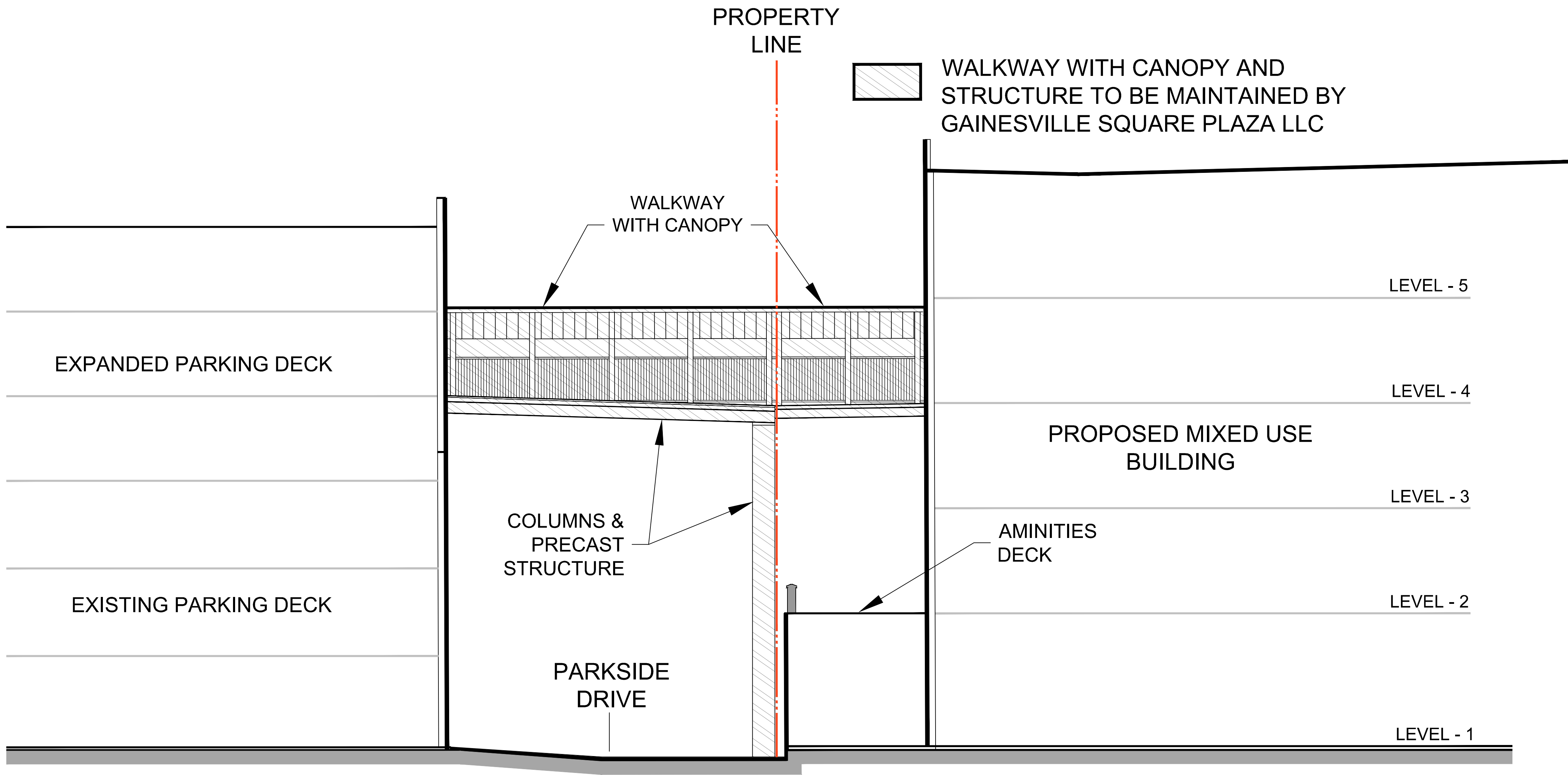
**LIMITS OF PARKSIDE DR,
GREASE TRAP & BACK
FLOW PREVENTOR
EASEMENTS**

SHEET TITLE
DATE 09-25-18
PROJECT NUMBER 17-106
SHEET NUMBER EX - B2



PARKSIDE ON THE SQUARE
106 SPRING STREET, S.E., GAINESVILLE, GEORGIA 30501
LAND LOT 148, 9TH DISTRICT, HALL COUNTY, GEORGIA
FOR:
GAINESVILLE SQUARE PLAZA, LLC.
2180 SATELLITE BOULEVARD, SUITE 400, DULUTH, GA 30097
CONTACT MR. BRAD JOHNSON, PHONE: 404-217-6292

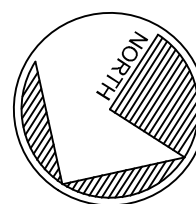
REVISIONS	
TEMPORARY CONSTRUCTION EASEMENT	
DATE	09-25-18
PROJECT NUMBER	17-106
TEST NUMBER	EX - C



**EXHIBIT
D**

WALKWAY BRIDGE MAINTENANCE AGREEMENT

SCALE: 1" = 8'
8' 0 8' 16' 24 FEET



REVISIONS

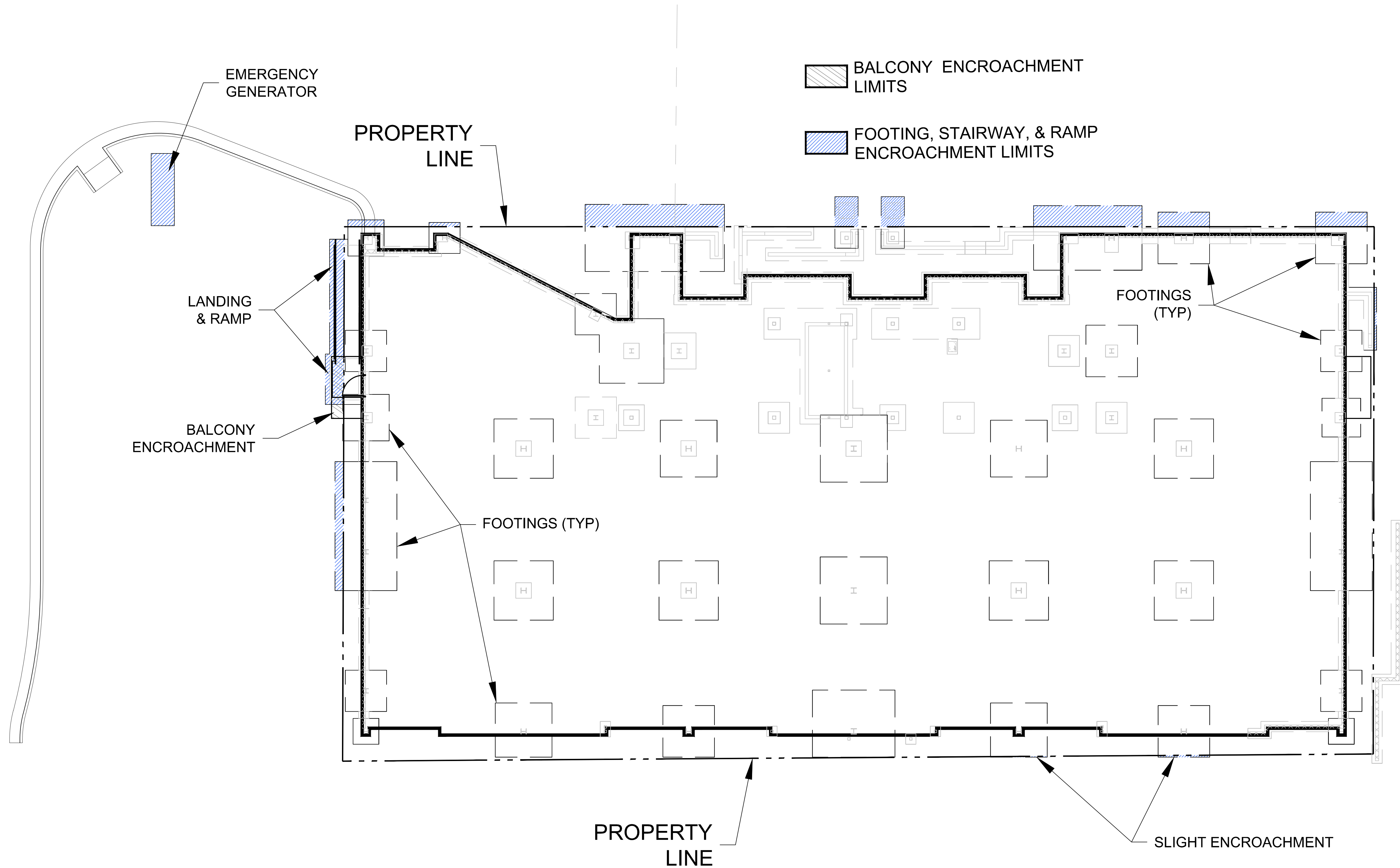
**WALKWAY BRIDGE
MAINTENANCE
AGREEMENT**

DATE: 09-21-18

PROJECT NUMBER: 17-106

SHEET NUMBER: EX - D

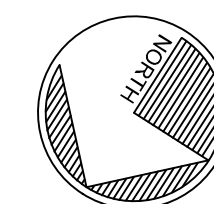
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**EXHIBIT
E**

FOOTING, STAIRWAY, & BALCONY ENCROACHMENT AREAS

SCALE: 1" = 10'
10 0 10 20 30 FEET



NOTE:
FOOTINGS SHOWN ARE ACCURATE AS OF THE
DATE OF THIS DRAWING. FOOTINGS MAY BE
REVISED BASED ON VALUE ENGINEERING AND
COORDINATION WITH PRECAST BRIDGE DESIGN,
BOTH ARE CURRENTLY IN PROCESS.

PARKSIDE ON THE SQUARE
106 SPRING STREET, S.E., GAINESVILLE, GEORGIA 30501
LAND LOT 148, 9TH DISTRICT, HALL COUNTY, GEORGIA
FOR:
GAINESVILLE SQUARE PLAZA, LLC.
2180 SATELLITE BOULEVARD, SUITE 400, DULUTH, GA 30097
CONTACT MR. BRAD JOHNSON, PHONE: 404-217-6292

REVISIONS

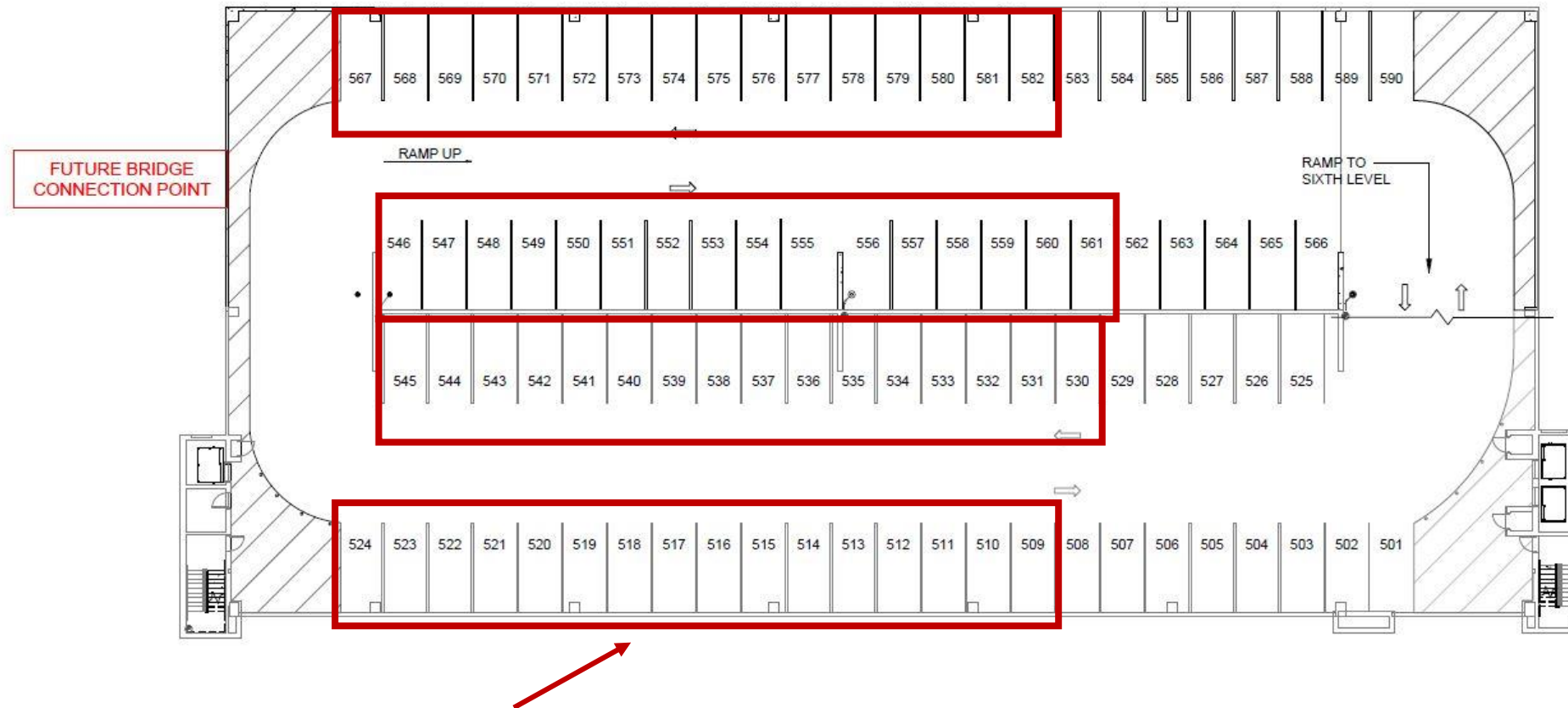
**FOOTING, STAIR,
& BALCONY
ENCROACHMENT
AREAS**

DATE
09-21-18

PROJECT NUMBER
17-106

SHEET NUMBER
EX - E

Residential Parking Easement Area Exhibit F



Residential Parking Easement Areas:
509-524, 530-545, 546-561, 567-582

LEVEL 5 - PARKING LAYOUT