SANDY SPRINGS
GEORGIA

CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council **DATE:** July 10, 2012

FROM: John McDonough, City Manager

AGENDA ITEM: Consideration of the Acceptance of an Easement for Construction and Maintenance of Pedestrian Plazas and Streetscape Improvements

MEETING DATE: For Submission onto the July 17, 2012, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Resolution
Exhibits

APPROVAL BY CITY MANAGER: _____ *APPROVED*

_____ *NOT APPROVED*

PLACED ON AGENDA FOR: 17 July 2012

CITY ATTORNEY APPROVAL REQUIRED: (✓) *YES* ( ) *NO*

CITY ATTORNEY APPROVAL: _____

REMARKS:

SANDY SPRINGS
GEORGIA

TO: John McDonough, City Manager

FROM: Kevin J. Walter, P.E., Public Works Director

DATE: June 25, 2012, for Submission onto the Consent Agenda of the July 17, 2012 City Council Meeting

ITEM: Consideration of the Acceptance of an Easement for Construction and Maintenance of Pedestrian Plazas and Streetscape Improvements.

Public Works Department's Recommendation:

Staff recommends that the Mayor and City Council accept an Easement for Construction and Maintenance of Pedestrian Plazas and Streetscape Improvements on that tract or parcel of land lying and located in Land Lot 18 of the 17th District, Fulton County, Georgia. The property as shown in the attached exhibit is owned by the property owners, ESA P Portfolio, LLC; located at 6330 Peachtree Dunwoody Road. The easement area consists of 167.00 square feet.

Background:

The acquisition of an easement across the owner's property is necessary in order to maintain a recently constructed pedestrian plaza and streetscape improvements. The Perimeter CID was responsible for the construction of the improvements and the City will be responsible for the future maintenance.

Discussion:

N/A

Alternatives:

N/A

Financial Impact:

The easement was donated to the City. No monetary compensation is required.

Attachments:

I. Resolution

II. Exhibits
- Aerial Map
- GIS Map
- Executed Easement Agreement

Public Works

RESOLUTION NO. _____

STATE OF GEORGIA
COUNTY OF FULTON

A RESOLUTION TO ACCEPT AN EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF PEDESTRIAN PLAZAS AND STREETSCAPE IMPROVEMENTS ON PROPERTY LOCATED IN LAND LOT 18 OF THE 17TH DISTRICT, CITY OF SANDY SPRINGS, FULTON COUNTY, GEORGIA

WHEREAS, it is necessary, from time to time, to establish policies, procedures and guidelines consistent with the administration of a municipal government consistent with the US Constitution, Federal Statutes, alignment with Federal, Georgia's State Constitution, and the Charter for the City of Sandy Springs, and

WHEREAS, the City Manager directed the Department of Public Works to develop standard policies for recurring matters, to establish appropriate internal controls and legal compliance, and to provide for an efficient and effective means to serve constituents; and

WHEREAS, the Department of Public Works, in response to the guidance provided by the City Manager, has reviewed and approves the acceptance of an Easement For Construction and Maintenance of Pedestrian Plazas and Streetscape Improvements by the City of Sandy Springs for the property located at 6330 Peachtree Dunwoody Road, from ESA P Portfolio, LLC, located on Land Lot 18 of the 17th District, City of Sandy Springs, Fulton County, Georgia

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA

For the maintenance of pedestrian plazas and streetscape improvements, the City approves the acceptance of an Easement For Construction and Maintenance of Pedestrian Plazas and Streetscape Improvements located on Land Lot 18 of the 17th District, City of Sandy Springs, Fulton County, Georgia.

RESOLVED this 17th day of July, 2012.

APPROVED:

_____
Eva Galambos, Mayor

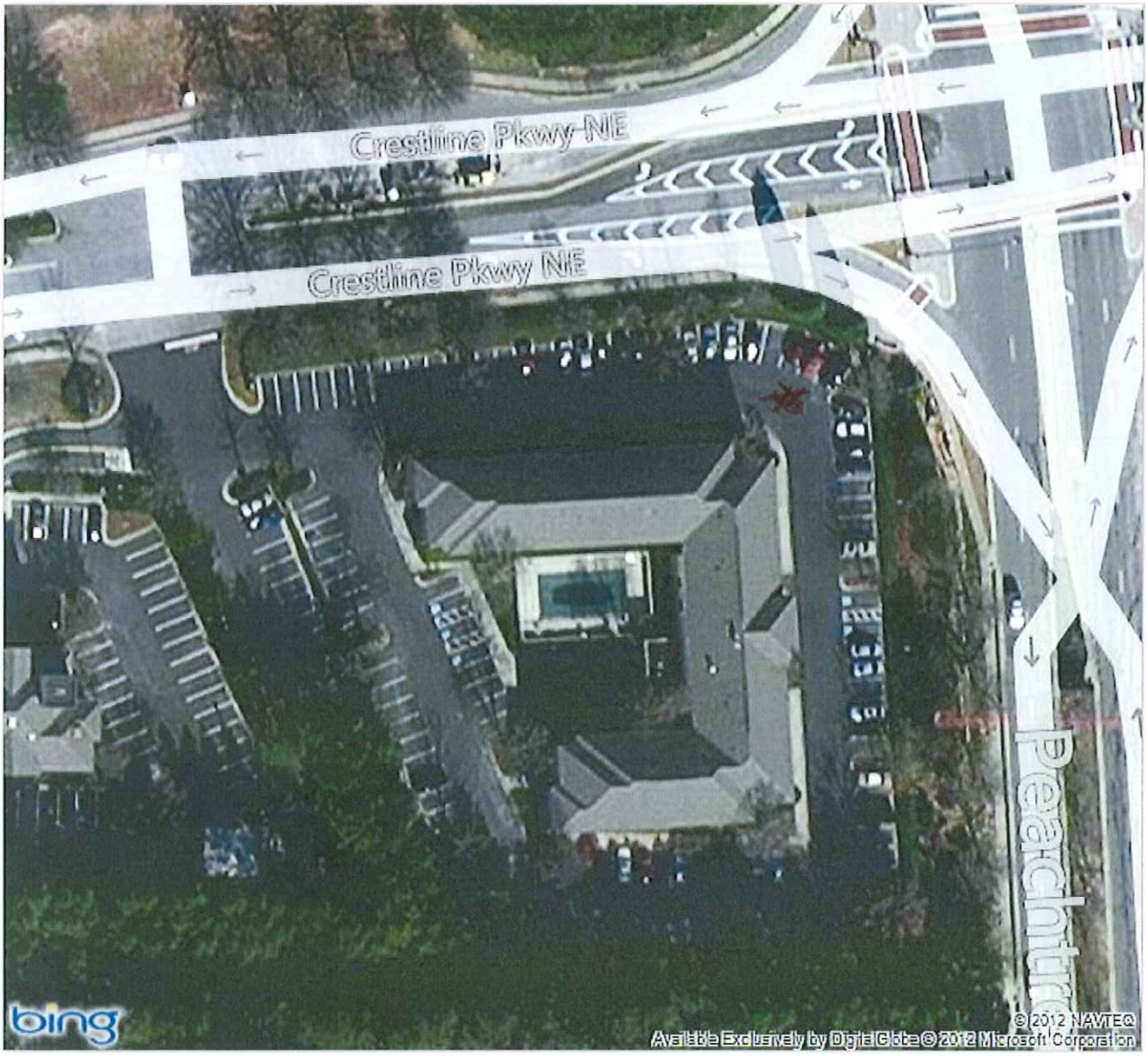
Attest:

_____
Michael Casey, City Clerk
(Seal)

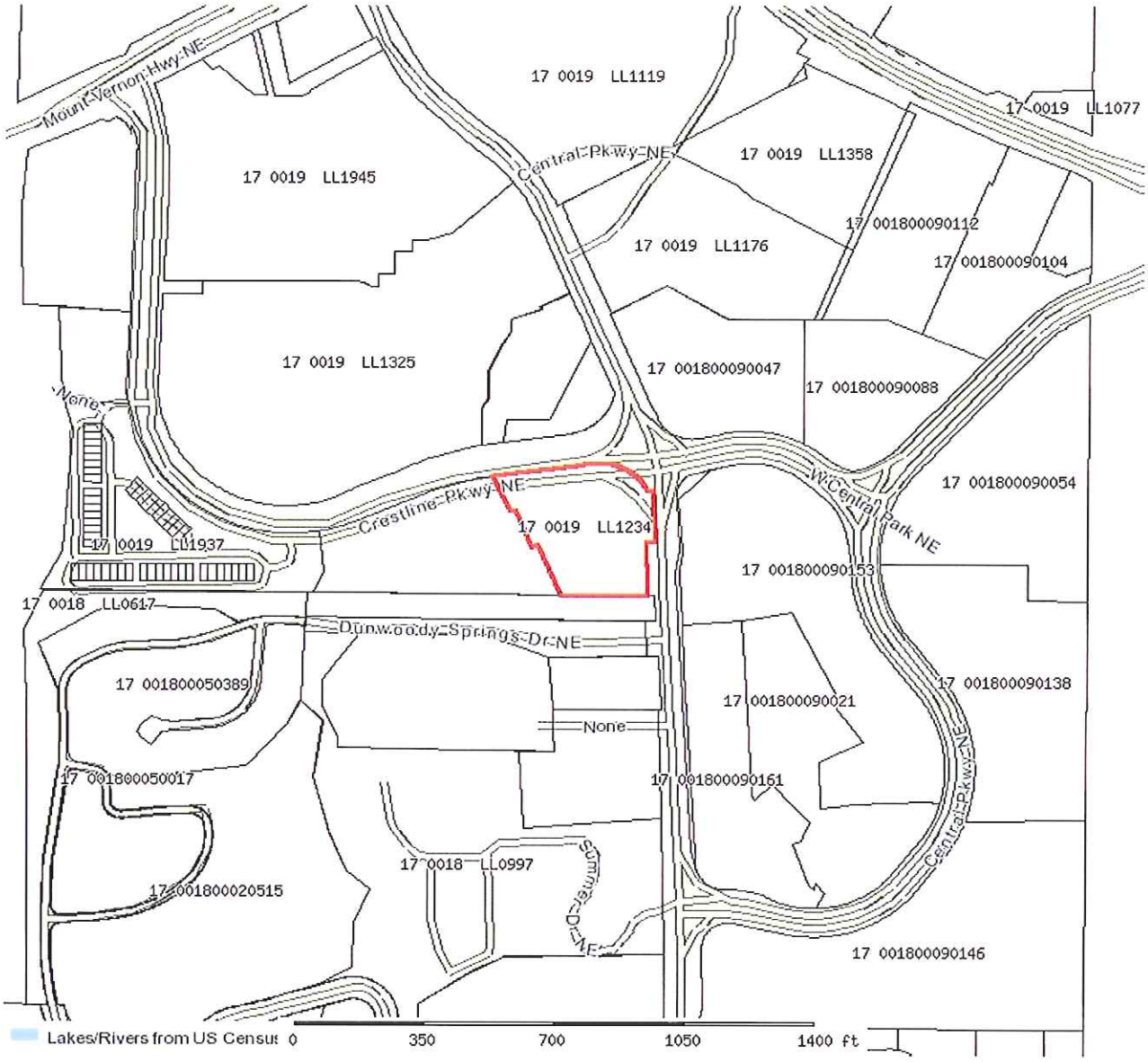
bing Maps

ESA P Portfolio, LLC
PCID Peachtree Dunwoody Road
Pedestrian Plazas

On the go? Use **m.bing.com** to find maps, directions, businesses, and more



Bird's eye view maps can't be printed, so another map view has been substituted.



ESA P Portfolio, LLC / PCID Peachtree Dunwoody Pedestrian Plazas			
Parcel: 17 0019 LL1234 Acres: 2.22			
Name:	BRE ESA TWO THOUSAND FIVE	Land Value	0
Site:	6330 PEACHTREE DUNWOODY RD	Building Value	0
Sale:	$6,200,000 on 2005-05-11 Reason=U Qual=7	Misc Value	0
Mail:	100 DUNBAR ST SPARTANBURG, SC 29306	Total Value:	0

The Fulton County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER FULTON COUNTY NOR ITS EMPLOYEES ASSUMI RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

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EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF PEDESTRIAN PLAZAS AND STREETSCAPE IMPROVEMENTS

STATE OF GEORGIA
CITY OF SANDY SPRINGS

WHEREAS, THE CITY OF SANDY SPRINGS (the "City") desires to construct and maintain pedestrian plazas and streetscape improvements along a road known as Peachtree Dunwoody Road located in Fulton County, Georgia, and, in so doing, desires to encumber a certain portion of that certain tract of real property (the "ESA Land") known as Lot 18 of the 17th District of Fulton County, Georgia, that is currently owned by ESA P PORTFOLIO, LLC ("ESA"), successor by merger to ESA 2005 Portfolio LLC, successor-by-name-change to BRE/ESA 2005 Portfolio LLC, to allow for the construction of and permanent access to said pedestrian plazas. A legal description of the ESA Land is more particularly set forth in **Exhibit "A"**.

NOW THEREFORE, in consideration of the above recital, the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ESA does hereby grant to the City and its Permissive Parties (as defined below), the non-exclusive right to access that certain area (hereinafter referred to as the "Easement Area") depicted in **Exhibit "B"** (the "Easement Site Plans") as the "Permanent Easement Area" in order to construct and maintain those certain improvements described in those certain construction plans prepared by Lowe Engineers for the Perimeter CID, dated as of March 1, 2011 and labeled "Peachtree Dunwoody North Plazas" (the "Approved Construction Plans"). The Permanent Easement Area is more particularly described in **Exhibit "C"**. The said grant for access shall include (i) the right to construct any improvements as are set forth in the Approved Construction Plans and (ii) a grant for temporary access over and upon that area depicted in the same as the "Temporary Easement Area" for staging during the construction of the said improvements. The said grant of access over the Temporary Easement Area shall expire upon the completion of the said improvements described herein.

All rights granted hereunder are granted upon the following terms and conditions and those terms and conditions set forth in the Addendum attached hereto:

a) The City, and its contractors, agents, and employees (collectively, the "Permissive Parties"), in connection with their exercise of the rights and easements granted hereunder, (i) shall not encroach upon or damage any existing improvements, including without limitation any utility structures or facilities, located in the Easement Area or upon the ESA Land, and (ii) shall at all times use their best efforts to minimize disruption and inconvenience to ESA, and its guests, tenants, invitees, licensees, and customers.
b) All construction and maintenance work performed hereunder shall be performed at the sole expense of the City, strictly in accordance with the Easement Plans, in a good and workmanlike manner, and once commenced, diligently prosecuted to completion. The City shall cause the Easement Area to be promptly dressed, grassed and left in good, and clean condition upon completion of the work, and thereafter maintained in a neat and clean condition at all times. This duty to maintain shall include the weekly pick-up of trash from the trash receptacle that the City will install with its improvements. The City will clear any and all vegetation in the Easement Area, and under no circumstances is the City obligated to landscape outside of the grass in the Easement Area.
c) ESA reserves the right to approve any change in the Approved Construction Plans made after the Effective Date of this Agreement, in its reasonable discretion, prior to the consummation of any such change in the same.

In the event the City fails to perform any of its obligations hereunder, ESA may notify the City of such failure, and the City shall clean up or correct any defaults within a reasonable period of time.

ESA shall not require the City to pay any fee or charge for the easement rights herein granted to the City. The City shall cause liability insurance over the Easement Area to be maintained in a commercially reasonable form and amount at all times. This easement shall be binding on all the undersigned and the City and their respective successors and assigns, and shall be subject to all matters of record, including without limitation the following:

1.
2.

ESA explicitly reserved the right to use the Easement Area (i) for ingress and egress to and from adjacent properties and roadways, on or over driveways, roadways, or trails existing now or hereinafter, (ii) for the construction, maintenance, and use of landscapes, hard capes, trails, fences or walls (whether retaining or otherwise) or related items, and (iii) for any other purpose whatsoever not inconsistent with the rights hereby granted. Nothing contained herein shall preclude the Easement Area from being considered as part of and contiguous with the ESA Land for any reason whatsoever, including without limitation calculations for purposes of set-back requirements and density, or any other zoning or land use matters.

All Exhibits attached hereto shall be incorporated herein by this reference.

[Signature page Attached; Addendum to Follow Exhibits.]

The parties hereto have signed, sealed, and delivered this Agreement as of the dates indicated below. This Agreement shall have an effective date (the "Effective Date") of that date on which it is recorded in the public land records.

Signed, sealed and delivered
in the presence of:

Witness

ESA P Portfolio, LLC, a Delaware limited liability company

By: _____(SEAL)

Name: William D. Rahm

Title: VP + Secretary

Date: 11/18/11

Notary Public

SYLVIA MARY VELLINO
Notary Public - State of New York
No. 01VE6233888
Qualified in New York County
Commission Expires 01/03/2015

Signed, sealed and delivered
in the presence of:

Witness

THE CITY OF SANDY SPRINGS

By: _____(Seal)

Name: _____

Title: _____

Date: _____

Notary Public

By: _____(Seal)

Name: _____

Title: _____

Date: _____

Exhibit "A"

Legal Description of ESA Land
(Site # 9845)

ALL THAT TRACT OR PARCEL OF LAND, lying and being in Land Lots 18 and 19 of the 17th District, Fulton County, Georgia, and being mote particularly described as follows:

BEGINNING at the intersection of the western right-of-way line of Peachtree-Dunwoody Road (having a variable right-of-way width) with the southern right-of-way line of Crestline Parkway (having a variable right-of-way width), said Crestline Parkway right-of-way line being a curve joining said right-of-way lines of said roads, but not tangent with said Peachtree-Dunwoody Road right-of-way line); proceed thence along said Peachtree-Dunwoody Road right-of-way line South 04 degrees 23 minutes 59 seconds East a distance of 303.33 feet to an iron pin; thence South 89 degrees 45 minutes 15 seconds West a distance of 230.00 feet to an iron pin; thence North 24 degrees 21 minutes 32 seconds West a distance of 156.91 feet to a point; thence South 65 degrees 38 minutes 28 seconds West a distance of 14.50 feet to a point; thence North 24 degrees 21 minutes 32 seconds West a distance of 112.60 feet to a point; thence South 82 degrees 11 minutes 19 seconds West a distance of 15.13 feet to a point; thence North 24 degrees 21 minutes 32 seconds West a distance of 73.38 feet to a point located on the aforesaid Crestline Parkway right-of-way line; thence along said Crestline Parkway right-of-way line North 69 degrees 14 minutes 06 seconds East a distance of 7.41 feet to a point; thence continue along said Crestline Parkway right-of-way line North 82 degrees 11 minutes 19 seconds East a distance of 14.25 feet to a point; thence continue along said Crestline Parkway right-of-way line North 82 degrees 11 minutes 19 seconds East a distance of 84.91 feet to a point; thence continue along said Crestline Parkway right-of-way line South 85 degrees 45 minutes 40 seconds East a distance of 16.76 feet to an iron pin found; thence continue along said Crestline Parkway right-of-way line North 82 degrees 11 minutes 19 seconds East a distance of 124.70 feet to an iron pin found; thence continue along said Crestline Parkway right-of-way line and following a curve to the right having an arc distance of 111.81 feet, said curve having a radius of 115.00 feet and a chord of 107.46 feet bearing South 69 degrees 57 minutes 28 seconds East, to a point located on said Peachtree-Dunwoody Road western right-of-way line, said point being the POINT OF BEGINNING.

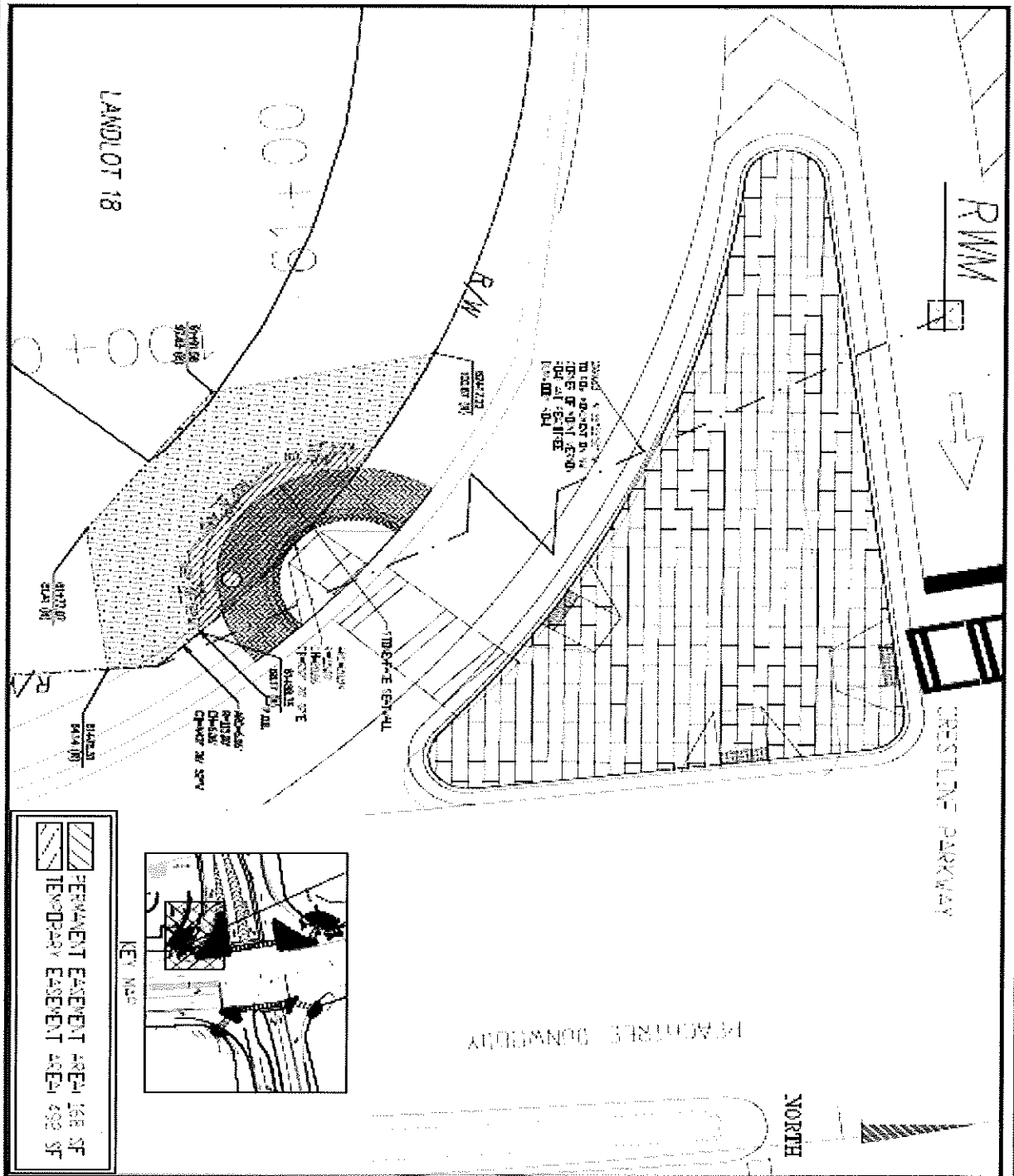

EXHIBIT B

LOWE ENGINEERS

SIX CONCOURSE PARKWAY
SUITE 1000
ATLANTA, GEORGIA 30328
TEL: 770-957-6400
FAX: 770-957-6401

EASEMENT SITE PLANS
PREPARED FOR
ATLANTA PERIMETER ASSOCIATES

DATE 09/22/11
SCALE 1" = 10'
PROJECT NO.
SHEET1

Exhibit "C"

Legal Description of Permanent Easement Area

Crestline SW→ Starting at bottom right point heading SW

All that tract or parcel of land lying and being in Land Lots 18 of the 17 district of Fulton County, Georgia, and more particularly described as follows:

Commence at a right of way monument found being located at the south westerly corner of the mitered right of way of the intersection of the westerly right of way of Peachtree Dunwoody Road and the northerly right of way of Mount Vernon Highway, thence run South 28° 55' 50" East a distance of 1769.63 feet to a point located on the westerly right of way of Peachtree Dunwoody Road; thence following the mitered right of way of the intersection of the westerly right of way of Peachtree Dunwoody Road and the southerly right of way of Crestline Parkway along a curve to the left an arc distance of 6.06 feet (said arc having a radius of 115.00 feet and being subtended by a chord 6.06 feet in length and bearing North 43° 36' 52" West) to a point; said point being the True Point of Beginning.

Thence from the True Point of Beginning as thus established, leave the right of way of the said miter of the intersection of the westerly right of way of Peachtree Dunwoody Road and the southerly right of way of Crestline Parkway South 82° 38' 32" West a distance of 9.92 feet to a point; thence run North 53° 01' 40" West a distance of 13.44 feet to a point; thence run North 11° 52' 23" West a distance of 11.06 feet to a point; said point located on the said miter of the intersection of the westerly right of way of Peachtree Dunwoody Road and the southerly right of way of Crestline Parkway; thence following the right of way of the said miter of the intersection of the westerly right of way of Peachtree Dunwoody Road and the southerly right of way of Crestline Parkway along a curve to the right an arc distance of 28.94 feet (said arc having a radius of 115.00 feet and being subtended by a chord 28.86 feet and bearing South 52° 20' 02" East) to a point; said point also being the True Point of Beginning.

Said tract contains 167 square feet.