



TO: John McDonough, City Manager

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

DATE: December 5, 2011 for Submission onto the Consent Agenda of the December 20, 2011 City Council Meeting

ITEM: Acceptance of a Permanent and Construction, Maintenance and Utility Easement from Hammond Center Joint Venture in connection with the Perimeter Community Improvement District's (PCID) Pedestrian Plazas' construction project on Peachtree-Dunwoody Road.

***Public Works Department's Recommendation:***

Staff recommends that the Mayor and City Council accept the Permanent and Construction, Maintenance and Utility Easement from Hammond Center Joint Venture in connection with the PCID's Pedestrian Plazas' construction project along Peachtree Dunwoody Road.

***Background:***

The subject property is located at the intersection of Hammond Drive and Peachtree-Dunwoody Road in the 18<sup>th</sup> Land Lot, 17<sup>th</sup> District. This donation will allow the City to perpetually maintain the pedestrian improvements and any utility functions that are to be paid for and constructed by the Perimeter Community Improvement District.

***Discussion:***

The attached exhibits include a site map showing the location and area of the property that was donated, the Permanent and Construction Maintenance and Utility Easement and a plat showing the specific location of the property as well.

***Alternatives:***

The Council could decide not to accept these easements and place burden of perpetual maintenance upon the PCID.

***Financial Impact:***

The easements are being donated and there is no financial impact to the City.

***Attachments:***

- I. Resolution
- II. Aerial map of site
- III. GIS map of site
- IV. Copy of Temporary Driveway Easements
- V. Plats

*Public  
Works*

STATE OF GEORGIA  
COUNTY OF FULTON

**A RESOLUTION TO ACCEPT THE DONATIONS OF A PERMANENT AND CONSTRUCTION, MAINTENANCE AND UTILITY EASEMENT 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

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

That the City of Sandy Springs Mayor and City Council approve the acceptance of the donation of a Permanent and Construction, Maintenance and Utility Easement from Hammond Center Joint Venture, in Land Lot 18, of the 17<sup>th</sup> District to in connection with the Perimeter Community Improvement District's Peachtree Dunwoody Road Pedestrian Plaza Construction Project.

**RESOLVED** this the 20<sup>th</sup> day of December, 2011.

Approved:

\_\_\_\_\_  
Eva Galambos, Mayor

Attest:

\_\_\_\_\_  
Michael Casey, City Clerk  
(Seal)

### Hammond Center Joint Venture Permanent Easement Donation PCID Pedestrian Plaza/Peachtree Dunwoody Road @ Hammond Drive Intersection



#### Legend

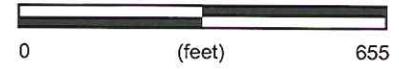
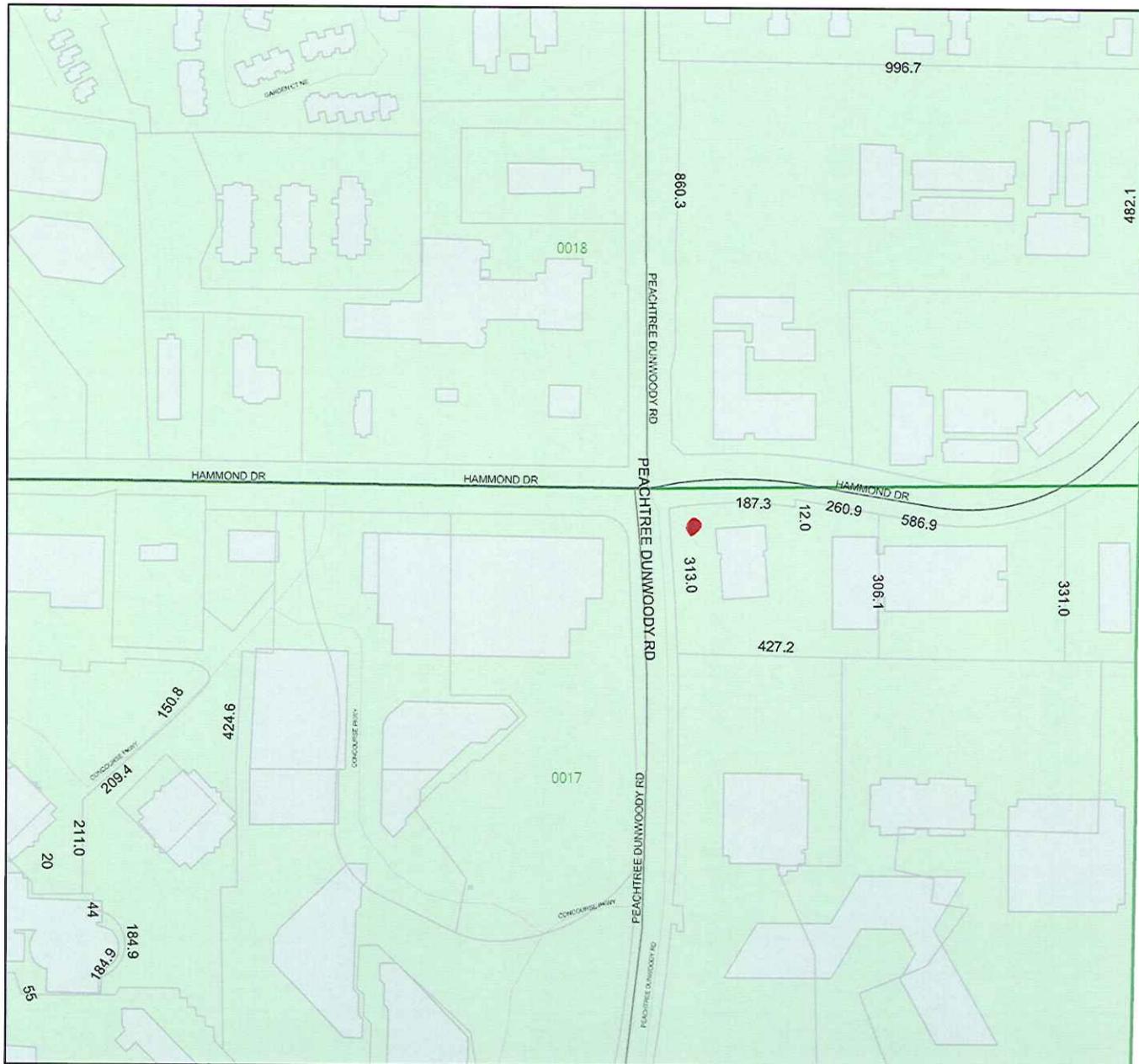
- Base Map
- City Limit
- City Hall
- Private School
- Major Road
- City Street
  - Public Street
  - Private Street
  - Private Drive
- Sandy Spring 2010 Address Point
- Building Footprint
- City Plats/Parcel
- FC Parcel Digest 2009
- Park
- Aerial 2010
  - Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3

#### Selections

1 17 0017 LL122

Map Printed On {2011-12-05 13:34}

This map has been compiled from the most accurate source data from Fulton County and the City of Sandy Springs. This map is for informational purposes only and is not to be interpreted as a legal document. The City assumes no legal responsibility for the information shown on this map. For inquiries please contact the City of Sandy Springs.




 Prepared by Fulton County Department of  
 Environment and Community Development  
 Support Services Division  
 Geographic Information System  
 Date: 01.23.45

Fulton County provides the data within this page for your personal use "as is".  
 The data is not guaranteed to be accurate, correct, or complete.



After Recording Please Return To:

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**PERMANENT AND CONSTRUCTION, MAINTENANCE AND UTILITY EASEMENT**

STATE OF GEORGIA

FULTON COUNTY

This Permanent and Construction, Maintenance and Utility Easement (this "Easement") is made and executed this 30 day of NOVEMBER, 2011.

WHEREAS, the Fulton Perimeter Community Improvements District and the City of Sandy Springs, Fulton County, Georgia desire to construct and maintain pedestrian plazas on Peachtree Dunwoody Road;

NOW, THEREFORE, for value received, HAMMOND CENTER JOINT VENTURE ("Hammond Center") does hereby grant to The City of Sandy Springs (the "City") temporary and permanent, non-exclusive easements for the purpose of construction and maintenance over and upon that certain real property abutting on and adjacent to the rights of way of Peachtree Dunwoody Road and Hammond Drive and lying and being in Land Lot 18 of the 17<sup>th</sup> District, City of Sandy Springs, Fulton County, Georgia, consisting of a total of 573 square feet as shown crosshatched on a plat (the "Plat") dated 9/28/11, attached as Exhibit "A" hereto and hereby made a part hereof (the "Easement Area"), in such manner as said municipality may reasonably deem proper to support or accommodate the improvement of said road, including the permanent right to construct and maintain any utilities, relocated or added, within the Easement Area together with all rights and privileges necessary or convenient for the full enjoyment or use of said Easement Area for the purpose of making repairs, renewals, alterations and extensions thereon, thereto or therefrom; together with the right to cut away and keep clear of said utilities all trees and other obstructions that may now or hereafter in any reasonable way interfere or be likely to interfere with said utilities.

This Easement is granted on the condition that the City maintains said Easement Area, and upon the following terms and conditions:

(a) The City and its contractors, agents, and employees, 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 on any adjacent real property owned by Hammond Center, and (ii) shall at all times use their best efforts to minimize disruption and inconvenience to Hammond Center, 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 (a copy of which has been provided to Hammond Center), in a good and workmanlike manner, and once commenced, diligently prosecuted to completion. Upon completion of such work, the City shall cause the Easement Area to be promptly dressed, grassed, and left in good and clean condition, and thereafter maintained in a neat and clean condition at all times. The City shall cause liability insurance to be maintained in a commercially reasonable form and amount at all times. In the event the City fails to perform any of its obligations hereunder, Hammond Center may notify the City of such failure, and the City shall clean up or correct any defaults within a reasonable period of time.

(c) The construction easement herein granted is temporary, and such easement shall terminate upon the earlier to occur of (i) the date the construction work as set forth in the Easement Plans is completed, or (ii) six (6) months from the date of this Easement.

(d) The construction easement herein granted encompasses that portion of the Easement Area as shown on Exhibit "A" consisting of 375 square feet. Upon the termination of the construction easement as provided in (c) above, the City shall have a permanent easement on that portion of the Easement Area consisting of 198 square feet as described by metes and bounds in Exhibit "B" and as shown on the Plat attached hereto as Exhibit "A" and identified as the "Proposed ROW". The permanent easement herein granted shall be for the purpose of allowing the City to maintain, repair, alter, improve and replace the improvements and utilities as constructed and installed pursuant to the terms hereof.

(e) The City herein agrees that it will not construct, or allow to be constructed, within the Easement Area any structure or improvement that would interfere with Hammond Center's line of sight across the Easement Area, it being presumed that any structure or improvement higher than six (6) feet would be in violation of this covenant.

Hammond Center hereby conveys and relinquishes to the City all rights of vehicular access through the Easement Area as shown on the Plat, provided that nothing herein shall affect the rights of Hammond Center or any other parties to go under, through or over said Easement Area to have access to any utilities that may be or are already in place in the Easement Area. Hammond Center explicitly reserves 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, hardscapes,

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 within this Easement shall preclude the Easement Area from being considered as part of and contiguous with Hammond Center adjacent real property for any reason whatsoever, including without limitation calculations for purposes of set-back requirements and density, or any other zoning or land use matters.

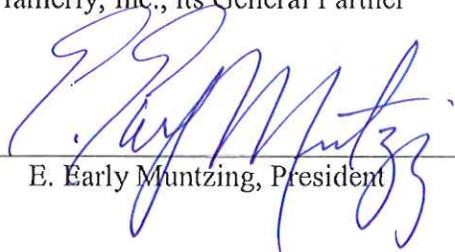
Hammond Center does hereby warrant that it has the right to convey the easements herein granted, and that it has the right to bind itself and its successors and assigns, said conveyance being subject to all matters of record.

The parties hereto have executed this Easement under seal as of the date first appearing above.

HAMMOND CENTER JOINT VENTURE

By: MSG Associates, L.P., Joint Venturer and  
Managing General Partner

By: Hamerly, Inc., its General Partner

By:  (SEAL)  
E. Early Muntzing, President

Signed, sealed and delivered  
in the presence of:

  
Unofficial Witness

  
Notary Public

My Commission Expires: Aug 22, 2014



**EXHIBIT "A"**

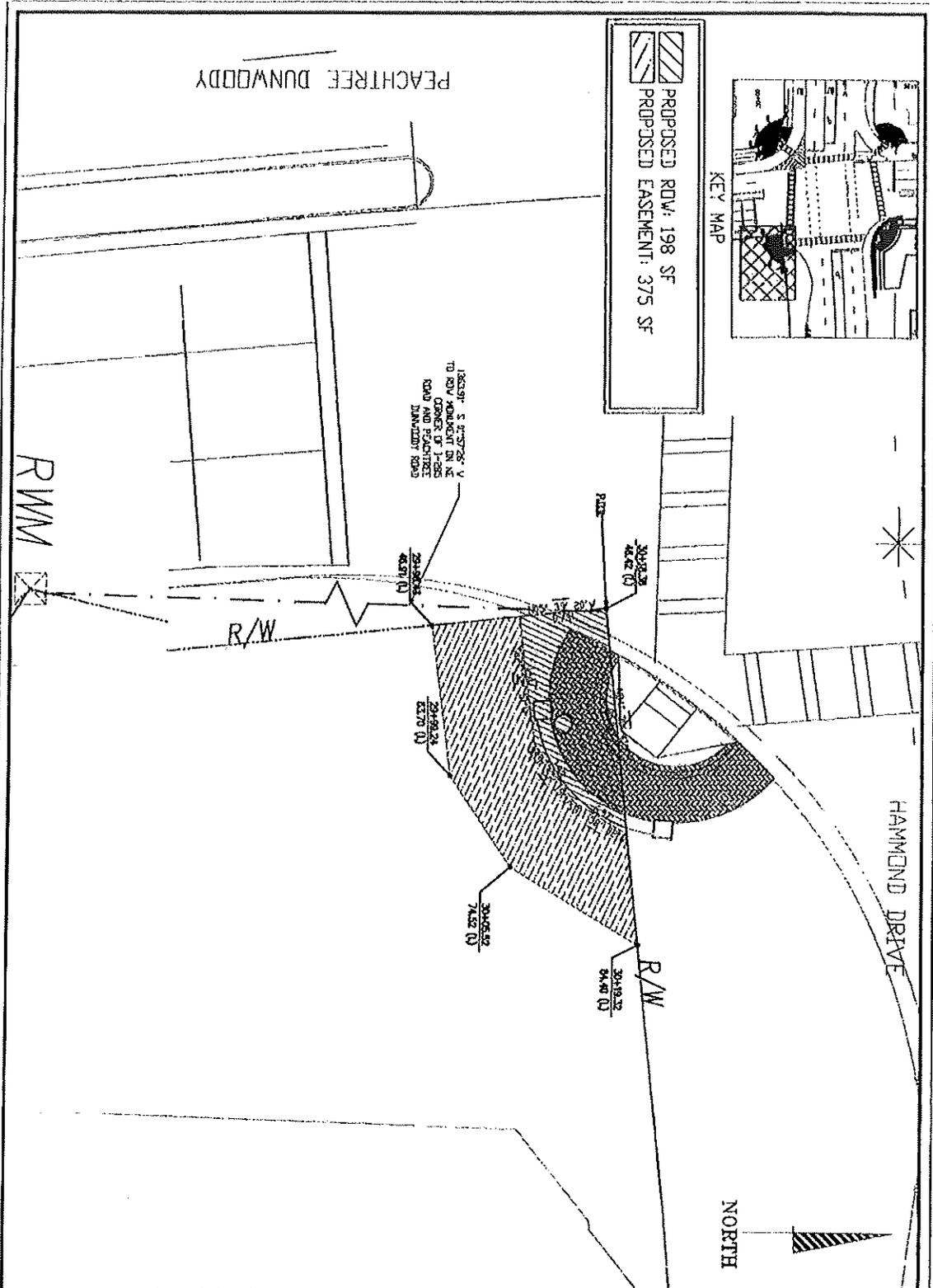


EXHIBIT A

**LOWE**  
ENGINEERS

616 CONNORVILLE PARKWAY  
SUITE 1000  
ATLANTA, GEORGIA 30328  
TEL: 770-857-8400  
FAX: 770-857-8401

R/W EXHIBIT  
PREPARED FOR  
HAMMOND CENTER JOINT VENTURE

DATE: 09/28/11

SCALE: 1" = 10'

PROJECT NO.

SHEET

EXHIBIT "B"

**Hammond SE →**

All that tract or parcel of land lying and being in Land Lot 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 north westerly corner of the mitered right of way of the intersection of the easterly right of way of Peachtree Dunwoody Road and the northerly right of way of Interstate-285 Exit Ramp, thence run North  $1^{\circ} 57' 26''$  East, 1363.91 feet to a point; said point being the True Point of Beginning.

Thence from the True Point of Beginning as thus established, run North  $84^{\circ} 30' 41''$  East a distance of 25.40 feet to a point; thence run South  $31^{\circ} 58' 32''$  West a distance of 6.97 feet to a point; thence run South  $55^{\circ} 57' 15''$  West a distance of 7.93 feet to a point; thence run South  $82^{\circ} 52' 51''$  West a distance of 14.17 feet; thence run North  $05^{\circ} 39' 20''$  West a distance of 9.73 feet to a point; said point also being the True Point of Beginning.

Said tract contains 198 square feet.

Record and Return To:

John Hancock Life Insurance Company (U.S.A.)  
197 Clarendon Street  
Boston, Massachusetts 02116  
Attention: Real Estate Law Division, C-3

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SPACE ABOVE LINE FOR RECORDER'S USE

Loan No. 526471:11

CONSENT AND SUBORDINATION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That

For good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.) ("Lender"), a Michigan corporation, having an address in Boston, Suffolk County, Massachusetts, hereby consents to a Permanent and Construction, Maintenance and Utility Easement Agreement for the exclusive purposes given by Hammond Center Joint Venture, a Georgia joint venture, Grantor, to the City of Sandy Springs, Grantee, its successors and assigns, upon, across, over and/or under the property situated in City of Sandy Springs, Fulton County, State of Georgia, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof ("Easement"), which Easement is to be recorded in the Official Records of Fulton County, State of Georgia (the "Recorder's Office").

Said Lender hereby subordinates to the aforesaid Easement the lien of that certain Deed to Secure Debt, Assignment of Leases and Rents and Security Agreement executed by Grantor to Lender dated as of June 30, 2010, recorded in the Recorder's Office on July 2, 2010, as Instrument No. 2010-0269223, in Book 49151, Page 468.

This consent shall in no way affect or impair the rights of the undersigned, its legal representatives, successors or assigns, to hold, foreclose or sell under said lien or liens, in any manner prescribed by contract or law, all of the lands, hereditaments, appurtenances and estates therein, save and except the rights, titles, estates and privileges of the said Grantee under said Easement; and any renewals or extensions of said lien or liens and any foreclosures or sales of said lands or any part thereof under the aforesaid liens, shall expressly except and be subject to the said Easement and Grantee's rights thereunder.

Grantee shall, at all times, have the right of full and free ingress to and egress from said property for all purposes provided in said Easement.

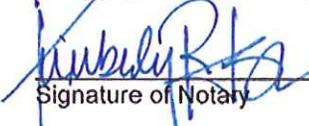
The rights, conditions and provisions of this consent and subordination shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

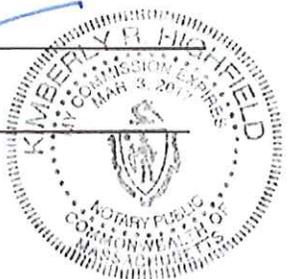
IN WITNESS WHEREOF, the said JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.) has caused its corporate seal to be hereto affixed, and these presents to be subscribed by Mark J. McDevitt, one of its Investment Officers, this 20<sup>th</sup> day of November, 2011.

Signed, Sealed and Delivered in the Presence of:  _____ Witness	JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.) By: <u>Mark J. McDevitt</u> Name: <u>mark j. mcdevitt</u> Title: <u>AVP/Sr. Inv. Officer</u>
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COMMONWEALTH OF MASSACHUSETTS )  
 ) ss.  
 COUNTY OF SUFFOLK )

On this 20<sup>th</sup> day of November, 2011, before me, the undersigned Notary Public, personally appeared Mark J. McDevitt, personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s) as AVP/Sr. Investment Officer for John Hancock Life Insurance Company (U.S.A.).

  
 \_\_\_\_\_  
 Signature of Notary  
 My commission expires: \_\_\_\_\_



(Seal)



EXHIBIT "B"

Hammond SE →

All that tract or parcel of land lying and being in Land Lot 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 north westerly corner of the mitered right of way of the intersection of the easterly right of way of Peachtree Dunwoody Road and the northerly right of way of Interstate-285 Exit Ramp, thence run North  $1^{\circ} 57' 26''$  East, 1363.91 feet to a point; said point being the True Point of Beginning.

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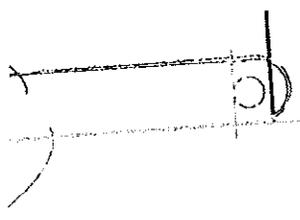
Said tract contains 198 square feet.

LT

PEACHTREE DUNWOODY

+25.63  
35.88' LT.  
R = 21' + 28.40

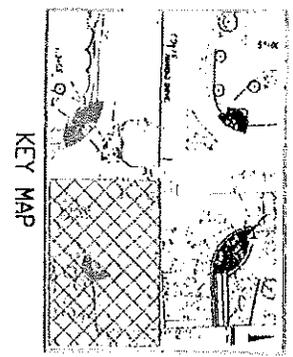
SO. 7  
R = 4'



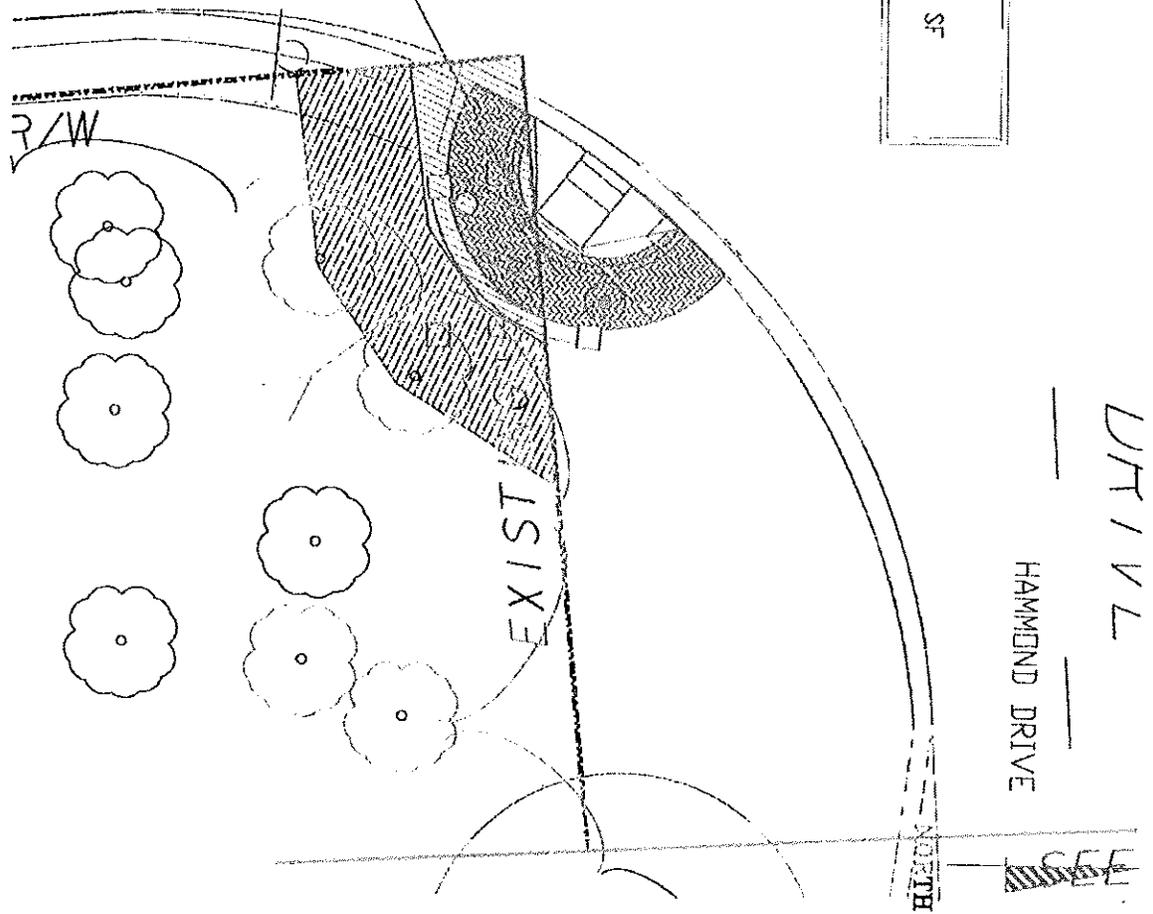
CURVE (4)

88.22

STRAIN  
POLE  
+10.00  
57.00' RT



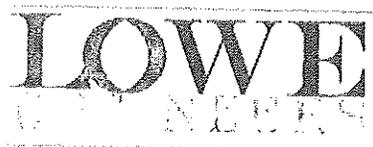
PROPOSED ROW: 205 SF  
PROPOSED EASEMENT: 380 SF



LIT / VL

HAMMOND DRIVE

NORTH



615 CONCOURSE PARKWAY  
SUITE 5000  
ATLANTA, GEORGIA 30328  
TEL: 770-857-8430  
FAX: 770-857-8401

HAMMOND  
PREPARED FOR  
PERIMETER CID

DATE FEB. 2, 2011  
SCALE 1" = 10'  
PROJECT NO.  
SHEET

**EXHIBIT A**

**(copy of Easement attached hereto)**