



Angela D. Robinson
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Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

September 25, 2019

Via Hand Delivery

Scott A. Cochran
Attorney
Cochran & Edwards
2950 Atlanta Road SE
Smyrna GA 30080-3655

Re: **Right of Entry Agreement – Windy Hill Joint Venture – Parcel 8 of City of
Smyrna Roundabout Project known as 1469.05**

Dear Scott:

Enclosed please find two originals of the Right of Entry Agreement executed by Newburger-Andes & Co., Administrator of Windy Hill Joint Venture.

Please have the City execute the two originals in the presence of a Witness and Notary Public (signature page found on Page 10).

Please e-mail me a copy of the fully executed originals and forward one (1) fully executed original to my attention as follows:

Angela Robinson
Parker Poe Adams & Bernstein LLP
1180 Peachtree Street NE, Suite 3300
Atlanta, Georgia 30309

Sincerely,

A blue ink handwritten signature of Angela D. Robinson, consisting of a series of loops and a long horizontal stroke.

Angela D. Robinson

ADR
Enclosures

SMYRNA, GEORGIA
RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this “**Agreement**”) is made and entered into this 25th day of September, 2019, by and between **NEWBURGER-ANDES & CO., ADMINISTRATOR OF WINDY HILL JOINT VENTURE** (“Property Owner”) and **CITY OF SMYRNA, GEORGIA** (“Smyrna”).

W I T N E S S E T H:

WHEREAS, Property Owner is the owner of the fee simple title to land lying in Land Lot 633 of the 17th Land District, 2nd Section, City of Smyrna, Cobb County, Georgia, and being multiple lots of the Windy Hill Industrial Park (the “**Property**”); and

WHEREAS, a portion of the Property is identified as Parcel 8 of the City of Smyrna Roundabout Project, known as Project Number 1469.05 (the “**Project**”); and

WHEREAS, in order to expedite the improvements the Project, Smyrna has requested the right to enter upon the following portions of the Property lying in Land Lot 633 of the 17th Land District, 2nd Section, City of Smyrna, Cobb County, Georgia identified, described and depicted on the Right of Way Plans for the Project, Drawing No. 60-008, prepared by Croy Engineering attached hereto as Exhibit “A” and incorporated herein by this reference:

Required Right of Way Area 1 consisting of 2849 square feet or 0.065 acres of land, more or less, and shown colored yellow on Exhibit “A” and Required Right of Way Area 2 consisting of 1170 square feet or 0.027 acres of land, more or less. Said Required Right of Way Areas 1 and 2 are more particularly described on Exhibit “B” attached hereto and incorporated herein by this reference and are shown colored yellow on Exhibit “A” (Required Right of Way Areas 1 and 2 collectively referred to herein as the “**Right of Way Areas**”);

Required Permanent Easement Area 3 consisting of 299 square feet or 0.007 acres of land, more or less. Said Required Permanent Easement Area 3 is more particularly described on Exhibit “C” attached hereto and incorporated herein by this reference and is shown colored orange with linear hatching on Exhibit “A” (the “**Permanent Easement Area**”);

Required Temporary Construction Easement Area 4 consisting of 2112 square feet or 0.048 acres of land, more or less, and Required Temporary Construction Easement Area 5 consisting of 2100 square feet or 0.048 acres of land, more or less. Said Required Temporary Construction Easement Areas 4 and 5 are more particularly described on Exhibit “D” attached hereto and incorporated herein by this reference and are shown colored green with linear dashed hatching on Exhibit “A” (Required Temporary Construction Easement Areas 4 and 5 collectively referred to herein as the “**Temporary Construction Easement Areas**”);

Required Temporary Driveway Easement Area 6 consisting of 2620 square feet or 0.060 acres, more or less, and Required Temporary Driveway Easement Area 7 consisting of 2089 square feet or 0.048 acres, more or less. Said Required Temporary Driveway Easement Areas 6 and 7 are more particularly described on Exhibit "E" attached hereto and incorporated herein by this reference and are shown colored pink with cross-hatching on Exhibit "A" (Required Temporary Driveway Easement Areas 6 and 7 collectively referred to herein as the "Temporary Driveway Easement Areas").

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **Grant of Rights**. Property Owner grants to Smyrna and its agents, employees, representatives, servants, invitees, contractors, subcontractors, and their respective agents, employees, representatives, servants and invitees (collectively the "Accessing Parties") a non-exclusive right to go over, under, upon, across and through the Right of Way Areas to construct certain road improvements within the Right of Way Areas as shown on Exhibit "A."

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Permanent Easement Area for the purpose of executing certain construction within said Permanent Easement Area to support or accommodate the improvement of the adjacent Right of Way as shown on Exhibit "A," including the right to install a drainage structure within said Permanent Easement Area subject to the following conditions:

Property Owner, its tenants and their employees, customers and invitees shall have the concurrent right to use the Permanent Easement Area.

The Permanent Easement Area shall not be utilized for the storage of machinery, apparatus, equipment or vehicles except as necessary for construction activities occurring within said Permanent Easement Area. Any permissible storage of such items will be at the sole risk of the Accessing Parties and the Property Owner shall not be responsible for any loss or damage occurring to such items during storage.

Upon completion of construction activities within the Permanent Easement Area, Smyrna shall cause, at its sole cost and expense, the Permanent Easement Area to be restored to as near possible its original condition and contour that existed prior to the commencement of the construction activities within said Permanent Easement Area; provided, however, that any drainage structure and related facilities constructed within said Permanent Easement Area shall remain in place.

If any improvements located within the Permanent Easement Area are damaged or disturbed by the Accessing Parties' presence on or activities within said Permanent Easement Area, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of the improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Permanent Easement Area.

Any disturbed soil within the Permanent Easement Area shall be covered with permanent grassing upon completion of construction activities within said Permanent Easement Area, at Smyrna's sole cost and expense.

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Temporary Construction Easement Areas for the purpose of executing certain construction within said Temporary Construction Easement Areas to support or accommodate the improvement of the adjacent Right of Way as shown on Exhibit "A," including the right to construct any required slopes within said Temporary Construction Easement Areas as shown on Exhibit "A," subject to the following conditions:

Property Owner, its tenants and their employees, customers and invitees shall have the concurrent right to use the Temporary Construction Easement Areas.

The parking areas lying within the Temporary Construction Easement Areas shall not be physically disturbed by the Accessing Parties presence or construction activities within said Temporary Construction Easement Areas.

The Temporary Construction Easement Areas shall not be utilized for the storage of machinery, apparatus, equipment or vehicles, except as necessary for construction activities occurring within said Temporary Construction Easement Areas. Any permissible storage of such items will be at the sole risk of the Accessing Parties and the Property Owner shall not be responsible for any loss or damage occurring to such items during storage. Notwithstanding anything contained herein to the contrary, Smyrna shall not store machinery, apparatus, equipment or vehicles within the portions of Temporary Construction Easement Areas that lie within the internal curb line/parking area of the Property.

Upon completion of construction activities within the Temporary Construction Easement Areas, Smyrna shall cause, at its sole cost and expense, the Temporary Construction Easement Areas to be restored to as near possible their original condition and contour that existed prior to the commencement of the construction activities within said Temporary Construction Easement Areas; provided, however, that any required slopes constructed within said Temporary Construction Easement Areas shall remain in place.

If any improvements located within the Temporary Construction Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said Temporary Construction Easement Areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of such improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Temporary Construction Easement Areas.

Any disturbed soil within the Temporary Construction Easement Areas shall be covered with permanent grassing upon completion of construction activities within said Temporary Construction Easement Areas, at Smyrna's sole cost and expense.

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Temporary Driveway Easement Areas the purpose of constructing/reconstructing the two existing driveways within said Temporary Driveway Easement Areas as shown on Exhibit "A," subject to the following conditions:

The Accessing Parties shall schedule their construction activities so that at least one (1) of the two (2) driveways lying within the Temporary Driveway Easement Areas remains completely open at all times. While performing work within the Temporary Driveway Easement Areas, the Accessing Parties shall maintain reasonable access, ingress to and egress from the Subject Property via the driveways lying within said Temporary Driveway Easement Areas.

The Temporary Driveway Easement Areas shall not be utilized for storage of machinery, apparatus, equipment or vehicles.

Upon completion of construction activities within the Temporary Driveway Easement Areas, Smyrna shall cause, at its sole cost and expense, the Temporary Driveway Easement Areas to be restored to as near possible their original condition and contour that existed prior to the commencement of the construction activities within said Temporary Driveway Easement Areas.

If any improvements located within the Temporary Driveway Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said Temporary Driveway Easement Areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of such improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Temporary Driveway Easement Areas.

Any disturbed soil within the Temporary Construction Easement Areas shall be covered with permanent grassing upon completion of construction activities within said Temporary Driveway Easement Areas, at Smyrna's sole cost and expense.

At all times while accessing the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, the Accessing Parties shall use their best efforts to avoid interfering with the access to, use, occupancy and enjoyment of the Property lying outside of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas by Property Owner, its tenants and their employees, customers and invitees.

If the Property or any improvements to the Property outside of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of the Property or improvements to the condition and contour that existed immediately prior to such damage or disturbance.

Smyrna's restoration obligations shall survive the expiration of this Agreement.

2. **Expenses.** All costs of the activities performed within the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas shall be borne by persons other than Property Owner. The provisions of this Section 2 shall survive the expiration of this Agreement.

3. **No Transfer of Title or Grant of Any Interest in the Property; No Waiver.** The granting of rights under this Agreement does not transfer title to or grant any interest in the Property and does not in any way constitute a waiver of any rights of Property Owner under the Constitution, statutes, or rules and regulations relating to eminent domain and such rights are expressly reserved. This Agreement in no way affects future negotiations between Property Owner and Smyrna and/or Property Owner's legal rights to receive payment of compensation from Smyrna for the acquisition/taking of the required property interests in the Property including, without limitation, the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, and consequential damages to the remaining Property, if any, arising from the acquisition/taking of such property interests. Property Owner and Smyrna agree that the date of valuation for determining the compensation due for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any, shall either be the Effective Date of this Agreement, as defined below in Section 7, or the actual date of Smyrna's acquisition/taking of the required property interests, whether by deed or condemnation proceedings, with the determination of the date of valuation to be made by Property Owner in its sole discretion. The provisions of this Section 3 shall survive the expiration of this Agreement.

4. **Release.** Property Owner makes no representations or warranty of the fitness of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, and Smyrna, as well as its agents, employees, representatives, servants, invitees, contractors, subcontractors, and anyone else related to affiliated whom access the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas hereby expressly assume the entire risk of all activities within said areas. Specifically, to the maximum extent permitted by law, Smyrna, for itself and its successors, assigns, agents, representatives, counsel, employees, directors, officers, and anyone else related to or affiliated with it (collectively the 'Releasing Parties'), hereby holds harmless, releases and fully discharges Property Owner, including but not limited to all current individual owners/investors of the Property and/or Windy Hill Joint Venture and their successors and assigns, and Property Owner's parents, affiliates, subsidiaries, and any of its respective partners, directors, officers, employees, agents, counsels, representatives, successors and assigns (collectively the "Released Group") from any and all claims, causes of actions, settlements, liabilities, demands, damages, losses and expenses (including, without limitation, attorneys' fees and court costs) of any kind, which the Releasing Parties may have or incur for, from or relating to any accident, damage, or injury (including, without limitations, death) to any person or property of the Releasing Parties sustained or incurred in connection with any of the Releasing Parties' presence or actions or omissions on the Property, including the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas. The foregoing release shall apply regardless of whether such accident, damage, or injury is caused by or attributable to (in whole or in part) the negligent acts or omissions, strict liability, products liability, any condition or defect in or on the Property or any improvements thereon, or any other fault or responsibility of

any member of the Released Group, but shall not cover that portion of any claim which may arise due to the willful misconduct of a member of the Released Group. The foregoing release provisions shall survive the expiration of this Agreement.

5. **Insurance.** Smyrna shall cause its contractors to maintain the following insurance policies at all times when it is accessing the Property to accommodate the construction of the Project: (a) occurrence based commercial general liability insurance with coverages of not less than \$1,000,000 per accident or occurrence for bodily injury, including death, or property damage, and \$1,000,000 in aggregate limits; (b) occurrence based commercial automobile insurance with minimum limits of \$500,000 combined single limit coverage for property damage and bodily injury, including death, and coverage for owned, leased, and non-owned vehicles; (c) worker's compensation and employers liability insurance for its respective employees in accordance with the laws of the State of Georgia to pay compensation to any employees accessing the Property; and (d) occurrence based umbrella liability insurance in excess of the coverages in clauses (a) and (b) above, with limits of at least \$2,000,000.00 and that follow the applicable underlying limits. Smyrna shall provide proof of the foregoing insurance policies to Property Owner by e-mailing a copy of such proof to Property Owner's counsel, Angela Robinson, at angelarobinson@parkerpoe.com. The foregoing insurance obligations shall survive the expiration of this Agreement.

6. **Onsite Meeting.** If requested by Property Owner, an onsite construction meeting shall occur between representatives of Croy Engineering, Smyrna's general contractor(s) and Property Owner. If so requested, Smyrna shall coordinate the scheduling of the onsite construction meeting through Property Owner's Counsel, Angela Robinson, who can be contacted by e-mail (angelarobinson@parkerpoe.com) or phone (404-665-1228).

7. **Term.** This Agreement shall be effective as of the day and year first above written (hereinafter the "Effective Date") and shall expire at 11:59 p.m. on December 31, 2020 or until such date that Property Owner executes a deed conveying to Smyrna the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas, if still needed, and Temporary Driveway Easement Areas, if still needed, or until such date that Smyrna acquires title to the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas, if still needed, and Temporary Driveway Easement Areas, if still needed, by filing condemnation proceedings, whichever occurs first (the "Term"), unless Property Owner and Smyrna agree in writing to extend the term of this Agreement, which said agreement may be withheld in the sole discretion of Property Owner.

If it is determined upon the expiration of this Agreement that Smyrna does not need to acquire temporary easement interests in the Temporary Construction Easement Areas and/or the Temporary Driveway Easement Areas, Property Owner shall be entitled to receive compensation for Smyrna's use of the Temporary Construction Easement Areas for the Term of this Agreement, as extended, and consequential damages arising from Smyrna's use of said Temporary Construction Easement Areas and Temporary Driveway Easement Areas, if any

If it is determined upon the expiration of this Agreement that Smyrna does need to acquire temporary easement interests in the Temporary Construction Easement Areas and/or Temporary Driveway Easement Areas, Property Owner shall be entitled to receive compensation for Smyrna's use of the Temporary Construction Easement Areas from the Effective Date of this Agreement through the to be determined expiration date of said temporary easement interests, and consequential damages arising from Smyrna's use of said Temporary Construction Easement Areas and Temporary Driveway Easement Areas, if any, from the Effective Date of this Agreement through the to be determined expiration date of said temporary easement interests.

8. **Deposit.** Within thirty (30) business days following the Effective Date of this Agreement, Smyrna shall deliver to Property Owner, in immediately available funds, the sum of Ten Thousand and No/100 (\$10,000.00) representing an advance deposit (the "Deposit") for the compensation to be paid by Smyrna for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any arising from the acquisition/taking of such property interests. Property Owner's counsel will provide Smyrna with wiring instructions for delivery of the Deposit, which Deposit shall be made immediately available to Property Owner. Upon the final determination of the amount of compensation for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any, arising from the acquisition/taking of such property interests (the "Final Compensation Amount"), the Deposit shall be credited against the Final Compensation Amount in favor of Smyrna.

9. **Binding Effect.** This Agreement shall be binding upon and enforceable against, and shall be for the benefit of, the parties of this Agreement and their respective heirs, legal representatives, successors and assigns.

10. **Non-Assignability.** This Agreement may not be assigned without first obtaining the prior written approval of the non-assigning parties, which may be withheld in the sole discretion of the non-assigning parties.

11. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters described in this Agreement.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Signatures transmitted electronically (e.g. by facsimile or e-mail in pdf. format or similar format or by e-signature) shall be binding as original signatures.

13. **Authority.** The parties warrant and represent one to the other that they have full power and authority to enter into this Agreement. By their execution below, each of the representatives of the parties hereto represents to the other parties that he/she has the right and authority to execute this Agreement on behalf of such party. Without limiting the generality of the foregoing, Newburger-Andes & Co. hereto represents to Smyrna that it has the full right, power and authority to execute this Agreement on behalf of Windy Hill Joint Venture and the individual owners/investors of Windy Hill Joint Venture.

14. **Governing Law.** This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Georgia, and those laws shall control in the event of any conflict of laws.

15. **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and shall be construed to be a part of this Agreement by such reference or other mention at each point in which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time such terms are used.

16. **Headings.** The headings of this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of the provisions of this Agreement or any part of this Agreement.

17. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held void, invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held void, invalid or unenforceable, shall not be affected thereby, and each and every term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law as if the void, invalid or unenforceable term or provision of this Agreement had not been part of this Agreement.

18. **Construction.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

IN WITNESS WHEREOF, this Agreement is signed and sealed as of the Effective Date.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGES]

Signed, sealed and delivered
in the presence of:

**NEWBURGER-ANDES & CO.,
ADMINISTRATOR OF WINDY HILL
JOINT VENTURE**



Unofficial Witness



Notary Public

By: (Seal)
Name: Jerry Andes
Title: President

By: (Seal)
Name: David Andes
Title: Chief Investment Officer



[NOTARY SEAL]

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



Signed, sealed and delivered
in the presence of:

CITY OF SMYRNA, GEORGIA

Unofficial Witness

By: _____ (Seal)

Name: A. Max Bacon

Title: Mayor

Notary Public

Attest: _____

Name: Terri Graham

Title: City Clerk

[NOTARY SEAL]

Approved as to form:

Name: Scott Cochran
Title: City Attorney

EXHIBIT "A"

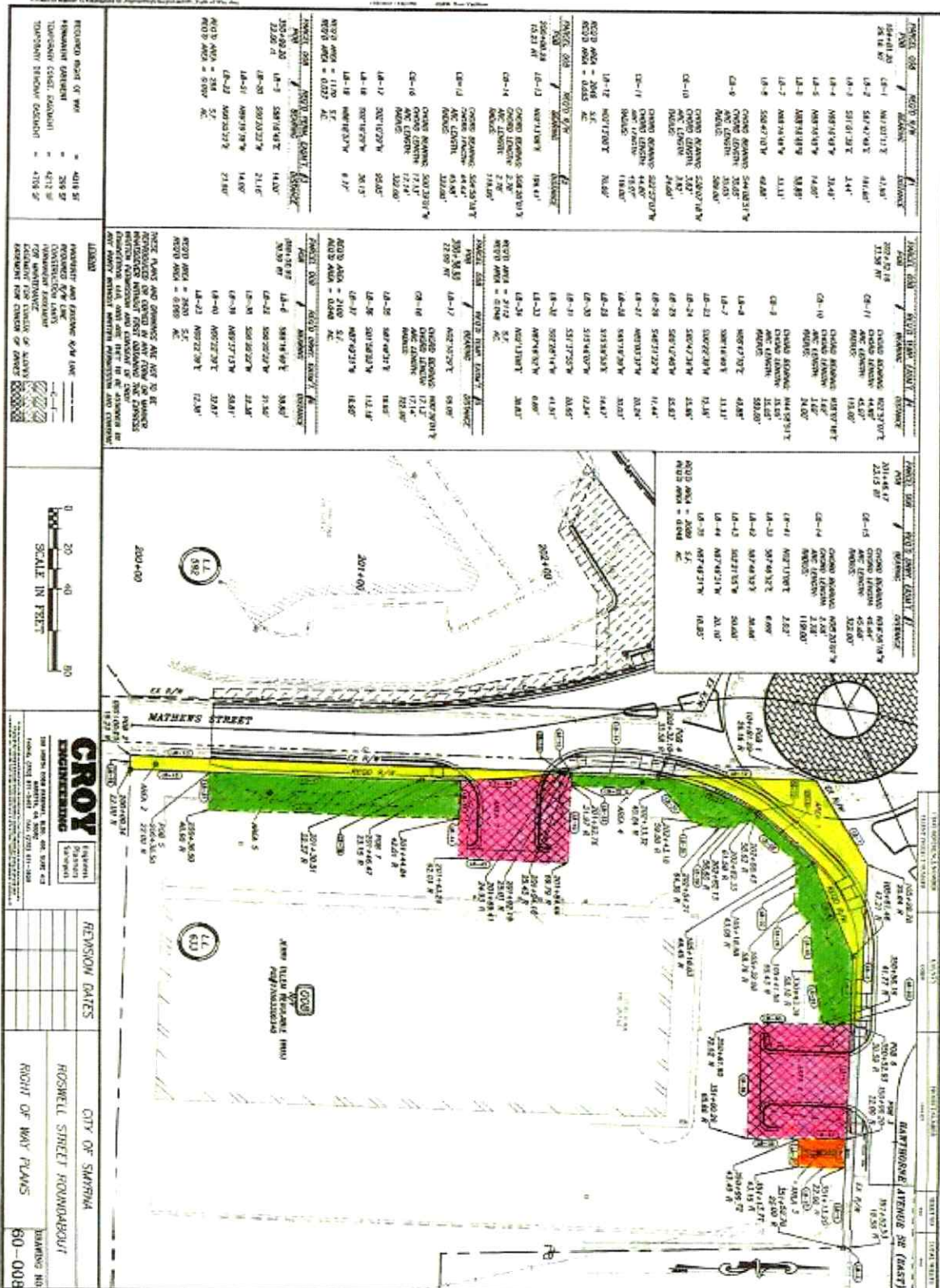


EXHIBIT "B"

Required Right of Way Area 1

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue SE East; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING northeasterly along said right-of-way miter on a bearing of North 61 degrees 03 minutes 11 seconds East for a distance of 47.90 feet to a point along the southerly Right-of-Way of Hawthorne Avenue SE East;

THENCE, easterly along said Right-of-Way of Hawthorne Avenue; and on a bearing of South 87 degrees 47 minutes 49 seconds East for a distance of 191.60 feet to a point at the common property corner of Jerry Tillman Revocable Trust;

THENCE, southerly and leaving said Right-of-Way and following along said common property line; on a bearing of

South 01 degrees 01 minutes 39 seconds East for a distance of 3.44 feet to a point;

THENCE, westerly and leaving said property line; and on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 39.49 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 14.00 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 58.80 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 33.33 feet to a point;

THENCE, southwesterly on a bearing of South 68 degrees 47 minutes 10 seconds West for a distance of 49.88 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 35.05 feet and having a radius of 589.00 feet and being subtended by a chord on a bearing of South 44 degrees 08 minutes 51 seconds West for a distance of 35.05 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 3.62 feet and having a radius of 24.00 feet and being subtended by a chord on a bearing of South 38 degrees 07 minutes 18 seconds West for a distance of 3.62 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 45.07 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 22 degrees 57 minutes 07 seconds West for a distance of 44.80 feet to a point along the easterly Right-of-Way of Mathews Street;

THENCE, northerly along the easterly Right-of-Way of Mathews Street on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 70.60 feet to the POINT OF BEGINNING.

The herein described area of land (Area #1) is **2849 Square Feet** or 0.065 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Right of Way Area 2

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue SE East; THENCE on a bearing of South 02 degrees 13 minutes 08 seconds East for a distance of 111.45 feet to a point; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING and southeasterly leaving the existing Right-of-Way of Mathews Street on a curve to the right with an arc distance of 2.78 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 08 degrees 20 minutes 01 seconds East for a distance of 2.78 feet to a point;

THENCE, southeasterly on a curve to the right with an arc distance of 45.68 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 04 degrees 56 minutes 18 seconds East for a distance of 45.64 feet to a point;

THENCE, southeasterly on a curve to the right with an arc distance of 17.14 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 00 degrees 39 minutes 01 seconds West for a distance of 17.13 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 10 minutes 29 seconds West for a distance of 95.05 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 10 minutes 29 seconds West for a distance of 36.15 feet to a point along the common property line with Jerry Tillem Revocable Trust;

THENCE, westerly and continuing along said common property line; on a bearing of North 88 degrees 18 minutes 57 seconds West for a distance of 6.77 feet to a point along the easterly Right-of-Way of Mathews Street;

THENCE, northerly along said Right-of-Way of Mathews Street on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 196.41 feet to the POINT OF BEGINNING.

The herein described area of land (Area #2) is **1170 Square Feet** or 0.027 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "C"

Required Permanent Easement Area 3

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue; THENCE, northeasterly along said right-of-way miter on a bearing of North 61 degrees 03 minutes 11 seconds East, for a distance of 47.90 feet to a point along the southerly Right-of-Way of Hawthorne Avenue; THENCE, easterly along said Right-of-Way of Hawthorne Avenue on a bearing of South 87 degrees 47 minutes 49 seconds East, for a distance of 191.60 feet to a point at the common property corner of Jerry Tillman Revocable Trust; THENCE, southerly and leaving said Right-of-Way and following along said common property line; on a bearing of South 01 degrees 01 minutes 39 seconds East, for a distance of 3.44 feet to a point; THENCE, westerly leaving said property line and along the proposed right-of-way of Hawthorne Avenue on a bearing of North 88 degrees 16 minutes 49 seconds West, for a distance of 39.49 feet to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, for a distance of 14.00 feet to a point; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING and easterly along the proposed right-of-way of Hawthorne Avenue on a bearing of South 88 degrees 16 minutes 49 seconds East, for a distance of 14.00 feet to a point;

THENCE, southerly leaving said proposed right-of-way on a bearing of South 00 degrees 20 minutes 22 seconds West, for a distance of 21.16 feet to a point;

THENCE, westerly on a bearing of North 89 degrees 39 minutes 38 seconds West, for a distance of 14.00 feet to a point;

THENCE, northerly on a bearing of North 00 degrees 20 minutes 22 seconds East, for a distance of 21.50 feet to the POINT OF BEGINNING.

The herein described area of land (Area #3) is **299 Square Feet** or 0.007 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "D"

Required Temporary Construction Easement Area 4

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8, Easement #4 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, South 02 degrees 13 minutes 08 seconds West for a distance of 70.60 feet to a point, said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING, northeasterly on a curve to the right with an arc distance of 45.07 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of North 22 degrees 57 minutes 07 seconds East for a distance of 44.80 feet to a point;

THENCE, northeasterly on a curve to the right with an arc distance of 3.62 feet and having a radius of 24.00 feet and being subtended by a chord on a bearing of North 38 degrees 07 minutes 18 seconds East for a distance of 3.62 feet to a point;

THENCE, northeasterly on a curve to the right with an arc distance of 35.05 feet and having a radius of 589.00 feet and being subtended by a chord on a bearing of North 44 degrees 08 minutes 51 seconds East for a distance of 35.05 feet to a point;

THENCE, northeasterly on a bearing of North 68 degrees 47 minutes 10 seconds East for a distance of 49.88 feet to a point;

THENCE, southeasterly on a bearing of South 88 degrees 16 minutes 49 seconds East for a distance of 33.33 feet to a point;

THENCE, southerly on a bearing of South 00 degrees 22 minutes 39 seconds West for a distance of 12.38 feet to a point;

THENCE, westerly on a bearing of South 80 degrees 47 minutes 34 seconds West for a distance of 25.86 feet to a point;

THENCE, westerly on a bearing of South 86 degrees 12 minutes 46 seconds West for a distance of 25.83 feet to a point;

THENCE, southwesterly on a bearing of South 48 degrees 31 minutes 22 seconds West for a distance of 11.44 feet to a point;

THENCE, westerly on a bearing of North 85 degrees 03 minutes 37 seconds West for a distance of 20.24 feet to a point;

THENCE, southwesterly on a bearing of South 45 degrees 19 minutes 39 seconds West for a distance of 30.03 feet to a point;

THENCE, southerly on a bearing of South 15 degrees 59 minutes 53 seconds East for a distance of 14.67 feet to a point;

THENCE, southerly on a bearing of South 15 degrees 46 minutes 07 seconds West for a distance of 12.24 feet to a point;

THENCE, southwesterly on a bearing of South 51 degrees 37 minutes 55 seconds West for a distance of 20.66 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 28 minutes 14 seconds West for a distance of 41.51 feet to a point;

THENCE, westerly on a bearing of westerly on a bearing of North 87 degrees 46 minutes 52 seconds West for a distance of 6.69 feet, to a point on the existing Right-of-Way of Mathews Street;

THENCE, northerly along the Right-of-Way, on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 38.83 feet, to the POINT OF BEGINNING.

The herein described area of land (Area #4) is **2112 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Temporary Construction Easement Area 5

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8, Easement #5 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, South 02 degrees 13 minutes 08 seconds West for a distance of 70.60 feet to a point; THENCE, southerly along the said Right-of-Way, on a bearing of South 02 degrees 13 minutes 08 seconds West for a distance of 38.83 feet to a point; THENCE, southerly along the Right-of-Way South 02 degrees 13 minutes 08 seconds West, for a distance of 2.02 feet to a point; THENCE, southerly leaving the said Right-of-Way, on a curve to the left with an arc distance of 2.78' and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 08 degrees 20 minutes 01 seconds East, for a distance of 2.78' to a point; THENCE, southerly on a curve to the right with an arc distance of 45.68' and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 04 degrees 56 minutes 18 seconds East, for a distance of 45.64 feet to a point being the POINT OF BEGINNING;

THENCE, from the POINT OF BEGINNING, easterly on a bearing of South 87 degrees 49 minutes 31 seconds East, for a distance of 18.95 feet to a point;

THENCE, southerly on a bearing of South 01 degrees 58 minutes 02 seconds West, for a distance of 112.18 feet to a point;

THENCE, westerly on a bearing of North 87 degrees 49 minutes 31 seconds West, for a distance of 18.90 feet to a point on the said Right-of-Way of Mathews Street;

THENCE, northerly along the said Right-of-Way, on a bearing of North 02 degrees 10 minutes 29 seconds East, for a distance of 95.05' to a point;

THENCE, northerly on a curve to the left with an arc distance of 17.14 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 00 degrees 39 minutes 01 seconds East, for a distance of 17.13' to a point being the POINT OF BEGINNING;

The herein described area of land (Area #5) is **2100 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "E"

Required Temporary Driveway Easement Area 6

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as part of Parcel 8, Easement #6 in design plans titled "Roswell Street Roundabout" being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, continuing northeasterly along the said Right-of-Way, on a bearing of North 61 degrees 03 minutes 11 seconds East, a distance of 47.90' to a point; THENCE, easterly on a bearing of South 87 degrees 47 minutes 49 seconds East, a distance of 191.60' to a point; THENCE, leaving the said Right-of-Way, southerly on a bearing of South 01 degrees 01 minutes 39 seconds East, a distance of 3.44' to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, a distance of 39.49' to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, a distance of 14.00' to the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING, southerly on a bearing of South 00 degrees 20 minutes 22 seconds West, a distance of 21.50' to a point;
THENCE, southerly on a bearing of South 00 degrees 20 minutes 22 seconds West, a distance of 22.38' to a point;
THENCE, westerly on a bearing of North 89 degrees 37 minutes 13 seconds West, a distance of 58.81' to a point;
THENCE, northerly on a bearing of North 00 degrees 22 minutes 39 seconds East, a distance of 32.87' to a point;
THENCE, northerly on a bearing of North 00 degrees 22 minutes 39 seconds East, a distance of 12.38' to a point;
THENCE, easterly on a bearing of South 88 degrees 16 minutes 49 seconds East, a distance of 58.80' to the POINT OF BEGINNING.

The herein described area of land (Area #6) is **2620 Square Feet** or 0.060 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Temporary Driveway Easement Area 7

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as part of Parcel 8, Easement #7 in design plans titled "Roswell Street Roundabout" being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, southerly on a bearing of South 02 degrees 13 Minutes 08 Seconds West, a distance of 70.60 feet to a point; THENCE, southerly on a bearing of South 02 degrees

13 Minutes 08 Seconds West, a distance of 38.83 feet to a point being the POINT OF BEGINNING;

THENCE, easterly on a bearing of South 87 degrees 46 minutes 52 seconds East, a distance of 6.69 feet to a point;

THENCE, easterly on a bearing of South 87 degrees 46 minutes 52 seconds East, a distance of 39.68 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 21 Minutes 05 Seconds West, a distance of 50.00 feet to a point;

THENCE, westerly on a bearing of North 87 degrees 49 Minutes 31 Seconds West, a distance of 20.10 feet to a point,

THENCE, westerly on a bearing of North 87 degrees 49 Minutes 31 Seconds West, a distance of 18.95 feet to a point,

THENCE, on a curve to the left with an arc distance of 45.68 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of North 04 degrees 56 minutes 18 seconds East for a distance of 45.64 feet to a point;

THENCE, on a curve to the right with an arc distance of 2.78 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of North 08 degrees 20 minutes 01 seconds West for a distance of 2.78 feet to a point,

THENCE, northerly on a bearing of North 02 degrees 13 minutes 08 seconds East, for a distance of 2.02' to a point, said point being the POINT OF BEGINNING.

The herein described area of land (Area #7) is **2089 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

SMYRNA, GEORGIA
RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this “**Agreement**”) is made and entered into this 25th day of September, 2019, by and between **NEWBURGER-ANDES & CO., ADMINISTRATOR OF WINDY HILL JOINT VENTURE** (“Property Owner”) and **CITY OF SMYRNA, GEORGIA** (“Smyrna”).

W I T N E S S E T H:

WHEREAS, Property Owner is the owner of the fee simple title to land lying in Land Lot 633 of the 17th Land District, 2nd Section, City of Smyrna, Cobb County, Georgia, and being multiple lots of the Windy Hill Industrial Park (the “**Property**”); and

WHEREAS, a portion of the Property is identified as Parcel 8 of the City of Smyrna Roundabout Project, known as Project Number 1469.05 (the “**Project**”); and

WHEREAS, in order to expedite the improvements the Project, Smyrna has requested the right to enter upon the following portions of the Property lying in Land Lot 633 of the 17th Land District, 2nd Section, City of Smyrna, Cobb County, Georgia identified, described and depicted on the Right of Way Plans for the Project, Drawing No. 60-008, prepared by Croy Engineering attached hereto as Exhibit “A” and incorporated herein by this reference:

Required Right of Way Area 1 consisting of 2849 square feet or 0.065 acres of land, more or less, and shown colored yellow on Exhibit “A” and Required Right of Way Area 2 consisting of 1170 square feet or 0.027 acres of land, more or less. Said Required Right of Way Areas 1 and 2 are more particularly described on Exhibit “B” attached hereto and incorporated herein by this reference and are shown colored yellow on Exhibit “A” (Required Right of Way Areas 1 and 2 collectively referred to herein as the “**Right of Way Areas**”);

Required Permanent Easement Area 3 consisting of 299 square feet or 0.007 acres of land, more or less. Said Required Permanent Easement Area 3 is more particularly described on Exhibit “C” attached hereto and incorporated herein by this reference and is shown colored orange with linear hatching on Exhibit “A” (the “**Permanent Easement Area**”);

Required Temporary Construction Easement Area 4 consisting of 2112 square feet or 0.048 acres of land, more or less, and Required Temporary Construction Easement Area 5 consisting of 2100 square feet or 0.048 acres of land, more or less. Said Required Temporary Construction Easement Areas 4 and 5 are more particularly described on Exhibit “D” attached hereto and incorporated herein by this reference and are shown colored green with linear dashed hatching on Exhibit “A” (Required Temporary Construction Easement Areas 4 and 5 collectively referred to herein as the “**Temporary Construction Easement Areas**”);

Required Temporary Driveway Easement Area 6 consisting of 2620 square feet or 0.060 acres, more or less, and Required Temporary Driveway Easement Area 7 consisting of 2089 square feet or 0.048 acres, more or less. Said Required Temporary Driveway Easement Areas 6 and 7 are more particularly described on Exhibit "E" attached hereto and incorporated herein by this reference and are shown colored pink with cross-hatching on Exhibit "A" (Required Temporary Driveway Easement Areas 6 and 7 collectively referred to herein as the "Temporary Driveway Easement Areas").

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **Grant of Rights.** Property Owner grants to Smyrna and its agents, employees, representatives, servants, invitees, contractors, subcontractors, and their respective agents, employees, representatives, servants and invitees (collectively the "Accessing Parties") a non-exclusive right to go over, under, upon, across and through the Right of Way Areas to construct certain road improvements within the Right of Way Areas as shown on Exhibit "A."

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Permanent Easement Area for the purpose of executing certain construction within said Permanent Easement Area to support or accommodate the improvement of the adjacent Right of Way as shown on Exhibit "A," including the right to install a drainage structure within said Permanent Easement Area subject to the following conditions:

Property Owner, its tenants and their employees, customers and invitees shall have the concurrent right to use the Permanent Easement Area.

The Permanent Easement Area shall not be utilized for the storage of machinery, apparatus, equipment or vehicles except as necessary for construction activities occurring within said Permanent Easement Area. Any permissible storage of such items will be at the sole risk of the Accessing Parties and the Property Owner shall not be responsible for any loss or damage occurring to such items during storage.

Upon completion of construction activities within the Permanent Easement Area, Smyrna shall cause, at its sole cost and expense, the Permanent Easement Area to be restored to as near possible its original condition and contour that existed prior to the commencement of the construction activities within said Permanent Easement Area; provided, however, that any drainage structure and related facilities constructed within said Permanent Easement Area shall remain in place.

If any improvements located within the Permanent Easement Area are damaged or disturbed by the Accessing Parties' presence on or activities within said Permanent Easement Area, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of the improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Permanent Easement Area.

Any disturbed soil within the Permanent Easement Area shall be covered with permanent grassing upon completion of construction activities within said Permanent Easement Area, at Smyrna's sole cost and expense.

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Temporary Construction Easement Areas for the purpose of executing certain construction within said Temporary Construction Easement Areas to support or accommodate the improvement of the adjacent Right of Way as shown on Exhibit "A," including the right to construct any required slopes within said Temporary Construction Easement Areas as shown on Exhibit "A," subject to the following conditions:

Property Owner, its tenants and their employees, customers and invitees shall have the concurrent right to use the Temporary Construction Easement Areas.

The parking areas lying within the Temporary Construction Easement Areas shall not be physically disturbed by the Accessing Parties presence or construction activities within said Temporary Construction Easement Areas.

The Temporary Construction Easement Areas shall not be utilized for the storage of machinery, apparatus, equipment or vehicles, except as necessary for construction activities occurring within said Temporary Construction Easement Areas. Any permissible storage of such items will be at the sole risk of the Accessing Parties and the Property Owner shall not be responsible for any loss or damage occurring to such items during storage. Notwithstanding anything contained herein to the contrary, Smyrna shall not store machinery, apparatus, equipment or vehicles within the portions of Temporary Construction Easement Areas that lie within the internal curb line/parking area of the Property.

Upon completion of construction activities within the Temporary Construction Easement Areas, Smyrna shall cause, at its sole cost and expense, the Temporary Construction Easement Areas to be restored to as near possible their original condition and contour that existed prior to the commencement of the construction activities within said Temporary Construction Easement Areas; provided, however, that any required slopes constructed within said Temporary Construction Easement Areas shall remain in place.

If any improvements located within the Temporary Construction Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said Temporary Construction Easement Areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of such improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Temporary Construction Easement Areas.

Any disturbed soil within the Temporary Construction Easement Areas shall be covered with permanent grassing upon completion of construction activities within said Temporary Construction Easement Areas, at Smyrna's sole cost and expense.

Property Owner also grants to the Accessing Parties a non-exclusive right to go over, under, upon, across and through the Temporary Driveway Easement Areas the purpose of constructing/reconstructing the two existing driveways within said Temporary Driveway Easement Areas as shown on Exhibit "A," subject to the following conditions:

The Accessing Parties shall schedule their construction activities so that at least one (1) of the two (2) driveways lying within the Temporary Driveway Easement Areas remains completely open at all times. While performing work within the Temporary Driveway Easement Areas, the Accessing Parties shall maintain reasonable access, ingress to and egress from the Subject Property via the driveways lying within said Temporary Driveway Easement Areas.

The Temporary Driveway Easement Areas shall not be utilized for storage of machinery, apparatus, equipment or vehicles.

Upon completion of construction activities within the Temporary Driveway Easement Areas, Smyrna shall cause, at its sole cost and expense, the Temporary Driveway Easement Areas to be restored to as near possible their original condition and contour that existed prior to the commencement of the construction activities within said Temporary Driveway Easement Areas.

If any improvements located within the Temporary Driveway Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said Temporary Driveway Easement Areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of such improvements to as near possible the condition that existed immediately prior to such damage or disturbance upon completion of the construction activities within said Temporary Driveway Easement Areas.

Any disturbed soil within the Temporary Construction Easement Areas shall be covered with permanent grassing upon completion of construction activities within said Temporary Driveway Easement Areas, at Smyrna's sole cost and expense.

At all times while accessing the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, the Accessing Parties shall use their best efforts to avoid interfering with the access to, use, occupancy and enjoyment of the Property lying outside of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas by Property Owner, its tenants and their employees, customers and invitees.

If the Property or any improvements to the Property outside of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas are damaged or disturbed by the Accessing Parties' presence on or activities within said areas, then Smyrna shall cause, at its sole cost and expense, the prompt restoration of the Property or improvements to the condition and contour that existed immediately prior to such damage or disturbance.

Smyrna's restoration obligations shall survive the expiration of this Agreement.

2. **Expenses.** All costs of the activities performed within the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas shall be borne by persons other than Property Owner. The provisions of this Section 2 shall survive the expiration of this Agreement.

3. **No Transfer of Title or Grant of Any Interest in the Property; No Waiver.** The granting of rights under this Agreement does not transfer title to or grant any interest in the Property and does not in any way constitute a waiver of any rights of Property Owner under the Constitution, statutes, or rules and regulations relating to eminent domain and such rights are expressly reserved. This Agreement in no way affects future negotiations between Property Owner and Smyrna and/or Property Owner's legal rights to receive payment of compensation from Smyrna for the acquisition/taking of the required property interests in the Property including, without limitation, the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, and consequential damages to the remaining Property, if any, arising from the acquisition/taking of such property interests. Property Owner and Smyrna agree that the date of valuation for determining the compensation due for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any, shall either be the Effective Date of this Agreement, as defined below in Section 7, or the actual date of Smyrna's acquisition/taking of the required property interests, whether by deed or condemnation proceedings, with the determination of the date of valuation to be made by Property Owner in its sole discretion. The provisions of this Section 3 shall survive the expiration of this Agreement.

4. **Release.** Property Owner makes no representations or warranty of the fitness of the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas, and Smyrna, as well as its agents, employees, representatives, servants, invitees, contractors, subcontractors, and anyone else related to affiliated whom access the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas hereby expressly assume the entire risk of all activities within said areas. Specifically, to the maximum extent permitted by law, Smyrna, for itself and its successors, assigns, agents, representatives, counsel, employees, directors, officers, and anyone else related to or affiliated with it (collectively the "Releasing Parties"), hereby holds harmless, releases and fully discharges Property Owner, including but not limited to all current individual owners/investors of the Property and/or Windy Hill Joint Venture and their successors and assigns, and Property Owner's parents, affiliates, subsidiaries, and any of its respective partners, directors, officers, employees, agents, counsels, representatives, successors and assigns (collectively the "Released Group") from any and all claims, causes of actions, settlements, liabilities, demands, damages, losses and expenses (including, without limitation, attorneys' fees and court costs) of any kind, which the Releasing Parties may have or incur for, from or relating to any accident, damage, or injury (including, without limitations, death) to any person or property of the Releasing Parties sustained or incurred in connection with any of the Releasing Parties' presence or actions or omissions on the Property, including the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas and Temporary Driveway Easement Areas. The foregoing release shall apply regardless of whether such accident, damage, or injury is caused by or attributable to (in whole or in part) the negligent acts or omissions, strict liability, products liability, any condition or defect in or on the Property or any improvements thereon, or any other fault or responsibility of

any member of the Released Group, but shall not cover that portion of any claim which may arise due to the willful misconduct of a member of the Released Group. The foregoing release provisions shall survive the expiration of this Agreement.

5. **Insurance.** Smyrna shall cause its contractors to maintain the following insurance policies at all times when it is accessing the Property to accommodate the construction of the Project: (a) occurrence based commercial general liability insurance with coverages of not less than \$1,000,000 per accident or occurrence for bodily injury, including death, or property damage, and \$1,000,000 in aggregate limits; (b) occurrence based commercial automobile insurance with minimum limits of \$500,000 combined single limit coverage for property damage and bodily injury, including death, and coverage for owned, leased, and non-owned vehicles; (c) worker's compensation and employers liability insurance for its respective employees in accordance with the laws of the State of Georgia to pay compensation to any employees accessing the Property; and (d) occurrence based umbrella liability insurance in excess of the coverages in clauses (a) and (b) above, with limits of at least \$2,000,000.00 and that follow the applicable underlying limits. Smyrna shall provide proof of the foregoing insurance policies to Property Owner by e-mailing a copy of such proof to Property Owner's counsel, Angela Robinson, at angelarobinson@parkerpoe.com. The foregoing insurance obligations shall survive the expiration of this Agreement.

6. **Onsite Meeting.** If requested by Property Owner, an onsite construction meeting shall occur between representatives of Croy Engineering, Smyrna's general contractor(s) and Property Owner. If so requested, Smyrna shall coordinate the scheduling of the onsite construction meeting through Property Owner's Counsel, Angela Robinson, who can be contacted by e-mail (angelarobinson@parkerpoe.com) or phone (404-665-1228).

7. **Term.** This Agreement shall be effective as of the day and year first above written (hereinafter the "Effective Date") and shall expire at 11:59 p.m. on December 31, 2020 or until such date that Property Owner executes a deed conveying to Smyrna the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas, if still needed, and Temporary Driveway Easement Areas, if still needed, or until such date that Smyrna acquires title to the Right of Way Areas, Permanent Easement Area, Temporary Construction Easement Areas, if still needed, and Temporary Driveway Easement Areas, if still needed, by filing condemnation proceedings, whichever occurs first (the "Term"), unless Property Owner and Smyrna agree in writing to extend the term of this Agreement, which said agreement may be withheld in the sole discretion of Property Owner.

If it is determined upon the expiration of this Agreement that Smyrna does not need to acquire temporary easement interests in the Temporary Construction Easement Areas and/or the Temporary Driveway Easement Areas, Property Owner shall be entitled to receive compensation for Smyrna's use of the Temporary Construction Easement Areas for the Term of this Agreement, as extended, and consequential damages arising from Smyrna's use of said Temporary Construction Easement Areas and Temporary Driveway Easement Areas, if any

If it is determined upon the expiration of this Agreement that Smyrna does need to acquire temporary easement interests in the Temporary Construction Easement Areas and/or Temporary Driveway Easement Areas, Property Owner shall be entitled to receive compensation for Smyrna's use of the Temporary Construction Easement Areas from the Effective Date of this Agreement through the to be determined expiration date of said temporary easement interests, and consequential damages arising from Smyrna's use of said Temporary Construction Easement Areas and Temporary Driveway Easement Areas, if any, from the Effective Date of this Agreement through the to be determined expiration date of said temporary easement interests.

8. **Deposit.** Within thirty (30) business days following the Effective Date of this Agreement, Smyrna shall deliver to Property Owner, in immediately available funds, the sum of Ten Thousand and No/100 (\$10,000.00) representing an advance deposit (the "Deposit") for the compensation to be paid by Smyrna for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any arising from the acquisition/taking of such property interests. Property Owner's counsel will provide Smyrna with wiring instructions for delivery of the Deposit, which Deposit shall be made immediately available to Property Owner. Upon the final determination of the amount of compensation for the acquisition/taking of the required property interests in the Property and consequential damages to the remaining Property, if any, arising from the acquisition/taking of such property interests (the "Final Compensation Amount"), the Deposit shall be credited against the Final Compensation Amount in favor of Smyrna.

9. **Binding Effect.** This Agreement shall be binding upon and enforceable against, and shall be for the benefit of, the parties of this Agreement and their respective heirs, legal representatives, successors and assigns.

10. **Non-Assignability.** This Agreement may not be assigned without first obtaining the prior written approval of the non-assigning parties, which may be withheld in the sole discretion of the non-assigning parties.

11. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters described in this Agreement.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Signatures transmitted electronically (e.g. by facsimile or e-mail in pdf. format or similar format or by e-signature) shall be binding as original signatures.

13. **Authority.** The parties warrant and represent one to the other that they have full power and authority to enter into this Agreement. By their execution below, each of the representatives of the parties hereto represents to the other parties that he/she has the right and authority to execute this Agreement on behalf of such party. Without limiting the generality of the foregoing, Newburger-Andes & Co. hereto represents to Smyrna that it has the full right, power and authority to execute this Agreement on behalf of Windy Hill Joint Venture and the individual owners/investors of Windy Hill Joint Venture.

14. **Governing Law.** This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Georgia, and those laws shall control in the event of any conflict of laws.

15. **Exhibits**. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and shall be construed to be a part of this Agreement by such reference or other mention at each point in which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time such terms are used.

16. **Headings**. The headings of this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of the provisions of this Agreement or any part of this Agreement.

17. **Severability**. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held void, invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held void, invalid or unenforceable, shall not be affected thereby, and each and every term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law as if the void, invalid or unenforceable term or provision of this Agreement had not been part of this Agreement.

18. **Construction**. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

IN WITNESS WHEREOF, this Agreement is signed and sealed as of the Effective Date.


[SIGNATURES CONTAINED ON THE FOLLOWING PAGES]

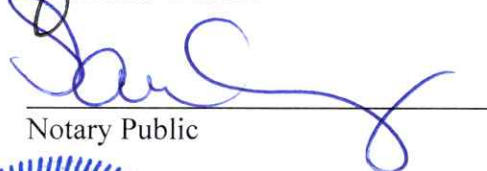
Signed, sealed and delivered
in the presence of:

**NEWBURGER-ANDES & CO.,
ADMINISTRATOR OF WINDY HILL
JOINT VENTURE**



Unofficial Witness

By:  (Seal)
Name: Jerry Andes
Title: President



Notary Public

By:  (Seal)
Name: David Andes
Title: Chief Investment Officer

[NOTARY SEAL]



[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



Signed, sealed and delivered
in the presence of:

CITY OF SMYRNA, GEORGIA

Unofficial Witness

By: _____ (Seal)

Name: A. Max Bacon

Title: Mayor

Notary Public

Attest: _____

Name: Terri Graham

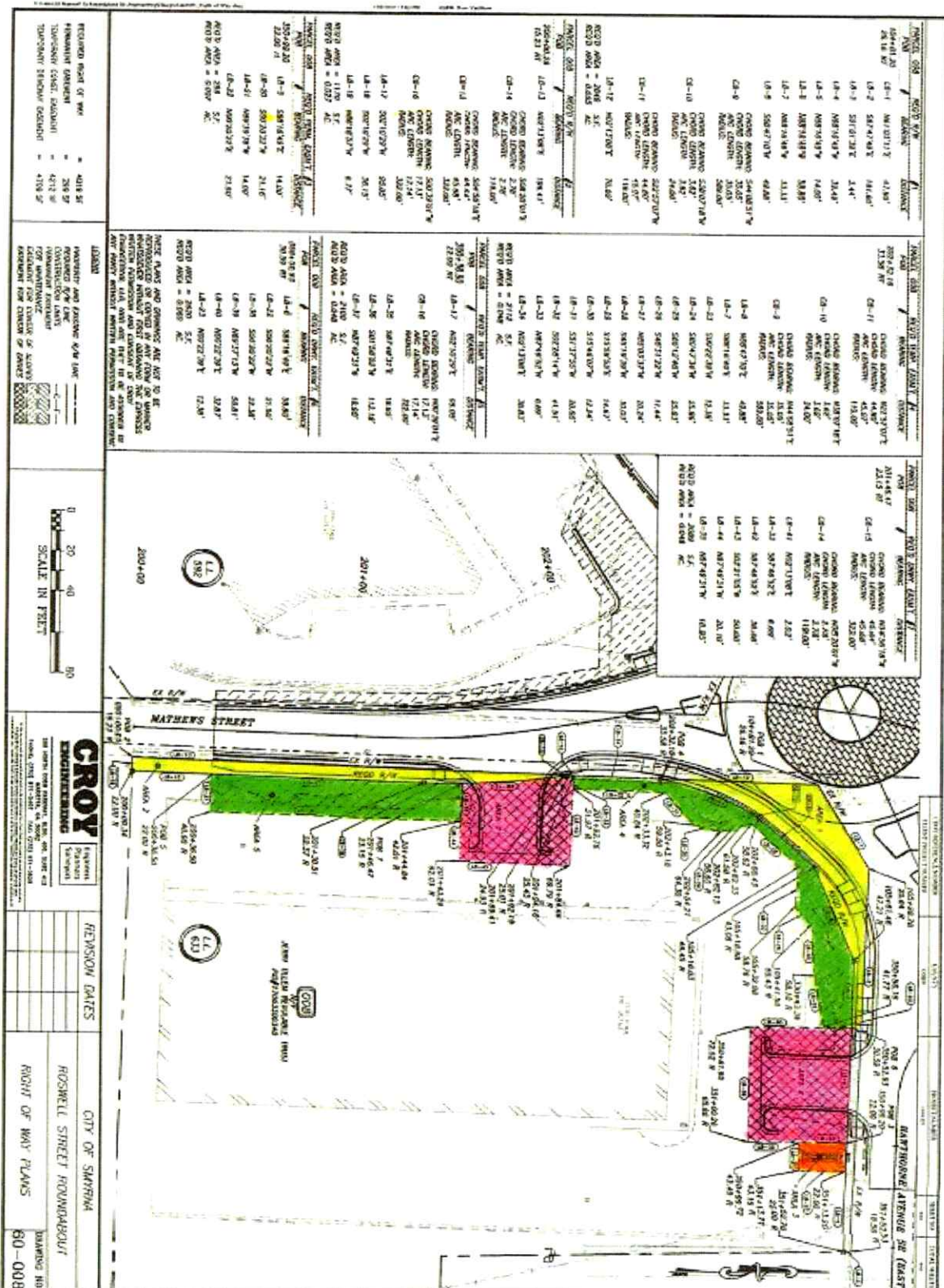
Title: City Clerk

[NOTARY SEAL]

Approved as to form:

Name: Scott Cochran
Title: City Attorney

EXHIBIT "A"



RETRIBUTION RIGHT OF WAY

MINIMUM EASEMENT	250 FT
THROUGHT CORNER DISTANCE	42 FT
THROUGHT STREET CORNER	42 FT

EXISTING CONVEYANCES

NO.	FROM	TO	DATE	REMARKS
1

EXISTING EASEMENTS

NO.	FROM	TO	DATE	REMARKS
1

PROPOSED HOUSING

NO.	FROM	TO	DATE	REMARKS
1

PROPOSED EASEMENTS

NO.	FROM	TO	DATE	REMARKS
1

PROPOSED CONVEYANCES

NO.	FROM	TO	DATE	REMARKS
1

PROPOSED ENCROACHMENTS

NO.	FROM	TO	DATE	REMARKS
1

PROPOSED HOUSING (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED EASEMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED HOUSING (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED EASEMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED HOUSING (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED EASEMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED HOUSING (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED EASEMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED HOUSING (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED EASEMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED CONVEYANCES (Continued)

NO.	FROM	TO	DATE	REMARKS
...

PROPOSED ENCROACHMENTS (Continued)

NO.	FROM	TO	DATE	REMARKS
...

EXHIBIT "B"

Required Right of Way Area 1

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue SE East; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING northeasterly along said right-of-way miter on a bearing of North 61 degrees 03 minutes 11 seconds East for a distance of 47.90 feet to a point along the southerly Right-of-Way of Hawthorne Avenue SE East;

THENCE, easterly along said Right-of-Way of Hawthorne Avenue; and on a bearing of South 87 degrees 47 minutes 49 seconds East for a distance of 191.60 feet to a point at the common property corner of Jerry Tillman Revocable Trust;

THENCE, southerly and leaving said Right-of-Way and following along said common property line; on a bearing of

South 01 degrees 01 minutes 39 seconds East for a distance of 3.44 feet to a point;

THENCE, westerly and leaving said property line; and on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 39.49 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 14.00 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 58.80 feet to a point;

THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West for a distance of 33.33 feet to a point;

THENCE, southwesterly on a bearing of South 68 degrees 47 minutes 10 seconds West for a distance of 49.88 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 35.05 feet and having a radius of 589.00 feet and being subtended by a chord on a bearing of South 44 degrees 08 minutes 51 seconds West for a distance of 35.05 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 3.62 feet and having a radius of 24.00 feet and being subtended by a chord on a bearing of South 38 degrees 07 minutes 18 seconds West for a distance of 3.62 feet to a point;

THENCE, southwesterly on a curve to the left with an arc distance of 45.07 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 22 degrees 57 minutes 07 seconds West for a distance of 44.80 feet to a point along the easterly Right-of-Way of Mathews Street;

THENCE, northerly along the easterly Right-of-Way of Mathews Street on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 70.60 feet to the POINT OF BEGINNING.

The herein described area of land (Area #1) is **2849 Square Feet** or 0.065 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Right of Way Area 2

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue SE East; THENCE on a bearing of South 02 degrees 13 minutes 08 seconds East for a distance of 111.45 feet to a point; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING and southeasterly leaving the existing Right-of-Way of Mathews Street on a curve to the right with an arc distance of 2.78 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 08 degrees 20 minutes 01 seconds East for a distance of 2.78 feet to a point;

THENCE, southeasterly on a curve to the right with an arc distance of 45.68 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 04 degrees 56 minutes 18 seconds East for a distance of 45.64 feet to a point;

THENCE, southeasterly on a curve to the right with an arc distance of 17.14 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 00 degrees 39 minutes 01 seconds West for a distance of 17.13 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 10 minutes 29 seconds West for a distance of 95.05 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 10 minutes 29 seconds West for a distance of 36.15 feet to a point along the common property line with Jerry Tillem Revocable Trust;

THENCE, westerly and continuing along said common property line; on a bearing of North 88 degrees 18 minutes 57 seconds West for a distance of 6.77 feet to a point along the easterly Right-of-Way of Mathews Street;

THENCE, northerly along said Right-of-Way of Mathews Street on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 196.41 feet to the POINT OF BEGINNING.

The herein described area of land (Area #2) is **1170 Square Feet** or 0.027 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "C"

Required Permanent Easement Area 3

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point at the easterly Right-of-Way of Mathews Street with the southwesterly-most point of a right-of-way miter formed with the southerly Right-of-Way of Hawthorne Avenue; THENCE, northeasterly along said right-of-way miter on a bearing of North 61 degrees 03 minutes 11 seconds East, for a distance of 47.90 feet to a point along the southerly Right-of-Way of Hawthorne Avenue; THENCE, easterly along said Right-of-Way of Hawthorne Avenue on a bearing of South 87 degrees 47 minutes 49 seconds East, for a distance of 191.60 feet to a point at the common property corner of Jerry Tillman Revocable Trust; THENCE, southerly and leaving said Right-of-Way and following along said common property line; on a bearing of South 01 degrees 01 minutes 39 seconds East, for a distance of 3.44 feet to a point; THENCE, westerly leaving said property line and along the proposed right-of-way of Hawthorne Avenue on a bearing of North 88 degrees 16 minutes 49 seconds West, for a distance of 39.49 feet to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, for a distance of 14.00 feet to a point; said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING and easterly along the proposed right-of-way of Hawthorne Avenue on a bearing of South 88 degrees 16 minutes 49 seconds East, for a distance of 14.00 feet to a point;

THENCE, southerly leaving said proposed right-of-way on a bearing of South 00 degrees 20 minutes 22 seconds West, for a distance of 21.16 feet to a point;

THENCE, westerly on a bearing of North 89 degrees 39 minutes 38 seconds West, for a distance of 14.00 feet to a point;

THENCE, northerly on a bearing of North 00 degrees 20 minutes 22 seconds East, for a distance of 21.50 feet to the POINT OF BEGINNING.

The herein described area of land (Area #3) is **299 Square Feet** or 0.007 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "D"

Required Temporary Construction Easement Area 4

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8, Easement #4 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, South 02 degrees 13 minutes 08 seconds West for a distance of 70.60 feet to a point, said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING, northeasterly on a curve to the right with an arc distance of 45.07 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of North 22 degrees 57 minutes 07 seconds East for a distance of 44.80 feet to a point;

THENCE, northeasterly on a curve to the right with an arc distance of 3.62 feet and having a radius of 24.00 feet and being subtended by a chord on a bearing of North 38 degrees 07 minutes 18 seconds East for a distance of 3.62 feet to a point;

THENCE, northeasterly on a curve to the right with an arc distance of 35.05 feet and having a radius of 589.00 feet and being subtended by a chord on a bearing of North 44 degrees 08 minutes 51 seconds East for a distance of 35.05 feet to a point;

THENCE, northeasterly on a bearing of North 68 degrees 47 minutes 10 seconds East for a distance of 49.88 feet to a point;

THENCE, southeasterly on a bearing of South 88 degrees 16 minutes 49 seconds East for a distance of 33.33 feet to a point;

THENCE, southerly on a bearing of South 00 degrees 22 minutes 39 seconds West for a distance of 12.38 feet to a point;

THENCE, westerly on a bearing of South 80 degrees 47 minutes 34 seconds West for a distance of 25.86 feet to a point;

THENCE, westerly on a bearing of South 86 degrees 12 minutes 46 seconds West for a distance of 25.83 feet to a point;

THENCE, southwesterly on a bearing of South 48 degrees 31 minutes 22 seconds West for a distance of 11.44 feet to a point;

THENCE, westerly on a bearing of North 85 degrees 03 minutes 37 seconds West for a distance of 20.24 feet to a point;

THENCE, southwesterly on a bearing of South 45 degrees 19 minutes 39 seconds West for a distance of 30.03 feet to a point;

THENCE, southerly on a bearing of South 15 degrees 59 minutes 53 seconds East for a distance of 14.67 feet to a point;

THENCE, southerly on a bearing of South 15 degrees 46 minutes 07 seconds West for a distance of 12.24 feet to a point;

THENCE, southwesterly on a bearing of South 51 degrees 37 minutes 55 seconds West for a distance of 20.66 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 28 minutes 14 seconds West for a distance of 41.51 feet to a point;

THENCE, westerly on a bearing of westerly on a bearing of North 87 degrees 46 minutes 52 seconds West for a distance of 6.69 feet, to a point on the existing Right-of-Way of Mathews Street;

THENCE, northerly along the Right-of-Way, on a bearing of North 02 degrees 13 minutes 08 seconds East for a distance of 38.83 feet, to the POINT OF BEGINNING.

The herein described area of land (Area #4) is **2112 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Temporary Construction Easement Area 5

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as Parcel 8, Easement #5 in design plans titled Roswell Street Roundabout being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, South 02 degrees 13 minutes 08 seconds West for a distance of 70.60 feet to a point; THENCE, southerly along the said Right-of-Way, on a bearing of South 02 degrees 13 minutes 08 seconds West for a distance of 38.83 feet to a point; THENCE, southerly along the Right-of-Way South 02 degrees 13 minutes 08 seconds West, for a distance of 2.02 feet to a point; THENCE, southerly leaving the said Right-of-Way, on a curve to the left with an arc distance of 2.78' and having a radius of 119.00 feet and being subtended by a chord on a bearing of South 08 degrees 20 minutes 01 seconds East, for a distance of 2.78' to a point; THENCE, southerly on a curve to the right with an arc distance of 45.68' and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 04 degrees 56 minutes 18 seconds East, for a distance of 45.64 feet to a point being the POINT OF BEGINNING;

THENCE, from the POINT OF BEGINNING, easterly on a bearing of South 87 degrees 49 minutes 31 seconds East, for a distance of 18.95 feet to a point;

THENCE, southerly on a bearing of South 01 degrees 58 minutes 02 seconds West, for a distance of 112.18 feet to a point;

THENCE, westerly on a bearing of North 87 degrees 49 minutes 31 seconds West, for a distance of 18.90 feet to a point on the said Right-of-Way of Mathews Street;

THENCE, northerly along the said Right-of-Way, on a bearing of North 02 degrees 10 minutes 29 seconds East, for a distance of 95.05' to a point;

THENCE, northerly on a curve to the left with an arc distance of 17.14 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of South 00 degrees 39 minutes 01 seconds East, for a distance of 17.13' to a point being the POINT OF BEGINNING;

The herein described area of land (Area #5) is **2100 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

EXHIBIT "E"

Required Temporary Driveway Easement Area 6

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as part of Parcel 8, Easement #6 in design plans titled "Roswell Street Roundabout" being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, continuing northeasterly along the said Right-of-Way, on a bearing of North 61 degrees 03 minutes 11 seconds East, a distance of a distance of 47.90' to a point; THENCE, easterly on a bearing of South 87 degrees 47 minutes 49 seconds East, a distance of 191.60' to a point; THENCE, leaving the said Right-of-Way, southerly on a bearing of South 01 degrees 01 minutes 39 seconds East, a distance of 3.44' to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, a distance of 39.49' to a point; THENCE, westerly on a bearing of North 88 degrees 16 minutes 49 seconds West, a distance of 14.00' to the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING, southerly on a bearing of South 00 degrees 20 minutes 22 seconds West, a distance of 21.50' to a point;
THENCE, southerly on a bearing of South 00 degrees 20 minutes 22 seconds West, a distance of 22.38' to a point;
THENCE, westerly on a bearing of North 89 degrees 37 minutes 13 seconds West, a distance of 58.81' to a point;
THENCE, northerly on a bearing of North 00 degrees 22 minutes 39 seconds East, a distance of 32.87' to a point;
THENCE, northerly on a bearing of North 00 degrees 22 minutes 39 seconds East, a distance of 12.38' to a point;
THENCE, easterly on a bearing of South 88 degrees 16 minutes 49 seconds East, a distance of 58.80' to the POINT OF BEGINNING.

The herein described area of land (Area #6) is **2620 Square Feet** or 0.060 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.

Required Temporary Driveway Easement Area 7

All that tract or parcel of land lying and being in Land Lot 633 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and shown as part of Parcel 8, Easement #7 in design plans titled "Roswell Street Roundabout" being prepared by Croy Engineering, Marietta, Georgia and being more particularly described as follows:

COMMENCING at a point on the southwesterly-most corner of a Right-of-Way miter formed with the southerly Right-of-Way of Hawthorne Avenue and the easterly Right-of-Way of Mathews Street; THENCE, southerly on a bearing of South 02 degrees 13 Minutes 08 Seconds West, a distance of 70.60 feet to a point; THENCE, southerly on a bearing of South 02 degrees

13 Minutes 08 Seconds West, a distance of 38.83 feet to a point being the POINT OF BEGINNING;

THENCE, easterly on a bearing of South 87 degrees 46 minutes 52 seconds East, a distance of 6.69 feet to a point;

THENCE, easterly on a bearing of South 87 degrees 46 minutes 52 seconds East, a distance of 39.68 feet to a point;

THENCE, southerly on a bearing of South 02 degrees 21 Minutes 05 Seconds West, a distance of 50.00 feet to a point;

THENCE, westerly on a bearing of North 87 degrees 49 Minutes 31 Seconds West, a distance of 20.10 feet to a point,

THENCE, westerly on a bearing of North 87 degrees 49 Minutes 31 Seconds West, a distance of 18.95 feet to a point,

THENCE, on a curve to the left with an arc distance of 45.68 feet and having a radius of 322.00 feet and being subtended by a chord on a bearing of North 04 degrees 56 minutes 18 seconds East for a distance of 45.64 feet to a point;

THENCE, on a curve to the right with an arc distance of 2.78 feet and having a radius of 119.00 feet and being subtended by a chord on a bearing of North 08 degrees 20 minutes 01 seconds West for a distance of 2.78 feet to a point,

THENCE, northerly on a bearing of North 02 degrees 13 minutes 08 seconds East, for a distance of 2.02' to a point, said point being the POINT OF BEGINNING.

The herein described area of land (Area #7) is **2089 Square Feet** or 0.048 acres of land, more or less. The above described property is subject to any and all easements, encumbrances and or restrictions of record.