

CITY COUNCIL
ATLANTA, GEORGIA

04- R -0325

A RESOLUTION
BY COUNCILMEMBER CLAIR MULLER

A RESOLUTION AUTHORIZING THE CITY OF ATLANTA TO ACCEPT A PERMANENT EASEMENT GRANTED TO ACCOMMODATE AND FACILITATE THE CONSTRUCTION OF A SIDEWALK ADJACENT TO PORTIONS OF HOWELL MILL ROAD, INCLUDING THE PROPERTY LOCATED AT 3051 HOWELL MILL ROAD, AND TO EXECUTE AND DELIVER TO THE OWNERS OF 3051 HOWELL MILL ROAD ANY DOCUMENTS NECESSARY TO EVIDENCE THE CITY'S ACCEPTANCE OF THE NEW EASEMENT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta constructed sidewalks adjacent to portions of Howell Mill Road; and

WHEREAS, a portion of this sidewalk was constructed on the property at 3051 Howell Mill Road, Parcel Identification Number 17-0182-0007-005-6; and

WHEREAS, the residents wish to grant the City perpetual and non-exclusive easement on that portion of the property, six feet in width, adjacent to and parallel with the existing curb along Howell Mill Road, and extending across the entire frontage of the property at 3051 Howell Mill Road; and

WHEREAS, the approximate square footage of the property granted by this easement is 708 ft² and the approximate value of this property is \$8,701.32; and

WHEREAS, to facilitate the construction of these sidewalks, and to ensure the ability to access infrastructure in the right-of-way as needed, the City of Atlanta should accept the easement from the owners of the property at 3051 Howell Mill Road.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: The City of Atlanta is authorized to accept from the owners of the property at 3051 Howell Mill Road, Parcel Identification Number 17-0182-0007-005-6, a non-exclusive easement, as evidenced by Exhibits 1 and 2, on that portion of the property, six feet in width, adjacent to and parallel with the existing curb along Howell Mill Road, and extending across the entire frontage of the property at 3051 Howell Mill Road, to be approved by the City Attorney as to form.

SECTION 2: The City of Atlanta is authorized to execute and deliver to the owners of the property at 3051 Howell Mill Road any documents necessary to evidence the City's acceptance of the new easement, to be approved by the City Attorney as to form.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

MAR 01, 2004
MAR 09, 2004

Exhibit 1

After recording, please return to:

Jonathan D. Gaul, Esquire
Department of Law, City of Atlanta
City Hall Tower, Suite 400
68 Mitchell Street, S.E.
Atlanta, Georgia 30303

Please cross-reference to:

Joint Tenancy With Survivorship
Warranty Deed recorded in Deed
Book 18855, Page 237, Fulton
County, Georgia Records

GRANT OF EASEMENT

STATE OF GEORGIA

COUNTY OF FULTON

THIS GRANT OF EASEMENT is made and entered into this 19th day of December 2003 by CYNTHIA BRISCOE BROWN and JAMES FRANKLIN BROWN, JR., as parties of the first part (the "Grantors"), in favor of THE CITY OF ATLANTA, a political subdivision of the State of Georgia, as party of the second part (the "City").

WHEREAS the City wishes to construct a sidewalk along the northerly right-of-way line of Howell Mill Road, N.W. (the "Road"); and the Grantors wish to accommodate and facilitate the City's plan and intention to do so;

WHEREAS the City, by policy, procedure and ordinance, has previously established that any newly constructed sidewalk within the City should, where practical and feasible, be constructed with a grass strip separating such sidewalk from the traffic lanes of an adjoining road; the Grantors have requested that, if the City constructs such a sidewalk along the Road as it fronts along the Grantors' property (more fully described herein below), the design of said sidewalk include such a grass strip; and, but for issues concerning the width of the Road's right-of-way as it fronts along the Grantors' property, the City is willing and able to so construct a sidewalk with a grass strip;

WHEREAS the City has asserted a forty (40)-foot right-of-way width for the Road as it fronts along the Grantors' property, based upon certain engineering drawings made by or on behalf of the City; however, despite the Grantors' and the City's respective efforts to identify, or to reach mutual agreement on, the established right-of-way width for the Road (including but not

necessarily limited to reviews of: the public deed records of Fulton County, Georgia; the City's own, internal records and engineering files; and applicable statutes, case law or other legal authority of the State of Georgia and political subdivisions thereof), neither party has identified a legal basis for such an established right-of-way width other than the greater of: (a) the existing width of the Road's pavement, being approximately thirty (30) feet, as a prescriptive, public right-of-way easement over, across and through the land of the Grantors, as adjoining property owners; or (b) thirty (30) feet as a first-class County Road under the County Road System for Fulton County, Georgia, pursuant to former GCA § 95-103, prior to the Road and the Grantors' property being annexed and incorporated into the City; and

WHEREAS the Grantors and the City wish to resolve their differences over the width of the Road's right-of-way reasonably, amicably and in the best interests of all concerned, without the necessity and expense of the parties' litigation over, or the City's condemnation or specific purchase of, the easement provided for herein;

WITNESSETH:

THAT THE GRANTORS, for and in consideration of the premises referenced herein above, mutual benefits to the Grantors and the City, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant, bargain and convey unto the City a non-exclusive, perpetual easement over, through and across real property of the Grantors, more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 182 of the 17th District, Fulton County, Georgia, and being a strip of land six (6) feet in width (the "Easement Area"), adjacent to and parallel with the existing curb along the northerly right-of-way line of Howell Mill Road, N.W., where said Road fronts along and adjoins Lot 1 of Westminister Acres Subdivision, as more fully shown and delineated on that Plat of Westminister Acres Subdivision recorded in Plat Book 76, Page 77, Fulton County, Georgia Records, which Plat is hereby referred to, incorporated herein and made a part hereof by this reference, said Lot 1 being improved property known as 3051 Howell Mill Road, N.W., Atlanta, Georgia 30327-1652.

SAID PERPETUAL, NON-EXCLUSIVE EASEMENT is granted, bargained and conveyed for the purposes of: (i) the City constructing a sidewalk (the "Sidewalk"), five (5) feet wide and separated from the back of the existing curb aforesaid by a one (1)-foot grass strip (the "Grass Strip"), all within the Easement Area; (ii) the temporary right of access for construction of the Sidewalk and Grass Strip over, across and through an additional five (5) feet of the Grantors' property adjacent to and parallel with the northerly boundary of the Easement Area, this temporary right of access terminating automatically upon the end of construction, or in any event no later than ninety (90) days from the date hereof; and (iii) the

continuing right to maintain, replace and repair the Sidewalk, as the City may deem necessary and appropriate

THE CITY OF ATLANTA, by its acceptance of this Grant of Easement and by its use of same, covenants and agrees in favor of the Grantors, their heirs, assigns and successors, to construct or have constructed the Sidewalk and Grass Strip within the Easement Area, and to maintain, replace and repair the Sidewalk, as and when the City deems it necessary to do so; and, in exercising any rights pursuant to this Grant of Easement, to take all reasonably necessary and appropriate precautions to fully protect and preserve, and to minimize the impact of the City's exercise of rights hereunder on, any and all existing trees located on the Grantors' property.

THIS GRANT OF EASEMENT, and the perpetual, non-exclusive easement granted herein, shall burden the Easement Area; shall run with title to the lands of the Grantors, their heirs, assigns and successors, until such time as the City or its successors no longer maintains the Sidewalk within the Easement Area; and shall inure to the benefit of the Grantors, their heirs assigns and successors, and of the City or its successors. The Sidewalk shall be and remain the City's improvements within the Easement Area, and shall not be improvements of the Grantors. This Grant of Easement is made with the mutual review and consideration of both parties; any subsequent construction or interpretation of this Grant of Easement, whether judicial or otherwise, shall be balanced, impartial and objective as between the Grantors and the City, such that this Grant of Easement shall not be construed or interpreted in favor of, or against, either party except in accordance with the terms and provisions contained herein.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and affixed their seals, the day and year first written herein above.

Signed, sealed and delivered in the presence of:

Mary L Skene
Unofficial Witness

Carol A. Berry
Notary Public

[NOTARY SEAL]

CYNTHIA BRISCOE BROWN (SEAL)

JAMES FRANKLIN BROWN, JR. (SEAL)

My Commission expires:
Notary Public, Cobb County, Georgia
My Commission Expires Nov. 11, 2004

Exhibit 2

After recording, please return to:

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City Hall Tower, Suite 400
68 Mitchell Street, S.E.
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City; however, despite the Grantors' and the City's respective efforts to identify, or to reach mutual agreement on, the established right-of-way width for the Road (including but not necessarily limited to reviews of: the public deed records of Fulton County, Georgia; the City's own, internal records and engineering files; and applicable statutes, case law or other legal authority of the State of Georgia and political subdivisions thereof), neither party has identified a legal basis for such an established right-of-way width other than the greater of: (a) the existing width of the Road's pavement, being approximately thirty (30) feet, as a prescriptive, public right-of-way easement over, across and through the land of the Grantors, as adjoining property owners; or (b) thirty (30) feet as a first-class County Road under the County Road System for Fulton County, Georgia, pursuant to former GCA § 95-103, prior to the Road and the Grantors' property being annexed and incorporated into the City; and

WHEREAS the Grantors and the City wish to resolve their differences over the width of the Road's right-of-way reasonably, amicably and in the best interests of all concerned, without the necessity and expense of the parties' litigation over, or the City's condemnation or specific purchase of, the easement provided for herein;

W I T N E S S E T H:

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IN WITNESS WHEREOF, the Grantors have hereunto set their hands and affixed their seals, the day and year first written herein above.

Signed, sealed and delivered in the presence of:

M. Jaczive Richardson

Unofficial Witness

CYNTHIA BRISCOE BROWN (SEAL)

Michelle E. Vail

Notary Public

[NOTARY SEAL]

[Signature]

JAMES FRANKLIN BROWN, JR. (SEAL)

My Commission expires _____

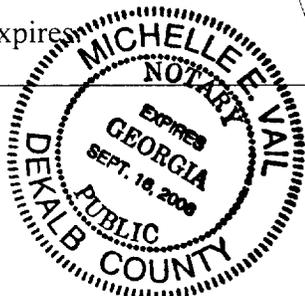


Exhibit 3

3-01-04 Council Meeting	
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT
<ol style="list-style-type: none"> 1. 04-O-0324 2. 04-O-0328 3. 04-O-0332 4. 04-O-0337 5. 04-O-0338 6. 04-O-0339 7. 04-O-0155 8. 04-O-0047 9. 04-O-0221 10. 04-O-0251 11. 04-R-0039 12. 04-R-0305 13. 04-R-0306 14. 04-R-0307 15. 04-R-0308 16. 04-R-0353 17. 04-R-0298 18. 04-R-0301 19. 04-R-0313 20. 04-R-0344 21. 04-R-0345 22. 04-R-0366 23. 04-R-0248 24. 04-R-0297 25. 04-R-0325 26. 04-R-0326 27. 04-R-0336 28. 04-R-0343 29. 04-R-0355 30. 04-R-0299 31. 04-R-0316 32. 04-R-0062 33. 04-R-0302 34. 04-R-0303 35. 04-R-0304 36. 04-R-0309 37. 04-R-0354 38. 04-R-0275 39. 04-R-0276 40. 04-R-0277 	<ol style="list-style-type: none"> 41. 04-R-0278 42. 04-R-0279 43. 04-R-0280 <p>ITEMS ADVERSED ON CONSENT</p> <ol style="list-style-type: none"> 44. 04-R-0281 45. 04-R-0282 46. 04-R-0283 47. 04-R-0284 48. 04-R-0285 49. 04-R-0286 50. 04-R-0287 51. 04-R-0288 52. 04-R-0289 53. 04-R-0290 54. 04-R-0291 55. 04-R-0292 56. 04-R-0293 57. 04-R-0294 58. 04-R-0295 59. 04-R-0296

04-R-0325
(Do Not Write Above This Line)

A RESOLUTION
BY COUNCILMEMBER CLAIR MULLER

A RESOLUTION AUTHORIZING THE CITY OF ATLANTA TO ACCEPT A PERMANENT EASEMENT GRANTED TO ACCOMMODATE AND FACILITATE THE CONSTRUCTION OF A SIDEWALK ADJACENT TO PORTIONS OF HOWELL MILL ROAD, INCLUDING THE PROPERTY LOCATED AT 3051 HOWELL MILL ROAD, AND TO EXECUTE AND DELIVER ANY DOCUMENTS NECESSARY TO EVIDENCE THE CITY'S ACCEPTANCE OF THE NEW EASEMENT; AND FOR OTHER PURPOSES.

ADOPTED BY
MAR 01 2004
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 02/16/04
 Referred To: City Utilities
 Date Referred _____
 Referred To: _____
 Date Referred _____
 Referred To: _____

First Reading
 Committee _____
 Date _____
 Chair _____
 Referred To _____

Committee City Utilities
 Date Feb. 2004
 Chair Hand Shair
 Action Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____
 Refer To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
 Consent V Vote RC Vote

CERTIFIED

MAR 01 2004

CERTIFIED
 MAR 01 2004
 Mayor's Office
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
Mayor's Office
 MAR 9 2004
 MAYOR