

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BROCK BUILT, LLC PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, Brock Built, LLC (“Brock Built”) wishes to build up to 300 residential, single-family and townhome units in a planned development housing (PDH) subdivision located within the municipal boundaries of the City of Atlanta (“City”); and

WHEREAS, the proposed residential units would be served with potable water from the City; and

WHEREAS, The City typically requires that water meters be installed at the “service connection” location either on City property, in the right-of-way or within an easement or license granted to the City; and

WHEREAS, Section 154-66 of the City’s Code of Ordinances regarding the City’s water system provides that a “service connection” is the point of water delivery to a premises where the water meter is normally located and where the City’s responsibility ends and the water customer’s responsibility begins; and

WHEREAS, Brock Built proposes to locate up to three hundred (300) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the PDH subdivision; and

WHEREAS, the Commissioner of the City’s Department of Watershed Management has reviewed the plans submitted by Brock Built for the installation of water system infrastructure, including the initial 227 meters, within the PDH subdivision and has approved those plans and considered Brock Built’s request for installation of water meters on private property; and

WHEREAS, it is desirable and in the best interests of the City to enter into an Agreement with Brock Built setting forth the terms between the parties concerning the installation of and responsibility for water system infrastructure, including meters, within the Subdivision.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT, the Mayor is authorized to execute with Brock Built an Agreement for the non-standard location of water meters on private property located within the PDH subdivision upon substantially the following conditions:

- 1) The PDH subdivision water system will be constructed per the Plans attached as Exhibit 1 and as otherwise modified pursuant to the agreement referenced herein, with the water meters located on private property.
- 2) The "service connection" will be located at the south side of Marietta Road, N.W. ("Valves"), as shown on Exhibit 1, so that the City's responsibility for the public portions of the water system includes the Valves.
- 3) The City or its representatives will read each water meter at the locations indicated in the Plans.
- 4) Brock Built agrees, prior to the sale of any lots and water service being established, to place within the recorded Declaration of Covenants and Restrictions that are applicable to the subdivision a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence and between the meter and the Valves must be maintained by the resident or the Homeowners Association; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the subdivision.
- 5) Brock Built further agrees to record an appropriate easement in favor of the City applicable to the subdivision, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of reading individual water meters within the subdivision.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to prepare an Agreement with Brock Built for this transaction, as deemed necessary and appropriate or as required by law, in accordance with this Resolution and in substantially the same form as Exhibit 2.

BE IT FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Brock Built, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Brock Built.

A true copy,

Shonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

FEB 02, 2004

FEB 11, 2004

AGREEMENT

This AGREEMENT ("Agreement") is entered into this ____ day of _____, 2004, between Brock Built, LLC ("Brock Built"), a Georgia limited liability company, and the City of Atlanta ("City"), a Georgia municipal corporation.

BACKGROUND:

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

The City typically requires that water meters be located at the "service connection" location to be on City property, in the right-of-way or within an easement or license granted to the City; and

Brock Built is developing Dupont Commons PDH Community, Land Lot 229, 17th District, a residential planned development housing subdivision ("Subdivision"), currently consisting of two-hundred twenty-seven (227) residential units, with modifications planned for additional units, located in the City of Atlanta, Fulton County, Georgia, and in which area water service is provided by the City; and

Brock Built proposes to locate up to three hundred (300) water meters at locations different than the service connection location, to allow each meter to be located on an individual lot; and

The City has consented to that proposal and, by legislation adopted on _____, 2004, by the City's Council and approved by the City's Mayor on _____, 2004, attached as Exhibit 1, authorized the City to execute with Brock Built an agreement pertaining to the proposed non-standard locations of the water meters;

Accordingly, the City and Brock Built agree as follows:

- 1. Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit 2, entitled Dupont Commons, prepared by Braswell Engineering, Inc. dated _____, 2003. The water system for the Subdivision will contain individual water meters at the locations shown on Exhibit 2. The City agrees that each individual water meter will be read by the City or its representatives at the locations set forth on Exhibit 2 for the purposes of rendering bills to each individual property owner for its respective and independent water use. Brock Built agrees that the City or its representatives shall have the authority to enter the Subdivision to read any meter, and this Agreement constitutes a right of entry,

license and agreement by Brock Built that the City or its representatives are authorized to enter such Subdivision and that entry will not constitute a trespass. Brock Built agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Subdivision a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the Subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence and between the meter and the valves must be maintained and repaired by the resident or the Homeowners Association in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Subdivision. Brock Built further agrees to record an appropriate easement in favor of the City applicable to the Subdivision, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of reading individual water meters within the Subdivision.

2. **Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Subdivision will not be located where any individual water meter is located. Instead, the "service connection" location will be at the point of the water system on the south side of Marietta Road, N.W. with valves ("Valves") as shown on Exhibit 2, so that the City's responsibility for the public portions of the water system includes the Valves. Brock Built agrees that it is entirely responsible, at its expense, for the construction, operation, maintenance and repair of all water services infrastructure located immediately after the "service connection" and vault and throughout the Subdivision. The City agrees that Brock Built shall not be responsible for payments or fees to the City for construction, operation, maintenance and repair of the water system located after the service connection, as herein defined, including but not limited to installation of individual meters and lines thereto. The City's approval of Exhibit 2 does not encompass an approval that the materials proposed to be installed in the Subdivision in the form of water services infrastructure, except for materials identified on the Exhibit 2 as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

3. Miscellaneous:

- 3.1. **Future Modifications to Exhibit 2 Authorized.** Should the Subdivision be modified in the future so as to alter or increase the land area and number of individual residential water meters within the Dupont Commons development beyond that set forth in Exhibit 2, the provisions of this Agreement shall also apply to said modified area and associated individual water meters, provided the water system plan for said modified area has been approved by the City's Department of Watershed Management and further provided the total number of individual water meters at Dupont Commons shall not exceed three hundred (300). In the event of such modification, Brock Built agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".
- 3.2. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon Brock Built and the City, their legal representatives and permitted successors and assigns.
- 3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.
- 3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 3.5. **Forum Selection Clause.** The City and Brock Built agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.
- 3.6. **Ethics: Gratuities And Kickbacks.**
- 3.6.1. **Gratuities and Kickbacks.** The right of Brock Built to proceed under this Agreement may be terminated if, after notice and hearing, City determines that Brock Built:
- 3.6.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and



3.6.1.2.intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. **Contingent Fees.** Brock Built warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that Brock Built has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from Brock Built the full amount of such fee, commission, percentage, gift or consideration.

3.8. **Further Acts.** Brock Built agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

CITY:

BROCK BUILT, LLC

MAYOR

Name: _____
Title: _____

ATTEST:

ATTEST:

MUNICIPAL CLERK (Seal)

**SECRETARY/ASSISTANT
SECRETARY (Seal)**

APPROVED:

APPROVED AS TO FORM:

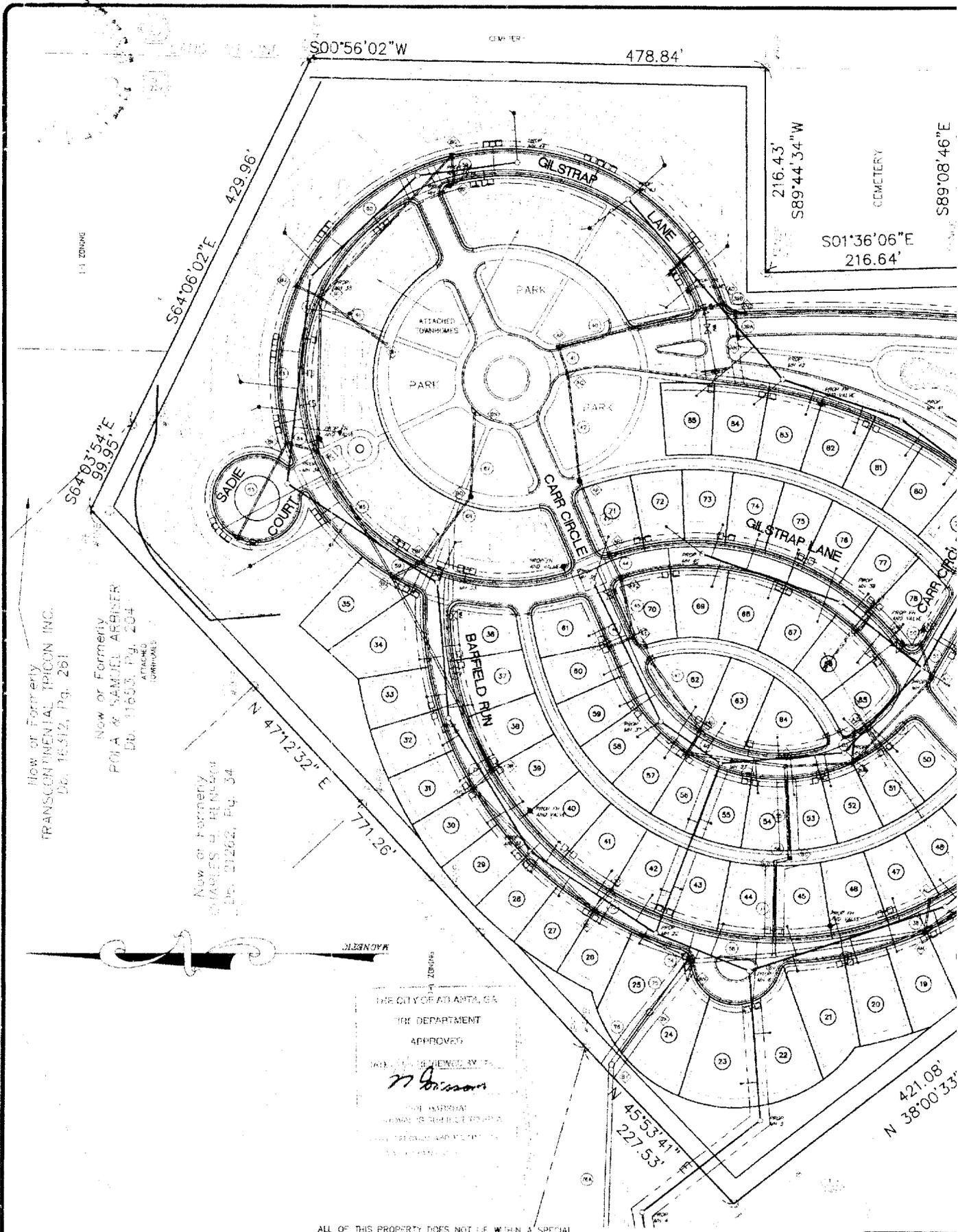
**COMMISSIONER, DEPARTMENT OF
WATERSHED MANAGEMENT**

CITY ATTORNEY

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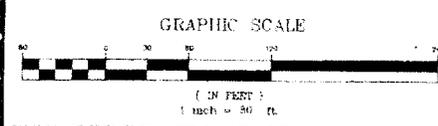
Now of Formerly
 TRANSCONTINENTAL TRICORN INC.
 DB. 16312, Pg. 261

Now of Formerly
 POHA & SAMUEL ARBISER
 DB. 11633, Pg. 204

Now of Formerly
 CHARLES H. HENNING
 DB. 21262, Pg. 34



THE CITY OF ATLANTA, GA
 THE DEPARTMENT
 APPROVED
 DATE REVIEWED BY
M. Johnson
 THE MARSHAL
 COMMUNITY DEVELOPMENT

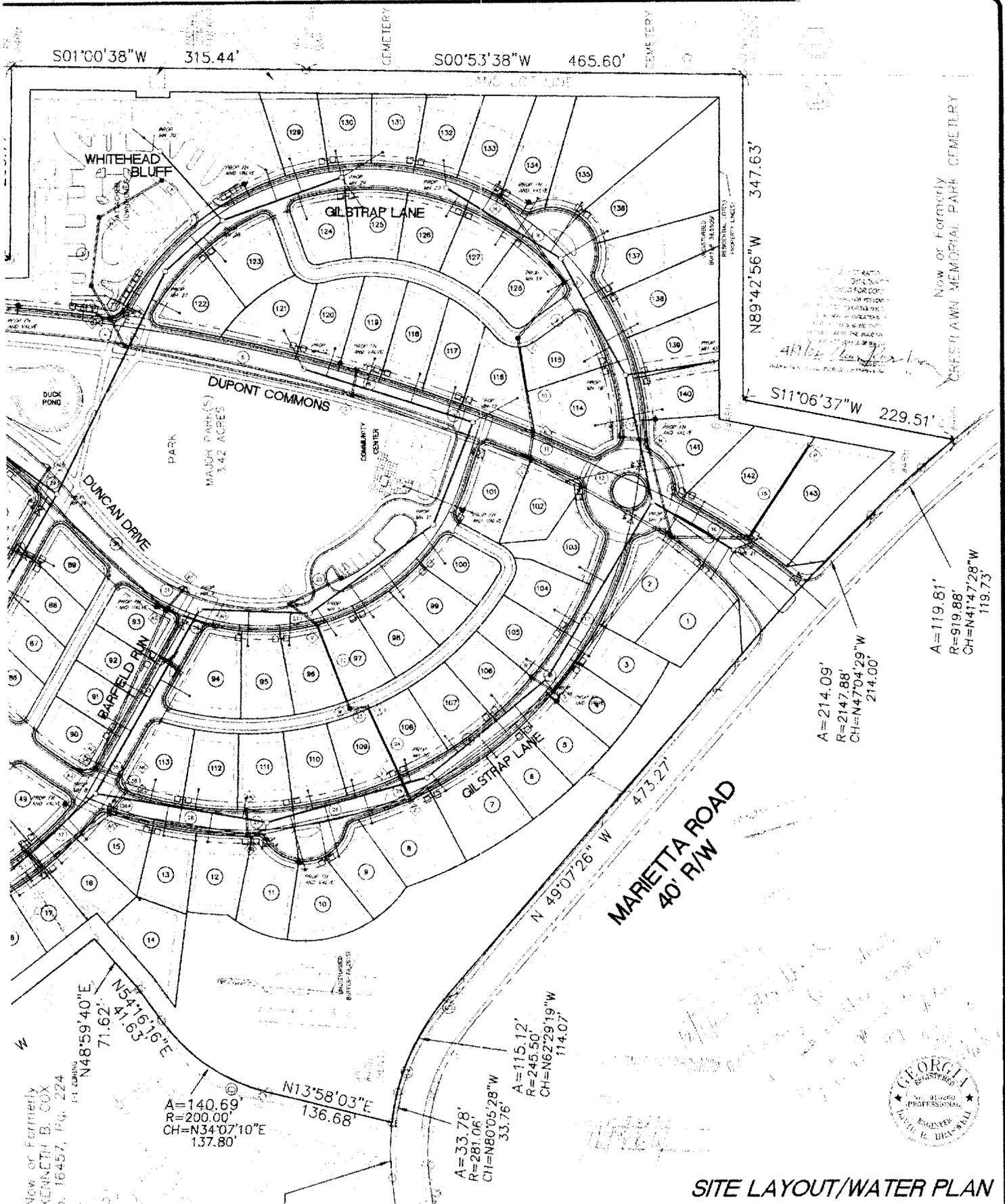


ALL OF THIS PROPERTY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO THE F.I.R.M. MAPS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
 ZONE
 COMMUNITY PANEL NO. 131210232 E
 DATED JUNE 22, 1990

TOTAL AREA=34.719 ACRES
ZONING=PDH

REFERENCE
 1. SURVEY FOR PETER INDUSTRIES INC. BY LOWE ENGINEERS, DATED MARCH 5, 1984
 LAST REVISED AUGUST 3, 1985
 2. SURVEY FOR KENNETH B. COX AND SALLY ANN COX BY VALENTINO & ASSOCIATES, INC. DATED FEBRUARY 3, 1997

BRASWELL ENGINEERS
 3225 SHALLOWFORD
 SUITE 100
 MARIETTA, GEORGIA
 (770) 865-1111



SITE LAYOUT/WATER PLAN

Now or Formerly
KENNETH B. COX
P.L. 16457, P.G. 224
L.S. 2000

ERING INC.
RD ROAD
10
30082-7031
0036

NO.	DATE	DESCRIPTION	BY
<input type="checkbox"/>		APPROVED FOR CONSTRUCTION	
<input type="checkbox"/>		NOT APPROVED FOR CONSTRUCTION	

DUPONT COMMONS

(A PDH COMMUNITY)
LOCATED IN LAND LOT 229
17TH DISTRICT - CITY OF ATLANTA
FULTON COUNTY, GEORGIA

DRAWN BY	JCS
CHECKED BY	DME
DATE	12-6-2001
SCALE	1"=80'
PROJECT NO.	01-152

SHEET	2
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#20

04-R-0170
(Do Not Write Above This Line)

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BROCK BUILT, LLC PROVIDING FOR THE NON STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

ADOPTED BY
FEB 0 2 2004
COUNCIL

AS AMENDED

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

Date Referred _____

Referred To: _____

Committee _____

Date _____

Chair _____

Referred To _____

First Reading

Committee Public Works

Date Feb 1, 2004

Chair Mark Miller

Action Fav, Adv, Hold (see rev. side)

Other Refer

Members [Signatures]

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

Readings

Consent V Vote RC Vote

CERTIFIED

FEB 0 2 2004

CERTIFIED

FEB 0 2 2004

Frank Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

FEB 1 1 2004

WITHOUT SIGNATURE
BY OPERATION OF LAW