



41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346
 P (678) 382-6700 F (678) 382-6701
dunwoodyga.gov

MEMORANDUM

To: Mayor and City Council

From: Warren Hutmacher, City Manager

Date: October 14, 2013

Subject: **Amendment to the Declaration of Easement**

ITEM DESCRIPTION

An amendment to the Declaration of Easements clarifies the established easement area between the 16 acre property and the property immediately to its south by adding an exhibit and legal descriptions for the easement area.

BACKGROUND

In 2011 the City purchased a 16 acre property between Chamblee Dunwoody Road and North Shallowford Road. Prior to the City's purchase, the property was contemplated to be developed as the second phase of the residential development (the 2Blocks apartment complex) along its southern border. As such, the detention pond on the 16 acre property also serves the neighboring 2Blocks property. Similarly, drainage areas and sewer lines cross the property line between the two properties.

In 2012, the City adopted an Urban Redevelopment Plan specifying its intent to redevelop and revitalize the aforementioned 16 acre parcel and a 19 acre property in Georgetown. To implement the Urban Redevelopment Plan, in May 2012 the City Council created an Urban Redevelopment Agency (URA). In June 2012 the City Council entered into an Intergovernmental Agreement with the URA which specified roles and responsibilities related to implementing the Urban Redevelopment Plan and the Development Agreement the City signed with John Wieland Homes and Neighborhoods for the redevelopment of the property.

In July 2012, by Ordinance 2012-07-09, the City transferred the 16 acre property to the URA. In October 2012, the URA signed a Declaration of Easements with the owners of the 2Blocks apartment complex which established the easement areas and rights relating to drainage serving the 16 acre property.

UPDATE

In September 2013, the URA sold the first six lots to JWC Loden, an entity of John Wieland Homes and Neighborhoods. As part of the closing process, the title insurance company for John Wieland Homes and Neighborhoods asked that the URA amend the Declaration of Easements. They do not believe the Declaration of Easements is clear enough in depicting which areas are reserved for the drainage easement. They have asked that the URA amend the Declaration of Easements by including an exhibit focusing on just the drainage areas and add a legal description of the drainage areas. As an example, the detention pond is mentioned in the Declaration of Easements as a drainage area but in the original exhibit, the area was marked with cross-hatching instead of the gray shading used for the other "drainage areas."



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Although the Declaration of Easements is an agreement between the URA and the owners of the 2Blocks property, the City signed the original Declaration of Easements as a Consent and Joinder. As such, the City is also a party to any amendments to the Declaration of Easements. The proposed exhibit and legal description is also being reviewed by 2Blocks and will be reviewed by the URA at their next regularly scheduled meeting in early November.

RECOMMENDATION

Staff recommends the Council approve the amendment to the Declaration of Easements and authorize the Mayor, by action statement, to execute the amendment.

EXECUTION COPY

2012176201 DEED BOOK 23352 Pg 771


Filed and Recorded:

10/30/2012 5:00:02 PM

Debra DeBerry

Clerk of Superior Court
DeKalb County, Georgia

Georgia Intangible Tax Paid \$0.00
Real Estate Transfer Tax \$0.00

PREPARED BY AND AFTER
RECORDING, PLEASE RETURN TO:

Robin L. Wooldridge, Esq.

The Abram Law Group, LLC

1200 Ashwood Parkway, Suite 560
Atlanta, GA 30338

(770) 349-8120

First American Title Insurance Company

Six Concourse Parkway, Suite 2000

Atlanta, GA 30328

563699AT

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration") is made and entered into this 26 day of October, 2012, **DUNWOODY PARK DEVELOPMENT, LP**, a Georgia limited partnership ("Two Blocks"), and **URBAN REDEVELOPMENT AGENCY OF THE CITY OF DUNWOODY, LLC**, a governmental agency organized under the laws of the State of Georgia and the ordinances of the City of Dunwoody, Georgia ("URA").

WITNESSETH:

WHEREAS, there has heretofore filed and recorded that certain plat of property located in Land Lot 345 of the 18th District of the City of Dunwoody, Dekalb County, Georgia, entitled Final Plat for "Project Renaissance (A New Georgetown)", recorded in Plat Book 223, Page 113, Dekalb County, Georgia records (the "Plat") which plat by this reference is incorporated herein and made a part hereof showing the location and legal descriptions of the easements described in this Declaration;

WHEREAS, Two Blocks owns the parcel of land depicted on the Plat as "Lot 2" (the "Two Blocks Property"); and

WHEREAS, URA owns the parcel of land depicted on the Plat as "Lot 1" (the "URA Property"); and

WHEREAS, the owner or owners of fee simple title to the Two Blocks Property, from time to time are herein collectively called the "Two Blocks Owner", the owner or owners of fee simple title to the URA Property, from time to time are herein collectively called the "URA Owner", and the Two Blocks Owner and the URA Owner are herein sometimes individually called and "Owner" and collectively called the "Owners"; and

WHEREAS, the Two Blocks Property and the URA Property are adjacent to each other and are sometimes collectively be referred to as the "Property"; and

WHEREAS, the parties hereto desire to enter into this Declaration for the purpose of establishing certain easements to benefit the Property, as more particularly described hereinafter.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by each party hereto, the parties hereby agree as follows:

1. Declarations. Two Blocks hereby declares that the Two Blocks Property and any fee simple, leasehold or other interest therein is and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated, encumbered, leased, subleased, rented, used, occupied, developed, improved and maintained subject to the terms, provisions, covenants, conditions, restrictions, and easements set forth in this Declaration. URA hereby declares that the URA Property and any fee simple, leasehold or other interest therein is and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated, encumbered, leased, subleased, rented, used, occupied, developed, improved and maintained subject to the terms, provisions, covenants, conditions and restrictions set forth in this Declaration. This Declaration shall be a covenant running with the land, benefitting and burdening the Property and any portion thereof as an appurtenance thereto.

2. Drainage Easement. There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement (the "Drainage Easement") in, on, over, under, through or across that portion of the Two Blocks Property being more particularly depicted as "Drainage Easement for Maintenance and Construction (Typical)" on the Plat (the "Drainage Easement Area") for the benefit of the Two Blocks Property and the URA Property. The Drainage Easement is established for the purposes of: (i) using, maintaining, operating, replacing and repairing the detention pond and related equipment and facilities currently located in the Drainage Easement Area (the "Detention Facilities") to serve the Two Blocks Property and the URA Property; and (ii) installing, using, maintaining, operating, replacing and repairing additional drainage equipment and facilities carrying water from the Two Blocks Property and the URA Property through, under and across the Drainage Easement Area to the Detention Facilities shown on the Plat. "Water" as used herein, shall mean rainwater, surface waters, and waters from springs and other underground sources either: (1) originating on the Two Blocks Property or the URA Property; or (2) originating on other property, but only as and to the extent draining across the Two Blocks Property or the URA Property as of the date of this Declaration.

3. Sanitary Sewer Easement.

a. There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement (the "Sanitary Sewer Easement") in, on, over, under, through or across that portion of the Two Blocks Property being more particularly depicted as "20' Sanitary Sewer Easement" on the Plat ("Sanitary Sewer Easement Area") for the benefit of the Two Blocks Property and the URA Property. The Sanitary Sewer Easement is established for the purpose of using, maintaining, operating, replacing

and repairing the sewer line and related equipment and facilities currently located in the Sanitary Sewer Easement Area (the "Sanitary Sewer Facilities") to serve the Two Blocks Property and the URA Property. In no event shall the URA Owner have the right to construct within the Sanitary Sewer Easement Area any additional tie-ins or connections to the Sewer Facilities to serve the URA Property, it being the express intention of the parties that all such additional tie-ins or connections to serve the URA Property shall be to a sewer line located on the URA Property which connects to the Sanitary Sewer Facilities at the northern boundary of the Two Blocks Property.

b. The Two Blocks Owner and the URA Owner acknowledge that it is their intention to cause the Sanitary Sewer Facilities to be dedicated to DeKalb County, Georgia, as public utility facilities. The Two Blocks Owner and the URA Owner shall cooperate in such dedication, and use commercially reasonable efforts to cause such dedication to occur, including, without limitation, executing and delivering such documents and instruments as shall be reasonably required in connection therewith. The URA Owner expressly acknowledges that the dedication of the Sanitary Sewer Facilities will require the dedication of other sanitary sewer facilities located on the URA Property, and agrees that its obligations under this Section 3.b. include such additional dedication. Upon the dedication of the Sanitary Sewer Facilities, the Sanitary Sewer Easement shall terminate and be of no further force or effect.

4. Maintenance and Repair.

a. The URA Owner, at its sole cost and expense and without any liability or obligation of the Two Blocks owner, shall operate in a commercially reasonable manner, and shall perform all reasonably required capital and non-capital maintenance, repair and replacement of, the Detention Facilities and all drainage pipes, equipment and facilities now or hereafter installed within the Drainage Easement Area (collectively, the "Drainage Facilities").

b. The Two Blocks Owner shall operate in a commercially reasonable manner, and shall perform all reasonably required capital and non-capital maintenance, repair and replacement of, the Sanitary Sewer Facilities. The URA Owner shall be obligated to pay as incurred by the Two Blocks Owner a portion of all costs and expenses incurred by the Two Blocks Owner in performing its obligations pursuant to this Section 4.b., in accordance with the following formula: (i) no payment shall be required from the URA Owner for costs and expenses incurred prior to the time that the initial connection is made either to the Sanitary Sewer Facilities or other sanitary sewer facilities on the URA Property such that any portion of the URA Property is served by or through the Sanitary Sewer Facilities; and (ii) the URA Owner shall pay fifty percent (50%) of all costs and expenses incurred after the initial connection described in clause (i).

c. The Owner (the "Non-Maintaining Owner") that is not responsible for operating, maintaining, repairing and replacing the Drainage Facilities or the Sanitary Sewer Facilities (collectively, the "Easement Facilities"), as set forth in Sections 4.a. and 4.b., shall have no right to operate, maintain, repair or replace said Easement Facilities

unless and until the Owner having such responsibility (the "Maintaining Owner") fails to do so pursuant to the terms of this Declaration; provided, however, that the Non-Maintaining Owner may perform any emergency operation, maintenance, repairs or replacement necessary to prevent damage or loss of access or service, as the case may be, to the Property or to prevent imminent injury to persons or property.

d. In the event that the Non-Maintaining Owner determines that operation, maintenance, repair or replacement of any Easement Facilities is reasonably necessary, the Non-Maintaining Owner may, at any time and from time to time, deliver notice thereof to the Maintaining Owner requesting with reasonable detail that such reasonably necessary operation, maintenance, repair or replacement, as the case may be, be performed. Within ten (10) days following receipt of any such notice, the Maintaining Owner shall either: (i) begin to perform the requested operation, maintenance, repair or replacement and continue such performance diligently until completion; (ii) notify the Non-Maintaining Owner when the requested operation, maintenance, repair or replacement will be performed at a reasonable future time; or (iii) notify the Non-Maintaining Owner that the Maintaining Owner believes that such requested operation, maintenance, repair or replacement is not reasonably necessary. In the event the Maintaining Owner shall fail to deliver the notice required by the immediately preceding sentence, or in the event the Maintaining Owner gives notice that it believes that the requested operation, maintenance, repair or replacement is not reasonably necessary and the Non-Maintaining Owner reasonably disagrees with such determination, the Non-Maintaining Owner may, at its option, cause such operation, maintenance, repair or replacement to be performed, but the cost of such operation, maintenance or repair shall not be paid or reimbursed by the Maintaining Owner unless a licensed engineer or other third party reasonably acceptable to each of the parties determines that such operation, maintenance, repair or replacement was in fact reasonably necessary.

e. The Maintaining Owner hereby grants to the Non-Maintaining Owner a non-exclusive, perpetual easement upon and across such portions of the Property of the Maintaining Owner as shall be reasonably necessary or appropriate, from time to time, to enable the Non-Maintaining Owner to exercise the rights granted to it under this Section 4, which easement shall include the right of reasonable vehicular and pedestrian access, ingress and egress across the property of the Maintaining Owner as shall be reasonably necessary or appropriate for such purposes.

f. In the event that either Owner incurs any costs pursuant to this Declaration (the "Incurring Owner") which are to be paid or reimbursed by another Owner hereto (the "Reimbursing Owner"), the Reimbursing Owner shall pay such costs or expenses to the Incurring Owner within ten (10) days after receipt from the Incurring Owner of a written statement detailing the requested payment or reimbursement and accompanied by invoices detailing the work performed or to be performed, and if the statement is not so paid, the amount shall bear interest at a rate of twelve (12%) percent per annum from the date of receipt of the statement until the date payment is made. All unpaid costs and expenses evidenced by statements delivered to the Reimbursing Owner as required hereinabove, together with interest, costs, and attorney's fees incurred in the collection of

costs, shall be secured by a lien on the URA Property or the Two Blocks Property, as the case may be, in favor of the Incurring Owner. If such failure to pay continues after a second notice from the Incurring Owner to the Reimbursing Owner and the passage of ten (10) days after receipt of such second notice, the Incurring Owner may institute suit to collect all amounts due and to foreclose its lien.

g. All operation, maintenance, repair or replacement activities performed pursuant to this Declaration shall be diligently performed in a good and workmanlike and lien-free manner, and in a manner that, to the extent commercially practicable, will not unreasonably interfere with other operation, maintenance or repair activities being performed on, nor with the use, occupancy or enjoyment of, the URA Property or the Two Blocks Property, as the case may be. URA and Two Blocks each shall cooperate with the other in good faith and commercial reasonableness with respect to the exercise of their respective rights under this Declaration.

5. Non-Exclusive Easements. The Drainage Easement and the Sanitary Sewer Easement are non-exclusive. Therefore, the Drainage Easement Area and the Sanitary Sewer Easement may be used by the Owners thereof and their respective successors, successors-in-title, legal representatives and assigns for all uses which are not inconsistent with the Drainage Easement and the Sanitary Sewer Easement. No improvements which would impede access to the Drainage Easement Area or the Sanitary Sewer Easement shall be constructed or permitted without the prior written consent of the Owner(s) utilizing the Drainage Easement or the Sanitary Sewer Easement, which said consent shall not be unreasonably withheld.

6. Delegation. Each Owner may delegate the right to enjoy its easement rights hereunder to its tenants, lessees, invitees, licensees, officers, agents, contractors and employees.

7. Priority. This Declaration shall be prior and superior to the title, lien and encumbrance of any and all mortgages, security agreements, leases and other interests in and encumbrances upon the Property or any portion thereof.

8. Miscellaneous Provisions.

a. Governing Law. This Declaration shall be governed by and enforced in accordance with the laws of the State of Georgia.

b. Time of the Essence. Time is of the essence of each and every provision of this Declaration.

c. Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, successors-in-title and assigns of each party hereto and upon each person acquiring ownership, possession or any other right, title or interest in or to the URA Property or the Two Blocks Property or both, or any portion thereof, either voluntarily or by operation of law. Any transferee of any portion of the Property shall automatically be deemed, by acceptance of the title to said property, to have assumed all obligations of this Declaration relating thereto to the extent

of its interest in the Property and the transferor shall, upon the completion of such transfer, be relieved of all further liability under this Declaration except liability with respect to matters that may have arisen during its period of ownership of the portion of the Property so conveyed. The parties acknowledge that it is anticipated that, immediately following the execution of and delivery of this Declaration, Two Blocks will convey the Two Blocks Property to WRPV XI 2BLOCKS DUNWOODY, L.L.C., a Delaware limited liability company ("WRPV").

d. Notices. Any notice, request, demand, instruction or other communication (a "Notice") to be given by either party with respect to this Declaration may be given either by said party or its counsel and shall be deemed to have been properly sent when delivered by hand or national overnight courier service. If delivered by hand, a Notice shall be deemed to have been given and received when actually received by the addressee. If sent by national overnight courier service, a Notice shall be deemed to have been given and received one business day after the Notice has been delivered to said courier service, properly addressed with the delivery charges prepaid. The addresses to which Notices shall be sent are:

If to URA: Urban Redevelopment Agency of the City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346
Attn: City Manager

With copy to: City of Dunwoody City Attorney
41 Perimeter Center East, Suite 250
Dunwoody, GA 30316

If to Two Blocks: Dunwoody Park Development, LP
c/o PollackShores Real Estate Group
5605 Glenridge Drive, Suite 775
Atlanta, Georgia 30342
Attn: Mr. Steven Shores

With a Copy to:

Arnall Golden Gregory LLP
171 17th Street NW
Suite 2100
Atlanta, Georgia 30363
Attn: Scott A. Fisher, Esq.

If to WRPV: WRPV XI 2Blocks Dunwoody, L.L.C.,
 c/o Waterton Associates
 30 South Wacker Drive
 Suite 3600
 Chicago, Illinois 60606
 Attn: Marc Swerdlow

With a copy to:

Kilpatrick Townsend & Stockton LLP
 Suite 2800
 1100 Peachtree Street
 Atlanta, Georgia 30309
 Attn: M. Andrew Kauss

Each party shall have the right to change the address to which Notices to it are to be sent by giving written notice of said change to the other party as provided in this section. If any Notice shall not be actually received by the addressee due to said addressee's failure or refusal to furnish to the other party an accurate, current address or due to addressee's failure or refusal to accept a delivery tendered at the address specified in or to pursuant to this section, then, in such event, said notice shall conclusively be deemed to have been received by said addressee on the earlier to occur of (a) the time specified in this section, or (b) when a delivery attempt is made to the address specified in or pursuant to this section.

e. Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

f. Severability. If any provision of this Declaration or the application thereof to any entity or circumstances shall be invalid or unenforceable to any extent, the remainder of this Declaration and the application of such provisions to any other entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

g. Amendment. Neither this Declaration nor any provision hereof may be changed, modified, waived or altered in any way except by an instrument executed by the party against whom enforcement of the change, modification, waiver or alterations is sought.

h. Interpretation. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority.

i. Relationship of Parties. No express or implied term, provision or condition of this Declaration shall be deemed to constitute the parties as partners or joint venturers.

j. Entire Agreement. This Declaration constitutes the entire agreement and understanding of the parties hereto relating to the subject matter hereof and supersedes all prior negotiations and discussions regarding the subject matter.

[Remainder of Page Intentionally left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration under seal this 26 day of October, 2012.

Signed, sealed and delivered in the presence of:

DUNWOODY PARK DEVELOPMENT, L.P., a Georgia limited partnership, by its General Partner:

Witness [Signature]

By: PB Dunwoody Development, LLC, a Georgia limited liability company, by its Member-Manager:

Belinda K. Burke
Notary Public

By: Pollack-Dunwoody, LLC, a Georgia limited liability company



By: [Signature]
Name: Marv. S. Pollack
Title: President

[Signatures Continued on Following Page]

Signed, sealed and delivered
in the presence of:

**URBAN REDEVELOPMENT AGENCY OF
THE CITY OF DUNWOODY**, a governmental
agency established pursuant to the laws of the State
of Georgia and the ordinances of the City of
Dunwoody, Georgia

Kimberly Greer

Witness

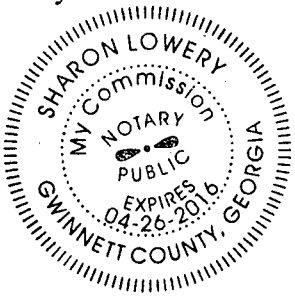
By: *[Signature]*

Sharon Lowery

Notary Public

Name: *Regina Wright*

Title: *Chair*



[Signatures Continued on Following Page]

Consent and Joinder

The undersigned, being the owner of a reversionary interest in the URA Property, hereby consents to and joins in the within and foregoing Declaration of Easements. By executing this Consent and Joinder, the undersigned expressly consents only to the terms of the Declaration, and agrees that its reversionary interest in the URA shall be subject, subordinate and inferior in priority to the Declaration. This Consent and Joinder shall not be deemed or construed as a consent and/or subordination to any other matter which may affect title to the URA Property.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Joinder to be executed on this 26 day of October, 2012.

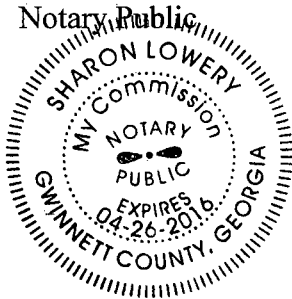
Signed, sealed and delivered
in the presence of:

THE CITY OF DUNWOODY, GEORGIA

Kimberly Greer
Witness

By: [Signature]
Name: Michael G. Davis
Title: Mayor

Sharon Lowery
Notary Public



(Space Above for Recorder’s Use)

After Recording Please Return To:
FisherBroyles, LLP
Northpark Town Center
1200 Abernathy Road, Bldg 600
Suite 1700
Atlanta, Georgia 30328
Attn: Alison S Woodrow, Esq.

STATE OF GEORGIA

COUNTY OF DEKALB

MODIFICATION OF DECLARATION OF EASEMENTS

This **MODIFICATION OF DECLARATION OF EASEMENTS** (this “Modification”), dated as of the ____ of _____, 2013, made and entered into by and between **WRPV XI 2BLOCKS DUNWOODY, L.L.C.**, a Delaware limited liability company (“Grantor”), and **URBAN REDEVELOPMENT AGENCY OF THE CITY OF DUNWOODY**, a governmental agency organized under the laws of the State of Georgia and the ordinances of the City of Dunwoody, Georgia (“Grantee”).

WITNESSETH:

WHEREAS, Dunwoody Park Development, LP, a Georgia limited partnership (“Dunwoody Park”), and Grantee entered into that certain Declaration of Easements dated as of October 26, 2012, recorded in Deed Book 23352, Page 771, DeKalb County, Georgia records (the “Declaration”);

WHEREAS, Dunwoody Park has conveyed to Grantor the title to the parcel of land depicted as “Lot 2” (the “Two Blocks Property”) on that certain plat of property located in Land Lot 345 of the 18th District of the City of Dunwoody, DeKalb County, Georgia, entitled Final Plat for “Project Renaissance (A New Georgetown)”, recorded in Plat Book 223, Page 113, DeKalb County, Georgia records (the “Plat”);

WHEREAS, Grantee is the owner of the parcel of land depicted as “Lot 1” on the Plat (the “URA Property”);

WHEREAS, portions of the Two Blocks Property are encumbered by certain easements arising from the Declaration, including, without limitation (i) a drainage easement, and (ii) a sanitary sewer easement; and

WHEREAS, Grantor and Grantee have agreed to modify the Declaration to clarify the locations of the Drainage Easement and Sanitary Sewer Easement, as more particularly set forth herein.

NOW THEREFORE, in consideration of the covenants contained herein, the sum of Ten and no/100 Dollars (\$10.00) in hand paid by Grantee to Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto do hereby agree as follows:

1. Modification of Drainage Easement. Section 2 of the Declaration is hereby deleted in its entirety and the following paragraph is hereby added in replacement thereof:

“Drainage Easement. There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement (the “Drainage Easement”) in, on, over, under, through or across that portion of the Two Blocks Property being more particularly depicted as the dark grey shaded areas labeled “Drainage Easement for Maintenance and Construction (Typical)” and “Detention Pond” on the sketch entitled Sketch of Sewer and Drainage Easement for Maintenance and Construction, prepared by TerraMark Professional Land Surveying, dated October 3, 2013, attached hereto as Exhibit “A” and by this reference made a part hereof, and being more particularly described in Exhibit “B,” attached hereto and by this reference made a part hereof (collectively, the “Drainage Easement Area”), for the benefit of the Two Blocks Property and the URA Property. The Drainage Easement is established for the purposes of: (i) using, maintaining, operating, replacing and repairing the detention pond and related equipment and facilities currently located in the Drainage Easement Area (the “Detention Facilities”) to serve the Two Blocks Property and the URA Property; and (ii) installing, using, maintaining, operating, replacing and repairing additional drainage equipment and facilities carrying water from the Two Blocks Property and the URA Property through, under and across the Drainage Easement Area to the Detention Facilities shown on the Plat. “Water” as used herein, shall mean rainwater, surface waters, and waters from springs and other underground sources either: (1) originating on the Two Blocks Property or the URA Property; or (2) originating on other property, but only as and to the extent draining across the Two Blocks Property or the URA Property as of the date of this Declaration.”

2. Modification of Sanitary Sewer Easement. Section 3.a. of the Declaration is hereby deleted in its entirety and the following paragraph is hereby added in replacement thereof:

“a. There is hereby established, declared and reserved a nonexclusive, permanent, perpetual easement (the “Sanitary Sewer Easement”) in, on, over, under, through or across that portion of the Two Blocks Property being more particularly depicted by cross-hatching and labeled “20’ Sanitary Sewer Easement” on the sketch attached as Exhibit “A” (“Sanitary Sewer Easement Area”) for the benefit of the Two Blocks Property and the URA Property. The Sanitary Sewer Easement is established for the purpose of using, maintaining, operating, replacing and repairing the sewer line and related equipment and facilities currently located in the Sanitary Sewer Easement Area (the “Sanitary Sewer Facilities”) to serve the Two Blocks Property and the URA Property. In no event shall the URA Owner have the right to construct within the Sanitary Sewer Easement Area any additional tie-ins or connections to the Sewer Facilities to serve the URA Property, it being the express intention of the parties that all such additional tie-ins or connections to serve the URA Property shall be to a sewer line located on the URA Property which connects to the Sanitary Sewer Facilities at the northern boundary of the Two Blocks Property.”

3. Severability. If any provision of this Modification or the application thereof to any entity or circumstances shall be invalid or unenforceable to any extent, the remainder of this Modification and the application of such provisions to any other entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
4. Amendment. Neither this Modification nor any provision hereof may be changed, modified, waived or altered in any way except by an instrument executed by the party against whom enforcement of the change, modification, waiver or alterations is sought.
5. Counterparts. This Modification may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.
6. Interpretation. No provision of this Modification shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority.
7. Ratification. As hereinabove modified, the Declaration is ratified, confirmed and continued in all respects, and all covenants, terms and conditions of the Declaration, as hereby modified, are hereby incorporated herein by this reference.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the date first set forth above.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

[AFFIX NOTARIAL SEAL & STAMP]

GRANTOR:

WRPV XI 2BLOCKS DUNWOODY, L.L.C., a Delaware limited liability company

By: _____

Name: _____

Title: _____

Signed, sealed and delivered in the presence of:

Witness

Notary Public

[AFFIX NOTARIAL SEAL & STAMP]

GRANTEE:

URBAN REDEVELOPMENT AGENCY OF THE CITY OF DUNWOODY, a governmental agency established pursuant to the laws of the State of Georgia and the ordinances of the City of Dunwoody, Georgia

By: _____

Name: _____

Title: _____

[SEAL]

Consent and Joinder

The undersigned, being the owner of a reversionary interest in the URA Property, hereby consents to and joins in the within and foregoing Modification of Declaration of Easements. By executing this Consent and Joinder, the undersigned expressly consents only to the terms of the Modification of Declaration of Easements, and agrees that its reversionary interest in the URA shall be subject, subordinate and inferior in priority to the Modification of Declaration of Easements. This Consent and Joinder shall not be deemed or construed as a consent and/or subordination to any other matter which may affect title to the URA Property.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Joinder to be executed on this ___ day of _____, 2013.

Signed, sealed and delivered
in the presence of:

THE CITY OF DUNWOODY, GEORGIA

Witness

By: _____
Name: _____
Title: _____

Notary Public

[SEAL]

EXHIBIT B**PROPERTY DESCRIPTION****Drainage & Sewer Easement – WRPV XI 2Blocks Dunwoody, L.L.C.**

Being all that tract or parcel of land lying and being in Land Lot 345, of the 18th District, in the City of Dunwoody, DeKalb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at a capped ½ inch rebar set at the intersection of the southerly Right-of-Way Line of North Shallowford Road (having a variable width right-of-way) with the westerly Right-of-Way Line of Dunwoody Park Drive (having an apparent 60 feet wide right-of-way), thence, leaving the said intersection point and running along the said line of Dunwoody Park Drive, South 39° 15' 09" West, 251.95 feet to a ½ inch rebar found; thence, 294.12 feet along the arc of a curve deflecting to the left, having a radius of 344.38 feet and a chord bearing and distance of South 14° 47' 09" West, 285.26 feet; thence, South 09° 40' 51" East, 90.83 feet to the True Point of Beginning of the herein described tract or parcel of land; thence, leaving the said Point of Beginning and continuing with the said line of Dunwoody Park Drive

1. South 09° 40' 51" East, 21.44 feet; thence, leaving the aforesaid Line of Dunwoody Park Drive and running in, through, over and across the property now or formerly owned by WRPV XI 2Blocks Dunwoody LLC as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 23352, Page 799
2. North 78° 33' 30" West, 115.24 feet; thence,
3. North 80° 57' 48" West, 35.53 feet; thence,
4. South 01° 17' 24" East, 5.27 feet; thence,
5. South 88° 42' 36" West, 20.00 feet; thence,
6. North 01° 17' 24" West, 8.92 feet; thence,
7. North 80° 57' 48" West, 174.27 feet; thence,
8. North 43° 33' 29" West, 38.72 feet; thence,
9. North 80° 34' 13" West, 61.84 feet; thence,
10. North 64° 21' 21" West, 57.49 feet; thence,
11. North 86° 43' 29" West, 53.28 feet; thence,
12. North 00° 40' 53" East, 8.59 feet; thence,
13. North 29° 00' 56" West, 51.83 feet; thence,
14. South 71° 36' 37" East, 218.26 feet; thence,
15. 66.50 feet along the arc of a curve to the left, having a radius of 241.00 feet and a chord bearing and distance of South 79° 30' 58" East, 66.29 feet; thence,
16. South 87° 25' 19" East, 18.87 feet; thence,
17. North 01° 03' 49" East, 99.19 feet; thence,
18. South 89° 12' 09" East, 219.53 feet; thence,
19. South 02° 32' 32" West, 162.47 feet; thence,
20. South 78° 33' 30" East, 50.06 feet to the Point of Beginning, containing 48,377 square feet or 1.1106 acres of land, more or less.

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