

**IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

SOUTH RIVER WATERSHED ALLIANCE,	:	
SOUTH RIVER FOREST COALITION,	:	
MARGARET S. BRADY, ALLEN P. DOYLE,	:	
JOEL FINEGOLD, JOSEPH S. PEERY, and	:	
JOHN AND JANE DOES,	:	CIVIL FILE ACTION NO.
	:	21CV1931
Plaintiffs,	:	
	:	
v.	:	
	:	
DEKALB COUNTY, GEORGIA, by and	:	
through its Board of Commissioners, and	:	
BLACKHALL REAL ESTATE PHASE II, LLC	:	
	:	
Defendants	:	

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**EMERGENCY MOTION  
FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTIVE RELIEF**

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COMES NOW South River Watershed Alliance ("SRWA"), South River Forest Coalition ("SRFC"), Margaret S. Brady, Allen P. Doyle, Joel Finegold, Joseph S. Perry and John and Jane Does (collectively the "Plaintiffs"), pursuant to O.C.G.A. §9-11-65, and by and through their undersigned counsel, respectfully move this Court on an emergency basis for the immediate issuance of a temporary restraining order, showing the Court as follows:

1.

Plaintiffs bring this Motion requesting emergency relief to prevent further destruction of public park land known as Intrenchment Creek Park and public

amenities associated with the same by Defendant Blackhall Real Estate Phase II, LLC (“Blackhall”) and others; to prevent further harassment of citizens utilizing their public park; to restore certainty and peace of mind to citizens of DeKalb County as it relates to their ability to access and utilize public park land; to prevent further destruction of property and evidence relevant to this case; and to maintain the status quo by preventing further destruction or development of public park land.

2.

Yesterday, while Plaintiffs were deposing a DeKalb County employee in this matter, Mr. Millsap who is the sole operator of Defendant Blackhall, ordered and directed the destruction of public park property and amenities at Intrenchment Creek Park, including, by way of example, the destruction of the public path system running through the park and providing connections to other public trails and paths, the pavilion and signs for the public park, nature trails, and public parking facilities.





3.

As the Verified Complaint filed on February 12, 2021 demonstrates, neither Mr. Millsap nor Defendant Blackhall have a valid property interest in the subject portions of Intrenchment Creek Park. It should be further noted that such activities were carried out by and/or at the direction of Mr. Millsap and Defendant Blackhall in contravention of commitments and obligations by Defendant Blackhall and Mr. Millsap to maintain public access to Intrenchment Creek Park and the trails located therein, as well as without proper authority and in violation of state and local ordinances, including, but not limited to, permits and authorizations for such activities.

4.

A TRO is required because Defendant Blackhall has and continues to impede access to public park land and trails as well as destroy public park land, trails, and other amenities, without authority or right to do so. Plaintiffs show that Defendant

Blackhall, led by Mr. Millsap, without the Order requested herein, will proceed with destruction and construction activities that threaten Plaintiffs' interests and the interests of the public. Accordingly, a TRO is necessary to o prevent further destruction of public park land known as Intrenchment Creek Park and public amenities associated with the same by Defendant Blackhall Real Estate Phase II, LLC ("Blackhall") and others; to prevent further harassment of citizens utilizing their public park; to restore certainty and peace of mind to citizens of DeKalb County as it relates to their ability to access and utilize public park land; to prevent further destruction of property and evidence relevant to this case; and to maintain the status quo by preventing further destruction or development of public park land.

4.

If the Court does not enter a Temporary Restraining Order, immediate and irreparable injury to Plaintiffs' interest and those of the public will occur.

5.

Plaintiffs have a substantially likelihood of success on the merits at trial; there is a substantial threat that Plaintiffs (and the public) will suffer irreparable injury if the injunction is not granted; the harm if the injunction is not granted far outweighs any harm to the Defendant if it is granted; and the public interest is served by granting the injunction.

6.

Plaintiffs have no adequate remedy at law from the ongoing destruction of public park land and public resources.

7.

Plaintiffs' counsel certifies that notice has been given to Defendants, by and through their counsel of record, of Plaintiffs' intent to seek a TRO.

8.

In support of its Motion, Plaintiffs submit herewith their Brief in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunctive Relief. The facts and circumstances present in this matter more than satisfy the requirements for immediate relief.

WHEREFORE, Plaintiffs respectfully request that this Court grant their Motion for Emergency relief and enter a Temporary Restraining Order prohibiting Defendants from (a) blocking or restricting access to public lands and trails and (b) conducting any further destruction and/or construction activities on those portions of Intrenchment Creek Park at issue in this case until the resolution of the above-styled action. A proposed Order is submitted herewith.

Respectfully submitted this 22<sup>nd</sup> day of December, 2021.

*/s/ Kasey Sturm* -----

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*Attorney for Plaintiffs*

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BLACKHALL REAL ESTATE PHASE II, LLC	:	
	:	
Defendants	:	

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**BRIEF IN SUPPORT OF EMERGENCY MOTION  
FOR TEMPORARY RESTRAINING ORDER  
AND INJUNCTIVE RELIEF**

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COMES NOW South River Watershed Alliance (“SRWA”), South River Forest Coalition (“SRFC”), Margaret S. Brady, Allen P. Doyle, Joel Finegold, Joseph S. Perry and John and Jane Does (collectively the “Plaintiffs”), by and through their undersigned counsel, and respectfully move this Court on an emergency basis for the issuance of a temporary restraining order to prevent further destruction of public park land and property, provide peace and comfort to citizens utilizing public park land, and to

maintain the status quo by preventing further destruction or development of public park land.

## INTRODUCTION

This case involves public park land commonly known as Intrenchment Creek Park (“ICP”). On January 29, 2021, Defendant DeKalb County, Georgia (the “County”) quitclaimed approximately 40 acres of Intrenchment Creek Park - public park land - to Defendant Blackhall Real Estate Phase II, LLC (“Blackhall”) via that Quitclaim Deed recorded in the records of DeKalb County, Deed Book 29032, Page 181 in exchange for certain tracts of land owned by Blackhall (this exchange of public park land is referred to, including herein, as the “Land Swap”). Plaintiffs challenged this conveyance and Land Swap as being *ultra vires* - invalid, void, and of no force or effect. See Verified Complaint.

Yesterday, while Plaintiffs were deposing a DeKalb County employee in this matter, Mr. Millsap who is the sole owner, operator, and controller of Defendant Blackhall, ordered and directed the destruction of public park property and amenities at Intrenchment Creek Park, including, by way of example, the destruction of the public path system running through the park and providing connections to other public trails and paths, the pavilion and signs for the public park, nature trails, and public parking facilities, among other amenities and resources. Emergency relief is needed in the form of a Temporary Restraining Order (“TRO”) to prevent further damage to ICP, to protect Plaintiffs’ property interests and rights in ICP (as well as those of the public), to prevent

further harm and harassment to members of the public seeking to utilize and enjoy their public park lands, particularly during this rapidly approaching holiday.

### **STATEMENT OF RELEVANT FACTS**

The relevant facts are set forth in detail in the Verified Complaint filed on February 12, 2021. The most pertinent facts justifying the Emergency Motion and Temporary Restraining Order and Interlocutory Injunction are as follows:

Intrenchment Creek Park, originally established as an approximately 136-acre, more or less, public park is located in south DeKalb County, inside Atlanta's I-285, along the banks of Intrenchment Creek. Intrenchment Creek Park is bound, generally, by the centerline of Intrenchment Creek to the west, Bouldercrest Road to the east, Constitution Road to the south and land tracts to the north. Intrenchment Creek Park also connects with Constitution Lakes, which sits to the southwest, providing a connection of public paths and trails.

Intrenchment Creek Park was established in January 2003 with the support of the Trust for Public Land ("TPL") and the Arthur M. Blank Family Foundation ("Blank Foundation" or "AMBFF") with the understanding that the property would be held and used as a public park permanently for the benefit and use of the public. On January 15, 2003, TPL deeded 136 acres, more or less, of land to DeKalb County for park purposes pursuant to Limited Warranty Deed recorded at Deed Book 14082, Page 22, DeKalb County, Georgia records ("Intrenchment Creek Park Deed" or the "Park Deed"). A true and correct copy of the Park Deed is attached hereto as Exhibit A. ICP was conveyed



to the County with explicit language in the deed that the land “shall be used in perpetuity as park property” and providing the public who utilizes the park, including Plaintiffs, with third-party rights in the property, including the right to enforce the deed language. *Id.* As the Park Deed explicitly states:

This Property is conveyed subject to the covenant and use restriction that it ***shall be used in perpetuity as park property*** (“Park Property Restriction,” as hereinbelow defined), which for purposes hereof, shall include, but shall not be limited to, the uses permitted of “greenspace” as provided by the terms of the Georgia Greenspace Act, O.C.G.A. § 36-22-1, *et seq.*,. For purposes hereof, the “Park Property Restriction” to which the Property is hereby subjected shall be an expansive term, and is defined to include, without limitation, the use of the Property solely for one or more of the following par uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: (1) passive recreation, such as walking, hiking, bicycling, horseback riding, picnicking, and/or “dog parks” and the like, and (2) active recreation, such as ball fields, tennis courts, basketball courts, playgrounds, swimming pools (indoor or outdoor), gymnasiums and/or similar recreational facilities (and associated auxiliary improvements) and activities for the use and benefit of the park-going public. No other uses or buildings (commercial, industrial, residential or municipal (i.e. Fire stations, police stations, libraries)), shall be permitted on the Property. **The foregoing Park Property Restriction and covenant is imposed with the consent and acquiescence of the GRANTEE, and is imposed in favor of and for the benefit of the Property so held by the GRANTEE for the use of the public, and thus is intended to be and shall be perpetual in accordance with the provisions of O.C.G.A. (§) 44-5-60(c). ... Both (i) Arthur M. Blank Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, as well as (ii) any member of the general public who utilizes the Property, shall have the right to take any action necessary at law or in equity to enforce the Park Property Restriction contained herein.**

...

AND THE SAID GRANTEE, by its acceptance of this conveyance, the consideration for which is funded in part with private foundation grant proceeds, dedicates, the Property to the Park Property Restriction in perpetuity for the benefit of the public pursuant to O.C.G.A. § 44-5-60(c).

GRANTEE further covenants to provide public access to the Property, consistent with sound park planning and management practices. **The Park Property Restriction shall run with the Property in perpetuity, exclusively for the purposes identified herein, for the benefit of DeKalb County, a political subdivision of the State of Georgia, and the public.**

(emphasis supplied).

Defendant Blackhall, which previously owned and operated Blackhall Studios on other lands in the vicinity of ICP and sought to expand its Studios, approached the County in 2017 proposing an exchange of public park land for private tracts of land, which Defendant Blackhall determined could best be accommodated on ICP property. *See* executed Real Estate Exchange Agreement between Defendants Blackhall and DeKalb County (a true and correct copy of which is attached hereto as Exhibit B)<sup>1</sup>.

On January 29, 2021, Defendant DeKalb County, Georgia (the "County") quitclaimed approximately 40 acres of Intrenchment Creek Park - public park land - to Defendant Blackhall Real Estate Phase II, LLC ("Blackhall") via that Quitclaim Deed recorded in the records of DeKalb County, Deed Book 29032, Page 181 in exchange for certain tracts of land owned by Blackhall. A true and correct copy of the Quitclaim Deed is attached hereto as Exhibit C.

On February 12, 2021, Plaintiffs filed their Verified Complaint in this action challenging the Land Swap and said conveyance of portions of ICP. Plaintiffs' Complaint challenges the conveyance as being *ultra vires* - invalid, void, and of no force or effect. *See* Verified Complaint. Plaintiffs challenge the conveyance both as a matter

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<sup>1</sup> The Real Estate Exchange Agreement was produced by Defendant DeKalb County as part of the discovery process and the attached copy bears bates numbers DeKalb\_031289-031339.

of law, as well as, on the basis of the County's failure to meet statutory requirements imposed on the County for conveyance of County property, should it be deemed that the County even had the authority and ability to begin with to convey portions of ICP, which Plaintiffs contend it did not. *Id.*

Defendant Blackhall, by and through Mr. Millsap, has repeatedly exhibited disdain for this legal challenge and sought to ignore the implications of the same. Mr. Millsap and Defendant Blackhall have engaged in pattern and practice of aggressive, harassing, and destructive behavior. Defendant Blackhall and Mr. Millsap have sought to cut off, block, and restrict access to Intrenchment Creek Park, despite commitments and obligations to "allow the general public to continue to enjoy the existing amenities and park usage of [ICP, including the portions at issue in the lawsuit]...." See Exhibit B, Real Estate Exchange Agreement, Paragraph 2(i), at pg 8. In fact, Blackhall and Mr. Millsap specifically agreed that "the general public may continue to use the portions of [ICP, including the portions at issue in the lawsuit] that serve as a park and open trail areas and may not restrict access thereto..." *Id.*

Despite the lawsuit challenging the validity of the transaction and such promises and commitments by Defendant Blackhall and Mr. Millsap, Defendant has repeatedly sought to restrict and block access to ICP. Defendant Blackhall and Mr. Millsap likewise has repeatedly sought to harass and intimate members of the public seeking to utilize the park and trail system, including by having DeKalb County police detain said members and place no trespassing signs on the property. During the last hearing before this Court in this matter, Plaintiffs advised the Court of a swath of trees Mr.

Millsap ordered and directed the destruction of before being stopped by members of the public and ultimately a Stop Work Order the County was forced to issue. Just last week, Mr. Millsap continued to aggressively attempt to restrict and block use of ICP by having DeKalb County police detain and/or arrest individuals seeking to use the park. In the latest string of actions, yesterday, while Plaintiffs were deposing a DeKalb County employee in this matter, Mr. Millsap who is the sole owner, operator, and controller of Defendant Blackhall, ordered and directed the destruction of public park property and amenities at Intrenchment Creek Park, including, by way of example, the destruction of the public path system running through the park and providing connections to other public trails and paths, the pavilion and signs for the public park, nature trails, and public parking facilities, among other amenities and resources. Attached as Exhibit D<sup>2</sup> are true and correct copies of photographs taken of the destruction of ICP property directed and ordered by Mr. Millsap. Defendant DeKalb County has been complicit in these actions by failing to stop the same and by failing to hold Mr. Millsap accountable. As a result of these unlawful actions, Defendants are causing irreparable harm to Plaintiffs and the public at large and destroying public park land, which is required to be held in trust for the benefit of the Plaintiffs and members of the public.

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<sup>2</sup> Affidavit forthcoming.

## STANDARD OF REVIEW

Emergency Relief or a Temporary Restraining Order (“TRO”) is designed to immediately prevent the threat of irreparable injury until a full hearing on injunctive relief can be held. An injunction may be ordered to restrain the actions of one party, which are tortious or are contrary to equity and good conscience, and for which there is otherwise no adequate remedy at law. See, O.C.G.A. §9-5-1. An interlocutory injunction is used to preserve the status quo of the parties, pending a final outcome of the case. See, Kinard v. Ryman Farm Homeowners Association, Inc., 278 Ga. 149, 598 S.E.2d 479 (2004); State Farm Mutual Automobile Ins. Co. v. Mabry, 274 Ga. 498, 509 (2001). In determining whether to grant interlocutory relief, courts balance the relative equities of the parties, and grant the injunction where it appears the equities favor the party seeking the injunction. See, Lee v. Environmental Pest & Termite Control, Inc., 271 Ga. 371, 373 (1999).

The three elements required for immediate injunctive relief are present in this case. See, Ward v. National Dairy Products Corp., 224 Ga. 241 (1968). As set forth below, there is clear evidence of immediate and irreparable injury, loss or damage that will result to the Plaintiffs; there is a substantial likelihood that the Plaintiffs will prevail on the underlying merits; and the injury, if any, suffered by the Defendants does not outweigh what will be suffered by the Plaintiffs if the relief sought is not granted. Additionally, the public interest would be furthered by the injunction.

## ARGUMENT

### I. There is Clear Evidence of Immediate and Irreparable Harm

As set forth *supra*, Mr. Millsap and Defendant Blackhall have already engaged in destruction of ICP and have continued to demonstrate a pattern and practice of destructive, aggressive, and abusive behavior at ICP and toward members of the public seeking to use and enjoy their public park lands. Defendant DeKalb County has been complicit in facilitating such behavior and conduct and stood by allowing destruction of public park land and resources. Such conduct and actions are destructive to and violate Plaintiffs' property interests and rights (as well as those of the general public at large) in ensuring that ICP be used as public park in perpetuity and their use and enjoyment of the park property. As attested to in the Verified Complaint filed on February 12, 2021 and demonstrated by the facts and circumstances detailed above, it is respectfully submitted that Plaintiffs, as well as other members of the general public who utilize ICP, will suffer immediate and irreparable harm if Defendants are not immediately ordered to cease and desist from (a) restricting and blocking access to ICP, (b) destroying public park land and amenities, (c) engaging in any construction activities on ICP, and (d) prevented from harassing, intimidating and bullying members of the public seeking to utilize ICP - their public park land.

**II. Plaintiffs are likely to prevail on the Merits.**

At issue in this action is whether the purported conveyance of 40 acres of Intrenchment Creek Park - restricted public park land required to be held for the benefit of the public and in perpetuity as a public park - to Defendant Blackhall in exchange for certain tracts of land owned by Blackhall - the Land Swap - is valid.

Plaintiffs submit to this Court – it was not. The action is *ultra vires* – invalid, void *ab initio*, and of no legal force or effect - and cannot be allowed to stand. Plaintiffs’ claims, as set forth in the Verified Complaint, allege that the Land Swap violates (a) the express terms and conditions of the Park Deed and Park Property Restrictions set forth therein; (b) the Public Trust Doctrine (O.C.G.A. §44-5-230); and/or (c) the limitations on a county’s authority to dispose of county property, including under O.C.G.A. §36-9-3 and its failure to conduct required due diligence required studies.

**A. The Express Terms of The Park Deed Require ICP Be Held as a Public Park in Perpetuity for the Benefit and Use of the Public**

ICP was conveyed to the County with explicit language in the deed that the land “shall be used in perpetuity as park property” and providing the public who utilizes the park, including Plaintiffs, with third-party rights in the property, including the right to enforce the Park Property Restriction. *See* Exhibit A, Limited Warranty Deed recorded at Deed Book 14082, Page 22, DeKalb County, Georgia records. As the Park Deed explicitly states:

This Property is conveyed subject to the covenant and use restriction that it *shall be used in perpetuity as park property* (“Park Property Restriction,” as hereinbelow defined), which for purposes hereof, shall include, but shall not be limited to, the uses permitted of “greenspace” as provided by the terms of the Georgia Greenspace Act, O.C.G.A. § 36-22-1, *et seq.*. For purposes hereof, the “Park Property Restriction” to which the Property is hereby subjected shall be an expansive term, and is defined to include, without limitation, the use of the Property solely for one or more of the following par uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: (1) passive recreation, such as walking, hiking, bicycling, horseback riding, picnicking, and/or “dog parks” and the like, and (2) active recreation, such as ball fields, tennis courts, basketball courts, playgrounds, swimming pools (indoor or outdoor), gymnasiums and/or

similar recreational facilities (and associated auxiliary improvements) and activities for the use and benefit of the park-going public. No other uses or buildings (commercial, industrial, residential or municipal (i.e. Fire stations, police stations, libraries)), shall be permitted on the Property. **The foregoing Park Property Restriction and covenant is imposed with the consent and acquiescence of the GRANTEE, and is imposed in favor of and for the benefit of the Property so held by the GRANTEE for the use of the public, and thus is intended to be and *shall be perpetual* in accordance with the provisions of O.C.G.A. (§) 44-5-60(c). ... Both (i) Arthur M. Blank Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, as well as (ii) any member of the general public who utilizes the Property, shall have the right to take any action necessary at law or in equity to enforce the Park Property Restriction contained herein.**

...

AND THE SAID GRANTEE, by its acceptance of this conveyance, the consideration for which is funded in part with private foundation grant proceeds, dedicates, the Property to the Park Property Restriction in perpetuity for the benefit of the public pursuant to O.C.G.A. § 44-5-60(c). GRANTEE further covenants to provide public access to the Property, consistent with sound park planning and management practices. **The Park Property Restriction shall run with the Property in perpetuity, exclusively for the purposes identified herein, for the benefit of DeKalb County, a political subdivision of the State of Georgia, and the public.**

(emphasis supplied).

The County, recognizing that it could not convey clear title to the 40 acres of ICP without encumbrances, including rights and interests of the public, including Plaintiffs in said public park property, was only able and willing to offer a quitclaim deed to the property to Defendant Blackhall. *See* Exhibit C, Quitclaim Deed from DeKalb County, Georgia to Blackhall recorded in the records of DeKalb County, Deed Book 29032, Page 181. Defendant Blackhall obviously recognized that it was not receiving clear title to the land in its



execution and acceptance of the quitclaim deed, the most modest of transfers of interest recognized by Georgia law.<sup>3</sup> Generally, in layman's terms, quitclaim deeds are used in situations where a grantor transfers any interest they have in property to the grantee but without offering any guarantee as to the extent of that interest and whether others may have an interest in the property as well. Under the express language of the Park Deed, Plaintiffs, and other members of the public who utilize ICP, can enforce the Park Property Restriction. Defendant Blackhall does not have clear title to the land and cannot thwart or restrict Plaintiffs' or the public's legal rights and interest in the same. Thus, even if the transfer from the County to Blackhall could be considered legal and valid, which Plaintiffs' dispute, best case scenario is that Blackhall holds title to the land in conjunction with Plaintiffs' interests and rights, as well as those of the general public who utilize the property and is required to hold and maintain the ICP property in perpetuity as public park land.

**B. The Public Trust Doctrine Prevents the County from Conveying ICP to Blackhall**

A central question in this case is whether the County had the authority to convey ICP – a park specifically conveyed to and accepted by the County with restrictions requiring the property to be held as public park in perpetuity for the

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<sup>3</sup> Notably, the Real Estate Exchange Agreement recognizes the same limitations on the ability to convey and accept clear title. The Agreement specifically notes that Arthur M. Blank Family Foundation (“Blank Foundation”) and the Trust for Public Land (“TPL”) have explicit rights, pursuant to the language of the Park Deed, to enforce the Park Property Restriction. *See* Exhibit B, Real Estate Exchange Agreement, p. 3. The Agreement goes on to say that because of such, TPL and Blank have provided a quitclaim release of their interests. Of course, the public was also provided an interest in ICP and the same right rights, pursuant to the express language of the Park Deed, to enforce the Park Property Restriction. Significantly, the public did not release its rights or interests in ICP.

benefit and use of the public and with the right of the public to enforce the same (not to mention, which property was dedicated to public use and held out as a public park consistently since its conveyance and acceptance, and which was not abandoned by the public) – to Blackhall. Plaintiffs answer this question with a resounding: **NO**.

The Public Trust Doctrine derives from common law, which over the course of many decades has consistently restricted the alienation of dedicated public lands. The doctrine was first articulated in the case of *Mayor & Council of Macon v. Franklin*, 12 Ga. 239 (Ga. 1852). The Georgia Supreme Court upheld an injunction that enjoined the City of Macon from selling land that was dedicated for a public use. *Id.* “Where one being the owner of lands consents, either expressly or by his actions, that it may be used by the public for any particular purpose, it is a dedication.” *Id.* at 244. “When lands are dedicated and are enjoyed as such and rights are required by individuals in reference to such dedication, the law considers it in the nature of an *estoppel in pais*, which precludes the original owner from revoking it.” *Id.* “It would therefore be bad faith to the public, and bad faith to individual purchasers in such cases, to permit a revocation of the use. There is an estoppel as by matter *in pais*.” *Id.* at 245. “The estoppel enures to the benefit of all who belong to the public ...” *Id.* at 252. “Equity may compel the specific execution of the trust.” *Id.* at 253.

In accord with *Mayor & Council of Macon v. Franklin*, the property that is known as ICP was expressly conveyed and dedicated for use as a public park and such dedication created an *estoppel in pais*, or as we refer to it today, a public trust of which

the citizens of DeKalb County (and the public at large) are the beneficiaries. In fact, this public trust doctrine was specifically incorporated into the ICP deed, by way of a use restriction on the property requiring the same to be used as public park land for the benefit and use of the public and authorizing “any member of the general public who utilizes the Property ... to take any action necessary at law or in equity enforce the ... restriction.” ICP, including the portions at issue here, have been consistently held out as public park land by the County and utilized as public park land and have not been alienated or abandoned. Accordingly, there is no confusion here as to the intended purpose and use of ICP as public park land to be held by the County in trust for the benefit and use of the public. Likewise, there is no confusion here as to the application of the Public Trust Doctrine to this matter.

“Where a municipality dedicates property to a public use, it inures to the benefit of all who are at the time, or may afterwards become, citizens of the municipality, such dedication being in the nature of an estoppel in pais; and where an attempt is made by the proprietor to revoke it by a sale (or exchange) of the land, the municipality may be enjoined by any person interested.” *Mayor & Council of Macon v. Franklin*, 12 Ga. 239 (1852). A city can dispose of property it holds in its proprietary capacity, but the law does not allow a city to alienate public use property absent statutory authority from the General Assembly or evidence of abandonment by the public. *Harper v. City Council of Augusta*, 212 Ga. 605 (1956).

In *Kirkland v. Johnson*, 209 Ga. 824 (1953), the Georgia Supreme Court held that “[a]s a general [rule], property held by a municipality for governmental or public uses

cannot be sold without express legislative authority, but must be devoted to the use and purpose of which it was intended.” Furthermore, a “municipality has no power to convey or sell land dedicated as a public park...” *City Council of Augusta v. Newsome*, 211 Ga. 899 (1955). *Newsome* and *Harper* show the process mandated in cases where a governing authority wishes to alienate land which has been dedicated as a public park, and which has not been abandoned ... “This situation is one which so closely affects citizens of the governing authority, and upon which they possess sufficient expertise to make a decision, that representative democracy should be reduced to its most elemental form – the undiluted voice of the people.”

Such principles remain in full force and effect despite intervening statutes addressing the disposal of property by municipalities and counties. See *Department of Transportation v. City of Atlanta*, 255 Ga. 124 (1985). More recently, in *Tuten v. Brunswick*, 262 Ga. 399 (1992), the City of Brunswick attempted to convey a public park to a church. The court determined that Brunswick lacked the power to dispose of park land and that a proposed land exchange was *ultra vires* and should be enjoined. *Id.* at 404-405. In reaching this decision, the *Tuten* court relied on and recited the many decades of case law acknowledging and providing the basis of the Public Trust Doctrine. *Id.* at 402 n. 3.

Here, ICP is clearly public park land, which was conveyed, accepted, dedicated and continually used as public park land. It is abundantly clear that the County has no authority to alienate and convey or exchange ICP and the transaction in question – the disposal of ICP in exchange for land owned by Blackhall without alienation and/or abandonment and without authority of the General Assembly or approval of the

affected public and in violation of the County's limitations on the disposal of public park land – is prohibited and *ultra vires*, and thus null and void and without legal force or effect.

**(C) O.C.G.A. §36-9-3 Does NOT Allow the County to Convey or Swap ICP**

O.C.G.A. §36-9-3 entitled “Public sale of real property by counties; publication of notice” does not provide a loophole to its express trust obligations or to the public trust doctrine allowing the County to convey or exchange ICP. The Georgia Supreme Court and the Georgia General Assembly have already effectively rejected any argument that O.C.G.A. §36-9-3 acts as a loophole to the public trust doctrine. In *Tuten* the court already addressed that issue and there is no merit to claims that there is a difference between Counties and Cities that materially affects the outcome of that case as the referenced statutes applicable to counties and cities are mirror images of each other.

**III. The Balance of Harms Supports a TRO as Does the Public Interest**

In the case of *West Hampton, Inc. v. Kehoe*, 227 Ga. 642 (1971) the Georgia Supreme Court held that even though evidence may be conflicting, and it appears that an interlocutory injunction, if granted, would not operate oppressively to the defendant, but that, if denied, the complainant would suffer harm in case he should thereafter establish the truth of the contentions, the trial court's discretion should be exercised to preserve the status quo.

Here, the Court is being asked to enjoin the blatant and clear trampling of Plaintiffs' rights and interests (and those of the public) in ICP - their public park land. The injunction is necessary so that Plaintiffs can protect and preserve ICP – public park land

- before trees and vegetation are forever destroyed and a giant warehouse studio with fences occupies the space. There is no harm to Blackhall (which already sold Blackhall Studios to a third party, who is building studio space on other tracts of private land in the vicinity).

Access to and maintenance of our public park land is quintessentially a public interest. As set forth above, this lawsuit challenges the very exchange of portions of public park land - portions of Intrenchment Creek Park - for private property as being *ultra vires* - without any legal force or effect, null and void. Neither Blackhall or Mr. Millsap, which are one and the same, can contend they are unaware of such challenge.

The parties to this action are currently in the midst of discovery, with a full schedule of depositions, which has already commenced, and set to continue over the next month - with Mr. Millsap's deposition set for February 1, 2023. With what can only be full knowledge of this schedule, including the deposition occurring yesterday, Defendant Blackhall, through Mr. Millsap, while said deposition was occurring yesterday, brazenly ordered and directed the bulldozing and destruction of public park improvements at Intrenchment Creek Park, including established paths, trails, parking areas, and a pavilion serving the public park<sup>4</sup>. This was done with the full knowledge

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<sup>4</sup> Plaintiffs further note that the actions by Defendant Blackhall and Mr. Millsap constitute spoliation of evidence, a term Mr. Millsap should be abundantly familiar with given other litigation involving him raising issues about spoliation of evidence. "Spoliation" is defined as the destruction or material alteration of evidence or failure to preserve property for another's use as evidence in pending reasonable foreseeable litigation. A party is obligated to not spoliolate evidence "it knew or reasonably should have known was relevant to the litigation. Here, Plaintiffs have brought in essence, alternative claims, that if for some reason it is found that the County can exchange public park land, it failed to meet other conditions and requirements applicable to the same. For example, the County appears to rely on O.C.G.A. §36-9-3(a)(3)(D)

of Plaintiffs' counsel being tied up in a deposition and having the inability to take action during the deposition and in view of rapidly approaching Christmas holiday, during which access to the Courts would be difficult, at best.

Mr. Millsap's conduct undermines the legal process, including by reducing faith in the legal process. As the media has often portrayed, the conflict between Defendant Blackhall, led by Mr. Millsap, and certain members of the public has become very intense at times. Plaintiffs' position has been consistent: Plaintiffs promote non-violence by all sides, including at grassroots demonstrations, and have been seeking to work within the legal system - most notably through this litigation - to vindicate their rights and the rights of the public in Intrenchment Creek Park. Here, however, it appears that Defendant Blackhall, led by Mr. Millsap, is intent on blatantly ignoring and undermining the legal process - as if the rules do not apply to them. Such actions and provoking by Mr. Millsap, do a great disservice to the legal system and rule of law.

Defendant DeKalb County is complicit in these actions. It has made zero effort to stop such conduct by Mr. Millsap and Defendant Blackhall despite the ability to do so. In fact, DeKalb County police have repeatedly accompanied and facilitated the destructive work by Mr. Millsap. In fact, just last week, DeKalb County police detained a citizen who was merely walking along the public trail system. The gentleman was

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for the proposition that it can exchange public park land for other land of equal or greater value. At question in this case is whether the County did in fact receive property of equal or greater value. Critical to that evaluation is the value of the property at the time of the exchange. Mr. Millsap's actions have now destroyed evidence of amenities and other features of ICP that impact the value of that property and constitute spoliation of evidence.

detained by police and harassed for over an hour in the back of a police car and for what cause? - merely for going for a stroll on a public trail. This sort of conduct cannot be condoned and cannot be allowed to continue. The public deserves the right to stroll in the open air of their public parks and enjoy the amenities of the same.

Despite such, Mr. Millsap and Defendant Blackhall continue to escalate tensions on site. A TRO will act to deescalate tensions and preserve the integrity of the legal process.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the Emergency Motion for TRO.

Respectfully submitted this 21<sup>st</sup> day of December, 2021.

*/s/ Kasey Sturm* -----

Kimberly [Kasey] A. Sturm  
Georgia Bar No. 690615

Weissman PC  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Office: 404.926.4600  
Direct: 404.926.4630  
[kaseys@weissman.law](mailto:kaseys@weissman.law)  
**Attorney for Plaintiffs**



# **EXHIBIT A**

Deed Book 14082 Pg. 22  
Filed and Recorded Jan-22-2003 03:06pm  
2003-0007807  
Real Estate Transfer Tax \$0.00

*Linda Carter*

Linda Carter  
Clerk of Superior Court DeKalb Cty. Ga.  
I SHALL BE THE DEED IN BOOK NO 14082 PG 22 TO BE IN BOOK NO 14082 PG 22

After recording return to:  
L. Hutch Moore, Esq.  
Miles, McGoff & Moore, LLC  
Suite 400  
4360 Chamblee Dunwoody Road  
Atlanta, GA 30341  
File # 03-1520-0119

STATE OF GEORGIA  
COUNTY OF FULTON

**LIMITED WARRANTY DEED**

THIS INDENTURE, made as of the 15<sup>th</sup> day of January, 2003, between **THE TRUST FOR PUBLIC LAND**, a nonprofit California public benefit corporation d/b/a The Trust for Public Land (Inc.) having a place of business in Atlanta, Georgia (hereinafter referred to as "GRANTOR"), and **DEKALB COUNTY**, a political subdivision of the State of Georgia, having an address of The Manuel J. Maloof Center, 1300 Commerce Drive, 6th Floor, Decatur, Georgia, 30030, its successors and assigns (hereinafter referred to as "GRANTEE").

**WITNESSETH:**

THAT GRANTOR, for and in consideration of this sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said GRANTEE, all that

tract or parcel of land lying and being in Land Lots 82 and 83 of the 15<sup>th</sup> District of DeKalb County, Georgia containing 135.98 acres, more or less, and being more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD, the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said GRANTEE forever in Fee Simple; subject to the matters (hereafter referred to as "Permitted Exceptions") set forth on Exhibit "B" attached hereto and by this reference incorporated herein

AND, FURTHERMORE, this Property is conveyed subject to the covenant and use restriction that it shall be used in perpetuity as park property ("Park Property Restriction," as hereinbelow defined), which for purposes hereof, shall include, *but shall not be limited to*, the uses permitted of "greenspace" as provided by the terms of the Georgia Greenspace Act, O.C.G.A. § 36-22-1, *et seq.* For purposes hereof, the "Park Property Restriction" to which the Property is hereby subjected shall be an expansive term, and is defined to include, without limitation, the use of the Property solely for one or more of the following park uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: (1) passive recreation, such as walking, hiking, bicycling, horseback riding, picnicking, and /or "dog parks" and the like, and (2) active recreation, such as ball fields, tennis courts, basketball courts, playgrounds, swimming pools (indoor or outdoor), gymnasiums and/or similar recreational facilities (and associated auxiliary improvements) and activities for the use and benefit of the park-going public. No other uses or buildings (commercial, industrial, residential or municipal (ie. Fire stations, police stations, libraries)), shall be permitted on the Property. The foregoing Park Property Restriction and covenant is

imposed with the consent and acquiescence of the GRANTEE, and is imposed in favor of and for the benefit of the Property so held by the GRANTEE for the use of the public, and thus is intended to be and shall be perpetual in accordance with the provisions of O.C.G.A. 44-5-60 (c). Notwithstanding anything to the contrary contained in the forgoing, municipal uses or buildings (i.e. Fire stations, police stations, libraries), may be permitted on a portion of the Property that does not exceed 6.8 acres provided GRANTEE first obtains the consent and approval of the Arthur M. Blank Family Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, which such consent shall not be unreasonably withheld, conditioned or delayed. Both (i) the Arthur M. Blank Family Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, as well as (ii) any member of the general public who utilizes the Property, shall have the right to take any action necessary at law or in equity to enforce the Park Property Restriction contained herein.

AND THE SAID GRANTOR, subject to the Permitted Exceptions and the Park Property Restriction, will warrant and forever defend the right and title to the Property unto the said GRANTEE against the claims of all persons owning, holding or claiming by, through and under the GRANTOR.

AND THE SAID GRANTEE, by its acceptance of this conveyance, the consideration for which is funded in part with private foundation grant proceeds, dedicates the Property to the Park Property Restriction in perpetuity for the benefit of the public pursuant to O.C.G.A § 44-5-60(c). GRANTEE further covenants to provide public access to the Property, consistent with sound park planning and management practices. The Park Property Restriction shall run with the Property in perpetuity, exclusively for the purposes identified herein, for the benefit of DeKalb County, a political subdivision of the State of Georgia, and the public.

IN WITNESS WHEREOF, the GRANTOR and GRANTEE have signed and sealed this Limited Warranty Deed, as of the day and year first above written.

Signed, sealed and delivered this 14th  
day of January, 2003, in the presence of:

Emil Smith  
Witness

Karen A. Clarke  
Notary Public

My Commission Expires:  
KAREN A. CLARKE  
NOTARY PUBLIC  
FULTON COUNTY, GEORGIA  
MY COMMISSION EXP. 01/02/07



[NOTARIAL SEAL]

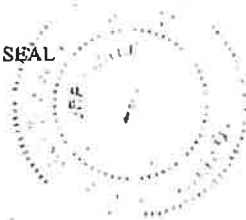
**GRANTOR:**

**THE TRUST FOR PUBLIC LAND,**  
a California public benefit corporation  
d/b/a The Trust for Public Land (Inc.)

By: [Signature]  
Its: STATE DIRECTOR

Attest: [Signature]  
Its: ASSISTANT SECRETARY

CORPORATE SEAL



Signed, sealed and delivered this 24 day  
of January, 2003, in the presence of:

Carmel Williams  
Witness

[Signature]  
Notary Public  
My Commission Expires:  
Notary Public, DeKalb County, Georgia  
CC# My Commission Expires Aug. 10, 2008

[NOTARIAL SEAL]

**GRANTEE:**

**DEKALB COUNTY;**  
a political subdivision of the State of  
Georgia

By: [Signature]

Date: 1/24/03

Attest: [Signature]

Date: Jan 24 2003

**IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

SOUTH RIVER WATERSHED ALLIANCE,	:	
SOUTH RIVER FOREST COALITION,	:	
MARGARET S. BRADY, ALLEN P. DOYLE,	:	
JOEL FINEGOLD, JOSEPH S. PEERY, and	:	
JOHN AND JANE DOES,	:	CIVIL FILE ACTION NO.
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DEKALB COUNTY, GEORGIA, by and	:	
through its Board of Commissioners, and	:	
BLACKHALL REAL ESTATE PHASE II, LLC	:	
	:	
Defendants	:	

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**VERIFIED COMPLAINT**

**Exhibit B -  
February 12, 2019 Letter from Blank Foundation  
to Mr. Zachary Williams, COO, DeKalb County**



FEB 14 2019

Date Received

THE ARTHUR M. BLANK FAMILY FOUNDATION

---

February 12, 2019

Mr. Zachary Williams  
 Chief Operating Officer  
 DeKalb County  
 1300 Commerce Drive, 6<sup>th</sup> Floor  
 Decatur, GA 30030

Dear COO Williams:

I am writing in response to your November 27, 2018, letter requesting the endorsement of The Arthur M. Blank Family Foundation for a proposed land swap that has been offered by Blackhall Studios involving land acquired by the County in 2002 with funds provided by the Blank Foundation.

Our initial due diligence in assessing the proposed swap was to review the commitments made by the County and the Blank Foundation in 2002. The attached letter documents DeKalb County's intention to build a regional athletics complex on the site, with some passive greenspace on the land near Intrenchment Creek. Our expectation is that any land transaction involving the property will result in parkland that is consistent with the original intent of the Blank Foundation's Investment, and we believe that the proposed transaction meets this criterion. We do note that while the park now hosts a multiuse trail, trailhead and model plane airfield, most of the promised investment in amenities remains unfulfilled.

Further due diligence discovered that the County no longer owns nearly nine acres of the property acquired in 2002. We subsequently learned that the acreage was swapped in 2007 for slightly more than 20 acres of nearby land to facilitate the construction of the multi-use Intrenchment Creek Trail currently running through the property. The original nine acres remains undeveloped and to our knowledge has not excluded public access, so it appears to remain in compliance with the deed restriction. Whoever owns the land, publicly or privately, is required by the deed restriction to make the property available for park use. Please note: This transfer took place without informing the Blank Foundation, The Trust for Public Land or others involved in the original transaction, which reflects poorly on the County's stewardship.

We also requested that The Trust for Public Land, an original partner in the acquisition of this land, review the proposed transaction from the perspective of providing recreational amenities to the community. The Trust for Public Land concluded that the proposed transaction would increase recreational opportunities on site, create a more cohesive public space, increase residential access to the park (see attached GIS analysis) and more clearly delineate



residential, park and industrial uses in the impacted area - with the park serving as a buffer between residential and industrial uses.

Since receiving your November 27 letter, several citizens and park users have reached out to the Foundation to express their concern about the potential ecological impact of the proposed land transaction and subsequent development. The Nature Conservancy, which has been active in this community, has requested an ecological assessment to compare the value of the two sites in regard to trees, water and habitat. We believe that there is merit in this exercise.

Given the above, The Arthur M. Blank Family Foundation is prepared to concur with the proposed land swap under the terms outlined in your November 27 letter, contingent upon additional commitments from the County and Blackhall Studios being accomplished before the closing of any exchange.

- Any land transaction must result in a net increase in public greenspace for DeKalb County. The original proposal called for an acre-for-acre swap. We would prefer a transaction that would result in acquisition of up to 1.5 acres of new parkland for each acre transferred by the County, but require a ratio of at least 1.1 to 1.
- Any land transaction must result in the County receiving land that clearly is of more value than land that is being transferred. Appraisals obtained by the County indicate that the transaction as originally proposed with an acre for acre swap would result in the County receiving land valued at 3% above the land that they would transfer. We require at least a 10% difference in valuation to the benefit of the County.
- DeKalb County must complete an ecological evaluation comparing the ecological features of the properties in the proposed transaction. To the extent that there is a disparity to the detriment of the County, DeKalb County should address those disparities.
- DeKalb County must retroactively apply the acreage, valuation and ecological evaluation requirements to the land transaction that took place in 2007. That transaction clearly meets the 1.1 to 1 acreage requirement, and the land acquired is subject to the same deed restrictions as the land acquired in 2002. However, the County must get appraisals for the two parcels and conduct ecological evaluations. Should that transaction not meet the valuation and ecological evaluation criteria, the County must present a plan to remedy any discrepancy - and commit resources to the execution of that plan - before the current proposed transaction may proceed.
- DeKalb County must host community meetings to present the details of the proposed land transaction and receive feedback from residents with the goal of ensuring that the community has a complete understanding of the planned amenities, accessibility and long-term maintenance plan.

- The terms of the November 27 letter require that any existing recreational amenities displaced by the proposed transaction be replaced. We further require that there be no diminishment in the value of the amenities promised by Blackhall as outlined in the November 27 letter.
- As noted earlier, The Arthur M. Blank Family Foundation invested in Intrenchment Creek Park with the expectation that it would be developed for recreational purposes. We reiterate this expectation of investment by the County. We particularly stress the need for DeKalb County to adequately invest in the ongoing maintenance and care of the park. The County significantly decreased funding for park maintenance during the recession of 2008, and that funding has not been fully restored, to the detriment of park users and DeKalb County residents. To merit park investments included in the proposed transaction, and to attract future private investments in its parks, DeKalb County must improve park maintenance. As a condition of the proposed swap, the Foundation requests that the DeKalb Department of Recreation and Parks commit to developing a park maintenance plan and submitting it to the County Commission for approval by September 2019.

The Arthur M. Blank Family Foundation and our fellow stakeholders appreciate the opportunity to work with the County to ensure that any land transaction involving Intrenchment Creek Park result in a definitive improvement in parkland and recreational opportunities in DeKalb County. While we encourage the County to continue to work for the best possible terms to the proposed transaction, we are prepared to concur by executing necessary releases at the closing once the commitments outlined above are met.

Sincerely,

A handwritten signature in black ink, appearing to read 'Penelope McPhee', with a long horizontal flourish extending to the right.

Penelope McPhee  
President

Cc: George Dusenbury  
Deron Davis

# **EXHIBIT B**

**REAL ESTATE EXCHANGE AGREEMENT**

**THIS REAL ESTATE EXCHANGE AGREEMENT** is made as of this 29 day of January, 2021 by and between **BLACKHALL REAL ESTATE PHASE II, LLC**, a Delaware limited liability company, whose mailing address is 1415 Constitution Road, Atlanta, GA 30316 (“Blackhall”) and **DEKALB COUNTY**, a political subdivision of the State of Georgia, whose mailing address is 1300 Commerce Drive, Decatur, Georgia 30030 (“DeKalb County”).

**WITNESSETH**

**WHEREAS**, DeKalb County owns 40.00 acres located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County which is further described at Exhibit A (the “DeKalb County Property”);

**WHEREAS**, Blackhall owns 23.830 acres (“Parcel 1”) located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County which is further described at Exhibit B-1; 7.318 acres (“Parcel 2”) located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County which is further described at Exhibit B-2; and 21.766 acres (“Parcel 3”) located in Land Lots 83 and 84 of the 15<sup>th</sup> District of DeKalb County which is further described at Exhibit B-3 (Parcel 1, Parcel 2 and Parcel 3 collectively contain 52.914 acres and are collectively referred to as the “Blackhall Property”);

**WHEREAS**, 8.871 acres of Parcel 1 were previously owned by DeKalb County and at the time they were so owned were subject to a park restriction (“Previously Restricted Land”);

**WHEREAS**, the DeKalb County Property consists of a portion of Intrinchment Creek Park and is a portion of the land deeded to DeKalb County for park purposes on January 15, 2003 by The Trust for Public Land pursuant to Limited Warranty Deed recorded at Deed Book 14082, Page 22, DeKalb County, Georgia records (the “Original Deed”);

**WHEREAS**, the acreage of the Blackhall Property, excluding the Previously Restricted Land, is greater than 110% of the acreage of the DeKalb County Property and is contiguous to, or across a public road from, Intrinchment Creek Park;

**WHEREAS**, Blackhall Studios Atlanta, LLC, a Delaware limited liability company (“Blackhall Studios”), owns and operates a film studio (the “Studio”) on land in the vicinity of the DeKalb County Property, and Blackhall Studios and Blackhall (and its assigns) are under common control;

**WHEREAS**, Blackhall Studios wishes to expand the Studio;

**WHEREAS**, DeKalb County wishes to expand and improve upon its public parks and the improvements thereon for the benefit of the public;

**WHEREAS** Blackhall Studios has determined that the expansion of the Studio can best be accommodated on the DeKalb County Property;

**WHEREAS**, DeKalb County has determined that the County and its citizens will realize substantial economic benefit from the growth of the film industry in DeKalb County in general and by the expansion of the Studio in DeKalb County in particular;

**WHEREAS**, DeKalb County has determined that its public park system can best be expanded and improved by the acquisition of the Blackhall Property, which will thereby enable Intrenchment Creek Park to abut and connect with Gresham Park and to enhance the connectivity with the South River, thereby facilitating the expansion of public trails and other improvements;

**WHEREAS**, DeKalb County has determined that it is in the best interest of its citizens to focus truck traffic serving the Studio onto Constitution Road instead of Bouldercrest Road, and that such traffic planning can be best accomplished by enabling the development of the expansion of the Studio on the DeKalb County Property instead of on the Blackhall Property;

**WHEREAS**, DeKalb County has facilitated and held several public hearings from April, 2019 through September 2020, to solicit input from and attempt to address any concerns raised at such hearings in relation to the proposed real estate exchange, the planned improvements to the Blackhall Property and the fact that the DeKalb County Property will cease to be used as a park;

**WHEREAS**, on February 4, 2020, and in order to expand and improve upon its public park system and to help facilitate Blackhall Studios' expansion of its film studio, which will also inure to the benefit of the citizens of DeKalb County, the DeKalb County Board of Commissioners approved an Agenda Item expressing its willingness, in accordance with O.C.G.A § 36-9-3(a)(3)(D), to exchange the DeKalb County Property for the Blackhall Property (the "Exchange");

**WHEREAS**, on October 13, 2020, the DeKalb County Board of Commissioners authorized the Exchange and authorized the acceptance of the Park Improvements (defined below);

**WHEREAS**, as determined by appraisal, the value of the Blackhall Property to be received by DeKalb County in the Exchange is \$70,079 per acre for Parcel 1; \$75,157 per acre for Parcel 2; and \$45,024 per acre for Parcel 3, and the value as determined by appraisal, of the DeKalb County Property is \$70,000 per acre;

**WHEREAS**, considering the acreage to be conveyed, the Blackhall Property has an appraised value of \$3,200,000  $(23.830 \times \$70,079) + (7.318 \times \$75,157) + (21.766 \times \$45,024)$  and the DeKalb County Property has a value of \$2,800,000  $(40 \times \$70,000)$ ; therefore the value of the Blackhall Property to be delivered to DeKalb County in the Exchange exceeds the value of the DeKalb County Property by \$400,000;

**WHEREAS**, in addition to delivery of the Blackhall Property, which has an appraised value of approximately 114% of the Appraised Value of the DeKalb County Property, Blackhall has agreed, at its sole cost and expense and as a donation to DeKalb County, to (i) make certain park improvements to the Blackhall Property, Intrenchment Creek Park and adjacent areas at a cost of \$1,500,000 (which improvements are more particularly described on Exhibit C attached hereto and incorporated herein by this reference (the "Park Improvements") after the Exchange as more particularly described herein and (ii) pay the additional sum of \$100,000 to DeKalb County to be used by DeKalb County for acquisition of greenspace prior to the date of completion of the Park Improvements;

(b) AS IS, WHERE IS. Subject to the foregoing Section 1(a), the DeKalb County Property is being exchanged in an "AS IS" condition and "WITH ALL FAULTS" as of the date of this Agreement and of Closing (as hereinafter defined). Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by DeKalb County or any employee, staff member, commissioner, officer, legal representative, agent, person, firm, or any representative acting or purporting to act on behalf of DeKalb County as to the condition of the DeKalb County Property or the value, or income potential thereof or as to the ability to have the DeKalb County Property rezoned from its current zoning designation to any other zoning designation, or to have the DeKalb County Property developed, or as to any other fact or condition that has or might affect the DeKalb County Property, now or in the future, or the condition, value, or income potential of the DeKalb County Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement, which along with the Agenda Item (Item 2020-0195) passed by the Board of Commissioners of DeKalb County as of February 4, 2020 (the minutes from such meeting showing the approval is attached hereto as Exhibit F and made a part hereof), and the Agenda Item (Item 2020-1235) passed by the Board of Commissioners of DeKalb County as of October 13, 2020 (the excerpt of the minutes from such meeting showing the approval is attached hereto as Exhibit F-1 and made a part hereof) alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied or referenced in this Agreement. To the extent that DeKalb County has provided to Blackhall information from any inspection, engineering or environmental reports concerning harmful or toxic substances, DeKalb County makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. Blackhall acknowledges that Blackhall has sole responsibility to inspect fully the DeKalb County Property and investigate all matters relevant thereto and Blackhall shall rely solely upon the results of Blackhall's own inspections or other information obtained or otherwise available to Blackhall, rather than any information that may have been, or could have been, provided by DeKalb County to Blackhall.

(c) Objections to Title. Blackhall shall have until Closing or any extension thereof to examine title to the DeKalb County Property and to furnish DeKalb County a statement of objections to DeKalb County's title to the DeKalb County Property, which objections, should they exist at the time of Closing would make DeKalb County unable to convey at Closing title to the DeKalb County Property provided for in sub paragraph 1(d) hereof. DeKalb County shall, after receipt by DeKalb County of such written statement of objections, have twenty (20) days or until the date of Closing, whichever is later, in which to cure all such objections and if necessary, the date of Closing shall be extended for the period required to allow DeKalb County said twenty (20) days to cure or satisfy the objections. If DeKalb County cannot, after reasonable efforts, cure such objections, then Blackhall may as its sole remedy, either (i) terminate this Agreement or (ii) waive such objections and proceed to Closing with no adjustment for such matters (and such matters shall be deemed approved and become part of the DeKalb County Permitted Title Exceptions). DeKalb County shall at or prior to Closing, pay all taxes and assessments which constitute a lien against the DeKalb County Property (other than those not then due and payable) and pay all indebtedness secured by the DeKalb County Property and obtain cancellations of all loan instruments affecting the DeKalb County Property.

(d) Closing and Conveyance of the DeKalb County Property. At the Closing, each party shall execute and deliver all documents necessary to effect and complete the terms of this Agreement. DeKalb County shall convey to Blackhall, by quitclaim deed, good and marketable fee simple title, insurable as such by a title insurance company licensed to do business in the State of Georgia, subject only to (i) ad valorem taxes and assessments not then due and payable, (ii) the DeKalb County Permitted Title Exceptions and (iii) such other exceptions to title as Blackhall shall have approved or which have been deemed approved.

(e) Closing Costs and Prorations. DeKalb County shall pay its own closing costs including without limitation the cost of title insurance on its acquisition of the Blackhall Property. No prorations of property taxes shall be made as the parties hereby acknowledge and agree that the DeKalb County Property is exempt for all ad valorem taxes and special assessments; however, if there are storm water fees applicable then same shall be prorated.

(f) Possession of DeKalb County Property. DeKalb County shall deliver possession of the DeKalb County Property to Blackhall at the time of Closing subject to the provisions of Paragraph 2(i) below.

(g) Survey. Blackhall shall obtain, at its sole cost and expense no later than five (5) days after the date of execution of this Agreement, a survey from a Georgia Registered Land Surveyor, showing the DeKalb County Property to be conveyed under this Agreement. Promptly upon receipt of said survey, Blackhall will cause DeKalb County and their legal counsel to be provided with a copy thereof. The survey shall indicate the total number of acres of the DeKalb County Property to the nearest hundredth of an acre. The survey shall form the basis of the legal description to be used for the conveyance of the DeKalb County Property. In the event DeKalb County disagrees with said survey, DeKalb County shall have the right, at DeKalb County's expense, to have a new survey of the DeKalb County Property prepared. In the event Blackhall does not accept DeKalb County's survey, Blackhall's and DeKalb County's surveyors shall name a third surveyor to survey the DeKalb County Property, the cost to be divided equally between DeKalb County and Blackhall.

(h) Inspection. Commencing on the date hereof and continuing as long as this Agreement shall remain in force, Blackhall shall have the right to go on the DeKalb County Property personally or through agents, employees and contractors for the purpose of making boundary line and topographical surveys of same, soil tests, environmental tests or assessments, hydrological tests, boring and percolation tests and such other tests, analyses and investigations of the DeKalb County Property as Blackhall deems desirable.

Blackhall shall, to the extent permitted by law, defend, reimburse, indemnify and hold DeKalb County harmless from and against all losses, liabilities, damages, obligations, payments, costs, and expenses (including reasonable attorney's fees incurred in connection therewith) caused to or brought against DeKalb County by any action or inaction of Blackhall or its agents which may be asserted against DeKalb County by reason, in whole or in part, of the entry upon the DeKalb County Property by Blackhall or its agents or their respective inspection activities.

(i) Release. Blackhall, to the extent permitted by law, and except for willful acts by DeKalb County, hereby releases DeKalb County from any and all liability for any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments and expenses of every kind and nature arising out of or in connection with any hazardous materials, substances, wastes or other environmentally regulated substances placed or located on, in or under the DeKalb County Property. This release shall survive the Closing.

2. Blackhall Property

(a) Blackhall Conveyance. Blackhall hereby agrees to convey the Blackhall Property to DeKalb County in exchange for the DeKalb County Property, free and clear of all mortgages, security deeds, other security instruments, liens, encumbrances and restrictions (including condemnation proceedings) of any kind and nature other than the following "Blackhall Permitted Title Exceptions": (i) zoning ordinances affecting Blackhall Property, (ii) those matters shown on Exhibit G attached hereto, (iii) the Park Restriction (including without limitation as such Park Restriction may apply to the Previously Restricted Land (iv) such other exceptions to title as DeKalb County shall have approved, in writing.

(b) AS IS, WHERE IS. Subject to the foregoing Section 2(a), the Blackhall Property is being exchanged in an "AS IS" condition and "WITH ALL FAULTS" as of the Date of this Agreement and of Closing (as hereinafter defined). Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by Blackhall or any employee, staff member, officer, legal representative, agent, person, firm, or any representative acting or purporting to act on behalf of Blackhall as to the condition of the Blackhall Property or the value, or as to any other fact or condition which has or might affect the Blackhall Property, now or in the future, or the condition, or value of the Blackhall Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied or referenced in this Agreement. To the extent that Blackhall has provided to DeKalb County information from any inspection, engineering or environmental reports concerning harmful or toxic substances, Blackhall makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. DeKalb County acknowledges that DeKalb County has sole responsibility to inspect fully the Blackhall Property and investigate all matters relevant thereto, and DeKalb County shall rely solely upon the results of DeKalb County's own inspections or other information obtained or otherwise available to DeKalb County, rather than any information that may have been, or could have been, provided by Blackhall to DeKalb County.

(c) Objections to Title. DeKalb County shall have until Closing or any extension thereof to examine title to the Blackhall Property and to furnish Blackhall a statement of objections to Blackhall's title to the Blackhall Property, which objections, should they exist at the time of Closing would make Blackhall unable to convey at Closing title to the Blackhall



Property provided for in Paragraph 2(d). Blackhall shall after receipt by Blackhall of such written statement of objections have twenty (20) days or until the date of Closing, whichever is later, in which to cure all such objections and if necessary, the date of Closing shall be extended for the period required to allow Blackhall said twenty (20) days to cure or satisfy the objections. If Blackhall cannot, after reasonable efforts, cure such title objections, then DeKalb County may either (i) terminate this Agreement or (ii) waive such objections and proceed to Closing with no adjustment for such matters (and such matters shall be deemed approved and become part of the Blackhall Permitted Title Exceptions). Blackhall shall at or prior to Closing, pay all taxes and assessments which constitute a lien against the Blackhall Property (other than those not then due and payable) and pay all indebtedness secured by the Blackhall Property and obtain cancellations of all loan instruments affecting the Blackhall Property.

(d) Closing and Conveyance of the Blackhall Property. At the Closing, each party shall execute and deliver all documents necessary to effect and complete the terms of this Agreement. Blackhall shall convey to DeKalb County, by limited warranty deed, good and marketable fee simple title, insurable as such by a title insurance company licensed to do business in the State of Georgia, subject only to (i) ad valorem taxes and assessments not then due and payable, (ii) the Blackhall Permitted Title Exceptions, and (iii) such other exceptions to title as DeKalb County shall have approved in writing.

(e) Closing Costs and Prorations. Blackhall shall pay its own closing costs including without limitation the cost of title insurance on the acquisition of the DeKalb County Property. The parties hereby acknowledge and agree that no prorations shall be made for such ad valorem taxes and utility bills as Blackhall shall pay same.

(f) Possession of Blackhall Property. Blackhall shall deliver possession of the Blackhall Property to DeKalb County at the time of Closing.

(g) Survey. Blackhall shall obtain at its sole cost and expense, a survey, no later than five (5) days after the date of execution of this Agreement, from a Georgia Registered Land Surveyor, showing the Blackhall Property to be conveyed under this Agreement. Promptly upon receipt of said survey, Blackhall will cause DeKalb County and their legal counsel to be provided with a copy thereof. The survey shall indicate the total number of acres of the Blackhall Property to the nearest hundredth of an acre. The legal description contained in the deeds unto Blackhall shall form the basis of the legal description to be used for the conveyance of the Blackhall Property; however, Blackhall will also deliver to DeKalb County a Quitclaim Deed, and the survey shall form the basis of the legal description for such quitclaim deed. In the event DeKalb County disagrees with said survey, DeKalb County shall have the right, at DeKalb County's expense, to have a new survey of the Blackhall Property prepared. In the event Blackhall does not accept DeKalb County's survey, Blackhall's and DeKalb County's surveyors shall name a third surveyor to survey the Blackhall Property, the cost to be divided equally between DeKalb County and Blackhall.

(h) Inspection. Commencing on the date hereof and continuing as long as this Agreement shall remain in force, DeKalb County shall have the right to go on the Blackhall Property personally or through agents, employees and contractors for the purpose of making boundary line and topographical surveys of same, soil tests, environmental tests or assessments,

hydrological tests, boring and percolation tests and such other tests, analyses and investigations of the Blackhall Property as DeKalb County deems desirable.

DeKalb County shall, to the extent permitted by law, defend, reimburse, indemnify and hold Blackhall harmless from and against all losses, liabilities, damages, obligations, payments, costs, and expenses (including reasonable attorney's fees incurred in connection therewith) caused to or brought against Blackhall by any action or inaction of DeKalb County or its agents which may be asserted against Blackhall by reason, in whole or in part, of the entry upon the Blackhall Property by DeKalb County or its agents or their respective inspection activities. Nothing herein shall be construed as a waiver of any claim of sovereign immunity by or on behalf of DeKalb County.

(i) Park Improvements; Land Acquisition. Blackhall also agrees that it shall, at its sole cost and expense cause the Park Improvements to be made to the Blackhall Property and Intrenchment Creek Park, provided, however, in constructing the Park Improvements, Blackhall shall not be obligated to incur costs in excess of \$1,500,000. The Park Improvements must be completed no later than the earlier of (a) December 1, 2022 or (b) one (1) year after commencement of construction of the expansion of the Studio on the DeKalb County Property. The Park Improvements shall be completed in a good, workmanlike and lien free manner in accordance with all applicable codes, regulations and permits. Blackhall shall use its best efforts to ensure that at least thirty percent (30%) of the work needed to construct the Park Improvements is performed by women and minorities. Blackhall shall submit to DeKalb County such reasonable documentation as may be requested by DeKalb County to ensure that the work has been properly completed and the cost thereof paid in full. The cost of and conveyance by Blackhall of the ownership of the Park Improvements to DeKalb County shall be a donation.

In order to allow the general public to continue to enjoy the existing amenities and park usage of the DeKalb County Property, Blackhall agrees that the general public may continue to use the portions of the DeKalb County Property that serve as a park and open trail areas and may not restrict access thereto until Blackhall begins construction of the expansion of the Studio on the DeKalb County Property. Once construction commences on the construction of the expansion, Blackhall will prepare a construction schedule for the completion of the Park Improvements and will meet with the Parks Department of DeKalb County to establish the priorities for the completion of the Park Improvements. Blackhall will expedite the Park Improvements that are the highest priority to DeKalb County to the extent practicable, with the objective of minimizing the period of time in which the general public will not have access to the park. The parties agree to execute and deliver at Closing reasonable documentation to evidence the above usage and access rights. In addition, but not as part of Park Improvements, Blackhall shall, at its sole cost and expense, provide community benefits, including internships\partnerships with the DeKalb County School District and entertainment industry programming for youths and adults at Gresham Park Recreation Center and will pay an additional \$100,000 to DeKalb County as a donation to be used by DeKalb County for acquisition of greenspace prior to the date of completion of the Park Improvements.

(j) Immediately after the Closing, DeKalb County agrees to grant temporary construction easements over the Blackhall Property and Intrenchment Creek Park to Blackhall in

order to facilitate the construction of the Park Improvements. The form of the easements shall be substantially similar to that attached hereto as Exhibit H.

(k) DeKalb County covenants and agrees that its current plan for use of the Blackhall Property acquired in the Exchange is as parkland.

(l) Release. DeKalb County, to the extent permitted by law, and except for willful acts by Blackhall, hereby releases Blackhall from any and all liability for any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments and expenses of every kind and nature arising out of or in connection with any hazardous materials, substances, wastes or other environmentally regulated substances placed or located on, in or under the Blackhall Property prior to the Closing. This release shall survive the Closing.

3. Declaration of Value. The parties hereto hereby acknowledge and agree based upon those certain appraisals obtained by DeKalb County last updated by letter dated February 21, 2020, the DeKalb County Property has a fair market value of \$2,800,000 and the Blackhall Property has a fair market value of \$3,200,000.

4. Closing. The consummation of this Agreement (the "Closing") shall occur as follows:

(a) Within ten (10) business days after the satisfaction of the condition set forth on Exhibit I, attached hereto, but in any event no later than January 29, 2021.

(b) The Closing of the Exchange shall occur simultaneously.

(c) The Closing shall take place at the offices of Gregory, Doyle, Calhoun & Rogers, LLC ("GDCR") located at 2951 Flowers Road South, Suite 220, Atlanta, GA 30341 at 11:00 a.m. local time, or at such other time and place as may be agreed upon in writing by both DeKalb County and Blackhall. All funds to be paid at Closing shall be wired to GDCR trust account by 10:00 a.m. on the date of the Closing, in accordance with the wire transfer instructions to be provided by GDCR.

5. Notices. All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and should be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postpaid or registered or certified with return receipt requested or sent by overnight mail by a national recognized overnight mail carrier, provided, however, the time period in which a response to any notice, demand or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any such notice, demand or request shall be sent to the following:

**Blackhall:**

Blackhall Studios  
1415 Constitution Road  
Atlanta, GA 30316  
ATTN: Ryan C. Millsap, Chairman & CEO

**WITH COPY TO:**

**Legal Counsel to Blackhall**

Robert E. Tritt  
Dentons US LLP  
303 Peachtree Street, NE  
Suite 5300  
Atlanta, GA 30308  
Phone: 404-527-8130  
E-mail: [robert.tritt@dentons.com](mailto:robert.tritt@dentons.com)

**DeKalb County:**

Dekalb County  
Attn: CEO  
1300 Commerce Drive  
6<sup>th</sup> Floor  
Decatur, GA 30030

DeKalb County  
Attention: Executive Assistant  
1300 Commerce Drive, 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
Phone: 404-371-2540  
Fax: 404-687-3585  
Email: [zwilliams@dekalbcountyga.gov](mailto:zwilliams@dekalbcountyga.gov)

**DeKalb County**

Attn: County Attorney  
1300 Commerce Drive  
5<sup>th</sup> Floor  
Decatur, GA 30030  
**Phone: (404) 371-3011**

**WITH COPY TO:**

**Legal Counsel to DeKalb County:**

Gregory, Doyle, Calhoun & Rogers, LLC  
Attention: Clay W. Reese  
2951 Flowers Road South  
Suite 220  
Atlanta, GA 30341  
Phone: 770-457-7000  
Fax: 770-455-3555  
Email: creese@gdcrlaw.com

6. Brokerage Commissions. Each party hereto represents to each other party hereto that it has not engaged any broker or agent in connection with this Agreement.

7. Miscellaneous.

(a) Time is of the essence of this Agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia.

(c) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

(d) Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

(e) This Agreement shall survive the Closing and shall not be merged into any of the documents executed at Closing.

(f) This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against DeKalb County and Blackhall. Each entity comprising Blackhall shall be jointly and severally liable for all of the obligations and duties of Blackhall hereunder.

(g) No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of Blackhall or DeKalb County contained in this Agreement or for any claim based hereon or otherwise in respect hereof against any member of a governing body, officer, or employee, as such, in his/her individual capacity, past, present, or future, of Blackhall, DeKalb County, or any successor body, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that, as to DeKalb County, this Agreement is solely a corporate obligation of

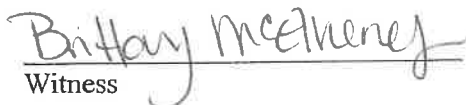
DeKalb County payable only from the funds and assets of DeKalb County herein specifically provided to be subject to such obligation and that no personal liability whatsoever shall attach to, or be incurred by, any member of a governing body, officer, or employee, as such, past, present, or future, of DeKalb County, and that as to Blackhall, this Agreement is solely a company obligation of Blackhall payable only from the funds and assets of Blackhall herein specifically provided to be subject to such obligation and that no personal liability whatsoever shall attach to or be incurred by, any member of a governing body, officer, or employee past, present or future of Blackhall, and that all personal liability of that character against every such member of a governing body, officer, and employee is, by the execution of this Agreement and as a condition of and as part of the consideration for the execution of this Agreement, expressly waived and released. The immunity of members of a governing body, officers, and employees of DeKalb County under the provisions contained in this Section shall survive the Closing and the expiration and/or termination of this Agreement.

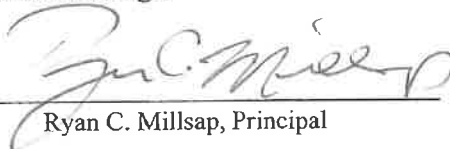
**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal as of the first date written above.

**BLACKHALL REAL ESTATE  
PHASE, II, LLC**, a Delaware limited  
liability company

As to the Blackhall Real Estate Phase  
II, LLC executed  
in the presence of:

By: Irinda Capital Management, LLC,  
a Georgia limited liability company,  
its sole Manager

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Ryan C. Millsap, Principal

**[EXECUTION CONTINUED ON THE FOLLOWING PAGE]**

As to DeKalb County, executed  
in the presence of:

Chenay Brown  
Witness

**DEKALB COUNTY:**

DEKALB COUNTY, a political  
Subdivision of the State of Georgia

By: [Signature]  
Chief Executive Officer

**ATTEST:**

By: [Signature]  
Barbara H. Sanders-Norwood  
Clerk to the Board of Commissioners  
And Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

Gregory, Doyle, Calhoun & Rogers, LLC

By: [Signature]  
Printed Name: Clay W. Reese  
Title: Member  
DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**

By: [Signature]  
Executive Assistant

**EXHIBIT A**

**Legal Description**

**DeKalb County Property**

**40.000 Acres**

Bouldercrest, Tract 1

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

**TO FIND THE TRUE POINT OF BEGINNING, COMMENCE** at a nail found at the intersection of the westerly right of way West Side Place (right of way varies) and the northerly right of way of Constitution Road (right of way varies), said point being the **TRUE POINT OF BEGINNING**.

**FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED;** thence leaving said westerly right of way and along said northerly right of way N89°40'39"W for a distance of 1402.88 feet to a 1/2" rebar set; thence leaving said northerly right of way N00°19'21"E for a distance of 614.37 feet to a point; thence N37°56'41"E for a distance of 1209.37 feet to a point; thence S89°47'51"E for a distance of 223.75 feet to a 1" steel rod found; thence S09°56'52"E for a distance of 274.46 feet to a 3/4" rebar found; thence S89°47'44"E for a distance of 395.51 feet to a 1/2" rebar found (bent) at the westerly right of way of Bouldercrest Road (right of way varies); thence along said westerly right of way of Bouldercrest Road and becoming the westerly right of way of West Side Place (right of way varies) S00°28'48"W for a distance of 1303.48 feet to a nail found, said point being the **TRUE POINT OF BEGINNING**.

Said tract of parcel of land contains 40.000 acres.



**EXHIBIT B-1**

**Legal Description**

**23.830 Acre Tract of Blackhall Property**

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033") located at the intersection of the Land Lot Line common to Land Lots 110 and 83 with the southwesterly right-of-way line of Bouldercrest Road (having a variable width right-of-way), said iron pin set being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run southeasterly along the southwesterly right-of-way line of Bouldercrest Road the following courses and distances: S30°36'46"E a distance of 15.76 feet to a point; S30°11'10"E a distance of 138.87 feet to a point; S30°25'07"E a distance of 388.27 feet to a point; S31°01'41"E a distance of 151.61 feet to a point; S30°43'19"E a distance of 100.00 feet to a point; S31°04'58"E a distance of 308.83 feet to a point; S29°22'54"E a distance of 127.87 feet to a point; S27°42'10"E a distance of 71.14 feet to a point; S26°12'13"E a distance of 75.27 feet to a point; S25°14'53"E a distance of 81.79 feet to an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033"); thence leave said southwesterly right-of-way line and run S69°53'06"W a distance of 484.49 feet to an iron pin found (1/2" rebar); thence run S89°09'13"W a distance of 753.94 feet to an iron pin found (1/2" rebar); thence run N00°50'05"W a distance of 370.17 feet to an iron pin found (1/2" rebar); thence run S89°26'05"E a distance of 263.49 feet to an iron pin found (1/2" rebar); thence run N00°56'24"W a distance of 471.46 feet to an iron pin found (1/2" rebar); thence run N13°02'37"W a distance of 227.90 feet to an iron pin found (1/2" rebar); thence run N25°06'11"W a distance of 426.56 feet to an iron pin found (1/2" rebar); thence run S89°24'56"E a distance of 463.86 feet to an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033"), said iron pin set being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 23.830 acres.

## EXHIBIT B-2

### Legal Description

#### 7.318 Acre Tract of Blackhall Property

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158") located at the intersection of the southernmost corner of the property described herein with the northeasterly right-of-way line of Bouldercrest Road (having a variable width right-of-way) and also with the northerly corner of property conveyed by TND City Crest, LLC to DeKalb County, Georgia by Limited Warranty Deed recorded in Deed Book 20505, page 453, DeKalb County, Georgia records, said iron pin found being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run northwesterly along the northeasterly right-of-way line of Bouldercrest Road the following courses and distances: N23°39'19"W a distance of 1.83 feet to a point; N25°14'53"W a distance of 126.38 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N26°12'13"W a distance of 76.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N27°42'10"W a distance of 72.53 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N29°22'54"W a distance of 129.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N31°04'58"W a distance of 309.42 feet to an "X" chiseled in concrete; thence leave said northeasterly right-of-way line and run N86°29'11"E a distance of 672.71 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S03°59'34"E a distance of 64.93 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S07°14'04"E a distance of 57.51 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S03°43'22"E a distance of 64.97 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"); thence run S34°23'09"E a distance of 90.23 feet to an iron pin found (5/8" rebar); thence run S18°17'31"E a distance of 119.70 feet to a point; thence run S16°15'49"E a distance of 15.80 feet to an iron pin found (5/8" rebar); thence run S16°42'29"W a distance of 73.19 feet to an iron pin found (5/8" rebar); thence run S63°22'19"W a distance of 463.19 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"), said iron pin found being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 7.318 acres.

## EXHIBIT B-3

### Legal Description

#### 21.766 Acre Tract of Blackhall Property

All that tract or parcel of land lying and being in Land Lots 83 and 84 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158") located at the intersection of the westernmost corner of the property described herein with the northeasterly right-of-way line of Bouldercrest Road (having a variable width right-of-way) and also with the southerly corner of property conveyed by TND City Crest, LLC to DeKalb County, Georgia by Limited Warranty Deed recorded in Deed Book 20505, page 453, DeKalb County, Georgia records, said iron pin found being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run N63°22'15"E a distance of 408.33 feet to an iron pin found (5/8" rebar); thence run N31°16'15"W a distance of 43.13 feet to an iron pin found (5/8" rebar); thence run N61°31'44"E a distance of 64.71 feet to an iron pin found (5/8" rebar); thence run along the arc of a curve to the left, an arc distance of 123.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"), said curve having a radius of 83.85 feet and being subtended by a chord bearing N30°34'22"E and a chord distance of 112.52 feet; thence run N08°46'43"W a distance of 251.27 feet to an "X" chiseled in concrete; thence run along the arc of a curve to the right, an arc distance of 277.10 feet to an "X" chiseled in concrete, said curve having a radius of 100.51 feet and being subtended by a chord bearing N85°02'42"E and a chord distance of 197.31 feet; thence run S16°03'15"E a distance of 156.14 feet to an "X" chiseled in concrete; thence run S24°19'12"E a distance of 156.02 feet to an "X" chiseled in concrete; thence run S32°33'04"E a distance of 156.03 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S40°48'55"E a distance of 155.96 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S49°01'38"E a distance of 156.03 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S57°28'15"E a distance of 93.11 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S04°18'47"E a distance of 469.18 feet to an "X" chiseled in concrete; thence run S88°06'39"W a distance of 294.46 feet to an iron pin found (1/2" rebar, cap is disturbed); thence run S01°31'49"E a distance of 278.09 feet to an iron pin found (5/8" rebar, bent); thence run N89°24'28"W a distance of 298.74 feet to an iron pin found (1" metal rod); thence run N28°03'34"W a distance of 61.37 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run N86°28'06"W a distance of 196.93 feet to an iron pin found (1/2" rebar with cap stamped "ASM") located on the northeasterly right-of-way line of Bouldercrest Road; thence run northwesterly along said northeasterly right-of-way line the following courses and distances: N22°40'20"W a distance of 104.82 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N22°39'43"W a distance of 90.33 feet to a point; N23°12'50"W a distance of 415.38 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N23°37'47"W a distance of 224.36 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"), said iron pin found being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 21.766 acres.

## EXHIBIT C

### Description of Park Improvements

Described in concept as:

- Work needed to provide and install signage to rename a portion of the Blackhall Property “Michelle Obama Park”
- Relocation of an airstrip for radio-controlled aircraft from the Dekalb County Property to the Blackhall Property
- Creation and installation of trails and wetlands restoration
- Assist with environmental enhancement of the Blackhall Property and surrounding property owned by Dekalb County such as removal of invasive plants and native plants replacement programs.

Which may be accomplished in part by work within the following categories, subject to the maximum aggregate cost of \$1,500,000.00:

<u>Item</u>	<u>Description</u>
#1	<b>Trailhead Development - Bouldercrest Road</b>
	Grading / Landscaping
	Security Lights
	Emergency call box
	Pavilion
	Signage
	Parking
	Access gate
#2	<b>Trail Development &amp; Boardwalk</b>
	New Trail from existing trail on Bouldercrest to south end of Intrenchment Creek Park
	Boardwalk and Overlook of Intrenchment Creek
#3	<b>Pedestrian Crossing (Bouldercrest Road)</b>
#4	<b>Wetland Restoration</b>
#5	<b>Remote Control Airfield</b>
#6	<b>Park Site Amenities &amp; Artwork</b>

## EXHIBIT D

### PARK RESTRICTION

“This Property is conveyed subject to the covenant and use restriction that it shall be used in perpetuity as park property (“Park Property Restriction,” as hereinbelow defined), which for purposes hereof, shall include, *but shall not be limited to*, the uses permitted of “greenspace” as provided by the terms of the Georgia Greenspace Act, O.C.G.A. § 36-22-1, *et seq.* For purposes hereof, the “Park Property Restriction” to which the Property is hereby subjected shall be an expansive terms, and is defined to include, without limitation, the use of the Property solely for one or more of the following park uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: (1) passive recreation, such as walking, hiking, bicycling, horseback riding, picnicking and/or “dog parks” and the like, and (2) active recreation, such as ball fields, tennis courts, basketball courts, playgrounds, swimming pools (indoor and outdoor), gymnasiums and/or similar recreational facilities (as associated auxiliary improvements) and activities for the use and benefit of the park-going public. No other uses or buildings (commercial, industrial, residential or municipal (i.e. fire stations, police stations, libraries)), shall be permitted on the Property. The foregoing Park Property Restriction and covenant is imposed with the consent and acquiescence of the Grantee, and is imposed in favor of and for the benefit of the Property so held by the Grantee for the use of the public, and thus is intended to be and shall be perpetual in accordance with the provisions of O.C.G.A. § 44-5-60(c). Notwithstanding anything to the contrary contained in the foregoing, municipal uses or buildings (i.e. fire stations, police stations, libraries), may be permitted on a part of the Property that does not exceed 6.8 acres provided Grantee first obtains the consent and approval of the Arthur M. Blank Family Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, which such consent shall not be unreasonably withheld, conditioned or delayed. Both (i) the Arthur M Blank Family Foundation, in consideration of its grant awarded towards the purchase of the Property for a public park, as well as (ii) any member of the general public who utilizes the Property, shall have the right to take any action necessary at law or in equity to enforce the Park Property Restriction contained herein.”

## EXHIBIT E

### LIST OF PERMITTED TITLE EXCEPTIONS FOR DEKALB COUNTY PROPERTY

1. All taxes for the year 2021 and subsequent years, not yet due and payable.
2. Rights of upper, lower and adjacent riparian owners in and to the waters of creeks and branches crossing or adjoining subject property and the natural flow thereof, free from diminution or pollutions.
3. Easement for Right-Of-Way from B. B. Crane to Georgia Power company, dated November 22, 1952 and recorded December 10, 1952 in Deed Book 953, Page 231, aforesaid records.
4. Atlanta Gas Light Company right of way crossing the property shown on Plat of survey as contained in that certain Limited Warranty Deed from Augusta Mathilde Howell a/k/a Augusta Howell Smith and Constitution Land Partners, LTD., a Georgia limited partnership, dated September 30, 1985, recorded October 17, 1985, in Deed Book 5318, Page 339, aforesaid records.
5. All matters shown on that certain Minor Plat of Bouldercrest Tracts, dated January 26, 2021, prepared by Gunnin Land Surveying, bearing the seal of Jesse R. Gunnin, Georgia Registered Land Surveyor No. 3079, recorded in Plat Book 290, Page 100, aforesaid records.

**EXHIBIT F**

**FEBRUARY 4, 2020 MINUTES FROM BOC MEETING AUTHORIZING THE  
POTENTIAL EXCHANGE**

# DeKalb County Government

*Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030*



## Meeting Minutes

**Tuesday, February 4, 2020**

**9:00 AM**

**Manuel J. Maloof Auditorium**

### Special Called Meeting

*Commissioner Steve Bradshaw, Presiding Officer, District 4  
Commissioner Lorraine Cochran-Johnson, Deputy, District 7*

*Commissioner Nancy Jester, District 1  
Commissioner Jeff Rader, District 2  
Commissioner Larry Johnson, District 3  
Commissioner Steve Bradshaw, District 4  
Commissioner Mereda Davis Johnson, District 5  
Commissioner Kathle Gannon, Super District 6  
Commissioner Loraine Cochran-Johnson, Super District 7*



- Present**        5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson
- Absent**         2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**Administration:** Michael Thurmond, CEO, Zachary Williams, Executive Assistant/ Chief Operating Office, Chenay Brown, Deputy Clerk, Viviane Ernstes, County Attorney

**Work Session**

**I. Committee of the Whole**

**A. Committee Reports**

**B. Review of the Proposed Executive Agenda for February 11, 2020**

**C. Review of Board of Commissioners Preliminary Agenda**

**D. Review/Recap of New Items for the BOC Agenda**

**E. Items Previously Heard**

**II. Special Call Meeting**

**A. Executive Session**

**2020-0191**      Commission District(s): All  
 To Convene a Special Called Meeting  
**MOTION was made by Commissioner Jeff Rader, seconded by Commissioner Lorraine Cochran-Johnson, that this agenda item be approved to convene a Special Call Meeting. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:**

- Yes:**            5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson
- Absent:**       2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**2020-0192** Commission District(s): All  
To Convene an Executive Session Meeting  
**MOTION was made by Commissioner Jeff Rader, seconded by Commissioner Nancy Jester, that this agenda item be approved to convene an Executive Session Meeting. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:**

**Yes:** 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson

**Absent:** 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**2020-0193** Commission District(s): All  
To Adjourn an Executive Session Meeting  
**MOTION was made by Commissioner Jeff Rader, seconded by Commissioner Larry Johnson, that this agenda item be approved to adjourn an Executive Session Meeting. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:**

**Yes:** 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson

**Absent:** 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**2020-0194**

Commission District(s): All

Proposed settlement of claims against DeKalb County and all individual Defendants in the lawsuit filed by Tree Creek Condominium Association, Civil Action no. 16cv4304-7 in the Superior Court of DeKalb County.

**MOTION was made by Commissioner Lorraine Cochran-Johnson, seconded by Commissioner Larry Johnson, that this agenda item be to approve removal of \$94,285.16 (ninety-four thousand two hundred eighty-five dollars and sixteen cents) in delinquent charges from the water/sewer account of Tree Creek Condominium Association to settle Tree Creek Condominium Association's Lawsuit Against DeKalb County and others in Civil Action No. 16cv4304-7 in the DeKalb County Superior Court. To Resolve Tree Creek's lawsuit, the County will remove the delinquent balance of \$94,285.16 (ninety-four thousand two hundred eighty-five dollars and sixteen cents) from Tree Creek's water/sewer account (257251) in return for and conditioned on Tree Creek's dismissal with prejudice of its lawsuit and Tree Creek's execution of a release and waiver of claims satisfactory to the County Attorney. The County Attorney or her designee is authorized to sign the settlement agreement. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:**

**Yes:** 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson

**Absent:** 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**2020-0195** Commission District(s): 3 & 6  
Authorize the Chief Operating Officer to finalize the exchange of County property for property owned by a private entity. MOTION was made by Commissioner Larry Johnson, seconded by Commissioner Jeff Rader, that this agenda item be approved to authorize the Chief Operating Officer to finalize a real estate exchange agreement; complete due diligence; and return to the Governing Authority to consider all necessary documents in connection with a possible future real estate closing of this transaction. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:

**Yes:** 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson

**Absent:** 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

**2020-0196** Commission District(s): 2 & 6  
Authorize the Chief Operating Officer to finalize the exchange of County property for property owned by a private entity. MOTION was made by Commissioner Jeff Rader, seconded by Commissioner Larry Johnson, that this agenda item be approved to authorize the Chief Operating Officer to finalize a real estate exchange agreement; complete due diligence; and return to the Governing Authority to consider all necessary documents in connection with a possible future real estate closing of this transaction. Commissioner Kathie Gannon and Commissioner Mereda Davis Johnson were absent from the meeting. The motion carried by the following vote:

**Yes:** 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson

**Absent:** 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon


**POLICY OF NON-DISCRIMINATION ON THE BASIS OF DISABILITY IN COUNTY SERVICES.**


DeKalb County Government does not discriminate against qualified individuals with disabilities or exclude them from participating in or receiving benefits of its services, programs, or activities, based on disability. Janet Essix, DeKalb County Government's Employee Relations Manager and ADA Coordinator, is designated to coordinate the County's compliance with Part 35 of the Department of Justice regulations regarding the Americans with Disabilities Act. Janet Essix may be contacted at 1300 Commerce Drive, 1st Floor, Decatur, GA 30030, 404.371.2309, to request information about access for persons with disabilities to County services, programs and activities, or to discuss a grievance regarding an impediment to such access. Ten days' notice is requested for special accommodations.


ADJOURNMENT:

There being no further official business, MOTION was made by Commissioner Jeff Rader, seconded by Commissioner Nancy Jester, that this agenda item be approved to adjourn the February 4, 2020 Special Called Meeting at 10:27a.m. The motion carried by the following vote:

- Yes: 5 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, and Commissioner Lorraine Cochran-Johnson
- Absent: 2 - Commissioner Mereda Davis Johnson, and Commissioner Kathie Gannon

  
Stephen R. Bradshaw -  
Presiding Officer

  
Michael Thurmond  
Chief Executive Officer

  
Barbara Sanders-Norwood  
County Clerk

**EXHIBIT "F-1"**

**OCTOBER 13, 2020 MINUTES FROM BOC MEETING TEM AUTHORIZING THE  
EXCHANGE**

# DeKalb County Government

*Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030*



## Meeting Minutes

Tuesday, October 13, 2020

9:00 AM

Manuel J. Maloof Auditorium

### Board of Commissioners

*Commissioner Steve Bradshaw, Presiding Officer, District 4  
Comm. Lorraine Cochran-Johnson, Deputy Presiding Officer, District 7*

*Commissioner Nancy Jester, District 1*

*Commissioner Jeff Ratler, District 2*

*Commissioner Larry Johnson, District 3*

*Commissioner Steve Bradshaw, District 4*

*Commissioner Mereda Davis Johnson, District 5*

*Commissioner Kathie Gannon, Super District 6*

*Commissioner Lorraine Cochran-Johnson, Super District 7*



**Present:** 7 - Commissioner Nancy Jester, Commissioner Jeff Rader, Commissioner Larry Johnson, Commissioner Steve Bradshaw, Commissioner Mereda Davis Johnson, Commissioner Kathie Gannon, and Commissioner Lorraine Cochran-Johnson

**Staff Present:** Michael Thurmond, Chief Executive Officer, Zachary Williams, Executive Assistant/ Chief Operating Officer; Barbara Sanders- Norwood, County Clerk, Viviane Ernstes, County Attorney

*Public Comment may be submitted by sending an email no longer than one page to PublicComment@dekalbcountyga.gov which must be received between 9:00 a.m. and 10:00 a.m. on the day of the meeting. Only those emails received during the allotted time may be read aloud and broadcast. Emails received outside of the allotted time will be included in the Public Comments record for the next meeting after the receipt of those emails. The body of your email must include your first and last name, followed by your address. By submitting an email at any time for public comment, you agree to have your name, address, and email broadcast on the teleconference (Zoom) and entered in the record/minutes. Abusive, profane or derogatory language will not be permitted. The Public Comment segment will not exceed 30 minutes and individual emails will be read by the Clerk for no more than 3 minutes each. The County reserves the right, at the County's sole discretion, to (1) add your email to the record/minutes without reading any of it into the broadcast or (2) add your email to the record/minutes and read all or a portion of your email into the broadcast.*

**A. INSPIRATIONAL**

Pastor Phil Schroeder  
Dunwoody United Methodist Church

**FLEDGE OF ALLEGIANCE**

Commissioner Larry Johnson  
District 3

**B. PRESENTATIONS**

COVID-19 Response - CEO Michael Thurmond

**C. COMMENTS FROM THE PUBLIC**

2020-1281

**Commission District(s):** All Districts

To add an item to the agenda

**MOTION was made by Jeff Rader, seconded by Larry Johnson, that this agenda item be approved to add an item.**

**The motion carried by the following vote:**

**Yes:** 7 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, Commissioner Gannon, and Commissioner Cochran-Johnson

2020-1282

**Commission District(s):** District 2

To appropriate Coronavirus Aid, Relief and Economic Security (CARES) ACT

Assigned to Grant Fund #258, Reserved for Districts 2 To the Toco Hills

Community Alliance for The Purchase of a Refrigerated Cooler and Refrigerated Van.

**MOTION was made by Jeff Rader, seconded by Larry Johnson, that this agenda item be approved. The motion carried by the following vote:**

**Yes:** 7 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, Commissioner Gannon, and Commissioner Cochran-Johnson

**I. ITEMS FOR DECISION BY THE BOARD**

Chief Executive Office

Yes: 7 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, Commissioner Gannon, and Commissioner Cochran-Johnson

2020-1235

Commission District(s): 3 & 6

Authorize the exchange of approximately 40.00 acres of land in the County's Intrenchment Creek Park for approximately 52.9 acres of adjacent property owned by Bouldercrest 70, LLC and Blackhall Real Estate Phase II, LLC, affiliates of Blackhall Studios (collectively "Blackhall"); and accept the donation of a number of improvements to be made by Blackhall, valued at an amount of approximately \$1,500,000.00.

**MOTION was made by Lorraine Cochran-Johnson, seconded by Larry Johnson, that this agenda item be tabled. The motion carried by the following vote:**

Yes: 7 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, Commissioner Gannon, and Commissioner Cochran-Johnson

**MOTION was made by Lorraine Cochran-Johnson, seconded by Mereda Davis Johnson, that this agenda item be taken off table. Commissioner Kathie Gannon opposed. The motion carried by the following vote:**

Yes: 6 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, and Commissioner Cochran-Johnson

No: 1 - Commissioner Gannon

MOTION was made by Larry Johnson, seconded by Mereda Davis Johnson, that this agenda item be to approve the substitute.

Substitute MOTION was made by Jeff Rader, seconded by Kathie Gannon, that this agenda item be deferred to the next meeting, until October 27, 2020. Commissioners Larry Johnson, Steve Bradshaw, Mereda Davis Johnson, and Lorraine Cochran-Johnson opposed. The motion failed by the following vote:

Yes: 3 - Commissioner Jester, Commissioner Rader, and Commissioner Gannon

No: 4 - Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, and Commissioner Cochran-Johnson

Original MOTION was made by Larry Johnson, seconded by Mereda Davis Johnson, that this agenda item be to approve the substitute. Commissioner Jeff Rader abstained. Commissioner Kathie Gannon opposed. The motion carried by the following vote:

Yes: 5 - Commissioner Jester, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, and Commissioner Cochran-Johnson

No: 1 - Commissioner Gannon

Abstain: 1 - Commissioner Rader

#### GIS Department

#### 2020-0953

Commission District(s): 3 & 7

A Resolution Authorizing the Sale of an Unredeemed and Unforeclosed Interest in Property at 1773 Parkhill Drive, Decatur, GA 30032.


MOTION was made by Kathie Gannon, seconded by Lorraine Cochran-Johnson, that this agenda item be deferred to the next meeting, and assigned to the Planning, Economic Development & Community Services Committee (PECS), and return to the Board on October 27, 2020. Items 2020-0953, 2020-0954, 2020-0955, 2020-0956, 2020-0957, 2020-0958 were heard together. The motion carried by the following vote:

ADJOURNMENT:

There being no further official business, MOTION was made by Commissioner Jeff Rader and seconded by Commissioner Larry Johnson to adjourn the October 13, 2020 Board of Commissioners meeting at 2:25 p.m. The motion carried by the following vote:

Yes: 6 - Commissioner Jester, Commissioner Rader, Commissioner Johnson, Commissioner Bradshaw, Commissioner Davis Johnson, and Commissioner Gannon

Absent: 1 - Commissioner Cochran-Johnson




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Stephen R. Bradshaw  
Presiding Officer



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Michael Thurmond  
Chief Executive Officer



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Barbara Sanders-Norwood  
County Clerk









# 10.13.2020 BOC Minutes for signature

Final Audit Report

2020-10-26

Created:	2020-10-22
By:	Kristin Rodgers (kwridders@dekalbcountyga.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGF5MnNmN1H0Lmov7OqAirb6mnmM98xiM

## "10.13.2020 BOC Minutes for signature" History

-  Document created by Kristin Rodgers (kwridders@dekalbcountyga.gov)  
2020-10-22 - 5:04:33 PM GMT- IP address: 204.120.180.4
-  Document emailed to Michael L. Thurmond (kwilborn@dekalbcountyga.gov) for signature  
2020-10-22 - 5:05:30 PM GMT
-  Email viewed by Michael L. Thurmond (kwilborn@dekalbcountyga.gov)  
2020-10-22 - 5:10:38 PM GMT- IP address: 204.120.180.4
-  Document e-signed by Michael L. Thurmond (kwilborn@dekalbcountyga.gov)  
Signature Date: 2020-10-26 - 9:54:11 PM GMT - Time Source: server- IP address: 204.120.180.4
-  Document emailed to Barbara Sanders (bhsander@dekalbcountyga.gov) for signature  
2020-10-26 - 9:54:13 PM GMT
-  Email viewed by Barbara Sanders (bhsander@dekalbcountyga.gov)  
2020-10-26 - 11:58:14 PM GMT- IP address: 174.218.129.193
-  Document e-signed by Barbara Sanders (bhsander@dekalbcountyga.gov)  
Signature Date: 2020-10-26 - 11:58:31 PM GMT - Time Source: server- IP address: 174.218.129.193
-  Agreement completed.  
2020-10-26 - 11:58:31 PM GMT



## EXHIBIT G

### LIST OF PERMITTED TITLE EXCEPTIONS FOR BLACKHALL PROPERTY

1. Easement from Mrs. P.M. Harden, also known as Mrs. Willie M. Harden in favor of Atlanta Gas Light Company dated August 28, 1950 and recorded September 12, 1950 in Deed Book 837, Page 131, DeKalb County, Georgia records.
2. Stormwater Detention Facility inspection and Maintenance Agreement by and between TND-City Crest Investments, LLC and DeKalb County dated June 18, 2009 and recorded June 18, 2009 in Deed Book 21501, Page 256, aforesaid records.
3. Easement conveyed in Warranty Deed between Barry L. Gardner and Kimberly P. Gardner formerly Kimberly P. Lichter and Orgin Companies, Inc., a Georgia corporation dated December 30, 2003 and recorded January 6, 2004 in Deed Book 15677, Page 409, aforesaid records.
4. Easement in favor of Georgia Power Company dated February 20, 1948 and recorded in Deed Book 717, Page 193(a), aforesaid records.
5. Easement from Paul J. Daniels in favor of Georgia Power Company dated March 30, 1998 and recorded May 5, 1998 in Deed Book 9979, Page 138, aforesaid records.
6. All taxes for the year 2021 and subsequent years, not yet due and payable.
7. As to the Previously Restricted Land, those park use restrictions contained in that certain Limited Warranty Deed recorded at Deed Book 14082 Page 22, aforesaid records.
8. Rights of upper, lower and adjacent riparian owners in and to the waters of creeks and branches crossing or adjoining subject property and the natural flow thereof, free from diminution or pollutions.
9. All matters shown on that certain ALTA/NSPS Land Title Survey for DeKalb County, a Political Subdivision of the State of Georgia and Chicago Title Insurance Company, dated January 27, 2021, prepared by Gunnin Land Surveying, bearing the seal of Jesse R. Gunnin, Georgia Registered Land Surveyor No. 3079.

**EXHIBIT H**

**TEMPORARY CONSTRUCTION EASEMENT**



**After recording, return to:**

Gregory, Doyle, Calhoun & Rogers, LLC  
2951 Flowers Road South, Suite 220  
Atlanta, Georgia 30341  
Attention: Clay W. Reese, Esq.  
DEKAL 198514

Tax Parcel #:15-083-02-003  
15-084-01-220; 15-084-01-004  
15-083-02-002; 15-083-01-003

STATE OF GEORGIA

COUNTY OF DEKALB

**TEMPORARY CONSTRUCTION EASEMENT**

This Temporary Construction Easement ("Easement"), effective \_\_\_\_\_, 2021, is entered into by **DEKALB COUNTY**, a political subdivision of the State of Georgia, ("**Grantor**"), having an address of 1300 Commerce Drive, Decatur, Georgia 30030 and **BLACKHALL REAL ESTATE PHASE II, LLC**, a Delaware limited liability company (the "**Grantee**") having an address of 1415 Constitution Road, Atlanta, GA 30316.

**WITNESSETH**

That for and in consideration of the sum of Ten Dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, said Grantor has granted and hereby grants to Grantee, its successors and assigns, for the construction of those certain improvements shown on Exhibit "A", attached hereto and by this reference incorporated herein (the "Park Improvements"), a temporary construction easement over and across a portion of that certain property owned by Grantor commonly known as Intrenchment Creek Park and located in Land Lots 82, 83 and 84, of the 15<sup>th</sup> District of DeKalb County such portion being shown on Exhibit "B" attached hereto and by this reference incorporated herein (the "Property"), to move, stage and store construction and other machinery, apparatus, equipment, vehicles and personnel necessary for the construction installation, access, and inspection of the Park Improvements. :

1. **TERM:** This Easement shall expire either one (1) year following the commencement of construction of the Park Improvements or December 1, 2022, whichever occurs first.

2. **CONSTRUCTION:** The Park Improvements shall be constructed with as little inconvenience to the Grantor, and to the public, as practicable and as is consistent with reasonable progress, and the area of the Property surrounding the Park Improvements shall be restored to a reasonably clean and good condition upon completion of the work, including but not limited to filling any holes created by Grantee or its activities, leveling the ground of the easement area to approximately the same contour as existed prior to the commencement of construction and leaving the easement area in a neat and mannerly condition that is similar to that which existed prior to the construction. In the performance of its activities

pursuant to this Easement, Grantee shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation or gender identity.

3. **INSURANCE:** Grantee shall ensure that for itself and each of its contractors and subcontractors shall maintain worker's compensation, employer's liability, automobile liability, general liability, excess or umbrella coverage, and property damage insurance in amount, form and content as is reasonably acceptable to Grantor.

4. **LIABILITY:** The Grantee shall at all times exonerate, indemnify, defend and hold harmless the Grantor from all claims or actions, and all expenses incidental to the defense of any such claims, litigation and actions, based upon or arising out of any damage or injury caused by or arising out of the Grantee's use of the easement granted herein. The Grantee shall assume, without cost to the Grantor, the defense of any and all claims, litigation and actions suffered through any act or omission of the Grantee, or anyone directly or indirectly employed by the Grantee and arising out of the Grantee's use of the easement granted herein, and the Grantee expressly agrees to defend against any claims brought or actions filed against the Grantor where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

5. **APPLICABLE LAW.** This Easement shall be construed, controlled and interpreted according to the laws of the State of Georgia. Venue for any proceeding arising under this Easement shall be in DeKalb County, Georgia. Each party shall bear its own costs and fees.

6. **TIME IS OF THE ESSENCE.** Time is of the essence as to the performance of the duties and obligations set forth in this Easement.

7. **COUNTERPARTS:** This Easement may be executed simultaneously in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.

*[signatures begin on following page]*

*[signature page for Temporary Construction Easement]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Easement effective as of the day and year noted above.

Signed, sealed and delivered in the presence of:

**BLACKHALL REAL ESTATE PHASE II, LLC,**  
a Delaware limited liability company

By: Irinda Capital Management, LLC, a Georgia  
limited liability company, its sole Manager

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Name: Ryan C. Millsap  
Title: Principal

(Company Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(NOTARY SEAL)

**[EXECUTION CONTINUED ON THE FOLLOWING PAGE]**

*[signature page for Temporary Construction Easement]*

Signed, sealed and delivered in the presence of:

**DEKALB COUNTY**, a political subdivision of the State of Georgia

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Michael L. Thurmond  
Chief Executive Officer

\_\_\_\_\_  
Notary Public

ATTEST:

My Commission Expires:

By: \_\_\_\_\_  
Barbara H. Sanders-Norwood  
Clerk to the Board of Commissioners  
And Chief Executive Officer  
DeKalb County, Georgia

[AFFIX NOTARIAL SEAL]

Exhibit "A"

Park Improvements

Described in concept as:

- Work needed to provide and install signage to rename a portion of the Blackhall Property "Michelle Obama Park"
- Relocation of an airstrip for radio-controlled aircraft from the Dekalb County Property to the Blackhall Property
- Creation and installation of trails and wetlands restoration
- Assist with environmental enhancement of the Blackhall Property and surrounding property owned by Dekalb County such as removal of invasive plants and native plants replacement programs.

Which may be accomplished in part by work within the following categories, subject to the maximum aggregate cost of \$1,500,000.00:

<u>Item</u>	<u>Description</u>
#1	<b>Trailhead Development - Bouldercrest Road</b>
	Grading / Landscaping
	Security Lights
	Emergency call box
	Pavilion
	Signage
	Parking
	Access gate
#2	<b>Trail Development &amp; Boardwalk</b>
	New Trail from existing trail on Bouldercrest to south end of Intrenchment Creek Park
	Boardwalk and Overlook of Intrenchment Creek
#3	<b>Pedestrian Crossing (Bouldercrest Road)</b>
#4	<b>Wetland Restoration</b>
#5	<b>Remote Control Airfield</b>
#6	<b>Park Site Amenities &amp; Artwork</b>

**EXHIBIT B**  
**Legal Description**  
(Page 1 of 7)

**23.830 Acre Tract of Blackhall Property**

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033") located at the intersection of the Land Lot Line common to Land Lots 110 and 83 with the southwesterly right-of-way line of Bouldercrest Road (having a variable width right-of-way), said iron pin set being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run southeasterly along the southwesterly right-of-way line of Bouldercrest Road the following courses and distances: S30°36'46"E a distance of 15.76 feet to a point; S30°11'10"E a distance of 138.87 feet to a point; S30°25'07"E a distance of 388.27 feet to a point; S31°01'41"E a distance of 151.61 feet to a point; S30°43'19"E a distance of 100.00 feet to a point; S31°04'58"E a distance of 308.83 feet to a point; S29°22'54"E a distance of 127.87 feet to a point; S27°42'10"E a distance of 71.14 feet to a point; S26°12'13"E a distance of 75.27 feet to a point; S25°14'53"E a distance of 81.79 feet to an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033"); thence leave said southwesterly right-of-way line and run S69°53'06"W a distance of 484.49 feet to an iron pin found (1/2" rebar); thence run S89°09'13"W a distance of 753.94 feet to an iron pin found (1/2" rebar); thence run N00°50'05"W a distance of 370.17 feet to an iron pin found (1/2" rebar); thence run S89°26'05"E a distance of 263.49 feet to an iron pin found (1/2" rebar); thence run N00°56'24"W a distance of 471.46 feet to an iron pin found (1/2" rebar); thence run N13°02'37"W a distance of 227.90 feet to an iron pin found (1/2" rebar); thence run N25°06'11"W a distance of 426.56 feet to an iron pin found (1/2" rebar); thence run S89°24'56"E a distance of 463.86 feet to an iron pin set (1/2" rebar with cap stamped "Gunnin LSF 1033"), said iron pin set being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 23.830 acres.

**EXHIBIT B**  
**Legal Description**  
(Page 2 of 7)

**TOGETHER WITH:**

**7.318 Acre Tract of Blackhall Property**

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158") located at the intersection of the southernmost corner of the property described herein with the northeasterly right-of-way line of Bouldercrest Road (having a variable width right-of-way) and also with the northerly corner of property conveyed by TND City Crest, LLC to DeKalb County, Georgia by Limited Warranty Deed recorded in Deed Book 20505, page 453, DeKalb County, Georgia records, said iron pin found being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run northwesterly along the northeasterly right-of-way line of Bouldercrest Road the following courses and distances: N23°39'19"W a distance of 1.83 feet to a point; N25°14'53"W a distance of 126.38 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N26°12'13"W a distance of 76.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N27°42'10"W a distance of 72.53 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N29°22'54"W a distance of 129.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N31°04'58"W a distance of 309.42 feet to an "X" chiseled in concrete; thence leave said northeasterly right-of-way line and run N86°29'11"E a distance of 672.71 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S03°59'34"E a distance of 64.93 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S07°14'04"E a distance of 57.51 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S03°43'22"E a distance of 64.97 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"); thence run S34°23'09"E a distance of 90.23 feet to an iron pin found (5/8" rebar); thence run S18°17'31"E a distance of 119.70 feet to a point; thence run S16°15'49"E a distance of 15.80 feet to an iron pin found (5/8" rebar); thence run S16°42'29"W a distance of 73.19 feet to an iron pin found (5/8" rebar); thence run S63°22'19"W a distance of 463.19 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"), said iron pin found being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 7.318 acres.

**EXHIBIT B**  
**Legal Description**  
(Page 3 of 7)

**ALSO TOGETHER WITH:**

**21.766 Acre Tract of Blackhall Property**

All that tract or parcel of land lying and being in Land Lots 83 and 84 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158") located at the intersection of the westernmost corner of the property described herein with the northeasterly right-of-way line of Bouldercrest Road (having a variable width right-of-way) and also with the southerly corner of property conveyed by TND City Crest, LLC to DeKalb County, Georgia by Limited Warranty Deed recorded in Deed Book 20505, page 453, DeKalb County, Georgia records, said iron pin found being the TRUE POINT OF BEGINNING.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence leave said intersection and run N63°22'15"E a distance of 408.33 feet to an iron pin found (5/8" rebar); thence run N31°16'15"W a distance of 43.13 feet to an iron pin found (5/8" rebar); thence run N61°31'44"E a distance of 64.71 feet to an iron pin found (5/8" rebar); thence run along the arc of a curve to the left, an arc distance of 123.34 feet to an iron pin found (1/2" rebar with cap stamped "ASM"), said curve having a radius of 83.85 feet and being subtended by a chord bearing N30°34'22"E and a chord distance of 112.52 feet; thence run N08°46'43"W a distance of 251.27 feet to an "X" chiseled in concrete; thence run along the arc of a curve to the right, an arc distance of 277.10 feet to an "X" chiseled in concrete, said curve having a radius of 100.51 feet and being subtended by a chord bearing N85°02'42"E and a chord distance of 197.31 feet; thence run S16°03'15"E a distance of 156.14 feet to an "X" chiseled in concrete; thence run S24°19'12"E a distance of 156.02 feet to an "X" chiseled in concrete; thence run S32°33'04"E a distance of 156.03 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S40°48'55"E a distance of 155.96 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S49°01'38"E a distance of 156.03 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S57°28'15"E a distance of 93.11 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run S04°18'47"E a distance of 469.18 feet to an "X" chiseled in concrete; thence run S88°06'39"W a distance of 294.46 feet to an iron pin found (1/2" rebar, cap is disturbed); thence run S01°31'49"E a distance of 278.09 feet to an iron pin found (5/8" rebar, bent); thence run N89°24'28"W a distance of 298.74 feet to an iron pin found (1" metal rod); thence run N28°03'34"W a distance of 61.37 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); thence run N86°28'06"W a distance of 196.93 feet to an iron pin found (1/2" rebar with cap stamped "ASM") located on the northeasterly right-of-way line of Bouldercrest Road; thence run northwesterly along said northeasterly right-of-way line the following courses and distances: N22°40'20"W a distance of 104.82 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N22°39'43"W a distance of 90.33 feet to a point; N23°12'50"W a distance of 415.38 feet to an iron pin found (1/2" rebar with cap stamped "ASM"); N23°37'47"W a distance of 224.36 feet to an iron pin found (1/2" rebar with cap stamped "LMX INC RLS 3158"), said iron pin found being the TRUE POINT OF BEGINNING.

Said tract or parcel of land containing 21.766 acres.



**EXHIBIT B**  
**Legal Description**  
(Page 4 of 7)

**ALSO TOGETHER WITH:**

All that tract or parcel of land lying and being in Land Lots 82 and 83 of the 15<sup>th</sup> District of DeKalb County, Georgia and being more particularly described as follows:

Begin at an iron pin set at the intersection of the western right-of-way of Westside Place (80' R/W) and the northern right-of-way of Constitution Road (80' R/W); thence running North 89 degrees 53 minutes 48 seconds West a distance of 2,559.80 feet to a point, said point being located at the centerline of Entrenchment Creek; thence continuing along the centerline of Entrenchment Creek the following courses and distances: North 17 degrees 39 minutes 21 seconds West a distance of 108.61 feet to a point; thence North 26 degrees 15 minutes 58 seconds East a distance of 149.95 feet to a point; thence North 24 degrees 56 minutes 20 seconds West a distance of 220.75 feet to a point; thence North 46 degrees 52 minutes 17 seconds West a distance of 117.08 feet to a point; thence North 20 degrees 55 minutes 07 seconds West a distance of 183.08 feet to a point; thence North 18 degrees 30 minutes 53 seconds East a distance of 73.53 feet to a point; thence North 24 degrees 44 minutes 27 seconds East a distance of 226.47 feet to a point; thence North 16 degrees 04 minutes 29 seconds East a distance of 133.43 feet to a point; thence North 05 degrees 22 minutes 08 seconds East a distance of 233.30 feet to a point; thence North 37 degrees 29 minutes 05 seconds East a distance of 134.57 feet to a point; thence North 58 degrees 10 minutes 28 seconds East a distance of 150.54 feet to a point; thence North 31 degrees 29 minutes 35 seconds East a distance of 107.29 feet to a point; thence North 25 degrees 33 minutes 23 seconds East a distance of 204.20 feet to a point; thence North 12 degrees 35 minutes 45 seconds East a distance of 160.66 feet to a point; thence North 22 degrees 43 minutes 19 seconds East a distance of 274.82 feet to a point; thence North 24 degrees 25 minutes 59 seconds East a distance of 221.22 feet to a point; thence North 10 degrees 50 minutes 57 seconds East a distance of 158.02 feet to a point; thence North 10 degrees 35 minutes 36 seconds East a distance of 172.58 feet to a point; thence leaving said centerline of Entrenchment Creek South 88 degrees 11 minutes 48 seconds East a distance of 1,414.80 feet to an iron pin found on the westerly right-of-way of Bouldercrest Road (80' R/W); thence along a curve to the right a distance of 317.10 feet, said curve having a radius of 4,577.00 feet and being subtended by a chord that bears South 25 degrees 32 minutes 14 seconds East a distance of 317.04 feet to a point; thence South 23 degrees 33 minutes 09 seconds East a distance of 659.66 feet to an iron pin set; thence North 89 degrees 34 minutes 26 seconds West a distance of 390.39 feet to an iron pin set; thence North 21 degrees 46 minutes 12 seconds West a distance of 68.96 feet to an iron pin set; thence North 89 degrees 34 minutes 26 seconds West a distance of 211.87 feet to an iron pin set; thence South 02 degrees 37 minutes 32 seconds West a distance of 287.24 feet to an iron pin set; thence South 89 degrees 34 minutes 36 seconds East a distance of 340.00 feet to an iron pin found; thence South 10 degrees 09 minutes 00 seconds East a distance of 274.52 feet to an iron pin found; thence North 89 degrees 54 minutes 42 seconds East a distance of 397.13 feet to an iron pin set on the westerly right-of-way of Bouldercrest Road (80' R/W); thence along said right-of-way (which said right-of-way forks to the east) and along the westerly right-of-way of Westside Place (80' R/W) South 00 degrees 35 minutes 56 seconds West a distance of 1,302.32 feet to an iron pin set and the Point of Beginning.

Said tract contains 135.98 acres as shown on that certain survey prepared for The Trust for Public Land, et al. by Wesley L. Browne, Jr. (G.R.L.S. No. 2770) of Corporate Environmental Risk Management, LLC, dated September 27, 2002, last revised November 18, 2002.

**EXHIBIT B**  
**Legal Description**  
(Page 5 of 7)

**LESS AND EXCEPT:**

ALL THAT TRACT or parcel of land lying and being in Land Lot 83 of the 15<sup>th</sup> District, DeKalb County, Georgia, and being shown as 8.871 acres per that certain Boundary Survey for TND City Crest, LLC and DeKalb County prepared by Ambit Technical Services, Parker Land Surveying, Scott Van Webb-Parker, Georgia RLS #2611, dated 07/18/06, last revised 11/29/07, and being more particularly described as follows

To find the Point of Beginning commence at an iron pin found at the intersection of the southwesterly right of way of Bouldercrest Road (right of way of varying width) with the land lot line common to Land Lots 83 and 110, proceed thence from said intersection along the southwesterly right of way of Bouldercrest Road the following courses and distances: south 35°59'30" east 36.63 feet to an iron pin set; south 35°59'25" east 825.0 feet to an iron pin set; south 35°57'09" west 397.48 feet to an iron pin set and the POINT OF BEGINNING, and from said POINT OF BEGINNING continue along said right of way the following courses and distances: southeasterly along the arc of a curve having a radius of 3732.79 feet, said arc being subtended by a chord bearing south 33°05'16" east and having a chord length of 55.23 feet, an arc distance of 55.24 feet to a point, southeasterly along the arc of a curve having a radius of 3732.79 feet, said arc being subtended by a chord bearing south 31°32'18" east and having a chord length of 147.67 feet, an arc distance of 147.68 feet to an iron pin set, thence leaving said right of way and proceed south 64°24'08" west 486.19 feet to an iron pin set, proceed thence south 83°40'59" west 754.03 feet to an iron pin set, proceed thence north 06°19'01" west 370.23 feet to an iron pin set, proceed thence north 85°05'28" east 1125.93 feet to the POINT OF BEGINNING

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**EXHIBIT B**  
**Legal Description**  
(Page 6 of 7)

**ALSO LESS AND EXCEPT:**

**DeKalb County Property**

**40.000 Acres**

Bouldercrest, Tract 1

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

**TO FIND THE TRUE POINT OF BEGINNING, COMMENCE** at a nail found at the intersection of the westerly right of way West Side Place (right of way varies) and the northerly right of way of Constitution Road (right of way varies), said point being the **TRUE POINT OF BEGINNING**.

**FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED;**  
thence leaving said westerly right of way and along said northerly right of way N89°40'39"W for a distance of 1402.88 feet to a 1/2" rebar set; thence leaving said northerly right of way N00°19'21"E for a distance of 614.37 feet to a point; thence N37°56'41"E for a distance of 1209.37 feet to a point; thence S89°47'51"E for a distance of 223.75 feet to a 1" steel rod found; thence S09°56'52"E for a distance of 274.46 feet to a 3/4" rebar found; thence S89°47'44"E for a distance of 395.51 feet to a 1/2" rebar found (bent) at the westerly right of way of Bouldercrest Road (right of way varies); thence along said westerly right of way of Bouldercrest Road and becoming the westerly right of way of West Side Place (right of way varies) S00°28'48"W for a distance of 1303.48 feet to a nail found, said point being the **TRUE POINT OF BEGINNING**.

Said tract of parcel of land contains 40.000 acres.

**EXHIBIT B**  
**Legal Description**  
(Page 7 of 7)

**AND TOGETHER WITH**

ALL THAT TRACT or parcel of land lying and being in Land Lots 83 and 84 of the 15<sup>th</sup> District, DeKalb County, Georgia, and being shown as 20.890 acres per that certain Boundary Survey for TND City Crest, LLC and DeKalb County prepared by Ambit Technical Services, Parker Land Surveying, Scott Van Webb Parker, Georgia RLS #2611, dated 07/18/06, last revised 11/29/07, and being more particularly described as follows

To find the Point of Beginning commence at the intersection of the northerly right of way line of Constitution Road with the easterly right of way of Bouldercrest Road (right of way of varying width), proceed thence from said intersection along the easterly right of way of Bouldercrest Road 1342.0 feet to a one-half inch open top pipe found, thence leaving said right of way and proceed north 87°32'02" east 478.91 feet to a point, said point being the POINT OF BEGINNING; and from said POINT OF BEGINNING proceed thence north 11°06'45" west 145.94 feet to a point; proceed thence north 11°06'53" west 164.51 feet to one inch iron rod found, proceed thence north 06°57'18" west 278.27 feet to an iron pin set, proceed thence north 82°42'58" east 294.50 feet to an iron pin set, proceed thence north 09°43'28" west 469.01 feet to an iron pin set, proceed thence north 62°42'39" west 93.25 feet to an iron pin set, proceed thence north 54°28'06" west 156.0 feet to an iron pin set, proceed thence north 46°13'33" west 156.0 feet to an iron pin set, proceed thence north 37°59'00" west 156.0 feet to an iron pin set, proceed thence north 29°44'26" west 156.0 feet to an iron pin set, proceed thence north 21°29'43" west 156.11 feet to an iron pin set, proceed thence southwesterly along the arc of a curve having a radius of 100.51 feet, said arc being subtended by a chord bearing south 79°38'38" west and having a chord length of 197.23 feet, an arc distance of 276.67 feet to an iron pin set, proceed thence south 14°10'54" east 251.29 feet to an iron pin set, southwesterly along the arc of a curve having a radius of 83.85 feet, said arc being subtended by a chord bearing south 25°04'32" west and having a chord length of 112.59 feet, an arc distance of 123.45 feet to an iron pin set, proceed thence south 56°07'36" west 64.63 feet to an iron pin set, proceed thence south 36°38'03" east 43.15 feet to an iron pin set, proceed thence south 57°57'20" west 408.81 feet to a one-half inch rebar set on the northeasterly right of way of Bouldercrest Road; proceed thence along said right of way north 28°58'02" west 100.14 feet to an iron pin set, thence leaving said right of way and proceed north 57°57'20" east 463.48 feet to an iron pin set, proceed thence north 11°18'20" east 73.20 feet to an iron pin set, proceed thence north 21°41'23" west 15.80 feet to an iron pin set, proceed thence north 23°43'05" west 119.71 feet to an iron pin set, proceed thence north 39°47'30" west 90.21 feet to an iron pin set, proceed thence north 09°11'04" west 65.06 feet to an iron pin set, proceed thence north 12°45'55" west 57.53 feet to an iron pin set, proceed thence north 09°20'54" west 63.95 feet to an iron pin set, proceed thence north 81°01'05" east 982.05 feet to an angle iron found, proceed thence north 04°46'57" west 47.92 feet to a point located in the centerline of Sugar Creek, said centerline being the property line, proceed thence along said centerline the following calls and distances: south 71°24'35" east 27.67 feet to a point, south 59°14'58" east 170.21 feet to an iron pin set, south 51°41'56" east 97.39 feet to an iron pin set, south 50°34'53" east 132.31 feet to an iron pin set, south 29°30'04" east 119.41 feet to a point, thence leaving said centerline and proceed south 48°47'43" west 471.98 feet to a one-half inch rebar set, proceed thence south 47°49'52" west 150.35 feet to a one-half inch rebar found, proceed thence south 09°53'11" east 31.97 feet to a one-half inch rebar found, proceed thence south 09°52'46" east 1251.35 feet to a point, proceed thence south 86°46'56" west 355.38 feet to the POINT OF BEGINNING

## EXHIBIT I

### Conditions to Closing

This Agreement is made contingent on the occurrence and satisfaction in the case of items 1, 2, 3 and 4 and non-occurrence in the case of item 5, of all of the following terms and conditions as set forth and referenced herein as Special Stipulations. In the event that any of the conditions are not satisfied, then unless the parties otherwise agree, this Agreement shall terminate, and the parties shall be relieved of any further obligations hereunder. The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph in the Agreement, shall control:

1. DeKalb County obtains the approval of the Board of Commissioners of DeKalb County authorizing the Exchange.
2. DeKalb County receives an updated environmental report for the Blackhall Property reasonably satisfactory to DeKalb County.
3. The Trust for Public Land, the Arthur M. Blank Family Foundation and DeKalb County executes a Quitclaim Deed of Release, in recordable form, that releases the Park Restriction from the DeKalb County Property.
4. DeKalb County and Blackhall enter into such recordable declarations as may be necessary to impose the Park Restriction on the Blackhall Property.
5. The Georgia Department of Natural Resources has not made written objections to the Exchange and the removal of the Park Restriction from the DeKalb County Property and placing the Park Restriction against the Blackhall Property communicated by response to the letter from Clay Reese of Moore & Reese LLC to Walter Rabon, Deputy Commissioner dated August 1, 2019, or otherwise, prior to the date that conditions 1, 2 and 3 above are satisfied.

# EXHIBIT C

Please return to:  
Attention: Clay W. Reese  
GDCR, Attorneys at Law  
2951 Flowers Road South, Suite 220  
Atlanta, Georgia 30341  
DEKAL.198514

Parcel ID #: 15 083 01 004

**QUITCLAIM DEED**

**STATE OF GEORGIA  
COUNTY OF DEKALB**

THIS INDENTURE made as of this 29 day of January, 2021, between **DeKalb County, a political subdivision of the State of Georgia**, as Grantor and **Blackhall Real Estate Phase II, LLC, a Delaware limited liability company**, the Grantee.

**WITNESSETH:**

**WHEREAS**, Grantor owns 40.00 acres located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County which is further described at Exhibit A (the "DeKalb County Property"); and

**WHEREAS**, Grantee owns 23.830 acres ("Parcel 1") located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County; 7.318 acres ("Parcel 2") located in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County; and 21.766 acres ("Parcel 3") located in Land Lots 83 and 84 of the 15<sup>th</sup> District of DeKalb County (Parcel 1, Parcel 2 and Parcel 3 collectively contain 52.914 acres and are collectively referred to as the "Blackhall Property"); and

**WHEREAS**, 8.871 acres of Parcel 1 were previously owned by Grantor and at the time they were so owned were subject to a park restriction ("Previously Restricted Land"); and

**WHEREAS**, the DeKalb County Property consists of a portion of Intrenchment Creek Park and is a portion of the land deeded to Grantor for park purposes on January 15, 2003 by The Trust for Public Land pursuant to Limited Warranty Deed recorded at Deed Book 14082, Page 22, DeKalb County, Georgia records (the "Original Deed"); and

**WHEREAS**, the acreage of the Blackhall Property, excluding the Previously Restricted Land, is greater than 110% of the acreage of the DeKalb County Property and is contiguous to, or across a public road from, Intrenchment Creek Park; and

**WHEREAS**, Blackhall Studios Atlanta, LLC, a Delaware limited liability company ("Blackhall"), owns and operates a film studio ("Blackhall Studios") on land in the vicinity of the DeKalb County Property, and Grantor and Blackhall are under common control; and

**WHEREAS**, Blackhall wishes to expand Blackhall Studios; and

**WHEREAS**, Grantor wishes to expand and improve upon its public parks and the improvements

thereon for the benefit of the public; and

**WHEREAS** Blackhall has determined that the expansion of Blackhall Studios can best be accommodated on the DeKalb County Property; and

**WHEREAS**, Grantor has determined that the County and its citizens will realize substantial economic benefit from the growth of the film industry in DeKalb County in general and by the expansion of Blackhall Studios in DeKalb County in particular; and

**WHEREAS**, Grantor has determined that its public park system can best be expanded and improved by the acquisition of the Blackhall Property, which will thereby enable Intrenchment Creek Park to abut and connect with Gresham Park and to enhance the connectivity with the South River, thereby facilitating the expansion of public trails and other improvements; and

**WHEREAS**, Grantor has determined that it is in the best interest of its citizens to focus truck traffic serving Blackhall Studios onto Constitution Road instead of Bouldercrest Road, and that such traffic planning can be best accomplished by enabling the development of the expansion of Blackhall Studios on the DeKalb County Property instead of on the Blackhall Property; and

**WHEREAS**, Grantor has facilitated and held several public hearings from April, 2019 through September 2020, to solicit input from and attempt to address any concerns raised at such hearings in relation to the proposed real estate exchange, the planned improvements to the Blackhall Property and the fact that the DeKalb County Property will cease to be used as a park; and

**WHEREAS**, on February 4, 2020, and in order to expand and improve upon its public park system and to help facilitate Blackhall's expansion of its film studio, which will also inure to the benefit of the citizens of DeKalb County, the DeKalb County Board of Commissioners approved an Agenda Item expressing its willingness, in accordance with O.C.G.A § 36-9-3(a)(3)(D), to exchange the DeKalb County Property for the Blackhall Property (the "Exchange"); and

**WHEREAS**, on October 13, 2020, the DeKalb County Board of Commissioners authorized the Exchange and authorized the acceptance of the Park Improvements (defined below); and

**WHEREAS**, considering the acreage to be conveyed, the Blackhall Property has an appraised value of \$3,200,000 and the DeKalb County Property has a value of \$2,800,000; therefore, the value of the Blackhall Property to be delivered to Grantor in the Exchange exceeds the value of the DeKalb County Property by \$400,000; and

**WHEREAS**, in addition to delivery of the Blackhall Property, which has an appraised value of approximately 114% of the appraised value of the DeKalb County Property, Grantee has agreed, at its sole cost and expense and as a donation to Grantor, to (i) make certain park improvements to the Blackhall Property, Intrenchment Creek Park and adjacent areas at a cost of \$1,500,000 (the "Park Improvements") after the Exchange and (ii) pay the additional sum of \$100,000 to Grantor to be used by Grantor for acquisition of greenspace prior to the date of completion of the Park Improvements; and

**WHEREAS**, the Park Improvements will be, to a significant extent, constructed on land owned by Grantor; however, all of the work will be performed by Grantee or its agents and contractors as part of the



donation of such improvements in connection with the Exchange; and

**WHEREAS**, Grantor intends to use the Blackhall Property acquired in the Exchange for use as parkland and will submit the Blackhall Property to the same parkland restriction as presently exists on the DeKalb County Property as described in the Original Deed; and

**WHEREAS**, the DeKalb County Property is currently subject to a park restriction (the "Park Restriction"); and

**WHEREAS**, as part of the Exchange the Park Restriction will be removed from the DeKalb County Property and will be imposed on the Blackhall Property; and

**WHEREAS**, each of the Arthur M. Blank Family Foundation and The Trust for Public Land has the right to enforce the Park Restriction but has, after reviewing the details of the Exchange, consented to allow the Park Restriction to be removed from the DeKalb County Property by executing and recording a Quit Claim Deed for such purpose; and

**WHEREAS**, Grantor has received a Phase 1 environmental assessment of the Blackhall Property in accordance with O.C.G.A. § 36-80-18, and no significant dangers were disclosed; and

**WHEREAS**, the Chief Executive Officer of Grantor or his designated representative has been authorized by the DeKalb County Board of Commissioners to accept delivery of recorded deeds for the Blackhall Property subject to the Park Restriction, and to tender delivery of quitclaim deeds for the DeKalb County Property and to execute and deliver such other documents as are reasonably necessary to effectuate the Exchange.

NOW, THEREFORE, Grantor, for and in consideration of the exchange of properties and other consideration described above and the sum of ONE DOLLAR (\$1.00), cash in hand paid at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has bargained and exchanged, and by these presents does grant, bargain, convey, remise, release and forever QUIT CLAIM unto the said Grantee, all the right, title, interest, claim or demand which the Grantor may have had in and to the following described property:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 83 of the 15<sup>th</sup> District of DeKalb County, Georgia and being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

Said property is conveyed subject to those matters set forth on Exhibit "B" attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD the said tract of land, with all and singular the rights, members and appurtenances thereof, to the same being belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said Grantee, so that neither Grantor nor any other person claiming under Grantor shall at any time, claim or demand any right, title or interest to the said tract of land, or its appurtenances.


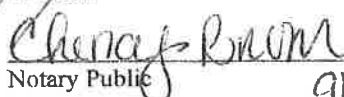
SIGNATURES CONTAINED ON FOLLOWING PAGE

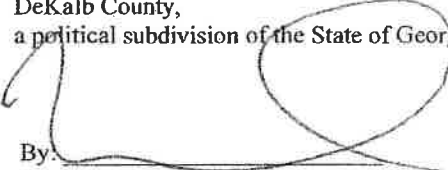
*[signature page for Quit Claim Deed]*

IN WITNESS WHEREOF, the said Grantor has executed the indenture under seal the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**GRANTOR:**  
DeKalb County,  
a political subdivision of the State of Georgia

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Notary Public 9/16/22

  
\_\_\_\_\_  
By: Michael L. Thurmond, CEO

[NOTARIAL SEAL]



**Exhibit "A"**  
**Legal Description**

**DeKalb County Property**

**40.000 Acres**

Bouldercrest, Tract 1

All that tract or parcel of land lying and being in Land Lot 83 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

**TO FIND THE TRUE POINT OF BEGINNING, COMMENCE** at a nail found at the intersection of the westerly right of way West Side Place (right of way varies) and the northerly right of way of Constitution Road (right of way varies), said point being the **TRUE POINT OF BEGINNING.**

**FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED;**

thence leaving said westerly right of way and along said northerly right of way N89°40'39"W for a distance of 1402.88 feet to a 1/2" rebar set; thence leaving said northerly right of way N00°19'21"E for a distance of 614.37 feet to a point; thence N37°56'41"E for a distance of 1209.37 feet to a point; thence S89°47'51"E for a distance of 223.75 feet to a 1" steel rod found; thence S09°56'52"E for a distance of 274.46 feet to a 3/4" rebar found; thence S89°47'44"E for a distance of 395.51 feet to a 1/2" rebar found (bent) at the westerly right of way of Bouldercrest Road (right of way varies); thence along said westerly right of way of Bouldercrest Road and becoming the westerly right of way of West Side Place (right of way varies) S00°28'48"W for a distance of 1303.48 feet to a nail found, said point being the **TRUE POINT OF BEGINNING.**

Said tract of parcel of land contains 40.000 acres.

Exhibit "B"

Permitted Exceptions

1. Taxes and assessments for the year 2021 and subsequent years, and any additional taxes for the current year or any prior years as a result of any re-assessment or re-billing of taxes which are not yet due and payable.
2. Applicable zoning ordinances and regulations.
3. Rights of upper, lower and adjacent riparian owners in and to the waters of creeks and branches crossing or adjoining subject property and the natural flow thereof, free from diminution or pollutions.
4. Easement for Right-Of-Way from B. B. Crane to Georgia Power company, dated November 22, 1952 and recorded December 10, 1952 in Deed Book 953, Page 231, aforesaid records.
5. Atlanta Gas Light Company right of way crossing the property shown on Plat of survey as contained in that certain Limited Warranty Deed from Augusta Mathilde Howell a/k/a Augusta Howell Smith and Constitution Land Partners, LTD., a Georgia limited partnership, dated September 30, 1985, recorded October 17, 1985, in Deed Book 5318, Page 339, aforesaid records.
6. All matters shown on that certain Minor Plat of Bouldercrest Tracts, dated January 26, 2021, prepared by Gunnin Land Surveying, bearing the seal of Jesse R. Gunnin, Georgia Registered Land Surveyor No. 3079, recorded in Plat Book 290, Page 100, aforesaid records.

# **EXHIBIT D**









**IN THE SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

SOUTH RIVER WATERSHED ALLIANCE,	:	
SOUTH RIVER FOREST COALITION,	:	
MARGARET S. BRADY, ALLEN P. DOYLE,	:	
JOEL FINEGOLD, JOSEPH S. PEERY, and	:	
JOHN AND JANE DOES,	:	CIVIL FILE ACTION NO.
	:	21CV1931
Plaintiffs,	:	
	:	
v.	:	
	:	
DEKALB COUNTY, GEORGIA, by and	:	
through its Board of Commissioners, and	:	
BLACKHALL REAL ESTATE PHASE II, LLC	:	
	:	
Defendants	:	

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a copy of the foregoing **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF** was served upon all parties of record, through counsel of record, by using the Court's electronic filing system (Odyssey) which will automatically send email notification of and a link to such filing, to:

John O'Shea Sullivan  
Leesa M. Guarnotta  
Grace B. Callanan  
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*Counsel for Defendant DeKalb County*

This 21<sup>st</sup> day of December 2022.

*/s/ Kasey Sturm* -----

Kimberly [Kasey] A. Sturm

Georgia Bar No. 690615

Weissman PC

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