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 Recorded: 05/15/2015 at 03:24:00 PM  
 Fee Amt: \$34.00 Page 1 of 13  
 Floyd County Superior Court  
 Barbara H. Penson Clerk

BK **2429** PG **449-461**

After Recording Return to:  
 Georgia Environmental Protection Division  
 Response and Remediation Program  
 2 Martin Luther King, Jr. Drive, SE  
 Suite 1462 East  
 Atlanta, Georgia 30334

### Environmental Covenant

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, OCGA §44-16-1, *et seq.* This Environmental Covenant subjects the Property identified below to the activity and/or use limitations specified in this document. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded in accordance with OCGA §44-16-8(a).

**Fee Owner of Property/Grantor:** Battey Downtown, LLC  
 501 E. 6<sup>th</sup> Street  
 Rome, GA 30161

**Grantee/Holder:** Atlanta Gas Light Company  
 Attn: Jeffrey Brown  
 Ten Peachtree Place  
 Atlanta, GA 30309

**Grantee/Entity with express power to enforce:** State of Georgia  
 Department of Natural Resources  
 Environmental Protection Division  
 2 Martin Luther King Jr. Drive, SE  
 Suite 1152 East Tower  
 Atlanta, GA 30334

**Parties with interest in the Property:** N/A

**Property:**

The property subject to this Environmental Covenant is the Battey Downtown, LLC (hereinafter "Property"), located on **West 1<sup>st</sup> Street** in Rome, Floyd County, Georgia. This tract of land was conveyed on 12/31/03 from Atlanta Gas Light Company\_ to Battey Downtown, LLC\_ recorded in Deed Book 1845, Page 1215, Floyd County Records. The area is located in Land Lot Nos. 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, and 72 of the 1<sup>st</sup> Ward of the City of Rome; Floyd County, Georgia. The Properties are approximately 6 acres in total, consisting of two 3-story buildings and an asphalt parking lot. The two buildings are developed as a hotel and a swimming pool is planned for installation near the west side of the property on Parcel 3. A complete legal description of the area is attached as Exhibit A and a map of the area is attached as Exhibit B.

**Tax Parcel Number(s):**

**J14D020, J14D021, J14D022, J14D023, J14D024** of Floyd County, Georgia

**Name and Location of Administrative Records:**

The corrective action at the Property that is the subject of this Environmental Covenant is described in the following document[s]:

*Compliance Status Report, Atlanta Gas Light Company Former Manufactured Gas Plant Site, Rome, Georgia.* September 28, 2001, revised February 15, 2002, May 31, 2002, and June 7, 2004.

*Continuing Action Monitoring Plan, Atlanta Gas Company Former Manufactured Gas Plant Site, Rome, Georgia.* August 2014 (included as Attachment C of the VRP CSR Addendum).

*Corrective Action Plan, Former Manufactured Gas Plant Site, Rome, Georgia.* June 10, 1997, revised May 27, 1998, February 26, 1999, and April 27, 1999.

*Corrective Action Plan – Operable Unit 3 – Rivers Place Building (Parcel 5), Former Manufactured Gas Plant Site, Rome, Georgia.* January 2000, revised March 13, 2000.

*Groundwater Corrective Action Plan – OU4, Former Manufactured Gas Plant Site, Rome, Georgia.* September 2000, revised December 2000.

*Groundwater Corrective Action Plan Addendum – OU4, Former Manufactured Gas Plant Site, Rome, Georgia.* April 2001.

*Remedial Investigation/Compliance Status Report Manufactured Gas Plant Site, Rome, Georgia, HSI Site Number 10109.* March 1997.

*Voluntary Remediation Program Compliance Status Report, Atlanta Gas Light Company Former Manufactured Gas Plant Site, Rome, Georgia.* December 2013.

*Voluntary Remediation Program Compliance Status Report Addendum, Atlanta Gas Light Company Former Manufactured Gas Plant Site, Rome, Georgia.* August 15, 2014.

These documents are available at the following locations:

Georgia Environmental Protection Division  
Response and Remediation Program  
2 MLK Jr. Drive, SE, Suite 1462 East Tower  
Atlanta, GA 30334  
M-F 8:00 AM to 4:30 PM excluding state holidays

**Description of Contamination and Corrective Action:**

Soil and groundwater impacts at the property were related to operations of the former manufactured gas plant (MGP) previously located on the properties. Soil was excavated to meet a Type 4 (non-residential) risk reduction standard and all such work was completed in 2003. To reduce potential exposure risks in the hotel basement (Parcel 5), a geomembrane barrier was installed below a gravel covering on the area that was excavated, as well as any area with exposed soil. The majority of the basement is covered by concrete. Groundwater monitoring was initiated in 1997 and continued quarterly to semiannually through October 2012. Groundwater was remediated via monitored natural

attenuation. Impacts remain in only three (3) on-site monitoring wells, but the remaining concentrations are below the groundwater clean-up criteria calculated in the VRP and therefore, future groundwater monitoring is not required.

**This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.**

This Declaration of Covenant is made pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. §44-16-1 *et seq.* by Battey Downtown, LLC, its successors and assigns, Atlanta Gas Light Company, and the State of Georgia, Department of Natural Resources, Environmental Protection Division (hereinafter "EPD"), its successors and assigns. This Environmental Covenant is required because a release of benzene and naphthalene occurred on the Property. Benzene and naphthalene are "regulated substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. §12-8-90 *et seq.*, and the rules promulgated thereunder (hereinafter "HSRA" and "Rules", respectively). The Corrective Action consists of institutional controls (consisting of limiting the use to non-residential activities and prohibiting the use of groundwater except for monitoring purposes) to protect human health and the environment.

Grantor, Battey Downtown, LLC, hereby binds Grantor, its successors and assigns to the activity and use restriction(s) for the Property identified herein and grants such other rights under this Environmental Covenant in favor of Atlanta Gas Light Company and EPD. EPD shall have full right of enforcement of the rights conveyed under this Environmental Covenant pursuant to HSRA, O.C.G.A. §12-8-90 *et seq.*, and the rules promulgated thereunder. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict EPD from excising any authority under applicable law.

Battey Downtown, LLC, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, pursuant to O.C.G.A. §44-16-5(a); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to O.C.G.A. §44-16-9; and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter "Owner"). Should a transfer or sale of the Property occur before such time as this Environmental Covenant has been amended or revoked then said Environmental Covenant shall be binding on the transferee(s) or purchaser(s).

The Environmental Covenant shall inure to the benefit of Atlanta Gas Light Company, EPD, Battey Downtown, LLC, and their respective successors and assigns and shall be enforceable by the Director or his agents or assigns, Atlanta Gas Light Company or its successors and assigns, and other party(ies) as provided for in O.C.G.A. §44-16-11 in a court of competent jurisdiction.

### Activity and/or Use Limitation(s)

1. Registry. Pursuant to O.C.G.A. §44-16-12, this Environmental Covenant and any amendment or termination thereof, may be contained in EPD's registry for environmental covenants.
2. Notice. The Owner of the Property must give thirty (30) day advance written notice to EPD of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Corrective Action. The Owner of the Property must also give thirty (30) day advance written notice to EPD of the Owner's intent to change the use of the Property, apply for building permit(s), or propose any site work that would affect the Property.
3. Notice of Limitation in Future Conveyances. Each instrument hereafter conveying an interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of the Environmental Covenant.
4. Monitoring. The Continuing Action Monitoring Action Plan (CAMP) will include an annual inspection to ensure property use remains non-residential.
5. Periodic Reporting. Annually, by no later than October 2014 following the effective date of this Environmental Covenant, the Owner shall submit to EPD an Annual Report as specified in the CAMP dated October 2013.
6. Activity and Use Limitation(s). The Property shall be used only for non-residential uses, as defined in Section 391-3-19-.02 of the Rules and defined in and allowed under Floyd County's zoning regulations as of the date of this Environmental Covenant. Any residential use on the Property shall be prohibited.
7. Groundwater Limitation. The use or extraction of groundwater beneath the Property for drinking water or for any other non-remedial purposes shall be prohibited.
8. Right of Access. In addition to any rights already possessed by EPD and/or Atlanta Gas Light Company, the Owner shall allow authorized representatives of EPD and/or Atlanta Gas Light Company the right to enter the Property at reasonable times for the purpose of evaluating the Corrective Action; to take samples, to inspect the Corrective Action conducted at the Property, to determine compliance with this Environmental Covenant, and to inspect records that are related to the Corrective Action.
9. Recording of Environmental Covenant and Proof of Notification. Within thirty (30) days after the date of the Director's signature, the Owner shall file this Environmental Covenant with the Recorders of Deeds for each County in which the Property is located, and send a file stamped copy of this Environmental Covenant to EPD within thirty (30) days of recording. Within that time period, the Owner shall also send a file-stamped copy to each of the following: (1) Atlanta Gas Light Company, (2) each person holding a recorded interest in the Property subject

to the covenant, (3) each person in possession of the real property subject to the covenant, (4) each municipality, county, consolidated government, or other unit of local government in which real property subject to the covenant is located, and (5) each owner in fee simple whose property abuts the property subject to the Environmental Covenant.

10. Termination or Modification. The Environmental Covenant shall remain in full force and effect in accordance with O.C.G.A. §44-5-60, unless and until the Director determines that the Property is in compliance with the Type 1, 2, 3, or 4 Risk Reduction Standards, as defined in Georgia Rules of Hazardous Site Response (Rules) Section 391-3-19-.07 and removes the Property from the Hazardous Site Inventory, whereupon the Environmental Covenant may be amended or revoked in accordance with Section 391-3-19-08(7) of the Rules and O.C.G.A. §44-16-1 *et seq.*
11. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
12. No Property Interest Created in EPD. This Environmental Covenant does not in any way create any interest by EPD in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by EPD in the Property in accordance with O.C.G.A. §44-16-3(b).

#### **Representations and Warranties.**

Grantor hereby represents and warrants to the other signatories hereto:

- a) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- b) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
- c) That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- d) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- e) That the Grantor has served each of the people or entities referenced in Activity 10 above with an identical copy of this Environmental Covenant in accordance with O.C.G.A. §44-16-4(d).
- f) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property; and
- g) That this Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

**Notices.**

Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

Georgia Environmental Protection Division  
Branch Chief  
Land Protection Branch  
2 Martin Luther King Jr. Drive SE  
Suite 1154 East Tower  
Atlanta, GA 30334

AGL Resources, Inc.  
Attn: Executive Vice President and General Counsel  
Ten Peachtree Place  
Atlanta, GA 30309

Grantor has caused this Environmental Covenant to be executed pursuant to The Georgia Uniform Environmental Covenants Act, on the 15<sup>th</sup> day of April, 2015.

Signed, sealed, and delivered in the presence of:

Polly Runge  
Unofficial Witness (Signature)

Polly Runge  
Unofficial Witness Name (Print)

12 E 10<sup>th</sup> Street SW  
Rome, GA 30161

Unofficial Witness Address (Print)

Courtney Waits  
Notary Public (Signature)

My Commission Expires: June 17, 2018

Signed, sealed, and delivered in the presence of:

Dorothy S. Kirkland  
Unofficial Witness (Signature)

Dorothy S. Kirkland  
Unofficial Witness Name (Print)

2 Martin Luther King Jr Dr  
Suite 1456  
Atlanta GA 30334

Unofficial Witness Address (Print)

Cristal Sailors  
Notary Public (Signature)

My Commission Expires: 1/22/17

**For the Grantor:**

Bathey Downtown, LLC  
Name of Grantor (Print)

[Signature] (Seal)  
Grantor's Authorized Representative (Signature)

Ira Levy, Managing Member  
Authorized Representative Name (Print)

Title of Authorized Representative (Print)

Dated: 4/15/15  
(NOTARY SEAL)



**For the State of Georgia  
Environmental Protection Division:**

Judson H. Turner (Seal)  
(Signature)

Judson H. Turner  
Director

Dated: 4/15/15

(NOTARY SEAL)



Signed, sealed, and delivered in the presence of:

Unofficial Witness (Signature)

*[Handwritten Signature]*

Unofficial Witness Name (Print)

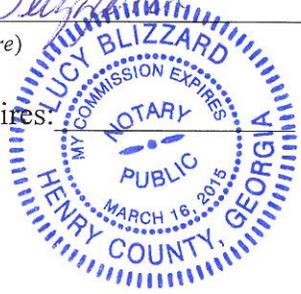
J. LANG WOODS

Unofficial Witness Address (Print)

Notary Public (Signature)

*[Handwritten Signature]*

My Commission Expires:



**For the Grantee/Holder:**

**Atlanta Gas Light Company**

Name of Grantee/Holder (Print)

*[Handwritten Signature]*

Grantee/Holder's Authorized Representative (Signature)

Authorized Representative Name (Print)  
**DONALD F. CARTER**  
**Vice President**

Title of Authorized Representative (Print)

Dated:  
(NOTARY SEAL)



2/9/15

Exhibit A  
Legal Description

EXHIBIT "A"TRACT 1

All that tract or parcel of land lying and being in the Coosa Division of the 1st Ward of the City of Rome, Floyd County, Georgia, being all of Lots numbered 61, 62, 63, 64, 65, 66, 67, 68 and 69 of said Coosa Division as well as that property lying between said lots and the Oostanaula River as shown by a property survey for E.C. Systems, Inc., a Plat of said survey being recorded in Plat Book 16, page 161, in the records of the Office of the Clerk of the Superior Court of Floyd County, Georgia, and designated as Tract 1, being more particularly described as follows:

BEGINNING at the north corner of the intersection of the right-of-ways of Second Avenue and West First Street, said corner also being a building corner and the south corner of Lot 61 of said Coosa Division and from said point of beginning running north 40 degrees 14 minutes 45 seconds west along the face of said building and the northeasterly right-of-way of Second Avenue 201.16 feet to a point on the northwesterly right-of-way of the Central of Georgia Railroad; thence running north 49 degrees 14 minutes 55 seconds east a distance of 20.0 feet to a point; thence running north 40 degrees 14 minutes 45 seconds west a distance of 120 feet, more or less, to the normal low water line of the Oostanaula River; thence running along the normal low water line of the Oostanaula River a distance of 255 feet, more or less, to a point (a survey tie line being run between the northeasterly property line and the southwesterly property line and adjacent to the Oostanaula River; said survey tie line beginning at a point on the southwesterly property line being 102.83 feet from the northwesterly right-of-way of the Central of Georgia Railroad and being 17 feet, more or less, from the normal low water line of the Oostanaula River and thence running north 57 degrees 02 minutes 15 seconds east a distance of 253.07 feet to a point on the northeasterly property line, said point being 20 feet, more or less, from the normal low water line of the Oostanaula River and 279.49 feet from West First Street as measured along the northeasterly property line); thence running south 40 degrees 14 minutes 30 seconds east a distance of 292 feet, more or less, to a point on the northwesterly right-of-way of West First Street; said point also being the east corner of Lot 69 of the said Coosa Division thence running south 49 degrees 49 minutes 20 seconds west along the northwesterly right-of-way of West First Street 270.96 feet to the point of beginning. Said tract containing 1.85 acres more or less.

This being the same property conveyed by E.C. Systems, Inc. to Rome I, Ltd. as found in Deed Book 908, page 226, aforesaid Records, this deed being used to conform the within deed description to the aforementioned survey recorded in Plat Book 16, page 161, aforesaid Records.

THE ABOVE DESCRIBED TRACT 1 WAS CONVEYED TO ATLANTA GAS LIGHT COMPANY BY THE FOLLOWING DEEDS:

- (1) DEED UNDER POWER OF SALE DATED AND RECORDED NOVEMBER 5, 1996, AND RECORDED IN DEED BOOK 1359, PAGE 649, AFORESAID RECORDS, AND RE-RECORDED IN DEED BOOK 1361, PAGE 231, AFORESAID RECORDS, ON NOVEMBER 18, 1996.

- (2) WARRANTY DEED DATED FEBRUARY 24, 1999 BETWEEN BATTEY RESTAURANT, LTD. AND ATLANTA GAS LIGHT COMPANY, RECORDED IN DEED BOOK 1515, PAGE 679, AFORESAID RECORDS.

**TOGETHER WITH:**

**TRACT 2**

All that tract or parcel of land lying and being in the Coosa Division of the First Ward of the City of Rome, being all of Lots 70, 71, and 72 of said Coosa Division and other properties as shown by a property survey for E.C. Systems, Inc., a plat of said survey being recorded in Plat Book 16, Page 175, and designated as Tract 2, being more particularly described as follows:

Starting at the northernmost corner of the right of ways of the intersection of Second Avenue and West First Street and from said starting point running north 49 degrees 49 minutes 20 seconds east along the northwesterly right of way of West First Street a distance of 270.96 feet to the TRUE POINT OF BEGINNING; thence, from said TRUE POINT OF BEGINNING running north 40 degrees 14 minutes 30 seconds west a distance of 204.57 feet to a point on the northwesterly right of way of the Central of Georgia Railroad; thence running north 48 degrees 57 minutes 40 seconds east along the northwesterly right of way of the Central of Georgia Railroad a distance of 88.96 feet to a point; thence running south 40 degrees 18 minutes 20 seconds east a distance of 205.91 feet to a point on the northwesterly right of way of West First Street; thence running south 49 degrees 49 minutes 20 seconds west a distance of 89.19 feet to the TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT 2 WAS CONVEYED TO ATLANTA GAS LIGHT COMPANY BY THE FOLLOWING DEED:

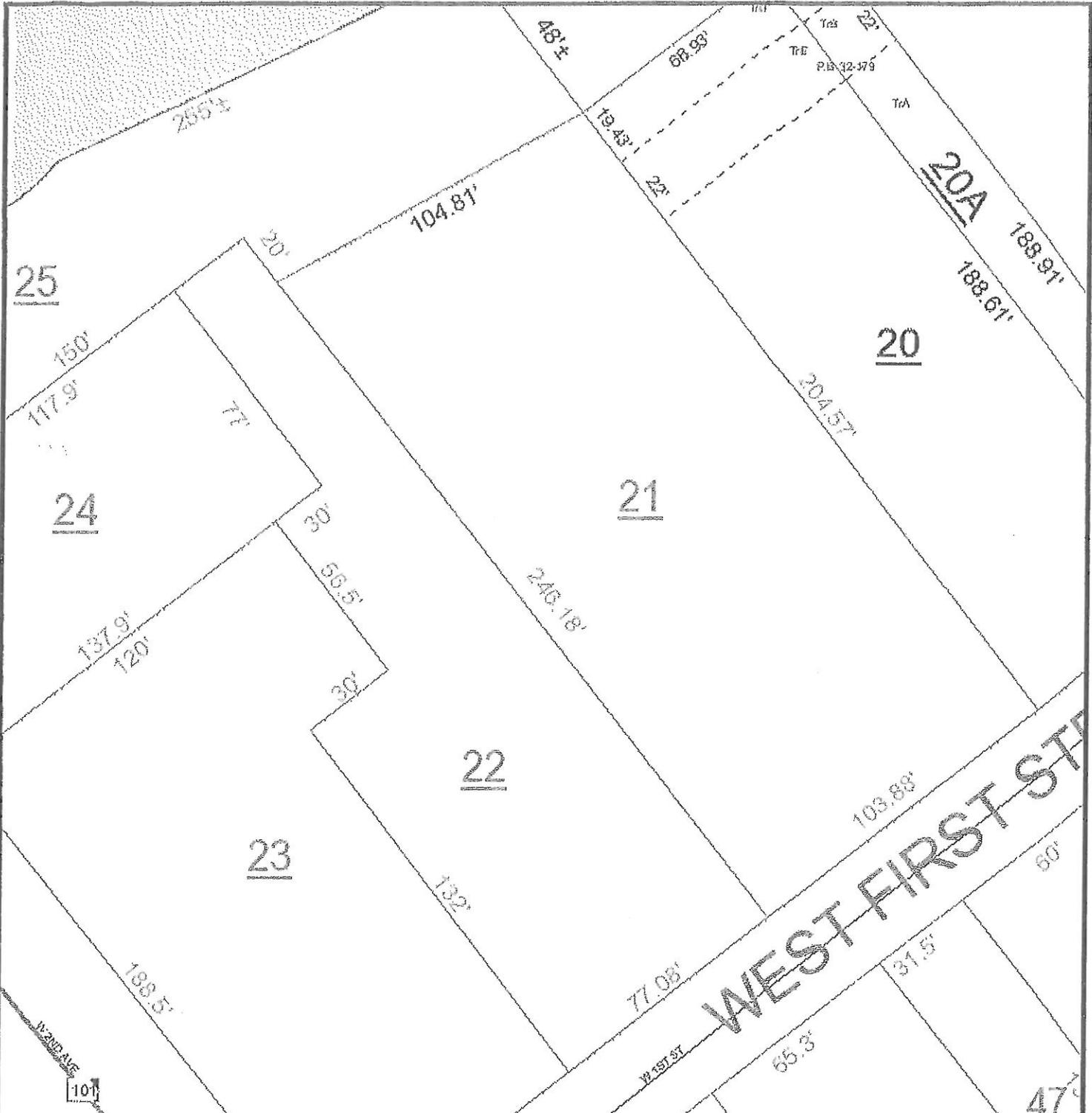
- (1) WARRANTY DEED DATED JANUARY 11, 1999, BETWEEN G.H. RIDDLE, JR. AND ATLANTA GAS LIGHT COMPANY, AND RECORDED IN DEED BOOK 1505, PAGE 759, AFORESAID RECORDS.

**LESS AND EXCEPT:**

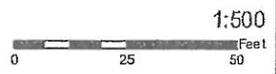
**All that tract or parcel of land conveyed by Deed of Gift between Atlanta Gas Light Company and the City of Rome, Georgia, dated October 6, 1997 and recorded in Deed Book 1426, page 701, aforesaid records and described more particularly as follows:**

ALL THAT TRACT OR PARCEL of land lying and being in the 1st Ward of the City of Rome, in Land Lot 244 of the 23rd District, 3rd Section, Floyd County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at a building corner at the intersection of the northwestern right-of-way line of West First Street with the northeastern right-of-way line of Second Avenue; running thence along said right-of-way line of Second Avenue, north 38 degrees 12 minutes 38 seconds west a distance of 201.16 feet to a point; running thence along an offset in the northeastern right-of-way line of Second Avenue, north 51 degrees 17 minutes 02 seconds east a distance of 20.00 feet to a point; continuing thence along said right-of-way line of Second Avenue, north 38 degrees 12 minutes 38 seconds west a distance of 63.02 feet to a point, said point being the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING thus established, continuing thence along said right-of-way line of Second Avenue, north 38 degrees 12 minutes 38 seconds west a distance of 57.0 feet, more or less, to the intersection of the northeastern right-of-way line of Second Avenue with the top of the southerly bank of the Oostanaula River; running thence in a generally northeasterly direction along the top of said bank, and following the meanderings thereof, a distance of 255 feet, more or less, to a point; thence leaving the top of the southerly bank of the Oostanaula River, and running south 38 degrees 12 minutes 23 seconds east a distance of 20.0 feet, more or less, to a 5/8-inch r-bar found; running thence south 38 degrees 12 minutes 23 seconds east a distance of 35.56 feet to a point; running thence south 56 degrees 53 minutes 41 seconds west a distance of 101.39 feet to a point; running thence north 38 degrees 12 minutes 38 seconds west a distance of 20.00 feet to a point; running thence south 51 degrees 17 minutes 02 seconds west a distance of 150.00 feet to a point located on the northeastern right-of-way line of Second Avenue, said point being the TRUE POINT OF BEGINNING; according to a survey of "City of Rome, Georgia Situated in Land Lot 244 of the 23rd District and 3rd Section of Floyd County, and in the First Ward of the City of Rome, Georgia," dated March 31, 1997, revised June 30, 1997, prepared by the City of Rome, Georgia Engineering Department, under the seal and certification of Randall E. Carver, Georgia Registered Land Surveyor No. 2331, under Job No. 0306; said tract of land containing 0.31 acre, more or less, according to said survey, which survey is incorporated herein and made a part hereof by reference.



# Battey Downtown, LLC



- |                                |                           |                      |                   |          |
|--------------------------------|---------------------------|----------------------|-------------------|----------|
| — Arterial - 4 or more Lanes   | — Local - 4 or more lanes | --- Hydrology        | — RAILROAD        | ■ Rivers |
| — Arterial                     | — Local                   | - - Lotline          | — ROAD            |          |
| — Major Road - 4 or more lanes | — Other                   | — Land Hook          | - - Landlot Lines |          |
| — Major Road                   | - - Private Roads         | — <all other values> | ⋮ Parcels         |          |
|                                | - - Private Roads         | — PROPLINE           | ⋮ Lakes           |          |

**EXHIBIT**

**B**