

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Director of Public Works

Date: August 11, 2014

Subject: **Discussion of Temporary Aerial Easement for KDC**

ITEM DESCRIPTION

Discussion of an aerial easement for KDC to allow for the swing of the tower crane above the right of way during construction of the State Farm development.

BACKGROUND

Construction plans for the State Farm development at Perimeter Center Parkway and Hammond Drive require the use of a tower crane. It will be necessary at times during construction of the building for the crane to swing over the right of way due to the size of the crane relative to the area of the construction site. The areas of aerial encroachment are indicated on the attached exhibit.

The developer for the project has requested a temporary right of way easement to allow for the swing of the crane during construction.

RECOMMENDED ACTION

Staff recommends approval of the right of way easement.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2014-08-XX

AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO ATLANTA OFFICE INVESTMENT PHASE I, LLC FOR THE PURPOSE OF USE AND SWING OF A CRANE OVER THE RIGHTS OF WAY OF HAMMOND DRIVE, PERIMETER CENTER PARKWAY AND GOLDKIST ROAD

WHEREAS, Atlanta Office Investment Phase I, LLC owns that piece of property located along Hammond Drive, Perimeter Center Parkway and Goldkist Road, described specifically in the Temporary Crane Swing Easement Agreement attached hereto and incorporated herein by reference; and

WHEREAS, as part of its development of its Property, Atlanta Office Investment, for the purpose of construction of the structures on said property, is in need of employing the use of a construction crane operating on the Property; and

WHEREAS, said construction crane's booms and associated tackles would need to swing over the rights-of-way of Hammond Drive, Perimeter Center Parkway and Goldkist Road, which are streets owned by the City of Dunwoody; and

WHEREAS, in order to utilize said construction cranes over the City's rights-of-way, Atlanta Office Investment necessitates a temporary easement to be effective during the time the cranes will be utilized for construction in order to secure air rights over the City's rights-of-way delineated here, through the execution of the Temporary Crane Swing Easement Agreement attached hereto.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council for the City of Dunwoody, that the Mayor, City Manager, and City Attorney are hereby authorized to execute all necessary documents, including the Temporary Crane Swing Easement Agreement attached hereto and incorporated herein, to affect the granting of the Temporary Crane Swing Easement as described herein.

SO RESOLVED AND EFFECTIVE, this ____ day of _____, 2014.

Approved:

Michael G. Davis, Mayor

Attest:

Approved as to Form and Content

Sharon Lowery, City Clerk

City Attorney

(Seal)

UPON RECORDING RETURN TO:

Troutman Sanders LLP
 600 Peachtree Street, N.E.
 Suite 5200
 Atlanta, Georgia 30308-2216
 Attention: Maureen Theresa Callahan, Esq.

TEMPORARY CRANE SWING EASEMENT AGREEMENT
 (City of Dunwoody, Georgia)

THIS TEMPORARY CRANE SWING EASEMENT AGREEMENT (this "Agreement") made and entered into this ____ day of _____, 2014, by and between CITY OF DUNWOODY, GEORGIA, a municipality of the State of Georgia ("Grantor"), and ATLANTA OFFICE INVESTMENT PHASE I, L.L.C., a Delaware limited liability company ("Grantee"). (Grantor and Grantee sometimes are collectively referred to as the "Parties".)

RECITALS:

A. Grantor is the owner of that certain parcel of real property more particularly described on **Exhibit A**, attached hereto and incorporated herein (the "Grantor Property").

B. Grantee is the owner of that certain parcel of real property more particularly described on **Exhibit B**, attached hereto and incorporated herein (the "Grantee Property"), on which Grantee anticipates constructing certain improvements.

C. Grantor is willing to grant Grantee the easement and rights more particularly described herein.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars and for other good and valuable considerations, the receipt, adequacy and sufficiency are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. **Temporary Crane Swing Easement.**

(a) Grantor hereby grants to Grantee, for the use by Grantee and its successors, assigns, agents and contractors, a temporary easement over the Grantor Property for the booms and associated tackle of three (3) construction cranes located on and operating from the Grantee Property

to enter and encroach into, onto, and/or through the air space located above the Grantor Property and above the improvements located thereon. The tentative travel paths of such construction crane arms are generally depicted on Exhibit C attached hereto and made a part hereof (the "Crane Swing Easement Area"). Grantee shall have the right to make non-material modifications to the Crane Swing Easement Area and any such non-material modifications shall automatically amend the location of the Crane Swing Easement Area without any further action on the part of any Parties.

(b) The foregoing easement shall automatically terminate with respect to the applicable construction crane(s) without further action by the Parties on the earlier to occur of (i) the date upon which Grantee removes the construction crane(s) from the Grantee Property and confirms in writing to Grantor that Grantee no longer requires the use of the construction crane(s), or (ii) December 31, 2016.

2. Indemnification. Grantee hereby agrees to indemnify Grantor and hold Grantor harmless from any and all actual damages which Grantor may suffer and from any and all direct and actual liability, costs, and expenses arising out of the exercise of the easements and rights granted in this Agreement (including cost of defense, settlement, and reasonable attorneys' fees) which Grantor may hereafter incur, become responsible for, or pay out as a result of the death or bodily injuries to any person, destruction or damage to any property, or any violations of governmental laws, regulations or orders caused solely by the negligent act, negligent omissions or willful misconduct of Grantee, its employees or subcontractors in the performance of this Agreement.

3. Insurance. Grantee shall obtain and furnish applicable insurance certificates to Grantor for the following amounts of insurance and the insurance shall be maintained in full force and effect during life of the Agreement:

- (a) Commercial General Liability Insurance providing coverage for injuries to persons as well as damage to property in an amount not less than One Million and 00/100 dollars (\$1,000,000.00).

4. Run with the Land; Governing Law. The rights, easements and obligations established in this Agreement will run with the land and shall be binding upon and inure to the benefit of Grantee, its assigns and successors and to the extent allowable by law, upon Grantor. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

5. Recordation; Counterparts. This Agreement shall be recorded in the real property records of DeKalb County, Georgia, and inure to all subsequent purchasers, transferors and assigns of the Grantee Property, until otherwise terminated according to the provisions set forth herein. This Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which taken together will constitute one and the same agreement.

6. Notices. All notices, consents, requests, demands or other communications to or upon the respective party shall be in writing and shall be effective for all purposes upon receipt, including, but not limited to (i) personal delivery; (ii) delivery by messenger, express or air courier or

similar courier; or (iii) delivery by United States first class certified or registered mail, postage prepaid and addressed as follows:

GRANTOR: City of Dunwoody
c/o City Manager
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30346

WITH A COPY TO: Leonid Felgin, Esq.
Riley McLendon, LLC
315 Washington Avenue
Marietta, Georgia 30060

GRANTEE: Atlanta Office Investment Phase I, L.L.C.
c/o KDC AH Investments One LP
1040 Crown Pointe Parkway
Suite 1070
Atlanta, Georgia 30338
Attention: Alexander A. Chambers

WITH A COPY TO: Atlanta Office Ph I, L.L.C.
c/o State Farm Mutual Automobile Insurance Company
1 State Farm Plaza E-7
Bloomington, Illinois 61710
Attention: John Higgins, Senior Investment Officer

AND: Atlanta Office Ph I, L.L.C.
c/o State Farm Mutual Automobile Insurance Company
1 State Farm Plaza A-3
Bloomington, Illinois 61710
Attention: Christiane M. Stoffer, Associate General Counsel

AND: KDC Real Estate Development & Investments
8115 Preston Road
Suite 700
Dallas, Texas 75225
Attention: Scott Ozymy

AND: Maureen Theresa Callahan, Esq.
Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal as of the date first set forth above.

GRANTOR:

Signed, sealed and delivered
in the presence of:

CITY OF DUNWOODY, GEORGIA

Witness

By:_____

Name:_____

Title:_____

Notary Public

[CORPORATE SEAL]

My Commission Expires:

(NOTARY SEAL)

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

GRANTEE:

Signed, sealed and delivered
in the presence of:

**ATLANTA OFFICE INVESTMENT PHASE I,
L.L.C.**, a Delaware limited liability company

Witness

By: KDC AH Investments One LP,
its manager

Notary Public

By: KDC AH Investments One GP LLC,
its general partner

My Commission Expires:

By: _____(SEAL)

Name: _____

Title: _____

(NOTARY SEAL)

EXHIBIT A

GRANTOR PROPERTY

Those certain tracts or parcels of land commonly known as the public rights-of-way of Hammond Drive, Perimeter Center Parkway and Goldkist Road in the City of Dunwoody, DeKalb County, Georgia.

EXHIBIT B**GRANTEE PROPERTY**

All that tract or parcel of land lying and being in Land Lots 329 & 348 of the 18th District, City of Dunwoody, DeKalb County, Georgia and being more particularly described as follows:

COMMENCING at the intersection of the southerly right-of-way of Hammond Drive (having an apparent variable width right-of-way) and the westerly right-of-way of Perimeter Center Parkway (having an apparent variable width right-of-way) if the right-ways were extended to intersect; thence, leaving the aforesaid point North 89° 26' 56" East, 104.86 feet to the TRUE POINT OF BEGINNING.

Thence, from the aforesaid TRUE POINT OF BEGINNING as thus established and running with the aforesaid right-of-way line of Hammond Drive

1. North 89° 26' 56" East, 217.32 feet; thence, leaving the aforesaid right-of-way of Hammond Drive and running with property now or formerly owned by Metropolitan Atlanta Rapid Transit Authority recorded at DB. 8898, Page 631, among the records of DeKalb County, Georgia
2. South 07° 06' 30" East, 36.88 feet; thence,
3. North 82° 53' 30" East, 17.75 feet; thence,
4. South 07° 06' 30" East, 43.00 feet; thence,
5. North 82° 53' 30" East, 61.50 feet; thence, leaving the aforesaid property of Metropolitan Atlanta Rapid Transit Authority and running with property now or formerly owned by Perimeter Atlanta SC LLC recorded at DB. 19774, Page 736, aforesaid records
6. South 04° 40' 02" East, 211.27 feet; thence, continuing with the aforesaid property of Perimeter Atlanta SC LLC
7. South 04° 40' 02" East, 279.34 feet; thence
8. South 89° 28' 20" East, 45.45 feet to a capped rebar found stamped RLS 2301; thence,
9. South 06° 41' 15" West, 10.10 feet to a point on the north side of Goldkist Drive (having a variable width right-of-way); thence, leaving the aforesaid property of Perimeter Atlanta SC LLC and run along the north side of Goldkist Drive
10. North 89° 28' 04" West, 280.96 feet; thence,
11. 2.44 feet along the arc of a curve deflecting to the right, having a radius of 50.00 feet and a chord bearing and distance of North 88° 04' 08" West, 2.44 feet; thence, leaving the aforesaid Goldkist Drive
12. North 47° 25' 22" West, 53.20 feet; thence,
13. 230.55 feet along the arc of a curve deflecting to the left, having a radius of 495.00 feet and a chord bearing and distance of North 04° 12' 18" West, 228.47 feet; thence,
14. 78.50 feet along the arc of a curve deflecting to the left, having a radius of 495.00 feet and a chord bearing and distance of North 22° 05' 28" West, 78.42 feet; thence,
15. North 26° 38' 04" West, 123.04 feet; thence,

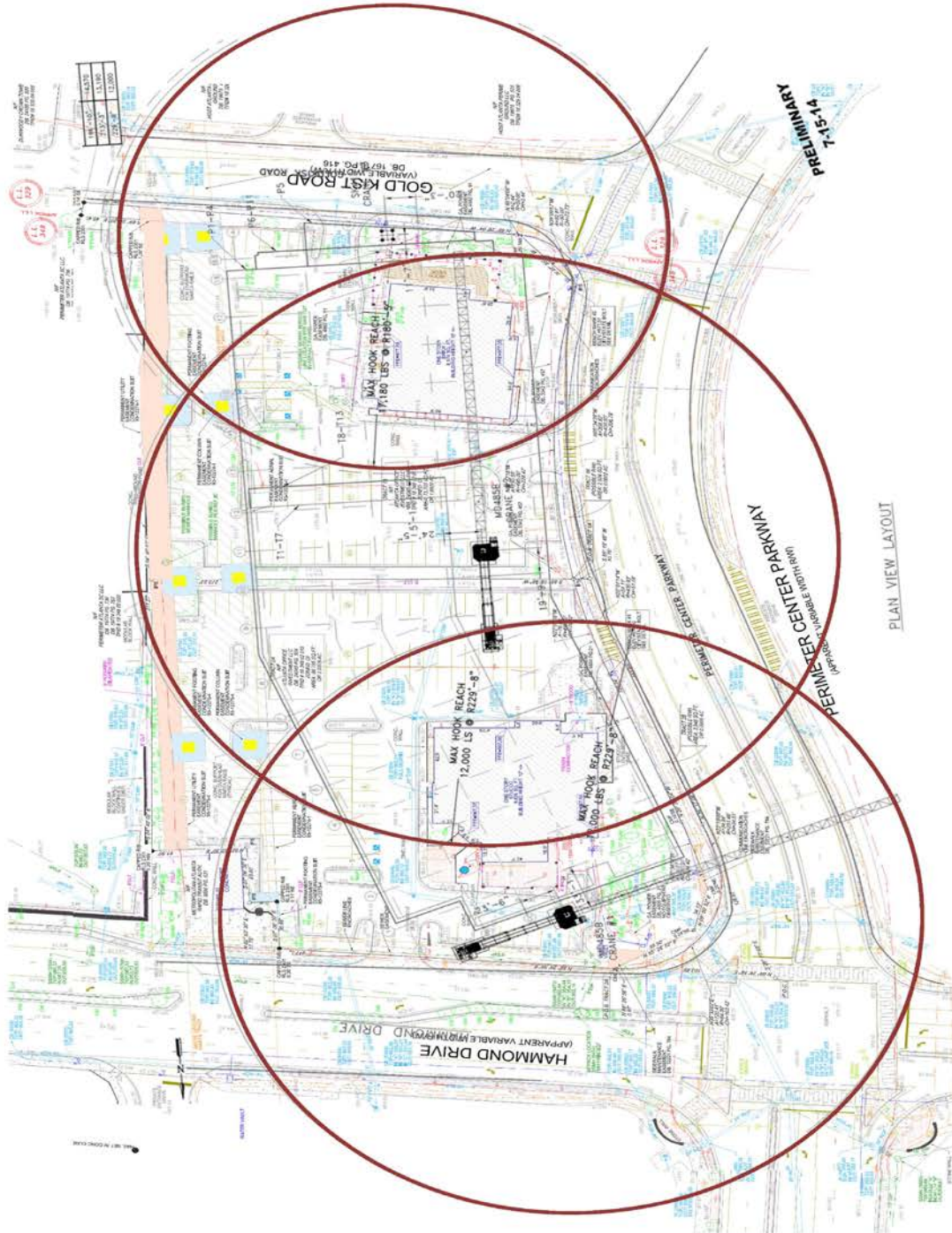
16. 54.47 feet along the arc of a curve deflecting to the right, having a radius of 385.00 feet and a chord bearing and distance of North 22° 34' 53" West, 54.42 feet; thence,
17. North 09° 50' 52" East, 34.13 feet; thence,
18. North 55° 26' 52" East, 59.50 feet to the point of beginning, containing 162,468 square feet or 3.7293 acres of land, more or less.

As shown on ALTA/ACSM Land Title Survey for Atlanta Office Investment Phase I, L.L.C. and Chicago Title Insurance Company, prepared by TerraMark Land Surveying, Inc., bearing the seal and certification of Paul B. Cannon, Georgia Registered Land Surveyor Number 2928, dated October 31, 2013, last revised July 18, 2014.

EXHIBIT C

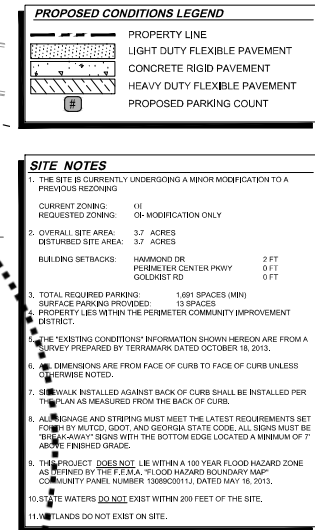
CRANE SWING EASEMENT AREA

See attached page



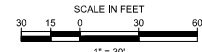
7/15/2014








CONTRACTOR MUST PROVIDE THREE (3) SETS OF "AS-BUILT" PLANS TO THE OWNER. AS-BUILT DRAWINGS MUST BE PREPARED AND SEALED BY A GEORGIA REGISTERED LAND SURVEYOR AND IN ACCORDANCE WITH REQUIREMENTS ON THIS SHEET.

IF ANY CONFLICTS, DISCREPANCIES, OR ANY OTHER UNSATISFACTORY CONDITIONS ARE DISCOVERED, EITHER ON THE CONSTRUCTION DOCUMENTS OR FIELD CONDITIONS, THE **CONTRACTOR** MUST NOTIFY THE ENGINEER IMMEDIATELY AND SHALL NOT COMMENCE FURTHER OPERATION UNTIL THE CONFLICTS, DISCREPANCIES, OR OTHER UNSATISFACTORY CONDITIONS ARE RESOLVED.



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|---------|--|--|--------|---|--|---|---|---|--|--|--|--|--|
| PROJECT | STATE FARM | | CLIENT |  KDC Real Estate Development & Management 8115 PRESTON ROAD, SUITE 700 DALLAS, TX 75225 PHONE: (214) 696-1700 FAX: (214) 773-1018 | SCALE: 1" = 20' DRAWN BY: MCS DESIGNED BY: MCS CHECKED BY: DM |  DOUGLAS M. MCSWAIN PROFESSIONAL ENGINEER NO. 12416 STATE OF TEXAS |  Knight-Ridder and Associates, Inc. 815 W. FAIRMONT AVE., N.W. SUITE 601 ATLANTA, GEORGIA 30062 PHONE (404) 484-0000 FAX (404) 484-0001 | 7 | | | | | |
| | DATE: 03.18.2014 PROJECT NO: 019977000 SHEET NUMBER: C3.00 | | | | | | | | | | | | |