

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: November 10, 2014

Subject: **Second Read: Discussion of an Aerial Easement Agreement for Atlanta Office Investment (KDC)**

ITEM DESCRIPTION

KDC on behalf of the State Farm office building development has requested a permanent easement within city right of way to allow for a pedestrian bridge over Perimeter Center Parkway. The enabling ordinance, easement agreement and a conceptual rendering of the pedestrian bridge follow this memo.

BACKGROUND

The requested aerial easement would allow for an open-air pedestrian bridge over Perimeter Center Parkway. The bridge would extend from the State Farm office building on the east side of the road to a future plaza area at street level on the west side of the road. The supports for the bridge would be located outside of the public right of way.

An appraisal provided by the developer estimates the fair market value of the aerial easement to be \$4,092. The primary benefit of the easement is to provide a mid-block pedestrian bridge crossing of Perimeter Center Parkway.

RECOMMENDATION

Staff recommends adoption of the attached ordinance which grants a permanent easement for installing and maintaining a pedestrian bridge over Perimeter Center Parkway.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2014-12-XX

AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO ATLANTA OFFICE INVESTMENT PHASE I, LLC FOR THE PURPOSE OF INSTALLING AND MAINTAINING A PEDESTRIAN BRIDGE LOCATED ABOVE AND ACROSS CERTAIN RIGHTS-OF-WAY ON PERIMETER CENTER PARKWAY

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

WHEREAS, as part of its development of its Property, Grantee is in need of an air easement for the construction of a pedestrian bridge over Perimeter Center Parkway from Phase I to Phase II of its development for the purposes of providing pedestrian access between the buildings; and

WHEREAS, Grantee agrees to maintain said easement as described in the Pedestrian Bridge Easement Agreement; and

WHEREAS, the City believes that the Pedestrian Bridge Easement will provide for safe access between the properties along Perimeter Center Parkway and, due to its connection between the Phase II development and the MARTA Dunwoody railway station, will provide for the encouragement of public transportation usage and contribute to positive environmental impact.

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 Pedestrian Bridge Agreement attached hereto and incorporated herein, to affect the granting of the Pedestrian Bridge 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.

PEDESTRIAN BRIDGE EASEMENT AGREEMENT

THIS PEDESTRIAN BRIDGE 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, L.L.C., a Delaware limited liability company ("Grantee"). (Grantor and Grantee are sometimes 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").

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 consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. Air Rights Easement for Pedestrian Bridge. Grantor hereby grants to Grantee, for the benefit of and as an appurtenance to the Grantee Property, and for the use by Grantee and its agents, contractors, customers, employees, tenants and invitees (including without limitation invitees from other private parcels of land) (collectively, the "Grantee Parties"), a perpetual, exclusive easement through and within certain air space over the Grantor Property as more particularly described in **Exhibit C** (the "Air Rights Easement Parcel"). The easement is for the purpose of constructing, using, operating, maintaining, repairing and replacing a pedestrian bridge

and related facilities and improvements (the "Pedestrian Bridge") within the Air Rights Easement Parcel above Perimeter Center Parkway. Grantee will be responsible for separately obtaining any private easements or third party rights needed from the owner of the land located on the eastern side of Perimeter Center Parkway as is needed for the construction of the Pedestrian Bridge.

2. Construction and Maintenance Standards. Grantee will construct the Pedestrian Bridge in accordance with the plans and specifications that will be submitted to, and approved by, Grantor in connection with the permit application for the Pedestrian Bridge. The design of the Pedestrian Bridge will be reasonably in keeping with the conceptual drawings prepared by _____, dated _____, 2014, which have been previously approved by Grantor. If and when constructed, the Pedestrian Bridge will be maintained in accordance with first class maintenance standards. Grantee will perform all construction and repair work in a good and workmanlike manner and in accordance with: (i) all permits and approvals, including plan approvals, obtained in connection with the work, (ii) all applicable laws, codes, ordinances, rules and regulations, and (iii) sound engineering principles. If any construction, maintenance, repair or replacement work will impact traffic on any public rights-of-way, then Grantee will comply with a traffic management plan developed by Grantee and approved by Grantor. After commencing construction of the Pedestrian Bridge, Grantee will diligently and expeditiously pursue such work to completion.

Grantee agrees that if the maintenance standard set forth above is not complied with after written notice to Grantee (the "First Maintenance Notice") and a period of thirty (30) days to perform the required maintenance (with such longer period of time permitted if the scope of the maintenance requires it; as long as Grantee commences the work and diligently prosecutes it to completion), then, in such event, Grantor may elect on written notice to Grantee (the "Second Maintenance Notice") to perform (or cause to be performed) the required maintenance. In addition, if the failure to maintain poses a safety threat as reasonably determined by Grantor, Grantor will state that fact with the reasons for the same in the First Maintenance Notice. If that safety condition exists, in addition to Grantor's self-help rights, Grantor may elect instead to suspend Grantee's use of that portion of the Pedestrian Bridge which poses the safety threat until it is repaired and no longer poses a safety threat.

If Grantor elects to exercise its self-help rights, the actual and reasonable costs incurred by Grantor will be reimbursed to Grantor within ten (10) days of a written demand accompanied by reasonable evidence of the costs incurred. If Grantee fails to so reimburse Grantor, Grantor may file a lien on the Grantee Property in the manner provided in DeKalb County, Georgia for the filing of mechanics' and materialmen's liens. All costs incurred by Grantor will accrue interest at the rate of eight percent (8%) from the date incurred until the date paid.

3. 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 contractors in the performance of this Agreement.

4. 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).

5. Run with the Land; Governing Law. The rights, easements and obligations established in this Agreement will run with the land and are for the benefit of Grantor and Grantee and all Grantee Parties, and shall be binding upon Grantee and its successors in title 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.

6. Recordation. This Agreement shall be recorded in the real property records of DeKalb County, Georgia, and will inure to the benefit of all subsequent purchasers, transferees and assigns of the Grantee Property.

7. Notices. All notices, consents, requests, demands or other communications given to or upon the respective Party shall be in writing and shall be effective for all purposes upon receipt, when given by (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 Investment Phase I, L.L.C. and Atlanta Office Investment, 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 Investment Phase I, L.L.C. and Atlanta Office Investment, 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

[Signatures begin on next page]

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, L.L.C., a
Delaware limited liability company

Witness

By: Transwestern Investment Management, L.L.C., a
Delaware limited liability company, as Managing
Member

Notary Public

By: _____ (SEAL)

My Commission Expires:

Name: Laurie Dotter

Title: President

(NOTARY SEAL)

EXHIBIT A

GRANTOR PROPERTY

Those certain tracts or parcels of land commonly known as the public right-of-way of Perimeter Center Parkway in the City of Dunwoody, DeKalb County, Georgia.

EXHIBIT B**GRANTEE PROPERTY**

ATLANTA OFFICE INVESTMENT, L.L.C. PARCEL (the "Phase II Parcel"):

PROPERTY DESCRIPTION

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

Beginning at a 1" square rod found at the Southwest corner of Land Lot 348 (said corner being the common corner of Land Lots 329 & 348 of the 18th District of Dekalb County, Georgia and Land Lots 17 & 18 of the 17th District of Fulton County, Georgia; thence running along the west line of Land Lot 348,

1. North 00°37'34" East, 48.24 feet to a point located on the southeasterly right of way line of Hammond Drive (variable R/W); thence continuing along said right of way line.
2. North 38°45'04" East, 54.63 feet; thence,
3. North 51°14'56" West, 15.00 feet; thence,
4. North 38°40'50" East, 252.13 feet; thence,
5. 385.24 feet along the arc of a curve deflecting to the right and having a radius of 673.43 feet and a chord bearing and distance of North 55°04'07" East, 380.01 feet; thence,
6. 112.22 feet along the arc of a curve deflecting to the right and having a radius of 597.48 feet and a chord bearing and distance of North 76°50'14" East, 112.05 feet; thence,
7. 80.26 feet along the arc of a curve deflecting to the right and having a radius of 88.86 feet and a chord bearing and distance of South 71°54'11" East, 77.56 feet to the intersection formed by the southwesterly right of line of Hammond Drive and the westerly right of way line of Perimeter Center Parkway (variable R/W according to GDOT Plans - Project No. HPP-0000-00(949)); thence running along the right of way line of Perimeter Center Parkway,
8. 143.35 feet along the arc of a curve deflecting to the left and having a radius of 495.00 feet and a chord bearing and distance of South 18°20'04" East, 142.85 feet; thence,
9. South 26°37'50" East, 123.04 feet; thence,
10. 365.89 feet along the arc of a curve deflecting to the right and having a radius of 385.00 feet and a chord bearing and distance of South 00°35'42" West, 352.28 feet; thence,
11. South 27°49'16" West, 125.45 feet; thence,
12. South 37°20'25" West, 118.42 feet; thence,
13. South 34°52'02" West, 65.01 feet; thence leaving said right of way line of Perimeter Center Parkway,
14. 17.46 feet along the arc of a curve deflecting to the right and having a radius of 237.84 feet and a chord bearing and distance of South 66°26'43" West, 17.46 feet; thence,
15. South 68°09'40" West, 58.40 feet; thence,
16. 41.15 feet along the arc of a curve deflecting to the right and having a radius of 50.00 feet and a chord bearing and distance of North 87°55'59" West, 40.00 feet; thence,
17. 66.03 feet along the arc of a curve deflecting to the left and having a radius of 75.00 feet and a chord bearing and distance of North 89°34'38" West, 63.92 feet; thence,
18. South 89°54'26" West, 429.34 feet to the west line of Land Lot 348; thence running along said Land Lot line,
19. North 00°03'56" West, 367.68 feet to the Point of Beginning, containing 568.111 square feet or 13.0420 acres of land, more or less.

EXHIBIT C**AIR RIGHTS EASEMENT PARCEL****Legal Description**

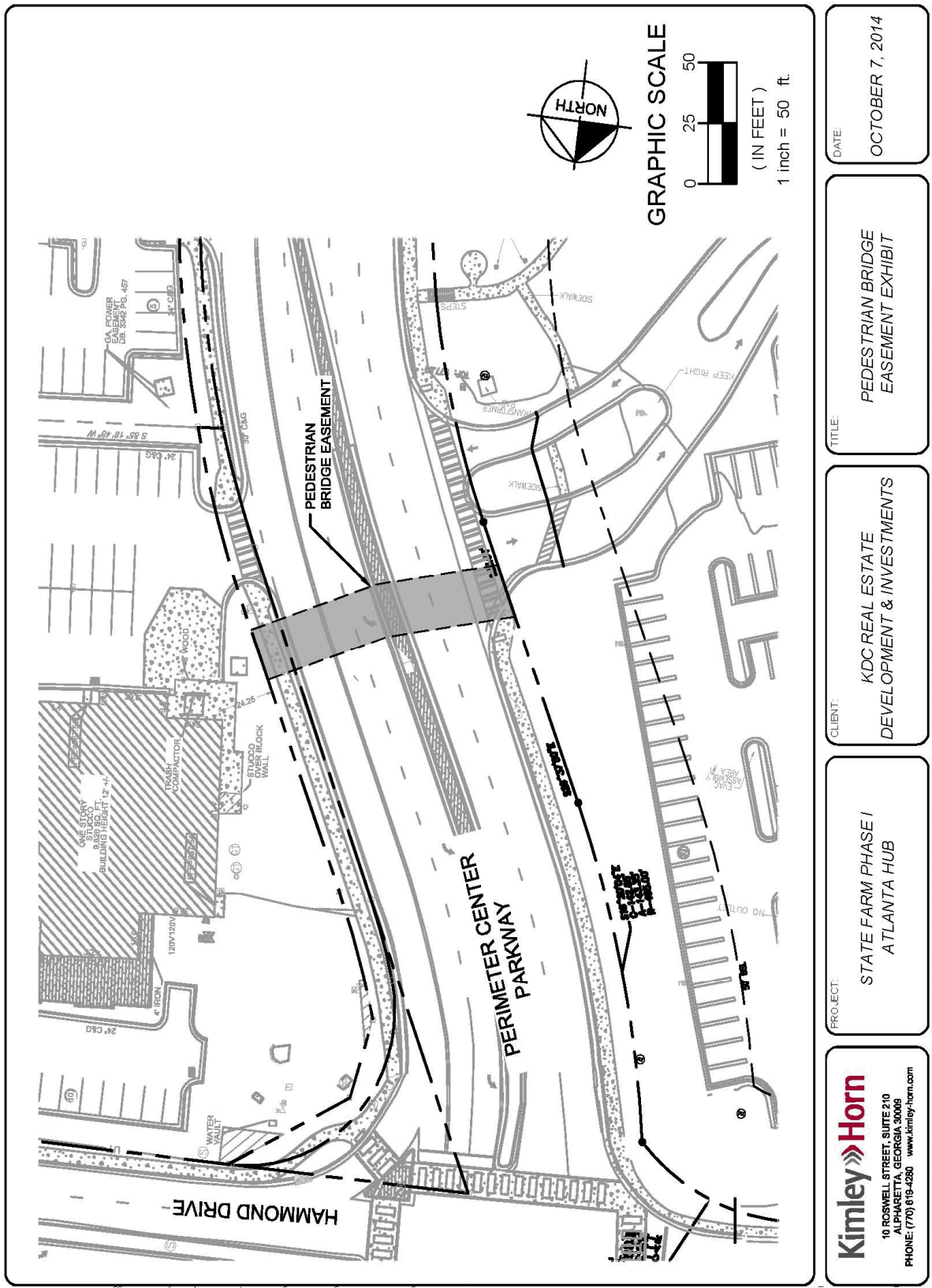
All that tract or parcel of land lying and being in Land Lot 348 of the 18th District, City of Dunwoody, Dekalb County, Georgia and being more particularly described as follows:

A three-dimensional parcel of air space having its bottom horizontal plane located at an elevation of 990.00 feet above mean sea level NAVD 88 DATUM (as per the site Benchmark shown on the ALTA/ACSM Land Title Survey prepared by TerraMark Land Surveying, Inc. for Atlanta Office Investment Phase I, L.L.C. and Chicago Title Insurance Company, dated October 18, 2013 and last revised on July 18, 2014) based upon RTK GPS observation on the aforesaid benchmarks and having the sides of such parcel of air space being perpendicular to and above such horizontal plane and within the boundaries of the following described property:

COMMENCING at the intersection of the easterly right-of-way of Perimeter Center Parkway (having an apparent variable right-of-way) and the northerly right-of-way of Gold Kist Road (having a variable right-of-way); thence, leaving the aforesaid point and continuing with the said right-of-way of Perimeter Center Parkway 309.05 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 08° 44' 54" West, 304.05 feet; thence, North 26° 38' 04" West, 8.13 feet to the POINT OF BEGINNING.

Thence, from said POINT OF BEGINNING as thus established and leaving the aforesaid right-of-way of Perimeter Center Parkway

- 1 . South 63° 53' 30" West, 57.74 feet; thence,
- 2 . South 74° 23' 16" West, 54.75 feet to a point on the westerly right-of-way Perimeter Center Parkway (having a variable right-of-way); thence, running with said right-of-way of Perimeter Center Parkway
- 3 . North 26° 41' 14" West, 22.50 feet; thence, leaving the aforesaid right-of-way of Perimeter Center Parkway
- 4 . North 74° 23' 16" East, 57.50 feet; thence,
- 5 . North 63° 53' 30" East, 55.06 feet to a point on the aforesaid easterly right-of-way of Perimeter Center Parkway; thence, running with said right-of-way of Perimeter Center Parkway
- 6 . South 26° 38' 04" East, 22.00 feet to the POINT OF BEGINNING, containing 2,480 square feet or 0.0569 acres of land, more or less.



Document comparison by Workshare Professional on Monday, October 20, 2014
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BRIDGE EXTERIOR 5/7