

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: November 10, 2014

Subject: **First 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. Drafts of 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.

DISCUSSION

Staff has asked KDC to provide an appraisal of the fair market value, including public benefits, of the requested easement

**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

Approved as to Form and Content

Attest:

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.

UNDERGROUND CONNECTOR EASEMENT AGREEMENT

THIS UNDERGROUND CONNECTOR EASEMENT AGREEMENT (this "Agreement") is 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 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"). It is acknowledged by Grantor that Grantee anticipates an exchange of land with the Metropolitan Atlanta Regional Transportation Authority ("MARTA") in connection with the development of the Grantee Property. At the request of Grantee following such land exchange, Grantor will enter into an amendment to this Agreement modifying the legal description of 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. Underground Connector Easement. Grantor hereby grants to Grantee, for the benefit of and as an appurtenance to the Grantee Property and for the use by Grantee, its successors and assigns and Grantee's agents, contractors, utilities providers, customers, employees, tenants

and invitees (including without limitation invitees from other private parcels of land) (collectively, the "Grantee Parties"), a perpetual, exclusive easement over, under, through and across that portion of the Grantor Property as is necessary for the purpose of constructing, using, operating, maintaining, repairing and replacing an underground connector and related facilities and improvements (the "Underground Connector"). The Underground Connector will be constructed under Perimeter Center Parkway approximately in the location shown on **Exhibit C** and will provide vehicular and pedestrian access, ingress and egress to and from Perimeter Center Parkway to the Grantee Property and specifically to the below-ground level parking deck that may be constructed on the Grantee Property. The easement includes the right to extend utilities to the Underground Connector from the Grantee Property as needed to illuminate and ventilate the Underground Connector and to provide fire protection for the Underground Connector.

2. Construction and Maintenance Standards. Grantee will construct the Underground Connector in accordance with plans and specifications that will be submitted to, and approved by, Grantor in connection with the permit application for the Underground Connector. The Underground Connector will be maintained in accordance with first class maintenance standards. Grantee will perform the construction and all repair and replacement 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 Underground Connector, Grantee will diligently and expeditiously pursue such work to completion. During construction, Grantee will develop and comply with a traffic management plan which will be subject to Grantor's prior, written approval.

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 unsafe condition exists, in addition to Grantor's self-help rights, Grantor may elect to suspend Grantee's use of that portion of the Underground Connector that so poses a safety threat until it is repaired and no longer poses a safety threat.

If Grantor elects to exercise its self-help rights, the actual costs reasonably 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, 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 Ph 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 Ph 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 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 right-of-way of Perimeter Center Parkway in the City of Dunwoody, DeKalb County, Georgia.

EXHIBIT B

GRANTEE PROPERTY

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

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

APPROXIMATELY LOCATION OF UNDERGROUND CONNECTOR

See attached page

PROPERTY DESCRIPTION

~~Proposed Tunnel Area~~

Description of Underground Connector Location

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 upper horizontal plane located at an elevation of 964.00 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 below 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, 26.63 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, 111.49 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
2. North 26° 41' 14" West, 75.99 feet; thence, leaving the aforesaid right-of-way of Perimeter Center Parkway
3. South 71° 06' 30" East, 31.10 feet; thence,
4. North 63° 53' 30" East, 89.77 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
5. South 26° 38' 04" East, 54.00 feet to the POINT OF BEGINNING, containing 6,261 square feet or 0.1437 acres of land, more or less.

Document comparison by Workshare Professional on Monday, October 20, 2014
12:54:17 PM

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Moved cell	
Split/Merged cell	
Padding cell	

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