



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
 dunwoodyga.gov | 678.382.6700

To: Mayor and Council

From: Richard McLeod, Director of Community Development

Date: March 12, 2018

Subject: Encroachment Agreement for Twelve24 Office Building

ITEM DESCRIPTION

Approval of encroachment agreement for the Twelve24 office building to be constructed on Hammond Drive on the south west corner of Perimeter Mall.

BACKGROUND

The developer submitted the agreement for the encroachment of the awning and foundation to the City and has asked us to review it and take it to the Mayor and Council for a vote of approval and to sign the agreement.

PROJECT SCOPE

The scope of work will include the building of two foundations about 9" into the right of way and one awning at 17' 11" in height and encroaching 6' into the right of way.

EVALUATION

In July of 2017 the City approved a special land use permit for Trammell Crow to build up to a 16 story office building in front of a 10 story hotel located on Hammond Drive. Part of the approval was a condition that the developer had to complete the right of way on Hammond Drive for the improvement of the bike lanes, sidewalks and landscaping strips. The developer submitted the plat with the right of way dedicating to the city of approximately 12 feet in order to meet the condition.

When the developer meet with staff to go over the building design (see attached building design) it was noted that they would need to get an encroachment agreement approved and signed by the Mayor and Council.

The agreement states that the developer will construct two foundations at line A-5 and A-6 9" into the right of way and an awning 17' 11' encroaching 6' into the right of way. See attached property line diagram ROW drawing, Exhibit "B".

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Rittcher City Council Post 2
Tom Lambert City Council Post 3

Terry Nail City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

#9.



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The agreement has been reviewed by Public Works and Community Development and by the City's legal staff.

RECOMMENDATION

Staff recommends approving the encroachment agreement and authorizing the Mayor to sign the agreement.

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Ritcher City Council Post 2
Tom Lambert City Council Post 3

Terry Nail City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

Prepared by and
after recording return to:
Arnall Golden Gregory LLP
171 17th Street, N.W., Suite 2100
Atlanta, GA 30363
Attention: Scott A. Fisher, Esq.

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 2018, by THE CITY OF DUNWOODY, a Georgia municipal corporation (“Grantor”) and TWELVE24 OFFICE, LLC, a Delaware limited liability company (“Grantee”).

WITNESSETH:

WHEREAS, Grantee is lawfully seized of and the fee owner of certain real property situated in the City of Dunwoody, DeKalb County, Georgia, which is more particularly described on Exhibit A attached hereto and made a part hereof (the “Grantee Property”);

WHEREAS, the southern boundary line of the Grantee Property is adjacent to right-of-way owned by Grantor (the “Grantor Property”); and

WHEREAS, Grantee intends to construct an office building on the Grantee Property which will include an overhang which will encroach into the air space above the Grantor Property, which overhang is more particularly depicted on Exhibit B attached hereto and made a part hereof (the “Encroachment”);

WHEREAS, Grantor desires to grant to Grantee a perpetual, non-exclusive encroachment easement across those portions of the Grantor Property into which the Encroachment will encroach, upon and subject to the terms and conditions set forth herein; and

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid to Grantor at or before the sealing and delivery hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference for all purposes.

2. Encroachment Easement. Grantor hereby grants, bargains, assigns, sets over and conveys to Grantee, for the use, benefit and enjoyment of the Grantee Property, a perpetual, non-exclusive easement in the air space above, under, over, across and through the Grantor Property for the use, maintenance, repair and replacement of the Encroachment as shown on Exhibit B (the “Encroachment Easement”); provided, however, that Grantee shall not construct any additional improvements in the air space above, under, over, across or through the Grantor Property without the prior written approval of Grantor, which approval may be withheld, conditioned, and/or delayed in Grantor’s sole discretion.

3. Reservation. Grantor reserves all right, title and interest in and to the Grantor Property incident to the fee simple estate thereof, and for any and all purposes not inconsistent with Grantee’s use of the Encroachment Easement.

4. Indemnity. Grantee hereby indemnifies, holds harmless, and agrees to defend Grantor, its agents, contractors, members and employees, and their successors and assigns, from and against any and all claims, demands, costs, damages, and other liabilities for personal injury or property damage (collectively, a “Claim”) related to Grantee’s use of the Encroachment Easement or the failure of Grantee to perform any obligations hereunder; provided, however, the foregoing indemnity shall not be applicable in the event any Claim was caused by the gross negligence or willful misconduct of Grantor and/or its agents, contractors, tenants or employees.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. Following a transfer by a party of its interest in its respective property, such predecessor shall be released from all obligations arising from and after the date of such transfer.

6. Covenants Running with the Land. The parties hereby agree and declare that all of the provisions contained herein and all of the rights, easements and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the properties. The grants of easements, rights and privileges in this Agreement are independent of any contractual agreements undertaken by the parties hereto and a breach by any party of any such contractual agreement shall not cause or result in a forfeiture or reversion of the easements, rights and privileges granted herein.

7. Counterparts. This Agreement may be executed in any number of identical counterparts. If so executed, each such counterpart is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but in making proof of the grant of easement, it shall not be necessary to produce or account for more than one such counterpart.

11. Governing Law. This Agreement shall be governed, interpreted and construed by, through and under the laws of the State of Georgia.

[Signatures begin on following page]

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

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My commission expires: _____

[SEAL]

GRANTOR:

CITY OF DUNWOODY, a Georgia Municipal Corporation

By: _____

Name: _____

Its: _____

[Signatures continue on next page]

GRANTOR:

Signed, sealed and delivered
in the presence of:

TWELVE24 OFFICE, LLC, a Delaware limited
liability company

Witness

By: Twelve24 Venture, LLC, a Delaware limited
liability company, its sole member

Notary Public

By: TC Twelve24 Member, LLC, a Delaware
limited liability company, its managing
member

My commission expires: _____

By: TC Atlanta Development, Inc., a Delaware
corporation, its sole member

[SEAL]

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Legal Description of Grantee Property

[ATTACH]

Being 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:

Commencing at the point of intersection of the easterly right-of-way line of Perimeter Center Parkway (having a variable width right-of-way) and the northerly right-of-way line of Hammond Drive (having a variable width right-of-way); thence, leaving the aforesaid right-of-way line of Perimeter Center Parkway and running with the said right-of-way line of Hammond Drive South 40° 23' 32" East, 12.81 feet; thence, North 47° 54' 09" East, 15.61 feet to a concrete monument found; thence, South 40° 26' 52" East, 12.96 feet; thence, South 43° 16' 03" West, 14.14 feet; thence, South 42° 28' 39" East, 33.02 feet; thence, South 67° 05' 52" East, 16.35 feet; thence, North 82° 49' 09" East, 30.20 feet; thence, North 89° 28' 25" East, 190.00 feet; thence, South 00° 31' 35" East, 5.89 feet; thence, North 89° 00' 40" East, 96.11 feet to a PK Nail Found; thence, South 89° 41' 31" East, 135.43 feet to a point; thence, South 00° 36' 11" East, 8.70 feet to a point; thence, North 89° 21' 16" East, 386.53 feet to a point; thence, leaving the aforesaid right-of-way line of Hammond Drive 14.50 feet along the arc of a curve deflecting to the left, having a radius of 33.27 feet and a chord bearing and distance of North 12° 00' 03" East, 14.39 feet to a point and the POINT OF BEGINNING.

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

1. South 89° 41' 04" West, 345.90 feet to a point; thence,
2. 8.40 feet along the arc of a curve deflecting to the right, having a radius of 31.50 feet and a chord bearing and distance of North 06° 43' 28" West, 8.37 feet to a point; thence,
3. North 00° 54' 42" East, 105.50 feet to a point; thence,
4. 25.50 feet along the arc of a curve deflecting to the right, having a radius of 26.50 feet and a chord bearing and distance of North 58° 21' 23" East, 24.53 feet to a point; thence,
5. North 89° 57' 24" East, 296.36 feet to a point; thence,
6. 40.67 feet along the arc of a curve deflecting to the right, having a radius of 26.50 feet and a chord bearing and distance of South 45° 46' 55" East, 36.79 feet to a point; thence,
7. South 00° 55' 05" East, 99.34 feet to a point and the POINT OF BEGINNING, containing 43,181 square feet or 0.9913 acres of land, more or less.

Described property is subject to all rights-of-way (public and private) and easements, both recorded and unrecorded.

EXHIBIT B

