

## **MEMORANDUM**

**To:** Mayor and City Council  
**From:** Richard McLeod, Community Development Director  
**Date:** January 28, 2019  
**Subject:** Private Development Agreement with Grubb Properties

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### **ITEM DESCRIPTION**

Request to approve Private Development Agreement with Grubb Properties to facilitate Transportation Infrastructure Improvements at 41, 47, and 53 Perimeter Center East.

### **DISCUSSION**

On December 10, 2018, Mayor and City Council approved a Special Land Use Permit (SLUP 18-02A and SLUP 18-02B) and Rezoning (RZ 18-02) for Grubb Properties to develop a mixed use development at 41, 47, and 53 Perimeter Center East, to consist of up to 700,000 square feet of office space and up to 900 residential units. As a condition of approval, pursuant to the Georgia Development Impact Fee Act, the applicant was required to enter into a Private Development Agreement to:

1. "Contribute no more than \$100,000 toward the design and construction of additional transportation infrastructure improvements located in the vicinity of the Development, such improvements to be determined and constructed by the City;" and
2. "Contribute up to fifty percent (50%) of the funds needed for the design and construction of a "best practices" multi-use bicycle facility connecting the Subject Property along Perimeter Center East to its southern intersection with Ashford-Dunwoody Road, such improvement to be designed and constructed at the direction of the Owner."

The attached agreement, drafted in coordination between representatives of both the City of Dunwoody and Grubb Properties, outlines the conditions under which such funds will be contributed and such improvements will be executed.

### **RECOMMENDATION**

Staff recommends Mayor and City Council approve the attached agreement.

#### Attachments:

Private Development Agreement

UPON RECORDING RETURN TO:

Troutman Sanders LLP  
600 Peachtree Street, N.E.  
Suite 3000  
Atlanta, Georgia 30308  
Attention: David C. Kirk

**DRAFT (12/6/2018)**

**STATE OF GEORGIA**

**COUNTY OF DEKALB**

**PRIVATE DEVELOPMENT AGREEMENT**

**WHEREAS**, the Georgia Development Impact Fee Act, O.C.G.A. §§ 36-71-1 through 36-71-13 (the "Impact Fee Act"), neither prevents nor prohibits private agreements between property owners and cities regarding the construction or installation of transportation system improvements as defined by the Impact Fee Act; and

**WHEREAS**, PCE Atlanta Office, LLC, a Delaware limited liability company (the "Owner"), owns certain property consisting of three parcels located in Land Lot 347 of the 18th District of DeKalb County, Georgia more particularly described on Exhibit "A" attached hereto (the "Property"), which is located in the City of Dunwoody, a municipal corporation (the "City"); the Property and a proposed mixed-use development on the Property (the "Development") being the subject of a rezoning application submitted to the City on September 4, 2018 (RZ18-02), and of two Special Land Use Permit applications submitted concurrently (SLUP18-02A and SLUP18-02B) (collectively, the "Applications"); and

**WHEREAS**, the City and the Owner, their respective successors and assigns, desire to provide additional transportation improvements in connection with the construction of the Development; and

**WHEREAS**, the City and the Owner have voluntarily agreed to enter into this Private Development Agreement (the "Agreement") pursuant to O.C.G.A. § 36-71-13 to support the construction of certain improvements; and

**WHEREAS**, in the interest of public safety and convenience, in the event the Development is constructed by Owner, Owner desires to fund all or a portion of, as will be determined by the terms of this Agreement, the construction of certain transportation system infrastructure improvements located in the vicinity of the Development, such improvements to be identified, designed, and constructed by the City in consultation with the Owner (the "Transportation Infrastructure Improvements"); and

**WHEREAS**, in the further interest of public safety and convenience, in the event the Development is constructed by Owner, Owner desires to fund a portion of additional transportation system improvements intended to serve bicyclists and pedestrians, between the

Property and Ashford Dunwoody Road along Perimeter Center East, such improvements to be designed and constructed by the Owner in general conformity with the conceptual alignment illustrated on Exhibit "B" attached hereto, being referred to as the "Bicycle and Pedestrian Improvements," and, when referred to in combination with the Transportation Infrastructure Improvements, the "Improvements") with a final location and configuration to be mutually agreed upon by the Owner and the City; and

**WHEREAS**, the City also desires to construct the Transportation Infrastructure Improvements, has afforded the public the opportunity to review and comment on such proposed Improvements during the process to review the Applications, and supports the safety and mobility goals such Improvements are intended to meet; and

**WHEREAS**, the City has determined the public interest is best served by the City having responsibility for constructing the Transportation Infrastructure Improvements; and

**WHEREAS**, the City and Owner have determined the public interest is best served by the Bicycle and Pedestrian Improvements being designed and constructed at the direction of the Owner; and

**WHEREAS**, the City and Owner do not want the ability of the Owner to proceed with the construction and occupancy of the Development to be contingent on the construction of the Improvements; and

**WHEREAS**, the City and Owner agree it is necessary for the Improvements to be constructed in a timely manner, as set forth herein; and

**WHEREAS**, the City and the Owner now desire to set forth their mutual understandings concerning the contemplated construction of the Improvements.

**NOW, THEREFORE**, for and in consideration of Ten and 00/100 Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, the City and the Owner, their successors and assigns, do hereby agree as follows:

## **SECTION 1.**

The City agrees to diligently pursue any and all applicable Federal, State, and local permits, exemptions, and approvals required to construct the Transportation Infrastructure Improvements, as well as any private easement agreements and rights required from adjoining property owners in connection with the construction of the Improvements (collectively, the "Approvals").

## **SECTION 2.**

Owner shall secure Owner's obligation to pay its portion of the costs of construction of the Transportation Infrastructure Improvements as provided in, and subject to the maximum set out in, this Section 2. Within 90 days following the City's issuance of the Land Disturbance Permit for the first residential building depicted on the Conceptual Site Plan attached hereto as

Exhibit "C," (the "First Residential Building") the Owner will escrow into an interest bearing account funds (the "Owner's Contribution") in an amount equal to \$100,000.00 (One Hundred Thousand Dollars), such amount to constitute the full amount of Owner's Contribution to the cost of the Transportation Infrastructure Improvements. Owner's Contribution will be escrowed with the national title insurance company that has issued Owner's title insurance policy or another company mutually agreed upon by the Owner and the City. The amount of Owner's Contribution as determined by this Section 2 will be Owner's maximum contribution towards the construction of the Transportation Infrastructure Improvements. The term of the escrow agreement will be four (4) years after the date the escrow agreement is signed and the Owner's Contribution is deposited with the escrow holder (the "Deposit Date"). If the Transportation Infrastructure Improvements are not constructed (or are not under construction) by the City within four (4) years after the Deposit Date, the Owner's Contribution shall be returned to the Owner automatically by the escrow holder. In addition, if at any time the City determines that it is no longer feasible to continue to pursue the Transportation Infrastructure Improvements, the City will notify Owner in writing and will direct the escrow holder in writing to return the Owner's Contribution to Owner.

### SECTION 3.

Should the Owner provide the Owner's Contribution described in Section 2 of this Agreement, the City agrees that in order to be entitled to apply Owner's Contribution (as such amount is determined pursuant to Section 2 above) towards the cost of constructing the Transportation Infrastructure Improvements as provided in this Agreement, the City must construct, or commence construction of, the Transportation Infrastructure Improvements not later than the date which is four (4) years after the Deposit Date. If the City timely constructs or commences construction of the Transportation Infrastructure Improvements, then on completion by the City of the Transportation Infrastructure Improvements, the Owner's Contribution shall be released to the City. Should the City fail to construct or commence construction of the Road Improvements by the date which is four (4) years after the Deposit Date, the funds escrowed as the Owner's Contribution will be returned to Owner and Owner shall have no further obligation to fund the Transportation Infrastructure Improvements. On the timely commencement and subsequent completion of the Transportation Infrastructure Improvements by the City, Owner will be obligated to pay to the City an amount equal to the actual cost of the same, minus any portion of the actual costs funded through any other public or private source, not to exceed the amount of the Owner's Contribution as then held by escrow agent as determined by this Agreement. Should the actual cost of the Transportation Infrastructure Improvements, or the actual cost of the Transportation Infrastructure Improvements minus any portion of the actual costs funded through any other public or private source, be less than the Owner's Contribution, any remaining portion of the Owner's Contribution will be returned to the Owner. The escrow agreement will be structured in a manner that is commercially reasonable so as to secure Owner's obligation to pay Owner's Contribution pursuant to the express terms of this Agreement.

## SECTION 4.

Owner shall secure Owner's obligation to pay its portion of the costs of design and construction of the Bicycle and Pedestrian Improvements as provided in, and subject to the maximum set out in, this Section 4. Prior to the City's issuance of the Land Disturbance Permit for the Main Park depicted on the Conceptual Site Plan (the "Park") the Owner shall identify and design the Bicycle and Pedestrian Improvements in consultation with the City. The Owner shall be responsible for all design costs. Upon the City's issuance of the Land Disturbance Permit for the Park, the Owner will escrow additional funds (the "Owner's Additional Contribution") in an amount equal to \$175,000.00 (One Hundred Seventy-Five Thousand Dollars) minus the verified design costs for the Bicycle and Pedestrian Improvements already paid by Owner, such amount to constitute the full amount of Owner's Additional Contribution to the cost of constructing the Bicycle and Pedestrian Improvements. Owner's Additional Contribution will be escrowed with the national title insurance company that has issued Owner's title insurance policy or another company mutually agreed upon by the Owner and the City.

The amount of Owner's Additional Contribution as determined by this Section 4 will be Owner's maximum contribution towards the design and construction costs of the Bicycle and Pedestrian Improvements. The term of the escrow agreement will be two (2) years after the date the escrow agreement is signed and the Owner's Additional Contribution is deposited with the escrow holder (the "Second Deposit Date"). Provided the City has acquired all private easement agreements and rights of way required from adjoining property owners in connection with the construction of the Bicycle and Pedestrian Improvements, has issued all necessary approvals and permits for the construction of the Bicycle and Pedestrian Improvements and, further, has secured the remaining funding for the estimated cost of the Bicycle and Pedestrian Improvements (the "Conditions Precedent"), the Owner shall commence construction of the Bicycle and Pedestrian Improvements within 90 days of the Second Deposit Date.

It is anticipated the total actual design and construction costs of the Bicycle and Pedestrian Improvements will not exceed \$350,000.00 (Three Hundred Fifty Thousand Dollars), with half such costs to be paid by the Owner and half to be paid by the City either with City funds or with funds provided to the City by a third party, or a combination of such funds. If the total design and construction costs of the Bicycle and Pedestrian Improvements exceed \$350,000.00 (Three Hundred Fifty Thousand Dollars), the parties agree that the Owner shall be responsible for one-third of such additional cost and the City will be responsible for two-thirds of such additional cost using either City funds or funds provided to the City by a third party, or a combination of such funds. In no event shall Owner be required to contribute more than \$50,000 in such additional funds.

If ~~the City has satisfied all Conditions Precedent and~~ the Bicycle and Pedestrian Improvements are not constructed (or are not under construction) by Owner within 180 days ~~after~~ the Second Deposit Date, the remaining amount of Owner's Additional Contribution shall be forfeited and made available by the escrow holder to the City for other City-designated bicycle and pedestrian oriented transportation improvements in the vicinity of the Development. In addition, if at any time the Owner and City determine that it is no longer feasible to continue to pursue the Bicycle and Pedestrian Improvements, the Owner and City will direct the escrow

holder in writing to return the Owner's Additional Contribution to Owner. Owner and City further agree that if the Owner is obligated to construct the Bicycle and Pedestrian Improvements as provided in this Agreement, the construction will be diligently pursued to completion.

## SECTION 5.

The City agrees that the construction of the Improvements, in whole or in part, shall not be a condition precedent to the issuance of any permits, ~~certificates of occupancy,~~ or other approvals required to construct ~~or occupy~~ the Development unless otherwise explicitly set forth in this Agreement. The City agrees further that it shall not withhold the temporary or final certificate of occupancy for any building in or component of the Development provided that the Owner's Contribution is deposited by Owner as required by Section 2 of this Agreement and the ~~Owner's Additional Contribution is deposited by Owner as required by~~ Section 4 of this Agreement.

## SECTION 6.

By this Agreement, the parties hereto acknowledge, understand, and agree that, if Owner does construct the Development, Owner shall remain responsible for completing at its own expense all project improvements as may be required pursuant to the Applications approved and adopted by the Mayor and City Council of the City of Dunwoody on December 10, 2018, and that such are not affected by this Agreement. The parties further acknowledge, understand, and agree that, except as explicitly provided herein or in the conditions of zoning approved in connection with the approval of the Applications, under no circumstances shall Owner be required by the City to construct, contribute right-of-way for, or provide any funds for the design or construction of the Improvements or any other transportation improvements in the City or elsewhere. Owner and City further agree that if the City is obligated to construct the Transportation Infrastructure Improvements as provided in this Agreement, the construction will be diligently pursued to completion.

## SECTION 7.

Nothing in this Agreement shall be construed to compel or require the Owner to construct the Development or to otherwise build, open, or operate any residences or business on the Property. The Owner's Contribution will only be required if Land Disturbance Permit for the First Residential Building is issued by the City, and only if and to the extent required by the terms of this Agreement, and Owner's obligations are subject to the express terms of this Agreement. If the Land Disturbance Permit for the First Residential Building is not issued, the Owner shall be relieved of any obligation to fund the Road Improvements, in whole or in part, through the Owner's Contribution.

## SECTION 8.

Nothing in this Agreement shall be construed to compel or require the Owner to construct the Development or to otherwise build, open, or operate a park on the Property. The Owner's Additional Contribution will only be required if the Land Disturbance Permit for the Park is

issued by the City, and only if and to the extent required by the terms of this Agreement, and Owner's obligations are subject to the express terms of this Agreement. If the Land Disturbance Permit for the Park is not issued, the Owner shall be relieved of any obligation to fund the Bicycle and Pedestrian Improvements, in whole or in part, through the Owner's Additional Contribution.

## **SECTION 9.**

This Agreement represents the entire understanding of the parties and any changes, additions or deletions shall be made in writing upon the mutual agreement of the parties and set forth in an amendment to this Agreement. Owner and City agree to execute such additional documents as are necessary and appropriate to carry out the intent of this Agreement.

## **SECTION 10.**

This Agreement shall inure to the successors and assigns of the City and to the successors and express assigns of Owner. Notwithstanding anything contained herein to the contrary, this Agreement shall not bind Owner and shall not be binding upon future owners of the Property unless Owner (or, as applicable, a future owner) constructs the Development in accordance with the terms and conditions of approval of the Applications or, as applicable, a future owner expressly assumes the terms and conditions hereof in connection with another proposed development on the Property. The Owner and the City agree this Agreement will be recorded in the real estate records of DeKalb County, Georgia.

## **SECTION 11.**

Notices will be given as follows:

**IF TO CITY:**

Mr. Eric Linton, AICP  
City Manager  
City of Dunwoody, Georgia  
4800 Ashford-Dunwoody Road  
Dunwoody, Georgia 30338

With copy to: Cecil McLendon, Esq.  
City Attorney  
City of Dunwoody, Georgia  
4800 Ashford-Dunwoody Road  
Dunwoody, Georgia 30338

**IF TO OWNER:**

Mr. Paul O'Shaughnessy  
Senior Development Associate  
Grubb Properties, Inc.  
4601 Park Road, Suite 450

Charlotte, NC 28209

With copy to: PCE Atlanta Office, L.L.C.  
c/o Mr. Todd Williams  
Chief Investment Officer  
Grubb Properties, Inc.  
4601 Park Road, Suite 450  
Charlotte, NC 28209

And copy to: David C. Kirk, Esq.  
Troutman Sanders LLP  
600 Peachtree Street, NE, Suite 3000  
Atlanta, Georgia 30308

Each party may, in its sole discretion, designate alternate or additional notice recipients by providing written notice of such designation to the other party.

[Signatures on Following Page]

**SO AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**NOTARY:**

**PCE ATLANTA OFFICE, L.L.C.**, a Delaware  
limited liability company

Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: Grubb Properties, Inc., as Managing Member

By: \_\_\_\_\_ (SEAL)

Name: W. Clay Grubb

Title: CEO

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**CITY OF DUNWOODY, GEORGIA**

BY: \_\_\_\_\_  
DENIS SHORTAL  
MAYOR, CITY OF DUNWOODY

DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**

ATTEST: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
CITY ATTORNEY

DATE: \_\_\_\_\_

**EXHIBIT "A"**  
**(to Private Development Agreement)**

**DESCRIPTION OF PROPERTY**

**Tract 1**  
**Building 41**

ALL THAT TRACT or parcel of land lying and being in Land Lot 347 of the 18th District of DeKalb County, Georgia and being more particularly described as follows:

COMMENCING at a point the intersection formed by the Southerly right of way of the North leg of

Perimeter Center East (variable right of way) and the Easterly right of way of Ashford-Dunwoody Road (120 foot right of way);

Thence proceed Easterly and Southeasterly along the Southerly and Southwesterly right of way of the North leg of Perimeter Center East (variable right of way) for a distance of 2112.32 feet to 1/2" rebar found and the true POINT OF BEGINNING of the parcel herein described;

Thence by the next four courses continuing along said Perimeter Center East right-of-way line, on a curve to the right having a radius of 369.327 feet on arc distance of 85.90 feet (said arc having a chord distance of 85.71 feet on a bearing of South 24 degrees 25 minutes 45 seconds East and a central angle of 13 degrees 19 minutes 36 seconds) to on iron pin set;

Thence South 17 degrees 45 minutes 58 seconds East a distance of 33.01 feet to an Iron pin set;

Thence on a curve to the right having a radius of 417.658 feet on arc distance of 255.10 feet (said arc having a chord distance of 251.15 feet on a bearing of South 00 degrees 19 minutes 08 seconds East and a central angle of 34 degrees 59 minutes 42 seconds) to a 1/2" rebar found;

Thence South 17 degrees 13 minutes 42 seconds West a distance of 91.97 feet to a 1/26 rebar found at the northeasterly corner of lands now or formerly of RB 41/47 PCE LLC;

Thence by the next five courses along said RB 41/47 PCE LLC lands, South 88 degrees 51 minutes 29 seconds West a distance of 463.26 feet to an iron pin set;

Thence North 01 degrees 09 minutes 30 seconds West a distance of 79.45 feet to a MAG nail found;

Thence South 89 degrees 00 minutes 27 seconds West a distance of 88.51 feet to a MAG nail found;

Thence North 00 degrees 59 minutes 59 seconds West a distance of 30.49 feet to a MAG nail found;

Thence South 88 degrees 59 minutes 04 seconds West a distance of 218.65 feet to a 1/2" rebar found on the easterly line of lands now or formerly of EQR-Lincoln Perimeter Center LLC;

Thence by the next three courses along said EQR-Lincoln Perimeter Center LLC lands,

North 00 degrees 55 minutes 02 seconds East a distance of 235.31 feet to a 1/2" rebar found;

Thence North 84 degrees 05 minutes 32 seconds East a distance of 614.68 feet to a 1/2M rebar found

Thence North 68 degrees 20 minutes 27 seconds East a distance of 148.01 feet to the POINT OF BEGINNING and containing within said bounds 6.3226 acres of land,

Being the same property conveyed to RB 41/47 OCE LLC, a Delaware limited liability company, by Limited Warranty Deed from GA-Perimeter Center LLC, a Delaware limited liability company, of record in Deed Book 19631, Page 67, Clerk of Superior Court for DeKalb County, Georgia, dated February 2, 2007.

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## **Tract 2 Building 47**

ALL THAT TRACT or parcel of land lying and being in Land Lot 347 of the 18th District of DeKalb County, Georgia and being more particularly described as follows:

COMMENCING at a point the intersection formed by the Southerly right of way of the North leg of Perimeter Center East (variable right of way) and the Easterly right of way of Ashford-Dunwoody Road (120 foot right of way);

Thence proceed Easterly, Southeasterly and Southerly along the Southerly, Southwesterly and Westerly right of way of the North leg of Perimeter Center East (variable right of way) for a distance of 2578.29 feet to a 1/2" iron pin found and the true POINT OF BEGINNING of the parcel herein described;

Thence by the next three courses along said Perimeter Center East (North Leg) right-of-way line, South 17 degrees 13 minutes 42 seconds West a distance of 52.80 feet to an iron pin set;

Thence on a curve to the left having a radius of 840.02 feet an arc distance of 286.33 feet (said arc having a chord distance of 284.95 feet on a bearing of South 07 degrees 23 minutes 18 seconds West and a central angle of 19 degrees 31 minutes 48 seconds) to an iron pin set;

Thence South 02 degrees 18 minutes 06 seconds East a distance of 30.44 feet to a 1/2~iron pin found at the northeasterly corner of lands now or formerly of RB 53 PCE LLC;

Thence by the next three courses along said RB 53 PCE LLC lands, North B3 degrees 48 minutes 23 seconds West a distance of 233.25 feet to a 1/2" iron pin found:

Thence South 65 degrees 15 minutes 46 seconds West a distance of 138.50 feet to a 1jt iron pin found;

Thence North 89 degrees 18 minutes 26 seconds West a distance of 311.45 feet to a 1/2" iron pin found on the easterly right-of-way line of Perimeter Center East (South Leg) point;

Thence by the next three courses along said Perimeter Center East (South Leg) right-of-way line, on a curve to the right having a radius of 263.31 feet an arc distance of 29.31 feet (said arc having a chord distance of 29.29 feet on a bearing of North 00 degrees 35 minutes 14 seconds East and a central angle of 6 degrees 22 minutes 40 seconds) to an iron pin set; Thence North 03 degrees 46 minutes 34 seconds East a distance of 44.40 feet to on iron pin set;

Thence on a curve to the left having a radius of 271.593 feet an arc distance of 217.93 feet (said arc having a chord distance of 212.13 feet on a bearing of North 19 degrees 12 minutes 40 seconds West and a central angle of 45 degrees 58 minutes 32 seconds) to a 1/2" iron pin found at the southeasterly corner of lands now or formerly of EQR-Lincoln Perimeter Center LLC;

Thence by the next two courses along said EQR-Lincoln Perimeter Center LLC lands, North 09 degrees 57 minutes 20 seconds East a distance of 69.42 feet to a 1/2" iron pin found;  
 Thence North 00 degrees 55 minutes 02 seconds East a distance of 145.47 feet to a 1/2" iron pin found at the southwesterly corner of lands now or formerly of RB 41/4-7 PCE LLC;  
 Thence by the next five courses along said RB 4- 1/4-7 PCE LLC lands, Thence North 88 degrees 59 minutes 04 seconds East a distance of 218.65 feet to a MAG nail found;  
 Thence South 00 degrees 59 minutes 59 seconds East a distance of 30.49 feet to a MAG nail found; Thence North 89 degrees 00 minutes 27 seconds East a distance of 88.51 feet to a MAG nail found; Thence South 01 degrees 09 minutes 30 seconds East a distance of 79.45 feet to an iron pin set;  
 Thence North 88 degrees 51 minutes 29 seconds East a distance: of 463.26 feet to the POINT OF BEGINNING and containing within said bounds 6.7752 acres of land.

Being the same property conveyed to RB 41/47 OCE LLC, a Delaware limited liability company, by Limited Warranty Deed from GA-Perimeter Center LLC, a Delaware limited liability company, of record in Deed Book 19631, Page 79, Clerk of Superior Court for DeKalb County, Georgia, dated February 2, 2007.

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### **Tract 3 Building 53**

All that tract or parcel of land lying and being in Land Lot 347 of the 18th District of DeKalb County, Georgia and being more particularly described as follows:

COMMENCING at a point on the intersection formed by the Southerly right of way of the North leg of  
 Perimeter Center East (variable right of way) and the Easterly right of way of Ashford-Dunwoody Road  
 (120 foot right of way);  
 Thence proceed Easterly, Southeasterly and Southerly along the Southerly, Southwesterly and Westerly right of way of the North leg of Perimeter Center East (variable right of way) for a distance of 2947.86 feet to a 1/2" iron pin found and the true POINT OF BEGINNING of the parcel herein described;  
 Thence by the next eight courses along said Perimeter Center East right-of-way line. South 02 degrees 18 minutes 06 seconds East a distance of 205.42 feet to an iron pin set;  
 Thence on a curve to the right having a radius of 220.76 feet on arc distance of 301.17 feet (said arc having a chord distance of 278.35 feet on a bearing of South 36 degrees 46 minutes 52 seconds West and a central angle of 78 degrees 09 minutes 55 seconds) to an iron pin set;  
 Thence South 75 degrees 51 minutes 54 seconds West a distance of 261.71 feet to a PK nail set;  
 Thence on a curve to the right having a radius of 180.32 feet an arc distance of 340.69 feet (said arc having a chord distance of 292.23 feet on a bearing of North 50 degrees 00 minutes 36 seconds West and a central angle of 108 degrees 15 minutes 01 seconds) to an iron pin set;  
 Thence North 04 degrees 06 minutes 54 seconds East a distance of 52.47 feet to on iron pin set;

Thence on a curve to the left having a radius of 309.42 feet an arc distance of 108.01 feet (said arc having a chord distance of 107.46 feet on a bearing of North 05 degrees 53 minutes 06 seconds West and a central angle of 20 degrees 00 minutes 01 seconds) to an iron pin set;  
 Thence North 15 degrees 54 minutes 06 seconds West a distance of 58.08 feet to a PK nail set;  
 Thence on a curve to the right having a radius of 263.31 feet an arc distance of 61.12 feet (said arc having a chord distance of 60.98 feet on a bearing of North 09 degrees 15 minutes 06 seconds West and a central angle of 13 degrees 17 minutes 59 seconds) to a 1/2" rebar found at the southwesterly corner of lands now or formerly of RB 41/47 PCE LLC;  
 Thence by the next three courses along said RB 41/47 PCE LLC lands, South 89 degrees 18 minutes 26 seconds East a distance of 311.45 feet to a 1/2" rebar found;  
 Thence North 65 degrees 15 minutes 46 seconds East a distance of 138.50 feet to a 1/2" rebar found;  
 Thence South 83 degrees 48 minutes 23 seconds East a distance of 233.25 feet to the POINT OF BEGINNING and containing within said bounds 6.3976 acres of land.

Being the same property conveyed to RB 53 OCH LLC, a Delaware limited liability company, by Limited Warranty Deed from GA-Perimeter Center LLC, a Delaware limited liability company, of record in Deed Book 19631, Page 153, Clerk of Superior Court for DeKalb County, Georgia records, dated February 2, 2007.

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**EXHIBIT "B"**  
**(to Private Development Agreement)**

**CONCEPTUAL ALIGNMENT OF THE PROPOSED BICYCLE  
AND PEDESTRIAN IMPROVEMENTS**

**[TO BE INSERTED PRIOR TO EXECUTION & RECORDING]**

**EXHIBIT "C"**  
**(to Private Development Agreement)**

**CONCEPTUAL SITE PLAN**

**[TO BE INSERTED PRIOR TO EXECUTION & RECORDING]**