

MEMORANDUM

To: Mayor & City Council

From: Steve Foote, AICP

Date: August 24, 2015

Subject: **CP 15-071:** Pursuant to the City of Dunwoody Zoning Ordinance, applicant, Acadia Homes & Neighborhoods c/o Smith, Gambrell & Russell, LLP on behalf of CR V Perimeter LLC, seeks an amendment to the City of Dunwoody Comprehensive Land Use Plan to modify density allowances and/or classifications, to allow for construction of an 87-unit, fee simple townhome development. The subject property is located at 54 Perimeter Center East, Dunwoody, GA 30346, tax parcel ID 18-347-01-008; and 4340, 4348, 4356, 4364, 4372, 4380 and 4388 Old Georgetown Trail, Dunwoody, GA 30338, tax parcel IDs 18-346-05-052, 053, 054, 055, 056, 057, 058.



BACKGROUND

The site is located at 54 Perimeter Center East, Dunwoody, GA 30346 on the eastern side of Perimeter Center East, just north of Lincoln Parkway (private), and 4340, 4348, 4356, 4364, 4372, 4380 and 4388 Old Georgetown Trail, Dunwoody, GA 30338 on the west side of Old Georgetown Trail at the west end of Old Spring House Lane. The property consists of approximately 9.84 acres of land on eight vacant parcels. The applicant is proposing to

develop 7.544 acres and dedicate the remaining 2.3 acres to the City for use as public park space.

The applicant applied in April to amend the land use classification in the Comprehensive Plan from "Perimeter Center Transitional Sub-Area" to "High-Density Mixed-Use Sub-Area," each a sub-area of the Perimeter Center Character Area, for the property located at 54 Perimeter Center East. The current designation, Perimeter Center Transitional, limits the density to 12 units an acre and the applicant proposed to construct townhomes at a density of 13.5 units an acre. The High-Density Mixed-use Sub-Area does not contain a maximum density. The proposed plan has been amended, and a comp plan amendment is no longer needed for the property located at 54 Perimeter Center East, for the project to meet density requirements.

To incorporate the properties located at 4340, 4348, 4356, 4364, 4372, 4380 and 4388 Georgetown Trail, the applicant has applied to amend the Comprehensive Plan land use map for the portion of those properties to be retained for the development site from "Suburban Neighborhood" Character Area to "Perimeter Center" Character Area – Transitional Subarea. The portion to be donated as a park is proposed to remain within the "Suburban Neighborhood" Character Area.

This is a companion case to rezoning application RZ 15-071 which requests a rezoning of the properties from Office-Institution (O-I) District and Single-dwelling Residential-100 (R-100) District to Multi-dwelling Residential-85 (RM-85) District.

ANALYSIS

Review and Approval Criteria

In accordance with Georgia and local law, the following review and approval criteria shall be used in reviewing the respective amendment applications:

Section 27-335. Review and approval criteria.

- a. *Comprehensive Plan Land Use Map.* The following review and approval criteria must be used in reviewing and taking action on all comprehensive plan land use map amendments:
 1. Whether the proposed land use change will permit uses that are suitable in view of the use and development of adjacent and nearby property;
The proposed land use change will permit uses that are suitable in view of the use and development of adjacent and nearby property. Townhomes are an appropriate transitional use between the high-intensity commercial uses and very low-intensity single family residential use. It is appropriate to apply the "Perimeter Center Sub-Area" standards to a property on the outside border of the district in this case. The encroachment of the development onto the existing residentially-zoned parcels will be minimal and there will be adequate buffering from nearby R-100 lots.
 2. Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property;

The proposed land use, multi-dwelling residential townhomes, is not expected to adversely affect the existing use or usability of adjacent or nearby property. The use is an appropriate transitional use. There will be a substantial buffer between the proposed development and the single-dwelling residential district to the east, both on the property with a multiuse path within a 50 foot transitional buffer and offsite with the future public greenspace.

3. Whether the proposed land use change will result in uses that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools;

The proposed uses are not anticipated to be overly burdensome on existing infrastructure.

4. Whether the amendment is consistent with the written policies in the comprehensive plan text;

The Suburban Neighborhood Character Area calls for, "stable, owner-occupied single family residential area that is characterized by a traditional suburban pattern of development with accessible sidewalks, extensive landscaping, and access to parks and functional greenspace, places of worship and schools." The proposed plan would transform approximately 2.3 acres of unbuildable privately owned land into usable park space and functional greenspace.

The amendment is consistent with many of the goals of the Comp Plan, in that it will include amenities and provide functional greenspace; reduce surface parking and promote livable centers near the MARTA station, although not in an immediately surrounding area of the station; create bike and pedestrian options to connect with the rest of the City, and promote and establish new connectivity. The development will be in an area that provides closer access to medical, recreational and other necessary services, than many areas of the City, such as hospitals, greenspace and trails, and the many services that are offered in the PCID.

The Suburban Neighborhood Character Area has two goals:

- 1. Encourage paths, connectivity, and sidewalks.***
- 2. Identify potential trail easements.***

Although the applicant is proposing to amend the Comp Plan to remove portions of the 7 lots from the Suburban Neighborhood Character Area, the plan will achieve the two above goals of that Area.

5. Whether there are environmental impacts or consequences resulting from the proposed change;

Potential environmental consequences from the proposed constructed will be mitigated as a result of the required improvements from the land development ordinances (e.g.: stormwater detention). Construction of retaining walls for the twelve foot wide concrete trail will be located in the City's 75-foot stream buffer, and those improvements are exempt from the regulations of the stream buffer requirements per Sec. 16-79(12), exempting multi-use trails and related improvements.

6. Whether there are impacts on properties in an adjoining governmental jurisdiction in cases of proposed changes near city boundary lines;
There are no impacts on properties in an adjoining governmental jurisdiction in cases of proposed changes near city boundary lines.
7. Whether there are other existing or changing conditions affecting the use and development of the affected land areas that support either approval or denial of the proposed land use change; and
While the Perimeter Center Zoning Code, in the drafting phase now, will not be effective to be applied to this project, the applicant has made efforts to comply with portions of the proposed code; therefore, this project, as proposed would not be out of context substantially with future development enforced under the pending regulations. Gated developments are prohibited in the proposed text, so the proposal to gate the project is not supported by the text.
8. Whether there are impacts on historic buildings, sites, districts or archaeological resources resulting from the proposed change.
There are no impacts on historic buildings, sites, districts or archaeological resources resulting from the proposed change.

RECOMMENDATION

Community Council

At their Special Called May meeting, the Community Council heard the applicant's request to amend the Comprehensive Plan. After some discussion with the applicant and staff related to the nature of the project and the proposed use of the subject property specifically, a motion was made to recommend approval of the request. The motion was voted and passed (4 – 0).

Planning Commission

At their regularly scheduled July meeting, the Planning Commission heard the applicant's request to amend the Comprehensive Plan. After some discussion with the applicant and staff related to the nature of the project and the proposed use of the subject property specifically, a motion was made to recommend approval of the request with the conditions as presented by staff in addition to the following condition. The motion was voted and passed (6 – 1).

Staff Recommendation

Based on the above analysis and findings, staff has determined that the requested amendments to the official zoning map meet the requirements of Chapter 27, §27-335. Therefore, staff recommends the amendment to the Comprehensive Plan be **approved**.

Attachments

- Perimeter Center Character Area, Suburban Neighborhood Character Area

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2015-XX-XX

**RESOLUTION TO REVISE THE DUNWOODY COMPREHENSIVE LAND
USE MAP TO AMEND THE PARCELS ON
4340/4348/4356/4364/4372/4380/4388 OLD GEORGETOWN
TRAIL, DUNWOODY, GEORGIA, FROM SUBURBAN NEIGHBORHOOD
CHARACTER AREA TO PERIMETER CENTER CHARACTER AREA FOR
CONSTRUCTION OF MULTI-DWELLING RESIDENTIAL TOWNHOMES
IN THAT CHARACTER AREA**

WHEREAS, the City of Dunwoody's Comprehensive Land Use Plan, adopted in 2010, provides vision and direction for the City of Dunwoody; and

WHEREAS, as part of the City's Comprehensive Plan Land Use Map, the City adopted the Future Land Use Map for the Perimeter Center Character area; and

WHEREAS, the Property at 4340/4348/4356/4364/4372/4380/4388 Old Georgetown Trail, Tax Parcel Numbers 18 346 05 052/053/054/055/056/057/058, is located on the west side of Old Georgetown Trail at the west end of Old Spring House Lane; and

WHEREAS, in order to incorporate said Property into the proposed multi-dwelling townhome development planned by applicant, the Future Land Use Map encompassing those Parcels needs to be amended from the existing Suburban Neighborhood Character Area to Perimeter Center Traditional Character Area, with the portion of the Property proposed to be donated as a park remaining as a Suburban Neighborhood Character Area; and

WHEREAS, the Mayor and City Council find that Townhomes are an appropriate transitional use between the high-density commercial uses and very low-density single family residential uses, and is not expected to adversely affect the existing use or usability of adjacent properties; and

WHEREAS, the Mayor and Council find that this Comprehensive Plan Amendment is consistent with many of the goals of the

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2015-XX-XX

Comprehensive Plan in that it will include amenities and provide for functional greenspace, promote livable centers near MARTA, create bike and pedestrian options to connect with the rest of the City and establish new connectivity.

NOW THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Dunwoody that by passage of this Resolution the City of Dunwoody Mayor and City Council hereby revise the City of Dunwoody Comprehensive Plan to amend the above-stated Property from a "Suburban Neighborhood Character Area" to "Perimeter Center Character Area – Traditional Sub Area" on the City's Future Land Use Map as a minor amendment pursuant to the Department of Community Affairs Regulations.

SO RESOLVED AND EFFECTIVE, this ____ day of _____, 2015.

Approved:

Michael G. Davis, Mayor

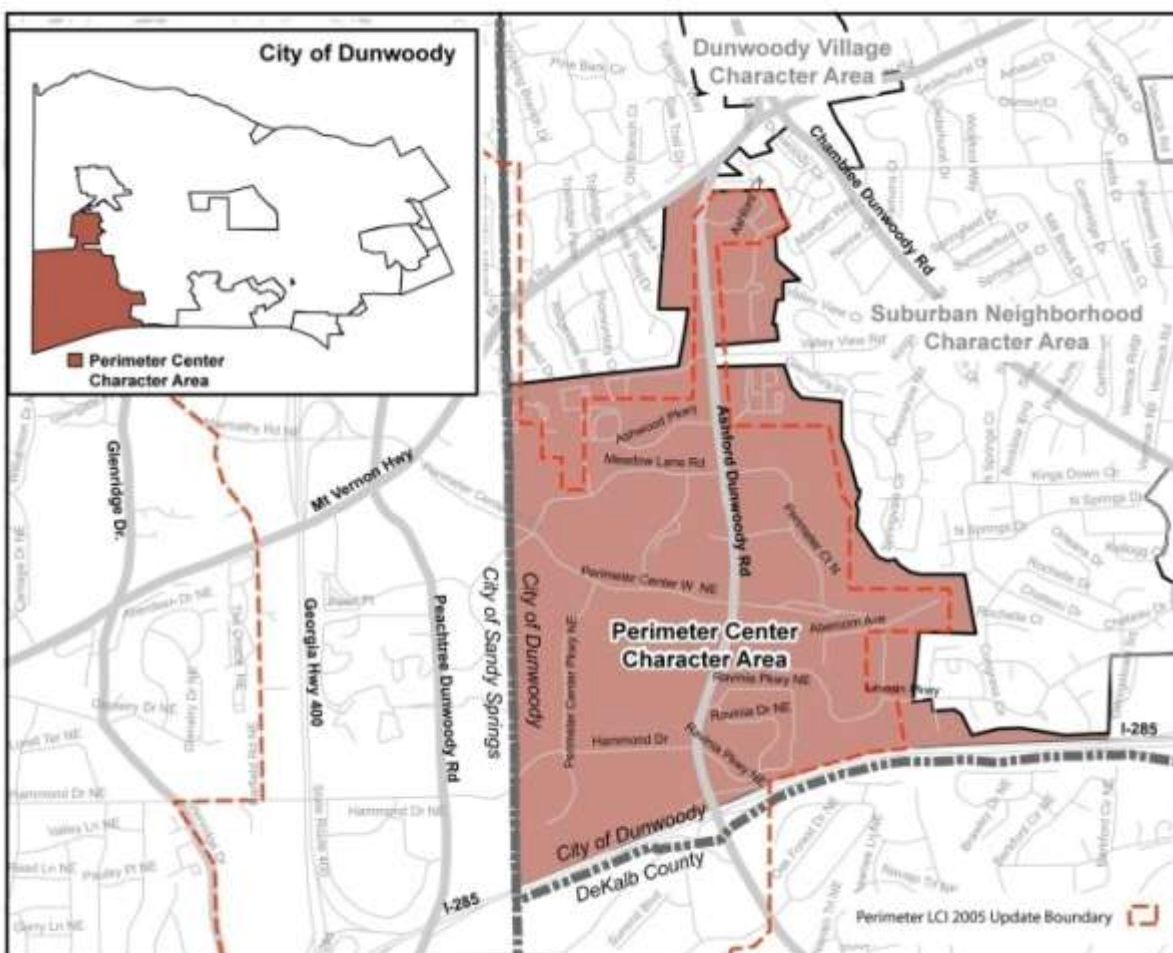
Attest:

Sharon Lowery, City Clerk

(Seal)



Perimeter Center



Vision/Intent

To create a "livable" regional center with first-class office, retail and high-end restaurants in a pedestrian and bicycle-oriented environment that serves as a regional example of high quality design standards. The City of Dunwoody works in partnership with the Perimeter Community Improvement Districts (PCIDs) to implement and compliment the framework plan and projects identified in the Perimeter Center Livable Centers Initiative study (LCI) and its current and future updates.

By 2030, the area successfully adds public gathering space and pocket parks, continues to create transportation alternatives, mitigates congestion, and reduces remaining excessive surface parking. The area creates the conditions of possible true "live-work" environment. All future development continues to emphasize high quality design standards and building



materials and incorporates the current national best practices on energy efficiency, where possible.

The City of Dunwoody recognizes the value of creating mixed-use, transit-oriented development within walking distance of public transit stations. However, the City has concerns about the impact of such development on the City's infrastructure and schools. To ensure proper controls on residential growth in the PCID, the City recommends zoning changes to require Special Land Use Permits (SLUP) for future high-density housing projects.

Future Development

The boundary of the Character Area designation extends slightly beyond the boundary of the PCIDs/LCI study area to include either existing commercial or to provide a transition where the Character Area abuts adjacent Suburban Character. The locator map also shows where the PCIDs/LCI boundary extends both west into Sandy Springs and into unincorporated DeKalb County, south of I-285.

The first section identifies the City's intent for the area outside the PCIDs; the subsequent section incorporates components which lie within the City of Dunwoody boundaries.

Outside the Perimeter CIDs/LCI:

Development within the Perimeter Center Character Area that abuts the Suburban Character area should demonstrate conformance with the principles of a transitional area. Unless accompanied by an exceptional buffering and usable open space provisions, density should be no greater than 4-8 units to the acre and commercial should be very low intensity (under 20,000 square feet).



1999 parking lot conditions in the Perimeter Center area



2009 conditions above (outparcel development); the City envisions continuing the trend of converting existing surface parking to better uses, ideally including pocket park and green space

Within the Perimeter CIDs/LCI study area: In 2000, the Perimeter CIDs engaged in a Livable Cities Initiative study to craft a vision and strategy for the Fulton and DeKalb Perimeter Community Improvement Districts. This process resulted in a future land use plan that divided the CIDs into defined, development sub-areas -- **Transitional, High-Density, and Transit Village** -- indicated below. Where located within the Dunwoody City limits, new development should conform to the intent of these areas, as described below. In 2005, the Perimeter CIDs went through a process to update a LCI and document potential growth strategies for each area. The City will partner with the PCIDs for a future update and amend this Comprehensive Plan, if appropriate.

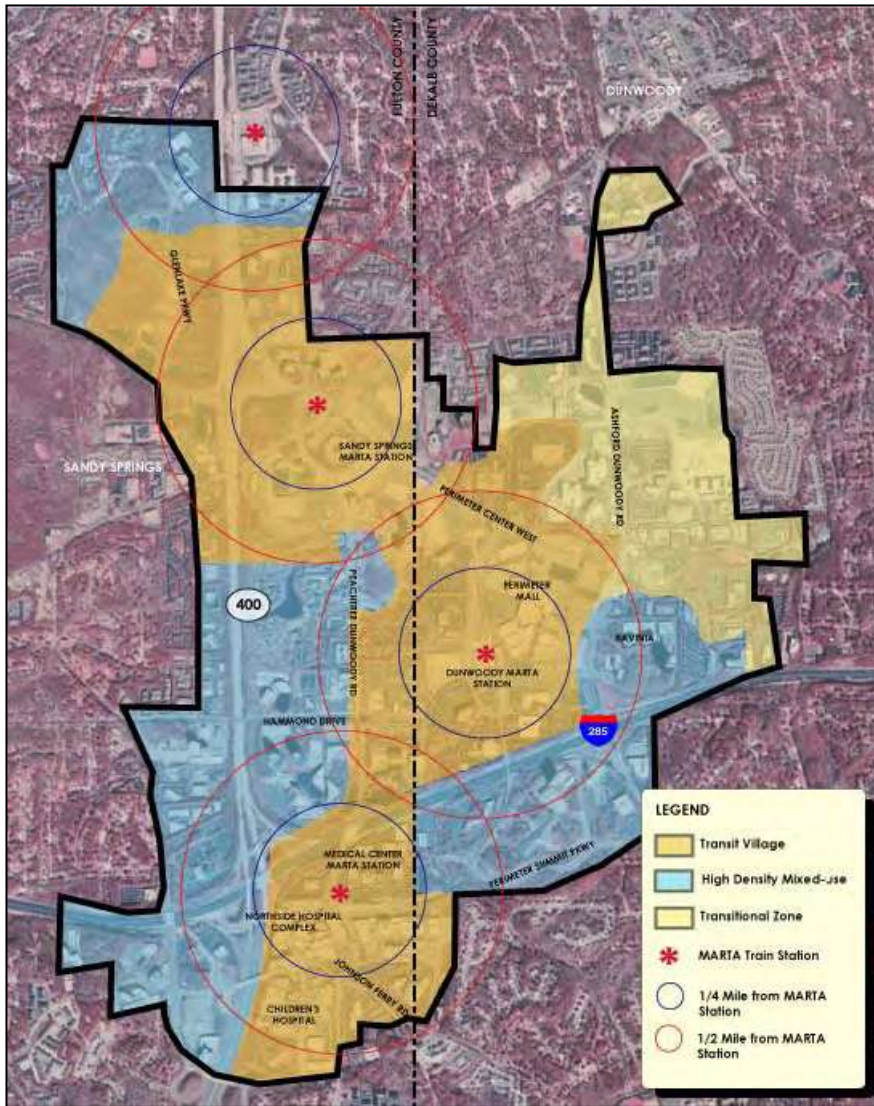


FIGURE 4: Perimeter Center LCI Framework Plan: development types

A Community Improvement District (CID)

is an authorized self-taxing district dedicated to infrastructure improvements within its boundaries. The PCIDs are governed by two boards – one each for Fulton and DeKalb. The PCIDs spent or leveraged public funds to invest \$55 million in Dunwoody alone; over \$7 million from ARC's LCI program was directed to the PCIDs. This makes it one of the most, if not the most, successful CIDs in the region. The PCIDs' mission focuses exclusively on transportation improvements:

To work continuously to develop efficient transportation services, with an emphasis on access, mobility, diversification and modernization.

Zoned when the area was under unincorporated DeKalb County jurisdiction, several of the parcels located within the City's character area remain undeveloped. As actual market values adjust in the post-recession climate, the City anticipates opportunities to establish development



regulations to provide appropriate recreation and open space amenities for the public, especially where open space potential is identified within the Perimeter LCI “Transit Village” and “Transitional” section described further below.

Perimeter Center - Transit Village:

Transit Village Sub-Area:

Defined by a half-mile radius around the existing MARTA Stations, the Transit Village area will develop as an urban district promoting a mix of residential, commercial and institutional uses. This decision is based on the location of major transit infrastructure which provides opportunities for alternative transportation.

The desire is to generate a “Town Center” near Perimeter Mall to reinforce business development and a sense of identity for the area emerged. The plan argues the vision for the Perimeter Mall “Transit Village” can serve as the “prototype spearheading development at other MARTA Stations.”

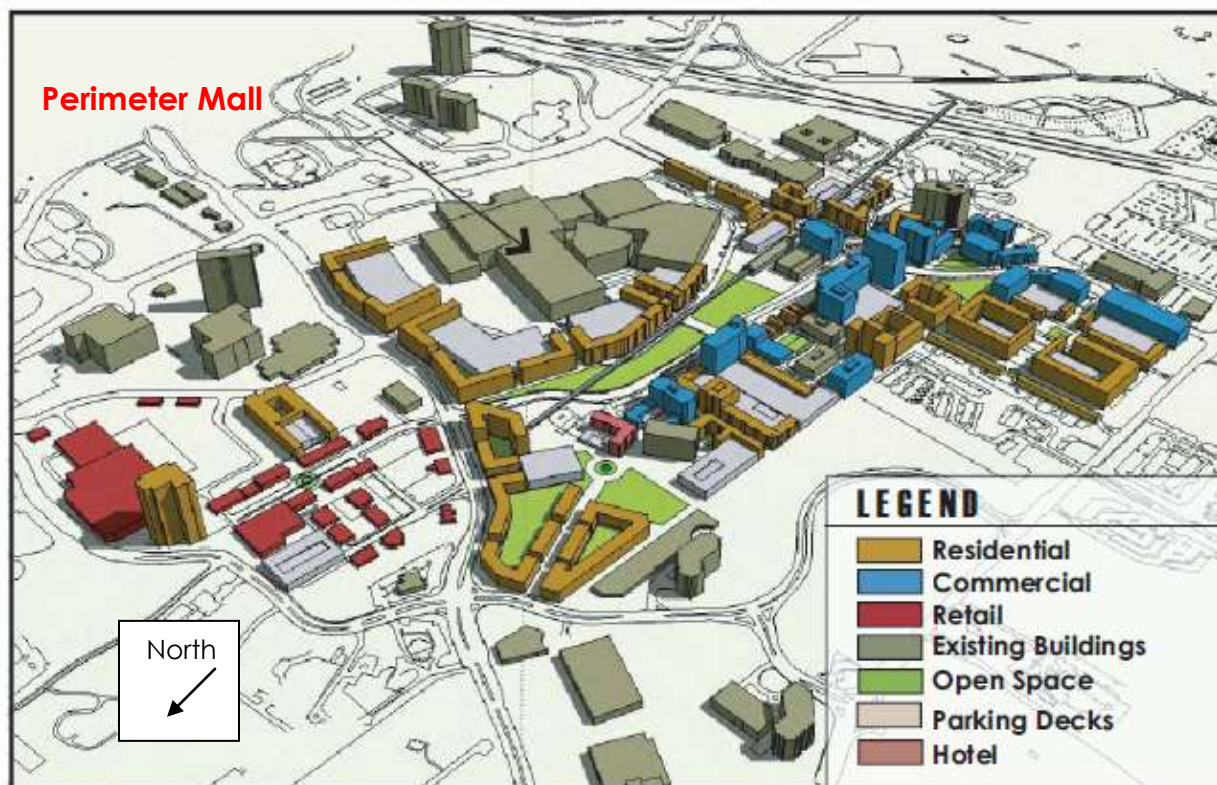


FIGURE 5: Plan-view Perimeter Center Parkway Build-Out with Linear Park and Green Space



FIGURE 6: Transit Village Vision: *Perimeter Focus: Envisioning a New Atlanta Center Update* (LCI 2005) [EDITOR'S NOTE: Cannot change the name of official documents.]

High-Density Mixed-Use sub-area:

This development sub-area currently has a concentration of commercial uses, mostly due to accessibility from I-285. The Ravinia complex on the north side of I-285 includes an upscale hotel (Crown Plaza) and two high-rise office towers. The parcels north of Ravinia are a part of the Perimeter Center East commercial properties, owned by Equity Office Properties. These buildings vary from low-density offices built in the 1970s (such as 77 Perimeter Center West) to high-rise buildings (including the former Philips regional headquarters) fronting I-285. The City envisions continuing commercial development along with encouraging compatible uses to balance office expansion.

Notable, the interchange at Ashford Dunwoody Road is one of the major transportation bottleneck locations in the Perimeter area. Current road patterns require all of the traffic on Ravinia Drive and Perimeter Center East to converge on to Ashford Dunwoody Road. Given the commercial nature of the developments on both these roads, morning and afternoon rush hour



times create huge congestion issues south of Perimeter Center West. Similar issues are created south of I-285 at Ashford Dunwoody Road, where vehicular traffic from offices at Perimeter Summit and Lake Hearn backs up during peak hours. The recent interchange improvements at Ashford Dunwoody Road are aimed at reducing congestion on Ashford Dunwoody Road, on both sides of I-285.

Additionally, the PCIDs completed the Perimeter Center Parkway Bridge (flyover) in 2007. This bridge provides much needed vehicular, pedestrian and bicycle accessibility connecting the Dunwoody MARTA Station to Perimeter Summit. The parkway improvements were achieved through a collaborative partnership between the Atlanta Regional Commission's Livable Centers Initiative, Georgia's Fast Forward bond program and DeKalb County.

The City also envisions realizing the goal of **expanding the open space** from the trails behind the Ravinia Towers to additional areas in the future. A public plaza would also be appropriate at Perimeter Summit, to serve the large number of residents and employees that will be using the complex. Public art such as sculptures or fountains could enhance these open spaces. This would anticipate a conversion of excess parking into usable pocket parks. A pocket park is defined as a small area – 2,500 sq. ft. to 1 acre – of open space for active or passive recreation within a development.

In 2009, the PCIDs broke ground on the nearly \$18 million half-diamond interchange at Hammond Drive and GA 400.

Construction will include building entrance and exit ramps from Hammond Drive to GA 400 and replace the four-lane Hammond overpass with a nine-lane, higher bridge to meet current and future traffic volumes. This will provide alternative access to the area. The project had been planned for more than 15 years.

Perimeter Center Transitional Sub-Area:

Geared specifically towards protecting the single-family communities that become vulnerable to density pressures given high land prices, this sub-area actively discourages incompatible infill and loss of neighborhood character. The City of Dunwoody intends to establish a "buffer zone" where transitional regulations can be put in place to offer contextual sensitivity. The plan envisions low and medium density office and some residential. The City of Dunwoody considers up to 8 units maximum to the acre "low density" and up to 12 units to the acre "medium density."

Two areas of potential open space, as indicated on the development opportunities map below, are identified. They include surface parking that could be converted into more appropriate uses, including usable open space amenities.

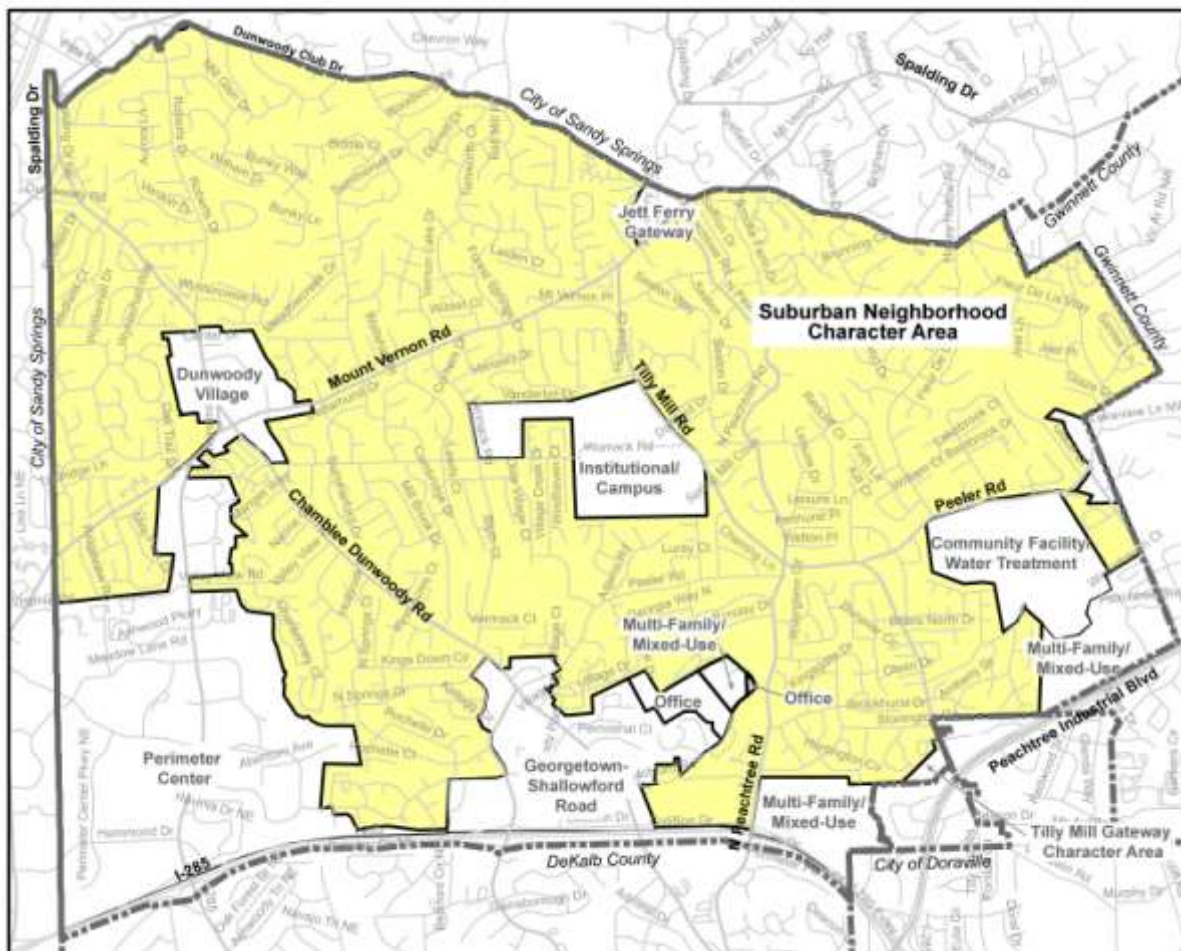


Perimeter Center Character Area Goals

- Land Use
 - New residential development will include amenities and provide public functional green space
 - New residential development will address school capacity issues and applicants will work with Board of Education and City for better resolution of school issues
 - Reduce surface parking and promote livable centers in the immediate areas surrounding MARTA station
 - Encourage hotel and convention development near MARTA in order to foster commerce along the mass transportation route
 - Achieve a lifelong-community for residents who can age in place with safe access to medical, recreational and other necessary services
- Transportation and Circulation
 - Create bicycle, pedestrian and potential golf cart options to connect with the rest of the City of Dunwoody
 - Work with the Perimeter Transportation Management Association (TMA) to actively reduce automobile dependency and emerge as a leader in alternative transportation for the region
 - Promote/establish new connectivity
- Intergovernmental Coordination
 - Work to strengthen Board of Education relationship for creative solutions to school capacity
 - Work with the PCIDs' boards to implement vision
 - Coordinate with the City of Sandy Springs for LCI Updates and implementation
 - Coordinate with the Atlanta Regional Commission (ARC) for implementation of future LCI study updates
 - Coordinate with MARTA regarding Bus Rapid Transit (BRT) (or other regional service) and urban design surrounding all transit stations



Suburban Neighborhood



Vision/Intent

Stable, owner-occupied single-family residential area that is characterized by a traditional suburban pattern of development with accessible sidewalks, extensive landscaping, and access to parks and functional greenspace, places of worship and schools.

Future Development

- **Height:** Up to 2 story typical although high quality, 3 story attached residential units (townhomes) may be appropriate if and only if featuring high quality architectural treatment and only where existing townhomes currently allowed by past zoning



- **Form:** Traditional homes with quality building materials, high quality design, streetscaping, and pedestrian and bicycle amenities
- **Uses:** Single-family residential, public gathering spaces, places of worship, office-residential or neighborhood scale commercial at key intersections (less than 10,000 square feet); townhomes only where existing townhomes currently allowed by zoning
- **Density:** Maximum residential density up to 4 units to the acre

Goals

- Encourage paths, connectivity, and sidewalks
- Identify potential trail easements



MEMORANDUM

To: City Council

From: Steve Foote, AICP

Date: August 24, 2015

Subject: Approval of Development Agreement between City of Dunwoody and Atlanta Office Investment, L.L.C. related to 245 Perimeter Center Parkway, Dunwoody, GA 30346 (18-329-04-003)

ITEM DESCRIPTION

The development agreement for consideration accompanies a request for rezoning for the property at 245 Perimeter Center Parkway. The rezoning request was first read at the August 10 meeting and will be second read at the August 24 meeting. The agreement can be approved any time prior to the vote for the rezoning.

BACKGROUND

During the process of the rezoning application, it was determined that another tool was necessary to address all the concerns shared by the applicant and staff teams related to infrastructure improvements. In particular, the contemplated construction of the "East-West Connector Road" is critical to support the intensity of developed proposed on the subject site and was shown to alleviate some of the volume at other intersections in the network once it is fully connected through the adjacent parcel in Sandy Springs. The development agreement allows the City Council to agree to the terms of construction of the road under different circumstances than as a condition of rezoning. The details of the agreement outline obligations of the developer for the permitting and construction of the road, financial alternatives, and timing of its completion and in what circumstances the construction of the road is not required. The agreement further outlines a process of returning funds to the applicant, should the construction of the East-West Connector not be achieved.

RECOMMENDATION

The development agreement should be approved and in place in advance of the final rezoning decision. Staff recommends that the City Council approve the development agreement in the attached form and content.

Attachments

Development Agreement
Flow chart provided by applicant on 8-10-15

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

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, Atlanta Office Investment, L.L.C., a Delaware limited liability company (the "Owner"), owns certain property consisting of a single tract located in Land Lot 329 and 348 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 April 21, 2015 (RZ15-072); and

WHEREAS, the City and the Owner, their respective successors and assigns, desire to provide additional transportation facilities 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 for the construction and dedication 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 construct, to current City and Perimeter Community Improvement District standards, as applicable, all or a portion of, as will be determined by the terms of this Agreement, a proposed new road in the City of Dunwoody (such road being referred to as the "East-West Connector Road") with a configuration as generally depicted on the site plan of the proposed Development attached hereto as Exhibit "B," as the site plan may be updated by the Owner after the date hereof with the approval of the City (the "Site Plan"); and

WHEREAS, the Owner desires to construct entrances to the Development along the East-West Connector Road as generally depicted on the Site Plan to provide additional

transportation options to users of the Development (such entrances being designated on the Site Plan, and referred to at times in this Agreement, as "P5" and "P10," such that any reference to entrance P5 in this Agreement also includes the entrance designated as "S2" on the Site Plan); and

WHEREAS, the City and the Owner desire for the Owner to construct a multi-use path as generally depicted on the Site Plan (the "Path") to provide for enhanced pedestrian and bicycle connectivity in the area of the Development; and

WHEREAS, the City and the Owner recognize that the location and alignment of the East-West Connector Road, the Path, and entrances P5 and P10 (collectively, the "Improvements") give rise to the possibility of impacts to areas subject to Federal, State, and local regulation and protection and that such impacts will require review and approval of the Improvements by various levels of government before the Improvements may be constructed; and

WHEREAS, to facilitate the construction of the Improvements, the City has agreed to reduce, eliminate, or otherwise exempt the construction of the Improvements from requirements related to any stream buffers over which the City has authority to the extent necessary to construct the Improvements; and

WHEREAS, the City also desires the construction of the proposed East-West Connector Road and the Path, has afforded the public the opportunity to review and comment on such proposed improvements during the process for the rezoning of the Property, supports the safety and mobility goals such improvements are intended to meet, and has agreed to grant the Owner the right to make the Improvements defined in this Agreement on any property that may be owned by the City and to grant any other rights as may be required by the Owner to construct such Improvements; and

WHEREAS, the City and the Owner recognize and agree there is uncertainty regarding whether all governmental approvals required for the construction of the Improvements will be granted and, if so, whether the issuance of such approvals will precede or follow the period during which the Owner intends to construct the Development; and

WHEREAS, the Owner does not want its ability to proceed with the construction and occupancy of the Development to be contingent on the receipt of approvals for all of the Improvements; and

WHEREAS, the City and the Owner further recognize that the location and alignment of the Improvements give rise to the possibility of impacts to adjoining private properties and that such impacts will require the grant of certain easements and other rights from the affected property owners before certain of the Improvements may be constructed; and

WHEREAS, the City and the Owner recognize and agree there is uncertainty regarding whether all easements and rights required from affected property owners will be granted for the

Improvements and, if so, whether the grant of such easements and rights will precede or follow the period during which the Owner intends to construct the Development; 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 receipt of the necessary easements and rights from affected private property owners for the Improvements; and

WHEREAS, the Owner desires to, upon the completion of the East-West Connector Road and the Path, convey that portion of the Path as may be located within the Property to the City in either fee simple/right-of-way or through the grant of an easement (at the Owner's option) and to convey to the City a fee simple/right-of-way interest in that portion of the East-West Connector Road as may be located within the Property (collectively, the "Dedicated Property"); and

WHEREAS, the City has determined the acceptance of maintenance responsibilities for the Dedicated Property are in the best interest of the public; and

WHEREAS, the City and the Owner now desire to set forth their mutual understandings concerning the contemplated construction of the Improvements, the dedication of the Dedicated Property associated with the East-West Connector Road and Path, and the acceptance of maintenance responsibilities for the Dedicated Property.

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 Owner agrees to diligently pursue all Federal, State, and local permits, exemptions, and approvals required to construct the 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;" and if a reference to "Approvals" in this Agreement relates to a specific portion of the Improvements, as the context requires, the term "Approvals" will mean those Approvals required only for that specific item comprising a portion of the Improvements). All Improvements constructed by Owner pursuant to this Agreement will be at Owner's expense. The East-West Connector Road discussed in this Agreement will be constructed to City and Perimeter Community Improvement District standards as the same are in place as of the date the Approvals are obtained. For the purposes of this Agreement, the East-West Connector Road is further defined as consisting of two (2) segments (because, as provided below, Owner may obtain Approvals for only one of the two segments). The portion of the East-West Connector Road extending from Perimeter Center Parkway approximately to the entrance to the Development designated on the Site Plan as "P5" (and including entrance "S2") is referred to as the "Eastern E-W Segment." From that point westerly to the City of Sandy Springs' boundary line is referred to as the "Western E-W Segment." The City has confirmed to Owner that the City can, and will, grant all Approvals required from the City to construct and use the Eastern E-W Segment and entrance P5 and it is

acknowledged that Owner's willingness to go forward with the construction of the Development is contingent on receipt of such Approvals from the City, as well as any other Approvals required for the Eastern E-W Segment and entrance P5, prior to or at the time permits are issued for the First Building, as that term is defined below. Owner acknowledges that the City's agreement to grant Approvals is intended to obligate the City to grant permits, variances, exemptions and discretionary approvals in order to give effect to the intent and goals of this Agreement but is not intended to relieve Owner of complying with standard application requirements, document submittals, and compliance with all applicable ordinances of the City (but subject, if applicable, to any variances or exemptions actually granted by the City pursuant to this Agreement).

SECTION 2.

The City hereby agrees to cooperate and assist in the Owner's efforts to obtain all Approvals necessary for the construction of the Improvements and to provide all Approvals within its control for such Improvements, subject to the final sentence of Section 1.

SECTION 3.

The City hereby authorizes the Owner to construct the Improvements and grants and conveys to Owner the right to enter into and perform work on City-owned property to construct the Improvements. This right will include the right to put in place all necessary traffic control measures pursuant to a plan to be agreed on by the City and Owner at the time of the issuance of permits for any particular portion of the Improvements, all to facilitate the safe movement of traffic during such construction and in consultation with the City's traffic and public safety personnel. This Agreement, together with the future issuance of permits by the City for any particular portion of the Improvements, constitutes (i) the City's agreement to grant to Owner a temporary construction easement appurtenant to the Property on, over and under any City-owned land as reasonably required to so construct the applicable portion of the Improvements in accordance with the plans approved by the City for the same, and (ii) the reduction or elimination of the City-controlled stream buffer (as contemplated in Section 4, below) as required for the same. Upon the request of the Owner and at the time the permits are issued by the City for all or any portion of the Development or for all or any portion of the Improvements, as the case may be, the City will enter into one or more recordable documents setting forth with particularity the rights and easements needed for the Development and Improvements for which permits are so issued, including, without limitation, tie back easements, shoring easements, excavation easements, sewer line easements, temporary construction easements, crane swing easements, and permanent easements for access, maintenance, and repair.

SECTION 4.

The City hereby approves the elimination of the City-controlled stream buffer to the extent necessary to construct the Development and, as applicable, the Improvements and agrees to timely issue any and all permits needed for the construction of the Development and, as applicable, the Improvements.

SECTION 5.

The City agrees that the construction of the proposed East-West Connector Road (in whole or in part), Path and entrance P10 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.

SECTION 6.

Should the Owner fail to obtain all necessary Approvals for the Western E-W Segment, the Path, and entrance P10 prior to the date Owner receives the building permit to construct the first of the three (3) buildings depicted on the Site Plan (the "First Building"), despite the Owner's reasonable and diligent efforts to obtain such Approvals, the Owner may, but is not obligated to, continue to pursue the Approvals.

SECTION 7.

Owner shall secure Owner's obligation to pay the costs of construction of the Western E-W Segment as provided in, and subject to the maximum set out in, this Section 7. Owner will escrow immediately available funds (the "Security") in an amount equal to \$2,155,000, to be increased by 5% per year starting on January 1 of 2016 and again on January 1 of each year thereafter, if applicable, until the funds are actually deposited (such amount is "Owner's Secured Contribution"); provided that, if the City obtains only the approvals for the Western E-W Segment (referred to in the Agreement as the "Reduced Approvals") and the federal and state agencies involved in issuing such Reduced Approvals expressly state that all Approvals would be obtainable but for the inclusion of P10, the City will direct the escrow agent to reduce the escrow funds to an amount equal to \$1,000,000, with the balance to be refunded to Owner, and the amount retained in escrow shall then constitute the full amount of Owner's Secured Contribution to the cost of the Western E-W Segment. Owner's Secured Contribution will be escrowed with the national title insurance company that has issued Owner's title insurance policy. The amount of Owner's Secured Contribution as determined by this Section 7 will be Owner's maximum contribution towards the construction of the Western E-W Segment. The term of the escrow agreement will be three (3) years after the date the escrow agreement is signed and the Security is deposited (the "Deposit Date"). If the Western E-W Segment is not constructed (or is not under construction) by Owner prior to the date of completion of construction of the First Building, the Security will be deposited by Owner at the time of Owner's application to the City for the final certificate of occupancy for the First Building. From and after the Deposit Date, the City will thereafter pursue all Approvals. If the City has not obtained all Approvals for the Western E-W Segment, the Path and P10 and does not commence construction of the Western E-W Segment within three (3) years after the Deposit Date, the Security 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 Approvals, the City will notify Owner in writing and will direct the escrow holder in writing to return the Security to Owner. The City shall not withhold the temporary or final certificate of occupancy for the First Building or any other building in the Development provided that either (i) Owner commences construction of the Western E-W Segment prior to the completion of the

First Building and issuance of the final certificate of occupancy for the First Building, or (ii) the Security is deposited by Owner as required by this Agreement. If the Owner commences construction of the Western E-W Segment as described herein but, prior to completing such construction, ceases construction for more than 30 days for any reason other than force majeure, the City shall have the right to withhold building permits or certificates of occupancy for buildings other than the First Building until such time as the Owner recommences such construction.

SECTION 8.

Should the Owner provide the Security described in Section 7 of this Agreement, the City agrees that in order to be entitled to apply Owner's Secured Contribution (as such amount is determined pursuant to Section 7 above) towards the cost of construction of the Western E-W Segment as provided in this Agreement, the City must obtain either (i) all Approvals for the construction of the Western E-W Segment, the Path, and entrance P10, or (ii) the Reduced Approvals and, in either such event, construct, or commence construction of, the Western E-W Segment not later than the date which is three (3) years after the Deposit Date. If the City timely obtains the Approvals and timely constructs or commences construction of the Western E-W Segment, then on completion by the City of the Western E-W Segment and provided that the City has obtained for Owner's benefit the Approvals for entrance P10 and the Path, Owner will be obligated to then construct the Path and entrance P10. In such event, the Path and entrance P10 will be completed by Owner not later than the later of (i) the completion date of the final of the three (3) buildings depicted on the Site Plan (the "Final Building"), or (ii) one (1) year after the City completes the Western E-W Segment. Should the City fail to construct or commence construction of the proposed Western E-W Segment by the date which is three (3) years after the Deposit Date, Owner will have no further obligation to construct, or pay the costs of construction of, the Western E-W Segment, the Path or P10 and the funds escrowed as the Security will be returned to Owner. Should the City only obtain the Reduced Approvals, Owner will have no obligation to construct or pay the costs of constructing the Path or P10. On the timely commencement and subsequent completion of the Western E-W Segment by the City, Owner will be obligated to pay to the City an amount equal to the actual cost of the same, not to exceed the amount of the Owner's Secured Contribution as then held by escrow agent as determined by this Agreement. The escrow agreement will be structured in a manner that is commercially reasonable so as to secure Owner's obligation to pay Owner's Secured Contribution pursuant to the express terms of this Agreement.

SECTION 9.

If only the Eastern E-W Segment is constructed, then for as long as it provides access solely to the Property, Owner will maintain the area as a private entrance to the Development. Owner agrees that, upon the completion of the entire East-West Connector Road and Path, Owner shall donate and dedicate the same (to the extent within the Property) at no cost to the City. The donation and dedication of the East-West Connector Road will occur by execution and delivery to the City of a deed or other instrument in a manner consistent with applicable legal requirements. The East-West Connector Road will be dedicated in fee simple by way of a right-of-way deed. At the Owner's discretion, the Path will either be dedicated in fee simple or by a

perpetual easement. The exact legal description of each portion of the Dedicated Property will be reasonably agreed to by Owner and the City. The City agrees to accept such dedication of the Dedicated Property upon completion of all required inspections and verification that the same has been constructed to applicable City standards and, thereafter, the City agrees to be responsible for maintaining and repairing the Dedicated Property as a public right-of-way and, as applicable, a public path for pedestrian and bicycle use. In addition, if at any time the Eastern E-W Segment is used for access to any property in addition to the Development, the City will take over the maintenance of the Eastern E-W Segment as public right-of-way and the Owner will, at that time, dedicate the Eastern E-W Segment.

SECTION 10.

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 Overall Development Plan for rezoning case #RZ15-072 approved and adopted by the Mayor and City Council of the City of Dunwoody on August 24, 2015 (the "ODP"), 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 ODP, 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, other transportation improvements in the City or elsewhere, such transportation improvements including, but not limited to, improvements to the Hammond Drive/Ashford – Dunwoody Road intersection, improvements to Hammond Drive, or improvements to or extensions of Gold Kist Drive. Owner and City further agree that if either party is obligated to construct the Western E-W Segment as provided in this Agreement, the construction will be diligently pursued to completion.

SECTION 11.

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 business on the Property. The Improvements will only be constructed if the Development is constructed, and only if and to the extent required by the terms of this Agreement, and Owner's construction obligations are subject to the express terms of this Agreement. If the Development is not constructed and if the Approvals (or Reduced Approvals, as the case may be) are not obtained, the Owner shall be relieved of any obligation to construct or fund the Improvements.

SECTION 12.

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 13.

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 of the ODP 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 14.

Notices will be given as follows:

IF TO CITY

Mr. Eric Linton, AICP
City Manager
City of Dunwoody, Georgia
41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346

With copy to: Leonid Felgin, Esq.
City Attorney
City of Dunwoody, Georgia
41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346

IF TO OWNER:

Mr. Bill Rogalski
Senior Investment Analyst
State Farm Insurance Companies
One State Farm Plaza, E-7
Bloomington, Illinois 61710

With copy to: Atlanta Office Investment, L.L.C.
c/o Alex Chambers, Esq.
KDC Real Estate Development & Investments
1040 Crown Pointe Parkway, Suite 1070
Atlanta, Georgia 30338

And copy to: Atlanta Office Investment, L.L.C.
c/o Mr. James F. George
KDC Real Estate Development & Investments
1040 Crown Pointe Parkway, Suite 1070
Atlanta, Georgia 30338

And copy to: Maureen Theresa Callahan, Esq.
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, NE
Atlanta, Georgia 30308

And copy to: Christiane M. Stoffer, Esq.
Associate General Counsel
State Farm Insurance Companies
One State Farm Plaza, A-3
Bloomington, Illinois 61710

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 appear on next page.]

SO AGREED this _____ day of _____, 2015.

NOTARY:

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

Sworn to and subscribed before me this
_____ day of _____, 20__.

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

NOTARY PUBLIC

My Commission Expires:_____

By:_____ (SEAL)

Name: Laurie Dotter

Title: President

APPROVED AS TO FORM:

ATTEST:_____
CITY CLERK

BY:_____
CITY ATTORNEY

DATE:_____

BY:_____
MICHAEL G. DAVIS
MAYOR, CITY OF DUNWOODY

DATE:_____

EXHIBIT "A"
(to Private Development Agreement)

DESCRIPTION OF PROPERTY

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°33'37" 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°41'07" East, 54.63 feet; thence,
3. North 51°18'53" West, 15.00 feet; thence,
4. North 38°36'53" 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°00'10" 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°46'17" East, 112.05 feet; thence,
7. 61.08 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 78°09'15" East, 59.89 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); thence running along the right of way line of Perimeter Center Parkway,
8. 25.65 feet along the arc of a curve deflecting to the right, having a radius of 29.50 feet and a chord bearing and distance of South 27° 11' 33" East, 24.85 feet; thence,
9. 28.47 feet along the arc of a curve deflecting to the left, having a radius of 364.79 feet and a chord bearing and distance of South 04° 21' 17" East, 28.47 feet; thence,
10. South 09° 42' 06" West, 24.78 feet; thence,
11. South 14° 08' 22" West, 31.94 feet; thence,
12. 69.87 feet along the arc of a curve deflecting to the left, having a radius of 382.15 feet and a chord bearing and distance of South 19° 45' 40" East, 69.77 feet; thence,
13. South 26° 36' 38" East, 168.18 feet; thence,
14. North 53° 13' 37" East, 7.98 feet; thence,
15. 13.66 feet along the arc of a curve deflecting to the right, having a radius of 7.50 feet and a chord bearing and distance of South 74° 35' 13" East, 11.85 feet; thence,
16. South 22° 24' 04" East, 2.53 feet; thence,
17. 47.67 feet along the arc of a curve deflecting to the right, having a radius of 833.33 feet and a chord bearing and distance of South 20° 55' 01" East, 47.66 feet; thence,
18. 73.44 feet along the arc of a curve deflecting to the right, having a radius of 314.55 feet and a chord bearing and distance of South 12° 39' 21" East, 73.28 feet; thence,

#15.

19. South 89° 05' 52" East, 4.14 feet; thence,
20. 177.94 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 South 14° 30' 53" West, 176.36 feet; thence,
21. South 27°45'19" West, 125.45 feet; thence,
22. South 37°16'29" West, 118.42 feet; thence,
23. South 34°48'05" West, 65.01 feet; thence leaving said right of way line of Perimeter Center Parkway,
24. 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°22'46" West, 17.45 feet; thence,
25. South 68°05'43" West, 58.40 feet; thence,
26. 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°59'56" West, 40.00 feet; thence,
27. 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°38'35" West, 63.92 feet; thence,
28. South 89°50'29" West, 429.34 feet to the west line of Land Lot 329; thence running along said Land Lot line,
29. North 00°07'53" West, 367.68 feet to the Point of Beginning, containing 555,140 square feet or 12.7443 acres of land, more or less.

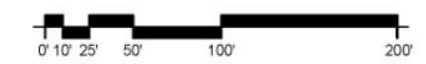
EXHIBIT "B"
(to Private Development Agreement)

**SITE PLAN OF PROPOSED DEVELOPMENT SHOWING THE APPROXIMATE
LOCATION OF THE EAST-WEST CONNECTOR ROAD IMPROVEMENT, MULTI-
USE PATH AND FUTURE PARKING ENTRANCES ("P5" & "P10")**

LEGEND

- P1 LOWER DECK
1 IN /1 OUT/2 REVERSABLE
- P2 LOWER DECK
RIGHT IN ONLY
- P3 PLAZA
1 RIGHT OUT/ 2 RIGHT IN
- P4 LOWER DECK
1 IN/1 OUT/1 REVERSABLE
- P5 PLAZA / B1
1 IN/ 1 OUT
- P6 UPPER DECK A+B
1 IN/1 OUT
- P7 UPPER DECK A+B
1 IN/1OUT
- P8 UPPER DECK B
1 IN/1 OUT
- P9 UPPER DECK C
1 IN/1 OUT
- P10 LOWER DECK
2 IN/ 2 OUT (FUTURE)
- S1 SERVICE BUILDING A
- S2 SERVICE BUILDING B+C

- - - - - POTENTIAL FUTURE R.O.W
- - - - - PROPERTY LINE
- - - - - 25' STREAM BUFFER
- - - - - 75' STREAM BUFFER



-352-



PARK CENTER – SITE PLAN

08.19.2015



