

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: July 11, 2016

Subject: **First Read: Permanent Easement Agreement for Palisades Venture, LLC**






BACKGROUND

Palisades Venture, LLC has requested a permanent easement on the city's property at 249 Perimeter Center Parkway for a fire lane driveway. This property is a right of way remnant from construction of Perimeter Center Parkway and, as can be seen on the attached site map, contains floodplain and topography that limit the potential for development. The easement area shown on the attached Exhibit C is 1,478 square feet.

RECOMMENDATION

It is staff's opinion that the construction of the roadway known as the east-west connector at an estimated cost to the Palisades developer of \$1,500,000 will provide transportation benefits to the public that exceed the value of the proposed easement.



-  Floodplain
-  State Stream Buffer
-  Property Dedicated for Roadway Projects
-  Proposed Permanent Easement for Fire Lane
-  East West Connector

**AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO
PALISADES VENTURE, LLC FOR A FIRE LANE DRIVEWAY ON CITY
PROPERTY AT 249 PERIMETER CENTER PARKWAY**

WHEREAS, Palisades Venture, LLC ("Grantee") plans to construct a building on the Palisades Office Park property at 5901 Peachtree Dunwoody Road; and

WHEREAS, as part of its development of its Property, the Grantee will construct the roadway referred to as the East-West Connector through the property from Peachtree Dunwoody Road to the Dunwoody city limit; and

WHEREAS, the Grantee desires a permanent easement on the City's property at 249 Perimeter Center Parkway for a fire lane driveway associated with the Grantee's proposed building; and

WHEREAS, the East-West Connector will improve the roadway network and provide additional transportation alternatives for vehicles, pedestrians and cyclists..

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council for the City of Dunwoody, that the Mayor, City Manager, and City Attorney are hereby authorized to execute all necessary documents to affect the granting of the Permanent Easement attached hereto and incorporated herein, to affect the granting of the easement as described herein.

SO RESOLVED AND EFFECTIVE, this ____ day of _____, 2016.

Approved:

Denis L. Shortal, Mayor

Attest:

Approved as to Form and Content

Sharon Lowery, City Clerk

City Attorney

(Seal)

FIRE LANE DRIVEWAY EASEMENT AGREEMENT (City of Dunwoody)

THIS FIRE LANE DRIVEWAY EASEMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of December, 2016, by and between CITY OF DUNWOODY, GEORGIA, a municipality of the State of Georgia ("Grantor"), and PALISADES VENTURE, L.L.C., a Delaware limited liability company ("Grantee"). (Grantor and Grantee are sometimes collectively referred to as the "Parties".)

RECITALS:

A. Grantor is the owner of that certain parcel of real property more particularly described on **Exhibit A**, attached hereto and incorporated herein (the "Grantor Property").

B. Grantee is the owner of that certain parcel of real property more particularly described on **Exhibit B**, attached hereto and incorporated herein (the "Grantee Property"), on which Grantee anticipates constructing certain improvements.

C. Grantee desires to construct a fire lane driveway within the Easement Property to provide emergency fire access on the east side of Grantee's proposed building.

D. Grantor is willing to grant Grantee the easement and rights more particularly described herein.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. Fire Lane Driveway Easement. Grantor hereby grants to Grantee, for the benefit of and as an appurtenance to the Grantee Property and for the use by Grantee, its successors and assigns and Grantee's agents, a perpetual, exclusive easement over, under, through and across the Easement Property for the purpose of constructing and maintain a fire lane driveway.

2. Construction and Maintenance Standards; Operation Standards.

(a) Grantee will construct the fire lane driveway in accordance with plans and specifications that will be submitted to, and approved by, Grantor. The fire lane driveway will be maintained in accordance with first class maintenance standards. Grantee will perform the construction and all repair and replacement work in a good and workmanlike manner and in accordance with: (i) all permits and approvals, including plan approvals, obtained in connection with the work, (ii) all applicable laws, codes, ordinances, rules and regulations, and (iii) sound engineering principles. If any construction, maintenance, repair or replacement work will impact traffic on any public rights-of-way, then Grantee will comply with a traffic management plan developed by Grantee and approved by Grantor. After commencing construction of the fire lane driveway, Grantee will diligently and expeditiously pursue such work to completion.

Grantee agrees that if the maintenance standard set forth above is not complied with after written notice to Grantee (the "First Maintenance Notice") and a period of thirty (30) days to perform the required maintenance (with such longer period of time permitted if the scope of the maintenance

requires it; as long as Grantee commences the work and diligently prosecutes it to completion), then, in such event, Grantor may elect on written notice to Grantee (the "Second Maintenance Notice") to perform (or cause to be performed) the required maintenance.

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

3. Indemnification. Grantee hereby agrees to indemnify Grantor and hold Grantor harmless from any and all actual damages which Grantor may suffer and from any and all direct and actual liability, costs, and expenses arising out of the exercise of the easements and rights granted in this Agreement (including cost of defense, settlement, and reasonable attorneys' fees) which Grantor may hereafter incur, become responsible for, or pay out as a result of the death or bodily injuries to any person, destruction or damage to any property, or any violations of governmental laws, regulations or orders caused solely by the negligent act, negligent omissions or willful misconduct of Grantee, its employees or contractors in the performance of this Agreement.

4. Insurance. Grantee shall obtain and furnish applicable insurance certificates to Grantor for the following amounts of insurance and the insurance shall be maintained in full force and effect during life of the Agreement:

- (a) Commercial General Liability Insurance providing coverage for injuries to persons as well as damage to property in an amount not less than One Million and 00/100 dollars (\$1,000,000.00).

5. Run with the Land; Governing Law; Contiguous Property. The rights, easements and obligations established in this Agreement will run with the land and are for the benefit of Grantor, Grantee, Grantee's successors in title and all Grantee Parties and shall be binding upon Grantee, its successors in title and, to the extent allowable by law, upon Grantor. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. Any property deeded to Grantee in the future that is contiguous to the Grantee Property as described on Exhibit C automatically will be deemed to be part of the Grantee Property.

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

7. Notices. All notices, consents, requests, demands or other communications given to or upon the respective Party shall be in writing and shall be effective for all purposes upon receipt when given by (i) personal delivery; (ii) delivery by messenger, express or air courier or similar courier; or (iii) delivery by United States first class certified or registered mail, postage prepaid and addressed as follows:

GRANTOR: City of Dunwoody
c/o City Manager
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30346

WITH A COPY TO: Leonid Felgin, Esq.
Riley McLendon, LLC
315 Washington Avenue
Marietta, Georgia 30060

GRANTEE: Palisades Venture, L.L.C.

[Signatures begin on next page]

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

GRANTOR:

Signed, sealed and delivered
in the presence of:

CITY OF DUNWOODY, GEORGIA

Witness

By: _____

Name: _____

Title: _____

Notary Public

My Commission Expires:

[CORPORATE SEAL]

(NOTARY SEAL)

[Signatures continue on the following page]

GRANTEE:

Signed, sealed and delivered
in the presence of:

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

By:

Notary Public

My Commission Expires:

By: _____ (SEAL)

Name: _____

Title: _____

(NOTARY SEAL)

EXHIBIT A

DESCRIPTION OF EASEMENT PROPERTY

Legal Description to Be Inserted

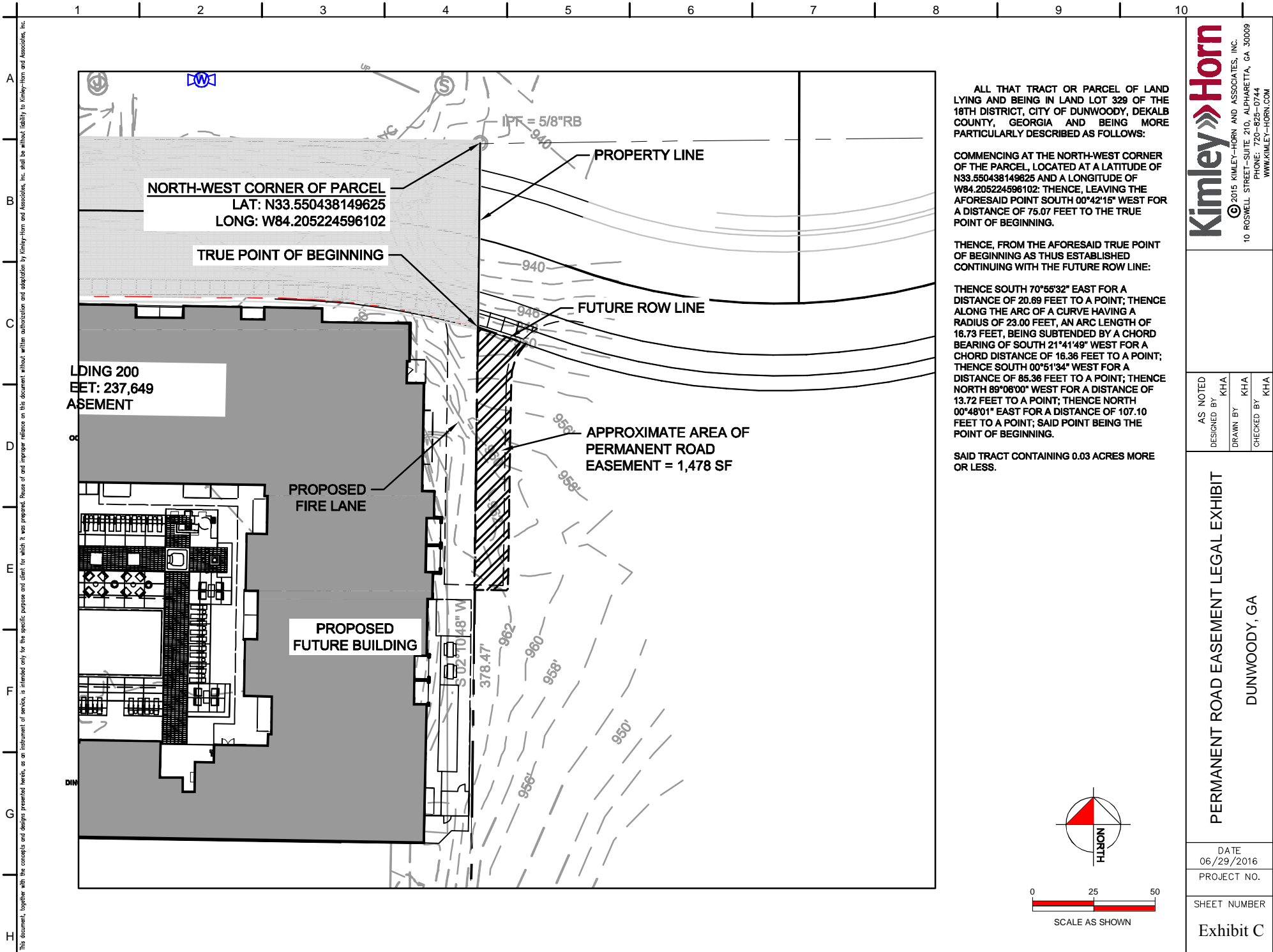
EXHIBIT B

GRANTEE PROPERTY

Legal Description to Be Inserted

Drawing name: K:\ALP_PR\019573010_Pollasades Multi-Family\CADD\Exhibits\2016-06-28 Fire Lane Easement\2016-06-28 Fire Lane Easement.dwg Legal Exhibit Jun 30, 2016 8:13am by Emily.Flood

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ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 329 OF THE 18TH DISTRICT, CITY OF DUNWOODY, DEKALB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH-WEST CORNER OF THE PARCEL, LOCATED AT A LATITUDE OF N33.550438149625 AND A LONGITUDE OF W84.205224596102: THENCE, LEAVING THE AFORESAID POINT SOUTH 00°42'15" WEST FOR A DISTANCE OF 75.07 FEET TO THE TRUE POINT OF BEGINNING.

THENCE, FROM THE AFORESAID TRUE POINT OF BEGINNING AS THUS ESTABLISHED CONTINUING WITH THE FUTURE ROW LINE:

THENCE SOUTH 70°55'32" EAST FOR A DISTANCE OF 20.69 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE HAVING A RADIUS OF 23.00 FEET, AN ARC LENGTH OF 16.73 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 21°41'49" WEST FOR A CHORD DISTANCE OF 16.36 FEET TO A POINT; THENCE SOUTH 00°51'34" WEST FOR A DISTANCE OF 85.36 FEET TO A POINT; THENCE NORTH 89°06'00" WEST FOR A DISTANCE OF 13.72 FEET TO A POINT; THENCE NORTH 00°48'01" EAST FOR A DISTANCE OF 107.10 FEET TO A POINT; SAID POINT BEING THE POINT OF BEGINNING.

SAID TRACT CONTAINING 0.03 ACRES MORE OR LESS.

Kimley»Horn
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WWW.KIMLEY-HORN.COM

AS NOTED	KHA
DESIGNED BY	KHA
DRAWN BY	KHA
CHECKED BY	KHA

PERMANENT ROAD EASEMENT LEGAL EXHIBIT

DUNWOODY, GA

DATE
06/29/2016

PROJECT NO.

SHEET NUMBER

Exhibit C