

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Smith, Public Works Director

**Date:** July 11, 2016

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

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### **BACKGROUND**






Palisades Venture, LLC has requested a temporary construction easement on the city's property at 249 Perimeter Center Parkway for the purposes of constructing a roadway referred to as the East-West Connector. 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 allows for the construction of the embankment of the roadway and a proposed fire lane along the east side of the future building. The easement would expire upon completion of the construction. The engineer's estimate of the cost for the roadway improvements to be provided by the Palisades developer is \$1,500,000.

### **RECOMMENDATION**

Staff recommends approval of the ordinance to grant the temporary 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 THE PURPOSE OF CONSTRUCTING  
ROADWAY IMPROVEMENTS AND A FIRE LANE 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 needs a temporary construction easement on the City's property at 249 Perimeter Center Parkway to construct the embankment for the roadway and a fire lane 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 Temporary Construction 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)

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

(City of Dunwoody, Georgia)

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 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 sometimes are 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. Grantor is willing to grant Grantee the easement and rights more particularly described herein.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars and for other good and valuable considerations, the receipt, adequacy and sufficiency are hereby acknowledged, the parties do hereby covenant and agree as follows:

#### 1. Temporary Construction Easement.

(a) Grantor hereby grants to Grantee, for the use by Grantee and its successors, assigns, agents and contractors, a temporary easement on the Grantor Property for construction equipment to enter and encroach into, onto, and/or through the Grantor Property for the purposes of constructing a roadway known as the East-West Connector and a fire lane. The easement area is generally depicted on **Exhibit C** attached hereto and made a part hereof (the "Temporary Construction Easement Area"). .

(b) The foregoing easement shall automatically terminate with respect to the applicable construction without further action by the Parties on the earlier to occur of (i) the date upon which Grantee completes construction of the roadway, or (ii) December 31, 2018.

2. 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 subcontractors in the performance of this Agreement.

3. 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).

4. Run with the Land; Governing Law. The rights, easements and obligations established in this Agreement will run with the land and shall be binding upon and inure to the benefit of Grantee, its assigns and successors 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.

5. Recordation; Counterparts. This Agreement shall be recorded in the real property records of DeKalb County, Georgia, and inure to all subsequent purchasers, transferors and assigns of the Grantee Property, until otherwise terminated according to the provisions set forth herein. This Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which taken together will constitute one and the same agreement.

6. Notices. All notices, consents, requests, demands or other communications to or upon the respective party shall be in writing and shall be effective for all purposes upon receipt, including, but not limited to (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.  
5605 Glenridge Dr. NE, Ste 775  
Atlanta, GA 30342

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

**GRANTOR:**

Signed, sealed and delivered  
in the presence of:

**CITY OF DUNWOODY, GEORGIA**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[CORPORATE SEAL]

My Commission Expires:

\_\_\_\_\_  
(NOTARY SEAL)

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

**GRANTEE:**

Signed, sealed and delivered  
in the presence of:

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

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Notary Public

Name: \_\_\_\_\_

My Commission Expires:

Title: \_\_\_\_\_

\_\_\_\_\_  
(NOTARY SEAL)

**EXHIBIT A**  
**GRANTOR PROPERTY**

*Legal Description to Be Inserted*



**EXHIBIT B**

**GRANTEE PROPERTY**

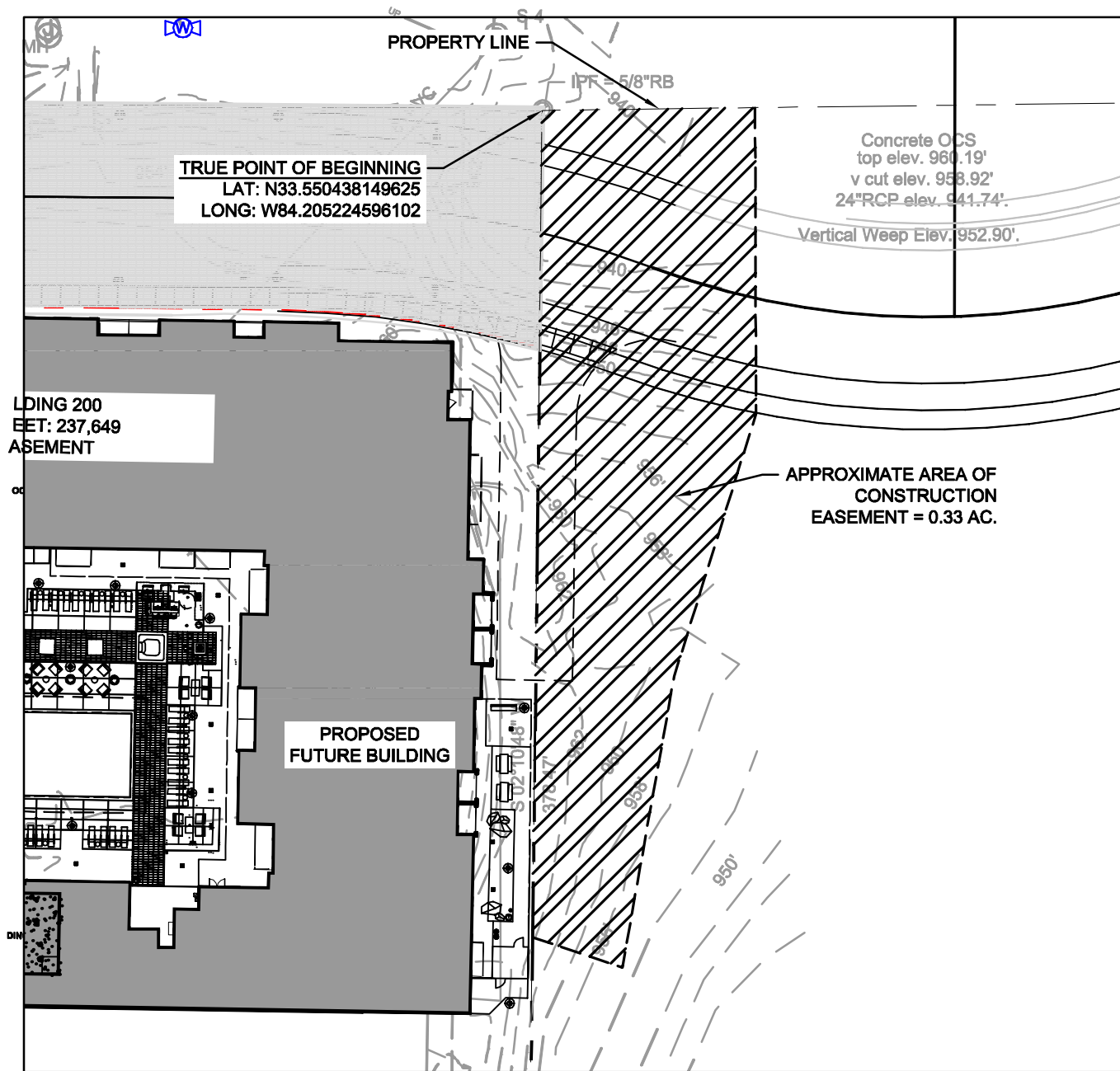
*Legal Description to Be Inserted*

**EXHIBIT C**

**TEMPORARY CONSTRUCTION EASEMENT AREA**

See attached page

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kinley-Horn and Associates, Inc. shall be without liability to Kinley-Horn and Associates, Inc.



SCALE AS SHOWN

SHEET NUMBER  
EXHIBIT C