

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: October 10, 2016

Subject: **FIRST READ: Ordinance Authorizing the Granting of an Easement to Atlanta Office Investment for a Crane Swing Easement. (ORDINANCE 2016-XX-XX) (Michael Smith)**

ITEM DESCRIPTION

Discussion of an aerial easement for Atlanta Office Investment to allow for the swing of the tower crane above the right of way during construction of Phase II of the State Farm development.

BACKGROUND

Construction plans for Phase II of the State Farm development at Perimeter Center Parkway and Hammond Drive require the use of a tower crane. It will be necessary at times during construction of the building for the crane to swing over the right of way due to the size of the crane relative to the area of the construction site. The areas of aerial encroachment over the right of way are indicated on the attached exhibit.

The developer for the project has requested a temporary right of way easement to allow for the swing of the crane during construction. The agreement expires upon removal of the crane at the completion of construction or December 31, 2020 whichever occurs first.

RECOMMENDED ACTION

Staff recommends approval of the right of way easement.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2016-10-XX

AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO ATLANTA OFFICE INVESTMENT, LLC FOR THE PURPOSE OF USE AND SWING OF A CRANE OVER THE RIGHTS OF WAY OF HAMMOND DRIVE, AND PERIMETER CENTER PARKWAY

WHEREAS, Atlanta Office Investment, LLC owns that piece of property located along Hammond Drive and Perimeter Center Parkway, described specifically in the Temporary Crane Swing Easement Agreement attached hereto and incorporated herein by reference; and

WHEREAS, as part of its development of its Property, Atlanta Office Investment, for the purpose of construction of the structures on said property, is in need of employing the use of a construction crane operating on the Property; and

WHEREAS, said construction crane’s booms and associated tackles would need to swing over the rights-of-way of Hammond Drive and Perimeter Center Parkway, which are streets owned by the City of Dunwoody; and

WHEREAS, in order to utilize said construction cranes over the City’s rights-of-way, Atlanta Office Investment necessitates a temporary easement to be effective during the time the cranes will be utilized for construction in order to secure air rights over the City’s rights-of-way delineated here, through the execution of the Temporary Crane Swing Easement Agreement attached hereto.

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, including the Temporary Crane Swing Easement Agreement attached hereto and incorporated herein, to affect the granting of the Temporary Crane Swing Easement as described herein.

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

Approved:

Denis L. Shortal, Mayor

Approved as to Form and Content

Attest:

Sharon Lowery, City Clerk

City Attorney

(Seal)

UPON RECORDING RETURN TO:

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

TEMPORARY CRANE SWING EASEMENT AGREEMENT
(Phase II / City of Dunwoody, Georgia)

THIS TEMPORARY CRANE SWING 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 ATLANTA OFFICE INVESTMENT, 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 the real property described on **Exhibit A**, attached hereto and incorporated herein (the "Grantor Property").
- B. Grantee is the owner of the real property 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 easements 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 Crane Swing Easement.

(a) Grantor grants to Grantee, for the use by Grantee and its successors, assigns, agents and contractors, a temporary easement over the Grantor Property for the booms and associated tackle of two (2) construction cranes located on and operating from the Grantee Property to enter and

encroach into, onto, and/or through the air space located above the Grantor Property and above the improvements located thereon. The tentative travel paths of such construction crane arms are generally depicted on Exhibit C attached hereto and made a part hereof (the "Crane Swing Easement Area"). Grantee shall have the right to make non-material modifications to the Crane Swing Easement Area and any such non-material modifications shall automatically amend the location of the Crane Swing Easement Area without any further action on the part of any Parties.

(b) The foregoing easement will terminate with respect to the applicable construction crane(s) without further action by the Parties on the earlier to occur of (i) the date upon which Grantee removes the construction crane(s) from the Grantee Property and confirms in writing to Grantor that Grantee no longer requires the use of the construction crane(s), or (ii) December 31, 2020.

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 successors and assigns and 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.

5. Recordation; Counterparts. This Agreement shall be recorded in the real property records of DeKalb County, Georgia, and inure to all subsequent purchasers, transferees 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: Atlanta Office Investment, L.L.C.
c/o State Farm Mutual Automobile Insurance Company
1 State Farm Plaza E-7
Bloomington, Illinois 61710
Attention: John Higgins, Investment Executive

WITH A COPY TO: Atlanta Office Investment, L.L.C.
c/o State Farm Mutual Automobile Insurance Company
1 State Farm Plaza A-3
Bloomington, Illinois 61710
Attention: Christiane M. Stoffer, Associate General Counsel

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal by their duly authorized representatives 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:

(NOTARY SEAL)

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

GRANTEE:

Signed, sealed and delivered
in the presence of:

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

Witness

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

Notary Public

By: _____ (SEAL)

My Commission Expires:

Name: Laurie Dotter

Title: President

(NOTARY SEAL)

#11.

EXHIBIT A

GRANTOR PROPERTY

Those certain tracts or parcels of land commonly known as the public rights-of-way of Hammond Drive and Perimeter Center Parkway in the City of Dunwoody, DeKalb County, Georgia.

EXHIBIT B**GRANTEE 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,
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,

#11.

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 C

CRANE SWING EASEMENT AREA

[See attached page]



LOCATION MAP

LAT. 33° 55' 02.82" N, LONG. 84° 20' 42.27" W

REFERENCE MATERIAL

- 1. ALL INFORMATION ON THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED.
- 2. THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED AND HAS FOUND IT TO BE REASONABLY ACCURATE.
- 3. THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED AND HAS FOUND IT TO BE REASONABLY ACCURATE.
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LEGEND

SYMBOL	DESCRIPTION
(Symbol)	EXISTING CURB
(Symbol)	EXISTING SIDEWALK
(Symbol)	EXISTING DRIVE
(Symbol)	EXISTING SIDEWALK
(Symbol)	EXISTING DRIVE
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(Symbol)	EXISTING SIDEWALK
(Symbol)	EXISTING DRIVE
(Symbol)	EXISTING SIDEWALK
(Symbol)	EXISTING DRIVE

PROPERTY DESCRIPTION

The subject property is bounded on the north by Hammond Drive, on the east by the Public Variable Right of Way, on the south by the Public Variable Right of Way, and on the west by the Public Variable Right of Way. The subject property is bounded on the north by Hammond Drive, on the east by the Public Variable Right of Way, on the south by the Public Variable Right of Way, and on the west by the Public Variable Right of Way. The subject property is bounded on the north by Hammond Drive, on the east by the Public Variable Right of Way, on the south by the Public Variable Right of Way, and on the west by the Public Variable Right of Way.

SURVEYORS CERTIFICATE

I, the undersigned, being a duly qualified and licensed Professional Engineer and a duly qualified and licensed Surveyor in the State of Alabama, do hereby certify that I am the author of this plan and that I am a duly qualified and licensed Professional Engineer and a duly qualified and licensed Surveyor in the State of Alabama. I am the author of this plan and that I am a duly qualified and licensed Professional Engineer and a duly qualified and licensed Surveyor in the State of Alabama.

SURVEY NOTES

1. ALL INFORMATION ON THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED.
2. THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED AND HAS FOUND IT TO BE REASONABLY ACCURATE.
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TITLE NOTES

1. ALL INFORMATION ON THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE SURVEYOR HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE INFORMATION PROVIDED.

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PERIMETER CENTER PARKWAY
(PUBLIC VARIABLE RIGHT OF WAY)
GDOT PROJECT #HPP-0000-00(949)
DB. 16716 PAGE 416

Tower Crane #1

Tower Crane #2

HAMMOND DRIVE
PUBLIC VARIABLE RIGHT OF WAY