

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: October 10, 2016

Subject: **FIRST READ: Ordinance Authorizing the Granting of a Temporary Easement to Atlanta Office Investment, LLC for**

ITEM DESCRIPTION

Discussion of a temporary right of way easement for Atlanta Office Investment, LLC to allow for the installation of temporary tiebacks that will anchor the shoring system necessary to excavate the parking deck for 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 deep excavation adjacent to the right of way. The excavation will require a shoring system to restrain the walls of the excavation and protect adjacent roadway and structures. The shoring system is supported by anchor`s drilled into the ground adjacent to the excavation. It will be necessary for some of these anchors to extend beneath city right of way in the areas shown on the attached exhibit.

The developer for the project, Atlanta Office Investment, LLC has requested a temporary right of way easement to allow for installation of these anchors beneath the right of way of Perimeter Center Parkway. As outlined in the proposed temporary easement, the developer will be required to cut or de-tension the anchors upon completion of the construction and the easement will terminate at that time or on 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 INSTALLING AND MAINTAINING UNDERGROUND FOUNDATION ANCHOR TIEBACK FACILITIES LOCATED ALONG CERTAIN RIGHT-OF-WAY ON PERIMETER CENTER PARKWAY

WHEREAS, Atlanta Office Investment, LLC ("Indemnitor") owns that piece of property located along Hammond Drive and Perimeter Center Parkway, described specifically in the Encroachment and Indemnification Agreement attached hereto and incorporated herein by reference; and

WHEREAS, as part of its development of its Property, Indemnitor, for the purpose of stabilization of its site during development, is in need of foundation anchoring via an anchor tieback facility that needs to extend into the rights-of-way of Perimeter Center Parkway; and

WHEREAS, Indemnitor agrees to maintain said anchor tieback facilities as described in the Encroachment and Indemnification Agreement and agrees to restore the surface and abandon the facilities upon termination of the easement and the Encroachment and Indemnification Agreement; and

WHEREAS, in order to secure the development site and provide for the proper safety and welfare of the residents of the City as well as travelers in and around said development, the City is willing to grant said Anchor Tieback easement to Indemnitor through the execution of the Encroachment and Indemnification 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 Encroachment and Indemnification Agreement attached hereto and incorporated herein, to affect the granting of the Anchor Tieback Easement as described herein.

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

Approved:

Denis L. Shortal, Mayor

Attest:

Approved as to Form and Content

Sharon Lowery, City Clerk

City Attorney

(Seal)

Please return to:
 Leonid Felgin, Esq.
 Riley McLendon, LLC
 315 Washington Avenue
 Marietta, Georgia 30060

**ENCROACHMENT AND INDEMNIFICATION AGREEMENT
 (PHASE II / TIEBACKS - Perimeter Center Parkway)**

THIS AGREEMENT, made this _____ day of _____, 2016, between ATLANTA OFFICE INVESTMENT, L.L.C., a Delaware limited liability company (the "Indemnitor"), and the CITY OF DUNWOODY, GEORGIA, a municipality of the State of Georgia (the "City").

For good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1

The City grants to Indemnitor the right to enter into a portion of the City right-of-way located along Perimeter Center Parkway for the purpose of installing and maintaining certain underground foundation anchor tieback facilities (the "Facilities") located within said right-of-way areas as shown on the attached Exhibit "A" and as further described on the attached Exhibit "B" (together, the "Encroachment Areas") and further grants Indemnitor such additional rights as may be described herein. The foregoing rights benefit certain property owned by Indemnitor as referenced in and recorded at Deed Book 23982, Page 184 and Deed Book 23982, Page 190, Land Lots 329 and 348, District 18 of DeKalb County, Georgia records and as is more fully described in the attached Exhibit "C" ("Indemnitor's Property").

2

With respect to this Agreement, the Indemnitor shall maintain the Facilities within the Encroachment Areas in a manner which complies with all applicable federal, state, and local laws and regulations.

3

This Agreement shall commence on the date of execution hereof and shall continue in full force and effect until the earlier of: (i) the completion of the portion of the work on the Indemnitor's Property necessitating the Facilities, and (ii) December 31, 2020.

4

Upon the termination of this Agreement: (i) the Indemnitor shall restore the surface of the Encroachment Area to its currently improved condition (which is paved and contains sidewalks) and Indemnitor will provide a letter to the City from Indemnitor's contractor confirming that all anchors within the right of way have been unloaded or detensioned, and (ii) the Facilities shall be deemed abandoned and the Indemnitor shall not be required to remove the Facilities.

5

The Indemnitor agrees that its maintenance activities will not adversely impact the right-of-way. In the event that any activities of Indemnitor do impact the rights-of-way on a temporary basis, the Indemnitor shall promptly return the disturbed area to its prior condition. The Indemnitor or its employees, agents or assigns shall perform all work on the right-of-way in a good and workmanlike manner and in compliance with all applicable governmental laws, ordinance and regulations.

6

Subject to the limitations in Section 8 below, the City personnel and/or agents shall have free access to and across the right-of-way to perform routine maintenance and any emergency repairs when needed to protect the health, safety and general welfare of the public.

7

The Indemnitor shall be solely responsible for the Facilities within the Encroachment Areas and the City grants the Indemnitor a right of access in order to carry out these obligations.

8

The City acknowledges and agrees that the disturbance of the Encroachment Areas could result in material and permanent structural damage to the improvements located on Indemnitor's Property. Accordingly, the City acknowledges and agrees that it will not disturb the Encroachment Areas without

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prior, written notice to the Indemnitor so that the parties may coordinate, plan and schedule any such disturbance so as to avoid any damage to the Facilities.

9

The Indemnitor hereby agrees to indemnify the City and hold the City harmless from any and all actual damages which the City 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 the City 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 the Indemnitor, its employees or subcontractors in the performance of this Agreement.

10

The Indemnitor agrees to repair or replace in a manner acceptable to the City and/or the owner thereof any public utilities damaged by its employees or subcontractors during performance of this Agreement. At its election, the City may repair or replace the damaged utility and assess all costs against the Indemnitor. Time is of the essence in all repairs or replacements. If any public utility is damaged by Indemnitor's employees or subcontractors, Indemnitor shall promptly notify the City.

11

The Indemnitor shall obtain and furnish applicable insurance certificates to the City 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).

12

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 the Indemnitor, its assigns and successors and to the

extent allowable by law, upon the City. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

13

This Agreement shall be recorded in the real property records of DeKalb County, Georgia, and inure to all subsequent purchasers, transferors and assigns of Indemnitor's 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.

14

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 (1) 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:

CITY:	City of Dunwoody c/o City Manager 41 Perimeter Center East, Suite 250 Dunwoody, GA 30346
WITH A COPY TO:	Leonid Felgin, Esq. Riley McLendon, LLC 315 Washington Avenue Marietta, Georgia 30060
INDEMNITOR:	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 next page]

This Agreement has been executed by the duly authorized representatives of the parties as of the date first written above.

INDEMNITOR:

Signed, sealed and delivered in
the presence of:

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

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

Witness

Notary Public

By: _____(SEAL)

Name: Laurie Dotter

Title: President

My Commission Expires:_____

(NOTARY SEAL)

[Signatures continue on next page]

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CITY:

Signed, sealed and delivered in
the presence of:

CITY OF DUNWOODY, GEORGIA

Witness

By: _____
Name: _____
Title: _____

Notary Public

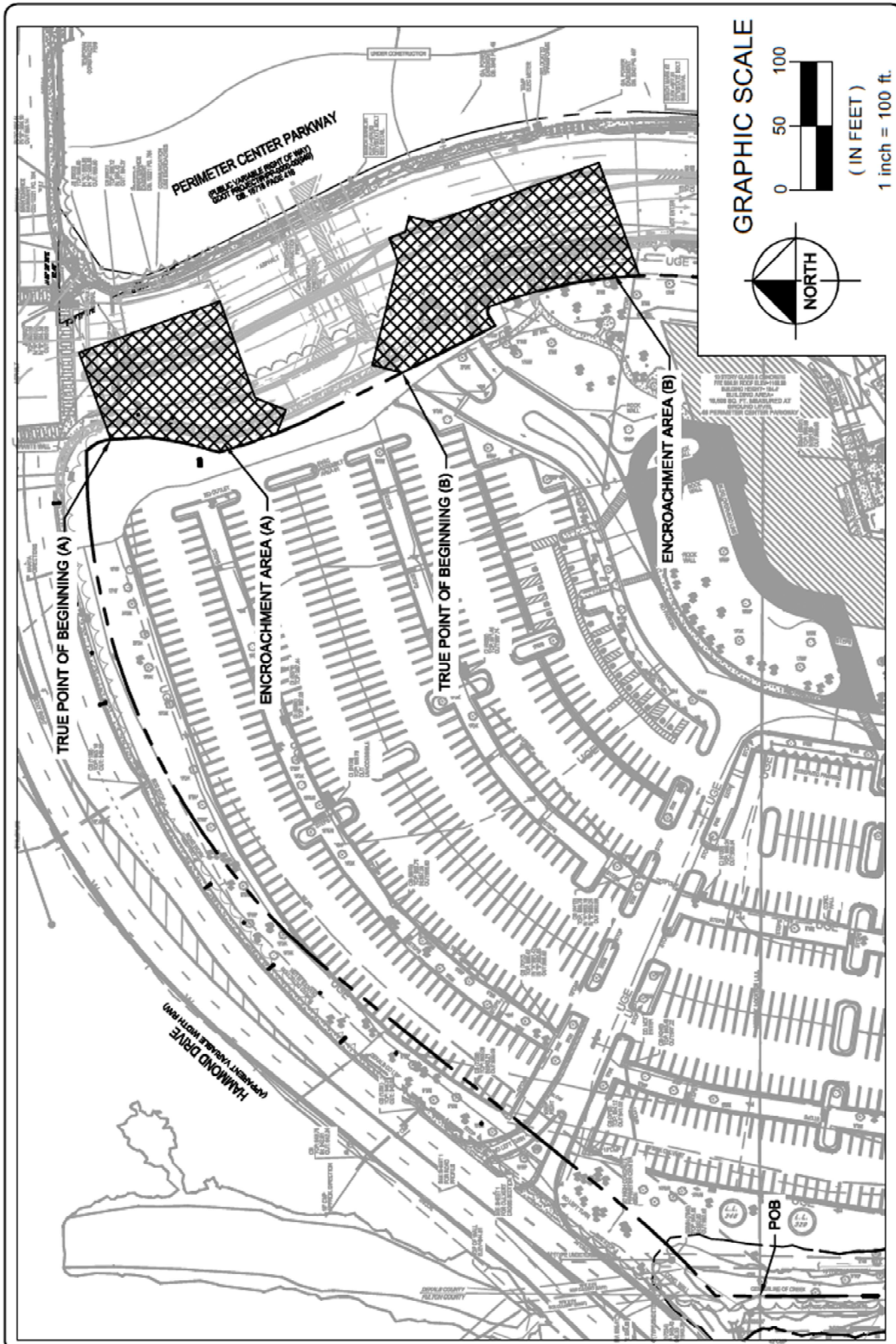
My Commission Expires: _____

(NOTARY SEAL)

[End of signatures]

EXHIBIT "A"
DEPICTION OF ENCROACHMENT AREAS

[See attached page]



Kimley»Horn 10 ROSWELL STREET, SUITE 210 ALPHARETTA, GEORGIA 30009 PHONE: (770) 619-4260 www.kimley-horn.com	PROJECT: STATE FARM PHASE II ATLANTA HUB	CLIENT: KDC REAL ESTATE DEVELOPMENT & INVESTMENTS	TITLE: ENCROACHMENT AREA (A) & ENCROACHMENT AREA (B)	DATE: SEPTEMBER 28, 2016
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EXHIBIT "B"**LEGAL DESCRIPTION OF ENCROACHMENT AREAS****Encroachment Area (A)**

All that tract or parcel of land lying and being in Land Lot 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, leaving the aforesaid point North 52°53'17" East for a distance of 840.86 feet to a point; said point being the True Point of Beginning (A).

Thence, from said True Point of Beginning (A) as thus established:

1. North 69°54'05" East for a distance of 72.53 feet;
2. Thence, South 20°05'55" East for a distance of 117.00 feet;
3. Thence, South 69°54'05" West for a distance of 80.52 feet;
4. Thence, South 21°11'24" West for a distance of 26.05 feet;
5. Thence, North 68°48'36" West for a distance of 19.65 feet;
6. Thence, along the arc of a curve having a radius of 382.15 feet, an arc length of 47.51 feet, being subtended by a chord bearing of North 18°05'06" West for a chord distance of 47.48 feet;
7. Thence, North 14°08'22" East for a distance of 31.94 feet;
8. Thence, along the arc of a curve having a radius of 41132.80 feet, an arc length of 24.79 feet, being subtended by a chord bearing of North 09°41'40" East for a chord distance of 24.79 feet;
9. Thence, along the arc of a curve having a radius of 364.79 feet, an arc length of 28.46 feet, being subtended by a chord bearing of North 04°21'13" West for a chord distance of 28.46 feet;
10. Thence, along the arc of a curve having a radius of 29.50 feet, an arc length of 0.90 feet, being subtended by a chord bearing of North 03°09'16" West for a chord distance of 0.90 feet to the True Point of Beginning (A), containing 0.27 acres of land, more or less.

POB SHOWN ON THE ALTA/ACSM LAND TITLE SURVEY PREPARED BY TERRAMARK LAND SURVEYING, INC. FOR ATLANTA OFFICE INVESTMENT, L.L.C., STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, TRANSWESTERN INVESTMENT MANAGEMENT, L.L.C., GENERAL ELECTRIC CREDIT EQUITIES, INC., AND CHICAGO TITLE INSURANCE COMPANY, DATED AUGUST 12, 2013.

Encroachment Area (B)

All that tract or parcel of land lying and being in Land Lot 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, leaving the aforesaid point North 68°50'57" East for a distance of 775.31 feet to a point; said point being the True Point of Beginning (B).

Thence, from said True Point of Beginning (B) as thus established:

1. North $13^{\circ}53'20''$ east for a distance of 24.01 feet;
2. Thence, South $76^{\circ}06'40''$ East for a distance of 83.37 feet;
3. Thence, North $70^{\circ}11'31''$ East for a distance of 19.79 feet;
4. Thence, South $19^{\circ}48'29''$ East for a distance of 13.20 feet;
5. Thence, South $76^{\circ}06'40''$ East for a distance of 12.84 feet to a point;
6. Thence, South $13^{\circ}53'20''$ West for a distance of 19.26 feet;
7. Thence, South $19^{\circ}48'29''$ East for a distance of 137.67 feet;
8. Thence, South $70^{\circ}11'31''$ West for a distance of 93.98 feet to a point;
9. Thence, along the arc of a curve having a radius of 372.48 feet, an arc length of 120.71 feet, being subtended by a chord bearing of North $11^{\circ}45'54''$ West for a chord distance of 120.18 feet;
10. Thence, along the arc of a curve having a radius of 7.50 feet, an arc length of 8.87 feet, being subtended by a chord bearing of South $87^{\circ}06'32''$ West for a chord distance of 8.36 feet;
11. Thence, South $53^{\circ}13'37''$ West for a distance of 7.98 feet;
12. Thence, North $26^{\circ}36'38''$ West for a distance of 81.76 feet to The True Point of Beginning (B), containing 0.40 acres of land, more or less.

POB SHOWN ON THE ALTA/ACSM LAND TITLE SURVEY PREPARED BY TERRAMARK LAND SURVEYING, INC. FOR ATLANTA OFFICE INVESTMENT, L.L.C., STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, TRANSWESTERN INVESTMENT MANAGEMENT, L.L.C., GENERAL ELECTRIC CREDIT EQUITIES, INC., AND CHICAGO TITLE INSURANCE COMPANY, DATED AUGUST 12, 2013.

EXHIBIT "C"**LEGAL DESCRIPTION OF INDEMNITOR'S 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,
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,

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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.