

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: September 26, 2016

Subject: **Second Read: Ordinance to Grant a Temporary Easement for Roadway Construction to Atlanta Office Investment**

BACKGROUND

As part of Phase II of the State Farm development Atlanta Office Investment has committed, through a development agreement with the city, to construct a roadway that will ultimately connect between Perimeter Center Parkway and Peachtree Dunwoody Road. A portion of this roadway will extend through the northern end of city property at 249 Perimeter Center Parkway. In order to construct the roadway that will ultimately be dedicated as public right of way, Atlanta Office Investment needs a temporary easement to enter onto city property for purposes of constructing the road.

RECOMMENDED ACTION

Staff recommends approval of the ordinance to grant a temporary easement for road construction.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2016-XX-XX

AN ORDINANCE AUTHORIZING THE GRANTING OF A TEMPORARY EASEMENT TO ATLANTA OFFICE INVESTMENT, LLC FOR THE PURPOSE OF CONSTRUCTING A PUBLIC ROADWAY

WHEREAS, Atlanta Office Investment Phase I, LLC ("Grantee") owns that piece of property located along Hammond Drive and Perimeter Center Parkway, described specifically in the Temporary Construction Easement Agreement attached hereto and incorporated herein by reference; and

WHEREAS, as part of its development of its Property, Grantee has agreed to build a new roadway that will ultimately connect Perimeter Center Parkway and Peachtree Dunwoody Road; and

WHEREAS, a portion of the roadway will be located on property owned by the City of Dunwoody (Grantor) described specifically in the Temporary Construction Easement Agreement; and

WHEREAS, it will be necessary for the Grantee to enter Grantor's property for the purposes of constructing the roadway; and

WHEREAS, the City believes that the new roadway to be constructed will be a beneficial addition to the road network.

NOW, IT IS HEREBY ORDAINED, by the Mayor and Council for the City of Dunwoody, that the Temporary Construction Easement Agreement as attached hereto and incorporated herein, is hereby approved and the Mayor, City Manager, and City Attorney are hereby authorized to execute all necessary documents therefor, to affect the granting of the Temporary Construction 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.

Cross Reference:

Deed Book 25248, Page 140,
Records of the Clerk of Superior
Court of DeKalb County, Georgia

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

(Phase II / City of Dunwoody, Georgia)

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is 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 and Grantee entered into a Private Development Agreement dated September 9, 2015 and recorded in Deed Book 25248, Page 140, in the Records of the Superior Court of DeKalb County, Georgia (the "Development Agreement"). Among other things, the Development Agreement contemplates the construction of a mixed-use development on the Grantee Property (the "Development").

D. In furtherance of and as contemplated by the Development Agreement, Grantor has agreed to grant a temporary construction easement to Grantee over the land described on Exhibit C and depicted on Exhibit D, both attached hereto and incorporated herein (the "Construction Easement Area"), on the terms and conditions contained in this Agreement.

E. 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 consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. Temporary Construction 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 following purposes:

(i) For construction access, parking, and the delivery and staging of materials and equipment as necessary for the construction of the Development, the East-West Connector Road and the other Improvements (as such terms are defined in, and required by, the Development Agreement).

(ii) For the construction of all Improvements including the East-West Connector Road.

(b) This Agreement will terminate on the date on which the East-West Connector Road is accepted by Grantor for dedication as a public right-of-way.

(c) The construction of all Improvements, including the East-West Connector Road, as and when constructed will be constructed in accordance with the Approvals (as that term is defined in the Development Agreement) at Owner's expense as required by the Development Agreement.

(d) The terms of the Development Agreement further govern the terms of this Agreement including, without limitation, the provisions of Sections 9, 10, and 11 of the Development Agreement.

(e) Grantor and Grantee acknowledge that this Agreement is being entered into prior to the completion of the design of the East-West Connector Road and Grantor will not grant or create rights in and to the Construction Easement Area which are inconsistent with this Agreement.

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 injury 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 the life of this 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. 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.

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, Senior Investment Officer

#7.

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:

CITY OF DUNWOODY, GEORGIA

Signed, sealed and delivered
in the presence of:

Witness

By: _____
Name: _____
Title: _____

Notary Public

My Commission Expires:

(NOTARY SEAL)

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

Laurie Dotter
Witness

Heather Robinson
Notary Public

My Commission Expires:
8-14-18
(NOTARY SEAL)



GRANTEE:

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

By: *Laurie Dotter* (SEAL)
Name: Laurie Dotter
Title: President

EXHIBIT AGRANTOR PROPERTY

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 A 1-INCH 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) LABELED POB; THENCE FROM THE AFORESAID POINT SOUTH 00°07'53" EAST FOR A DISTANCE OF 367.68 FEET TO A POINT; SAID POINT BEING THE TRUE POINT OF BEGINNING.

THENCE, FROM SAID TRUE POINT OF BEGINNING AS THUS ESTABLISHED:

1. NORTH 89°50'29" EAST FOR A DISTANCE OF 429.34 FEET.
2. THENCE, ALONG THE ARC OF A CURVE HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 66.03 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 89°38'35" EAST FOR A CHORD DISTANCE OF 63.92 FEET;
3. THENCE, ALONG THE ARC OF A CURVE HAVING A RADIUS OF 50.00 FEET, AN ARC LENGTH OF 41.15 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 87°59'56" EAST FOR A CHORD DISTANCE OF 40.00 FEET;
4. THENCE, NORTH 68°05'43" EAST FOR A DISTANCE OF 58.40 FEET;
5. THENCE, NORTH 66°22'46" EAST FOR A DISTANCE OF 17.46 FEET;
6. THENCE, NORTH 34°48'05" EAST FOR A DISTANCE OF 53.59 FEET;
7. THENCE, SOUTH 49°20'02" EAST FOR A DISTANCE OF 29.83 FEET;
8. THENCE, SOUTH 20°04'16" WEST FOR A DISTANCE OF 48.79 FEET;
9. THENCE, SOUTH 36°38'15" WEST FOR A DISTANCE OF 149.11 FEET;
10. THENCE, NORTH 54°43'18" WEST FOR A DISTANCE OF 63.94 FEET;
11. THENCE, NORTH 81°25'56" WEST FOR A DISTANCE OF 68.08 FEET;
12. THENCE, SOUTH 05°01'43" WEST FOR A DISTANCE OF 67.50 FEET;
13. THENCE, NORTH 82°32'14" WEST FOR A DISTANCE OF 81.14 FEET;
14. THENCE, SOUTH 28°59'57" WEST FOR A DISTANCE OF 49.99 FEET;
15. THENCE, SOUTH 37°29'11" WEST FOR A DISTANCE OF 64.39 FEET;
16. THENCE, NORTH 80°28'51" WEST FOR A DISTANCE OF 81.31 FEET;
17. THENCE, NORTH 72°26'04" WEST FOR A DISTANCE OF 175.74 FEET;
18. THENCE, SOUTH 86°34'09" WEST FOR A DISTANCE OF 33.90 FEET;
19. THENCE, NORTH 00°00'36" WEST FOR A DISTANCE OF 152.74 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2.11 ACRES OF LAND, MORE OR LESS.

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 $14^{\circ} 30' 53''$ West, 176.36 feet; thence,
21. South $27^{\circ} 45' 19''$ West, 125.45 feet; thence,
22. South $37^{\circ} 16' 29''$ West, 118.42 feet; thence,
23. South $34^{\circ} 48' 05''$ 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 $66^{\circ} 22' 46''$ West, 17.45 feet; thence,
25. South $68^{\circ} 05' 43''$ 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 $87^{\circ} 59' 56''$ 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 $89^{\circ} 38' 35''$ West, 63.92 feet; thence,
28. South $89^{\circ} 50' 29''$ West, 429.34 feet to the west line of Land Lot 329; thence running along said Land Lot line,
29. North $00^{\circ} 07' 53''$ 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

DESCRIPTION OF CONSTRUCTION EASEMENT AREA

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:

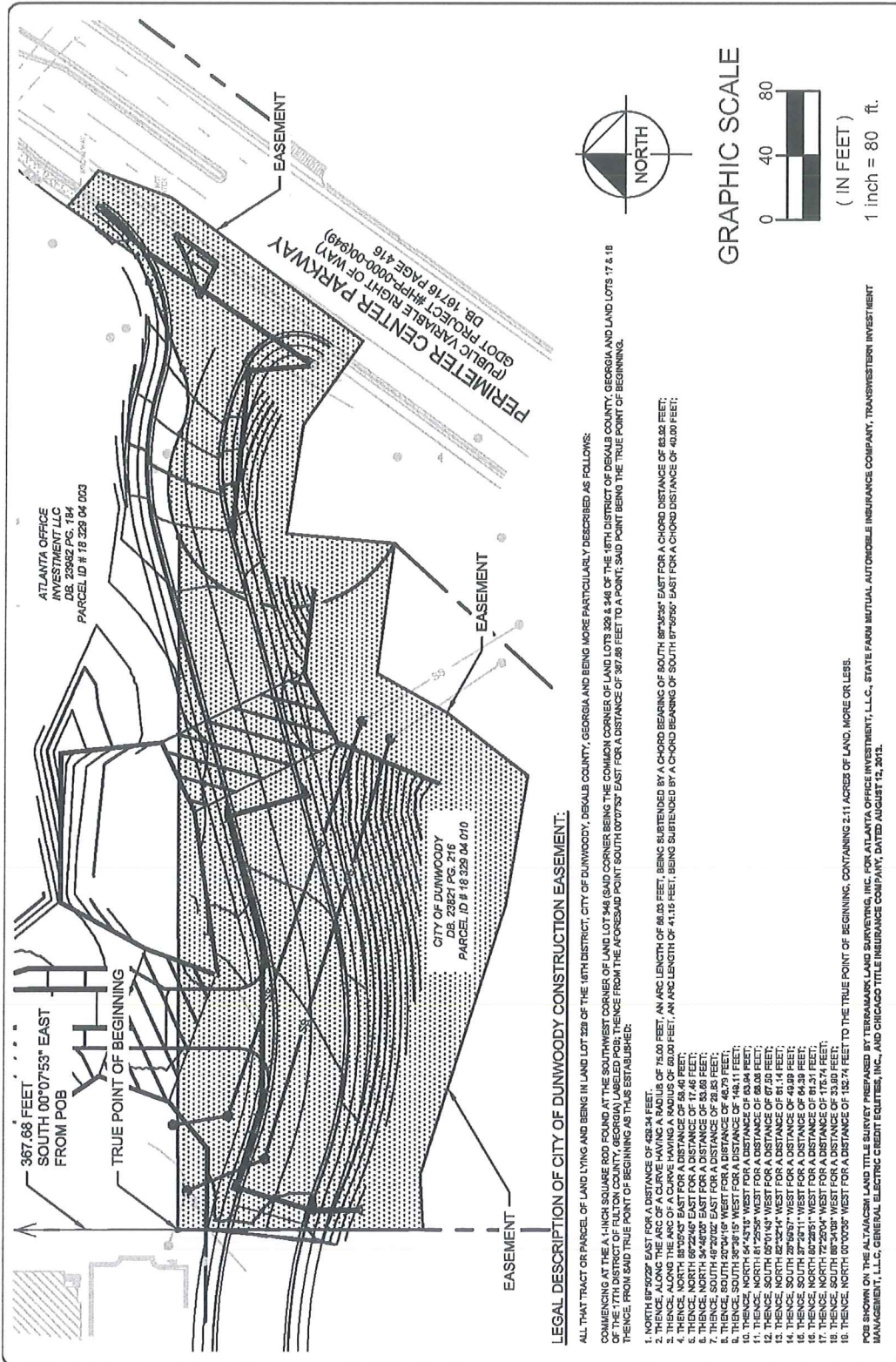
COMMENCING AT THE A 1-INCH SQUARE ROD FOUND AT THE SOUTHWEST CORNER OF LAND LOT 348 (SAID CORNER BEING THE COMMON CORNER OF LAND LOTS 329 & 348 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA AND LAND LOTS 17 & 18 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA) LABELED POB; THENCE FROM THE AFORESAID POINT SOUTH 00°07'53" EAST FOR A DISTANCE OF 367.68 FEET TO A POINT; SAID POINT BEING THE TRUE POINT OF BEGINNING.

THENCE, FROM SAID TRUE POINT OF BEGINNING AS THUS ESTABLISHED:

1. NORTH 89°50'29" EAST FOR A DISTANCE OF 429.34 FEET.
2. THENCE, ALONG THE ARC OF A CURVE HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 66.03 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 89°38'35" EAST FOR A CHORD DISTANCE OF 63.92 FEET;
3. THENCE, ALONG THE ARC OF A CURVE HAVING A RADIUS OF 50.00 FEET, AN ARC LENGTH OF 41.15 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 87°59'56" EAST FOR A CHORD DISTANCE OF 40.00 FEET;
4. THENCE, NORTH 68°05'43" EAST FOR A DISTANCE OF 58.40 FEET;
5. THENCE, NORTH 66°22'46" EAST FOR A DISTANCE OF 17.46 FEET;
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7. THENCE, SOUTH 49°20'02" EAST FOR A DISTANCE OF 29.83 FEET;
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18. THENCE, SOUTH 86°34'09" WEST FOR A DISTANCE OF 33.90 FEET;
19. THENCE, NORTH 00°00'36" WEST FOR A DISTANCE OF 152.74 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2.11 ACRES OF LAND, MORE OR LESS.

EXHIBIT D

DEPICTION OF CONSTRUCTION EASEMENT AREA



ATLANTA OFFICE
INVESTMENT LLC
DB: 23882 PG. 184
PARCEL ID # 18 328 04 003

367.66 FEET
SOUTH 00°07'53" EAST
FROM POB

TRUE POINT OF BEGINNING

EASEMENT

CITY OF DUNWOODY
DB: 23821 PG. 216
PARCEL ID # 18 329 04 010

EASEMENT

EASEMENT

PERIMETER CENTER PARKWAY
(PUBLIC VARIABLE RIGHT-OF-WAY)
DB: 18716 PAGE 416

EASEMENT

NORTH

GRAPHIC SCALE
(IN FEET)
0 40 80
1 inch = 80 ft.

LEGAL DESCRIPTION OF CITY OF DUNWOODY CONSTRUCTION EASEMENT:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 329 OF THE 16TH DISTRICT, CITY OF DUNWOODY, DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE A 1/4 INCH SQUARE ROD FOUND AT THE SOUTHWEST CORNER OF LAND LOT 348 (SAID CORNER BEING THE COMMON CORNER OF LAND LOTS 329 & 348 OF THE 16TH DISTRICT OF DEKALB COUNTY, GEORGIA AND LAND LOTS 17 & 18 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA) LABELED POB; THENCE FROM THE AFORESAID POINT SOUTH 00°07'53" EAST FOR A DISTANCE OF 367.66 FEET TO A POINT; SAID POINT BEING THE TRUE POINT OF BEGINNING.
THENCE FROM SAID TRUE POINT OF BEGINNING AS THUS ESTABLISHED:

1. NORTH 87°02'02" EAST FOR A DISTANCE OF 493.34 FEET;
2. THENCE, ALONG THE ARC OF A CURVE HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 68.03 FEET, AN ARC LENGTH OF 41.15 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 87°36'35" EAST FOR A CHORD DISTANCE OF 63.82 FEET;
3. THENCE, NORTH 87°02'02" WEST FOR A DISTANCE OF 94.49 FEET;
4. THENCE, NORTH 87°22'46" EAST FOR A DISTANCE OF 53.69 FEET;
5. THENCE, NORTH 54°48'03" EAST FOR A DISTANCE OF 28.83 FEET;
6. THENCE, SOUTH 48°20'32" EAST FOR A DISTANCE OF 46.79 FEET;
7. THENCE, SOUTH 20°04'16" WEST FOR A DISTANCE OF 46.79 FEET;
8. THENCE, NORTH 64°53'13" WEST FOR A DISTANCE OF 63.84 FEET;
9. THENCE, NORTH 61°25'58" WEST FOR A DISTANCE OF 68.08 FEET;
10. THENCE, SOUTH 09°01'43" WEST FOR A DISTANCE OF 67.20 FEET;
11. THENCE, NORTH 82°35'14" WEST FOR A DISTANCE OF 81.14 FEET;
12. THENCE, SOUTH 87°20'11" WEST FOR A DISTANCE OF 64.38 FEET;
13. THENCE, NORTH 60°28'51" WEST FOR A DISTANCE OF 81.31 FEET;
14. THENCE, NORTH 72°25'04" WEST FOR A DISTANCE OF 116.74 FEET;
15. THENCE, NORTH 08°10'08" WEST FOR A DISTANCE OF 162.74 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2.11 ACRES OF LAND, MORE OR LESS.

POB SHOW ON THE ALTA/MCSM LAND TITLE SURVEY PREPARED BY TERRAMARK LAND SURVEYING, INC. FOR ATLANTA OFFICE INVESTMENT, L.L.C., STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, TRANSWESTERNY INVESTMENT MANAGEMENT, L.L.C. GENERAL ELECTRIC CREDIT EQUITIES, INC., AND CHICAGO TITLE INSURANCE COMPANY, DATED AUGUST 13, 2013.

<p>Kimley»Horn 10 ROSWELL STREET, SUITE 210 ALPHARETTA, GEORGIA 30309 PHONE: (770) 618-4280 www.kimley-horn.com</p>	<p>PROJECT: EAST-WEST CONNECTOR</p>	<p>CLIENT: KDC REAL ESTATE DEVELOPMENT & INVESTMENTS AND CITY OF DUNWOODY</p>	<p>TITLE: CITY OF DUNWOODY CONSTRUCTION EASEMENT</p>	<p>DATE: AUGUST 24, 2016</p>
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