

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: May 08, 2017

Subject: **FIRST READ: Ordinance Granting a Hardscape Easement Agreement to Atlanta Office Investment Phase I, L.L.C.**

ITEM DESCRIPTION

First read of an ordinance granting an easement to Atlanta Office Investment Phase I, L.L.C. (AOI Phase I) for the purpose of maintaining, repairing and replacing the hardscape improvements (concrete plaza and stairs) within the easement area.

BACKGROUND

A plaza area with stairs to the public sidewalk was constructed along the right of way of Hammond Drive as part of the State Farm office building development at the southeast corner of Hammond Drive and Perimeter Center Parkway. At the completion of the development AOI Phase I agreed to dedicate the future right of way necessary to allow for the future widening and streetscape improvements on Hammond Drive. A portion of the plaza and stairs project into this future right of way as shown on Exhibit B of the easement agreement and AOI Phase I is requesting an easement to maintain, repair and replace the hardscape improvements within the easement area.

RECOMMENDED ACTION

Staff recommends approval of an ordinance granting an easement to Atlanta Office Investment Phase I, L.L.C. for the purpose of maintaining, repairing and replacing the hardscape improvements within the easement area.

**AN ORDINANCE AUTHORIZING THE GRANTING OF A HARDSCAPE
EASEMENT TO ATLANTA OFFICE INVESTMENT PHASE I L.L.C.
FOR THE PURPOSE OF MAINTAINING, REPAIRING AND REPLACING
EXISTING CONCRETE STAIRS IN THE RIGHT-OF-WAY ON HAMMOND DRIVE**

WHEREAS, Atlanta Office Investment Phase I, L.L.C. ("AOI Phase II") is the owner of a leasehold interest in the real property located along Hammond Drive, Perimeter Center Parkway and Goldkist Road, described more specifically in the Hardscape Easement Agreement attached hereto and incorporated by reference herein ("Hardscape Agreement"; and

WHEREAS, AOI Phase I conveyed real property to the City which is not a part of the public right-of-way known as Hammond Drive,

WHEREAS, the City is willing to grant to AOI Phase I an easement over portions of Hammond Drive as depicted in Exhibit "B" of the Hardscape Easement for the purposes of maintaining, repairing and replacing the existing concrete stairs within the easement area;

WHEREAS, the City believes that granting the Hardscape Easement to AOI Phase I is in the best interests of the citizens because it will enhance the safety of the stairs and enhance the safety of individuals using the stairs.

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 Hardscape Easement Agreement attached hereto and incorporated herein, to affect the granting of the Hardscape Easement as described herein.

SO ORDAINED, this ____ day of _____, 2017.

Approved:

Denis L. Shortal, Mayor

#15.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2017-XX-XX

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney

UPON RECORDING RETURN TO:

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

HARDSCAPE EASEMENT AGREEMENT
(City of Dunwoody for the Benefit of Phase I)

THIS HARDSCAPE EASEMENT AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 2017, by and between the CITY OF DUNWOODY, GEORGIA, a municipality of the State of Georgia ("**Grantor**"), and ATLANTA OFFICE INVESTMENT PHASE I, L.L.C., a Delaware limited liability company ("**Grantee**"). (Grantor and Grantee are sometimes collectively referred to as the "**Parties**".)

BACKGROUND STATEMENT

Grantee has conveyed to Grantor certain real property which is now a part of the public right-of-way known as Hammond Drive, Dunwoody, DeKalb County, Georgia.

Grantee is the owner of the parcel of real property described on Exhibit "A" ("**Grantee's Property**") adjacent to Hammond Drive.

Grantor is willing to grant Grantee an easement over the portions of Hammond Drive depicted on Exhibit "B" as (and referred to in this Agreement as) the "**Easement Areas**" for the purpose of maintaining, repairing and replacing the existing concrete stairs (the "**Hardscape Improvements**") within the Easement Areas.

For good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the Parties incorporate the Background Statement above and the Exhibits attached to this Agreement, and further covenant and agree as follows:

1. Grant of Easement. Grantor grants and conveys to Grantee, for the benefit of and as an appurtenance to Grantee's Property, an exclusive, perpetual easement over, under, upon, across and through the Easement Areas for the use, maintenance, repair, and replacement of the Hardscape Improvements within the Easement Areas as the same exist on the date of this Agreement. Grantor reserves the right to modify, at its expense, the Hardscape Improvements as may be required in connection with any future widening of Hammond Drive.

2. Maintenance Standards. The Hardscape Improvements will be maintained in accordance with first class maintenance standards. Grantee will perform all maintenance, 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, if applicable, and (ii) all applicable laws, codes, ordinances, rules and regulations. If any 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. If Grantor modifies or relocates the Hardscape Improvements in any material respect, Grantor will undertake the future maintenance of the portion of the Hardscape Improvements so modified or relocated.

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. In addition, if the failure to maintain poses a safety threat as reasonably determined by Grantor, Grantor will state that fact with the reasons for the same in the First Maintenance Notice.

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 after receipt of written demand accompanied by reasonable evidence of the costs incurred. If Grantee fails to so reimburse Grantor, Grantor may file a lien on Grantee's 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%) per annum from the date incurred until the date paid.

3. Indemnification. Grantee 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 Grantor may suffer (including cost of defense, settlement, and reasonable attorneys' fees) which are caused solely by the negligent act, negligent omissions or willful misconduct of Grantee, its employees or contractors in the exercise of the easements, rights and obligations of Grantee under this Agreement.

4. Insurance. Grantee will obtain and furnish applicable insurance certificates to Grantor for the following amounts of insurance and the insurance will 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).

5. Run with the Land; Governing Law. The rights, easements and obligations established in this Agreement will run with the land and will be binding on and inure to the benefit of Grantee, its assigns and successors, and, to the extent allowable by law, on Grantor. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.

6. Notices. All notices, consents, requests, demands or other communications given to or upon the respective Party (including a notice of change of address) will be in writing and will 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: Cecil McLendon, Esq.
Riley McLendon, LLC
315 Washington Avenue
Marietta, Georgia 30060

GRANTEE: Atlanta Office Investment Phase I, 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 Phase I, 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

AND: Atlanta Office Investment Phase I, L.L.C.
c/o KDC Real Estate Development & Investments
1040 Crown Pointe Parkway
Suite 1070
Atlanta, Georgia 30338
Attention: Alexander A. Chambers

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

[Signatures begin on next page]

The Parties have caused this Agreement to be executed under seal 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]

GRANTEE:

Signed, sealed and delivered
in the presence of:

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

Witness

By: Atlanta Hub One SFMM, LLC,
a Delaware limited liability company

Its: Manager and Member

Notary Public

By: State Farm Mutual Automobile Insurance Company,
a corporation organized and doing business under the
Illinois Insurance Code

My Commission Expires:

Its: Manager and Sole Member

(NOTARY SEAL)

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT "A"GRANTEE'S PROPERTY

All that tract or parcel of land lying and being in Land Lots 329 & 348 of the 18th District, City of Dunwoody, Dekalb County, Georgia and being more particularly described as follows:

COMMENCING at the intersection of the southerly right-of-way of Hammond Drive (having an apparent variable width right-of-way and the easterly right-of-way of Perimeter Center Parkway (having an apparent variable width right-of-way) if the right-ways were extended to intersect; thence, leaving the aforesaid point North 89° 26' 24" East, 86.29 feet to the TRUE POINT OF BEGINNING.

Thence, from the aforesaid TRUE POINT OF BEGINNING as thus established and running with the aforesaid right-of-way line of Hammond Drive

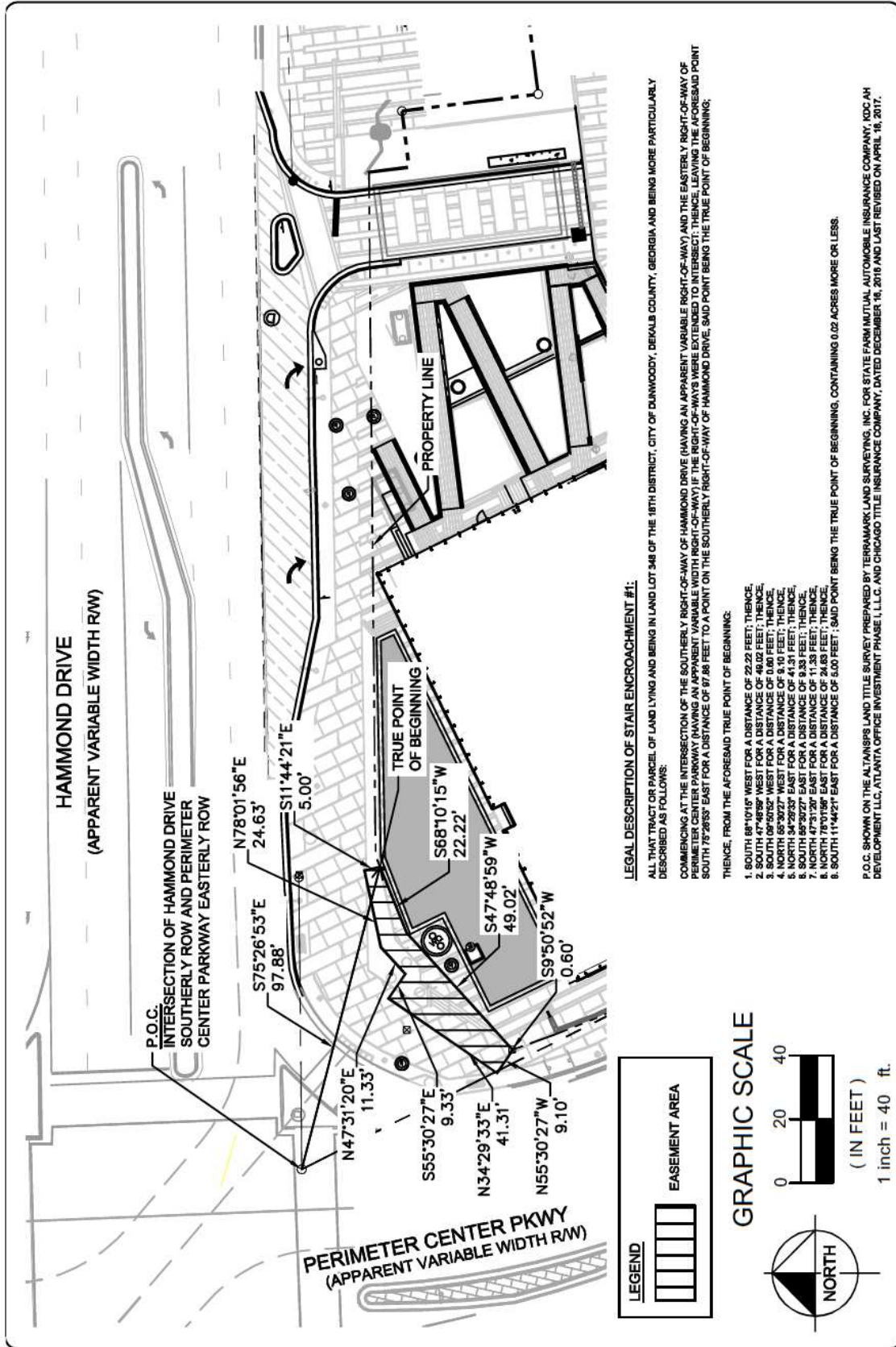
1. North 89° 26' 24" East, 214.48 feet to a point; thence, thence, leaving the aforesaid right-of-way of Hammond Drive and running with property now or formerly owned by Metropolitan Atlanta Rapid Transit Authority recorded at Deed Book 8898, Page 631, among the records of Dekalb County, Georgia
2. South 07° 06' 30" East, 12.66 feet to a point; thence,
3. North 82° 53' 30" East, 17.75 feet to a point; thence,
4. South 07° 06' 30" East, 2.10 feet to a point; thence, leaving the aforesaid described property and running with additional property now or formerly owned by Metropolitan Atlanta Rapid Transit Authority recorded in Deed Book 24854, Page 462, aforesaid records
5. South 82° 53' 30" West, 5.58 feet to a point; thence,
6. South 07° 06' 30" East, 51.96 feet to a point; thence,
7. South 82° 53' 30" West, 5.50 feet to a point; thence,
8. South 07° 06' 30" East, 35.02 feet to a point; thence,
9. North 82° 53' 30" East, 10.83 feet to a point; thence,
10. South 07° 06' 30" East, 34.02 feet to a point; thence,
11. North 82° 53' 30" East, 29.00 feet to a point; thence,
12. North 07° 06' 30" West, 25.50 feet to a point; thence,
13. North 82° 53' 30" East, 9.17 feet to a point; thence,
14. North 07° 06' 30" West, 54.60 feet to a point on the aforesaid property of Metropolitan Atlanta Rapid Transit Authority as recorded in Deed Book 8898, Page 631, aforesaid records; thence, leaving the Metropolitan Rapid Transit Authority property as recorded in Deed Book 24854, Page 462, aforesaid records and continue with the said property of Metropolitan Atlanta Rapid Transit Authority as recorded in Deed Book 8898, Page 631, aforesaid records
15. North 82° 53' 30" East, 23.58 feet to a point; thence, thence, leaving the aforesaid property of Metropolitan Atlanta Rapid Transit Authority and running with property now

or formerly owned by Perimeter Atlanta SC LLC recorded at DB. 19774, Page 736, aforesaid records

16. South 04° 40' 02" East, 500.69 feet to a point on the right-of-way of Goldkist Road (having a variable width right-of-way); thence, leaving the aforesaid property of Perimeter Atlanta SC LLC and run along the said right-of-way of Goldkist Road
17. North 89° 28' 04" West, 237.51 feet to a point; thence,
18. 2.44 feet along the arc of a curve deflecting to the right, having a radius of 50.00 feet and a chord bearing and distance of North 88° 04' 08" West, 2.44 feet to a point; thence,
19. North 47° 25' 22" West, 53.20 feet to a point on the aforesaid right-of-way line of Perimeter Center Parkway; thence, leaving the aforesaid right-of-way line of Goldkist Road and running with the said right-of-way line of Perimeter Center Parkway
20. 309.05 feet along the arc of a curve deflecting to the left, having a radius of 495.00 feet and a chord bearing and distance of North 08° 44' 54" West, 304.05 feet to a point; thence,
21. North 26° 38' 04" West, 123.04 feet to a point; thence,
22. 54.47 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 North 22° 34' 53" West, 54.42 feet to a point; thence,
23. North 09° 50' 52" East, 0.70 feet to a point; thence,
24. North 47° 48' 05" East, 49.03 feet to a point; thence,
25. North 68° 11' 21" East, 26.10 feet to the POINT OF BEGINNING, containing 151,992 square feet or 3.4893 acres of land, more or less.

EXHIBIT "B"

DEPICTION OF THE EASEMENT AREAS



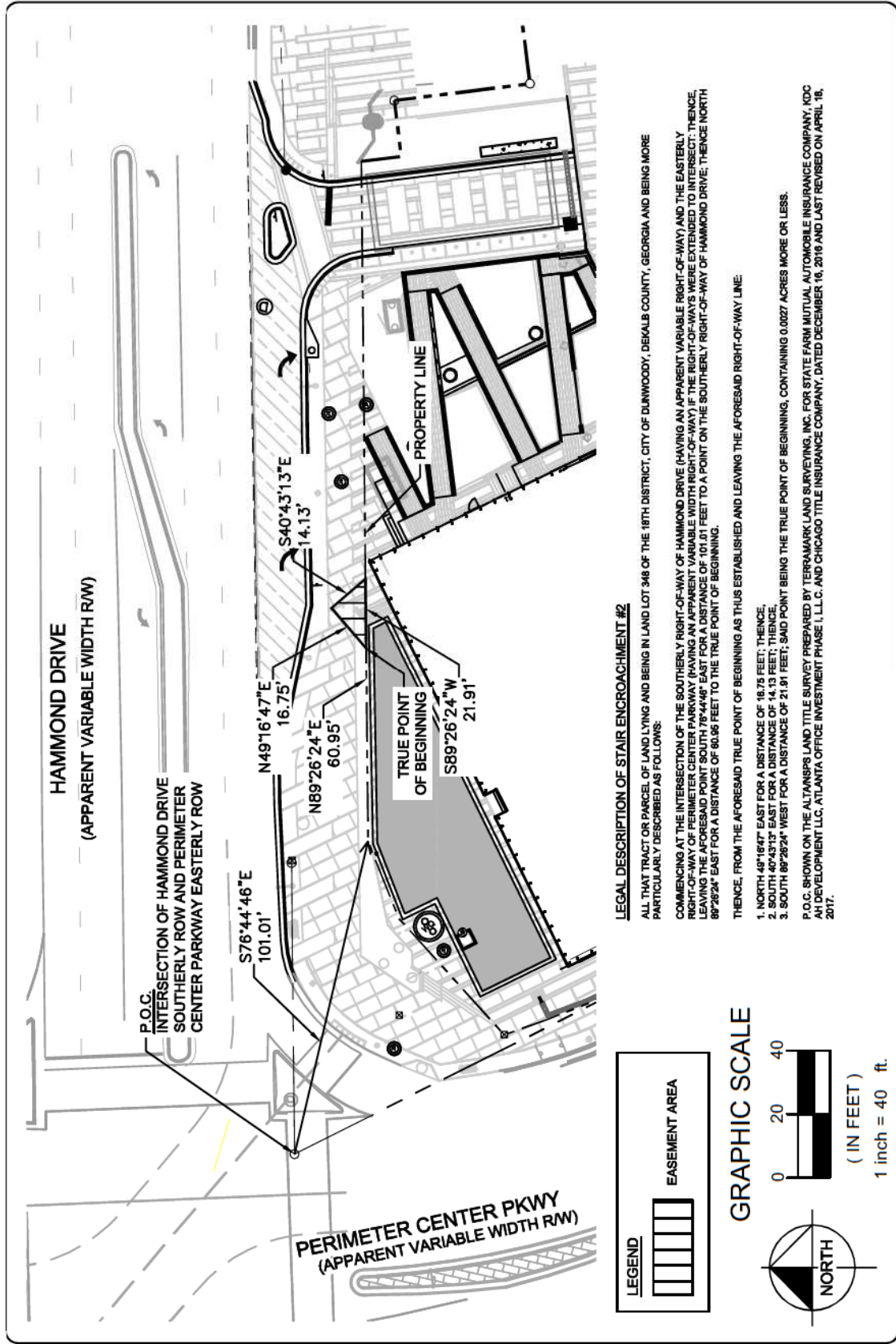
DATE: APRIL 20, 2017

TITLE: STAIR ENCROACHMENT #1

CLIENT: ATLANTA OFFICE INVESTMENT PHASE I, L.L.C.

PROJECT: STATE FARM PHASE I ATLANTA HUB

Kimley»Horn
 10 ROSWELL STREET, SUITE 210
 ALPHARETTA, GEORGIA 30009
 PHONE: (770) 919-4280 www.kimley-horn.com



DATE: APRIL 20, 2017

TITLE: STAIR ENCROACHMENT #2

CLIENT: ATLANTA OFFICE INVESTMENT PHASE I, L.L.C.

PROJECT: STATE FARM PHASE I ATLANTA HUB

Kimley»Horn
10 ROSWELL STREET, SUITE 210
ALPHARETTA, GEORGIA 30009
PHONE: (770) 819-4280 www.kimley-horn.com