

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: May 22, 2017

Subject: **First Read: Ordinance Granting a Hardscape Easement Agreement to Atlanta Office Investment L.L.C. for the Purpose of Constructing and Maintaining a Stairway**

ITEM DESCRIPTION

First read of an ordinance granting an easement to Atlanta Office Investment, L.L.C. (AOI Phase II) for the purpose of constructing, maintaining, repairing and replacing a stairway along the public right of way of Perimeter Center Parkway.

BACKGROUND

The developer for State Farm Phase II, located at 1111 Hammond Drive, has proposed to construct and maintain a stairway along the Perimeter Center Parkway right of way that would connect the upper plaza level of the development with the lower level along Hammond Drive. Without the stairs, the two levels would be connected externally by the sidewalk along Perimeter Center Parkway but the pathway would be less direct. The stairs will be beneficial to pedestrians by providing a more direct connection within the development and between the public right of way and the development. The area of the right of way where the stairs encroach is primarily behind the slip ramp easement area and is not likely to interfere with any future city related road projects.

RECOMMENDED ACTION

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

**AN ORDINANCE AUTHORIZING THE GRANTING OF A HARDSCAPE
EASEMENT TO ATLANTA OFFICE INVESTMENT L.L.C. FOR THE PURPOSE OF
CONSTRUCTING, MAINTAINING, REPAIRING AND REPLACING
HARDSCAPE IMPROVEMENTS IN THE RIGHT-OF-WAY ON PERIMETER
CENTER PARKWAY**

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

WHEREAS, AOI Phase II conveyed real property to the City which is now a part of the public right-of-way known as Perimeter Center Parkway,

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

WHEREAS, the City believes that granting the Hardscape Easement to AOI Phase II 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 II)

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, L.L.C., a Delaware limited liability company ("**Grantee**"). (Grantor and Grantee are sometimes collectively referred to as the "**Parties**".)

BACKGROUND STATEMENT

A. Grantee is the owner of a leasehold interest in the parcel of real property described on Exhibit "A" ("**Grantee's Property**") adjacent to Perimeter Center Parkway.

B. Grantor is willing to grant Grantee an easement over the portion of Perimeter Center Parkway depicted on Exhibit "B" as (and referred to in this Agreement as) the "**Easement Area**" for the purpose of constructing, maintaining, repairing and replacing certain hardscape improvements (the "**Hardscape Improvements**") which will encroach into the right-of-way of Perimeter Center Parkway as a part of the development of Grantee's Property substantially as the same are shown on Exhibit "B".

C. The leasehold estate of Grantee is created pursuant to the Lease Agreement, dated as of December 1, 2016 (as now or later amended, the "**Bond Lease**"), between AOI Phase II and the Dunwoody Development Authority (the "Authority"), with the short form of the Bond Lease being recorded on December 15, 2016, in Deed Book 25977, Pages 86 - 91 in the Records. The Authority has executed the Consent Agreement attached to and made a part of this Agreement.

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 Area for the use, maintenance, repair, and replacement of the Hardscape Improvements within the Easement Area. Grantor reserves the right to modify, at its expense, the stairs which are a part of the Hardscape Improvements as may be required in connection with any future widening of Perimeter Center Parkway.

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, 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]

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

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

Notary Public

Its: Member

My Commission Expires:

By: _____
Print Name: _____
Title: _____

(NOTARY SEAL)

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 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. 1.66 feet along the arc of a curve deflecting to the right and having a radius of 29.50 and a chord bearing and distance of South 50° 29' 22" East, 1.66 feet; thence,
9. South 07° 06' 00" East, 24.33 feet; thence,
10. North 82° 54' 00" East, 7.21 feet; thence,
11. 26.26 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° 31' 41" East, 26.26 feet; thence,
12. South 09° 42' 06" West, 24.78 feet; thence,
13. South 14° 08' 22" West, 31.94 feet; thence,
14. 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,
15. South 26° 36' 38" East, 168.18 feet; thence,
16. North 53° 13' 37" East, 7.98 feet; thence,
17. 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,
18. South 22° 24' 04" East, 2.53 feet; thence,
19. 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,
20. 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,
21. South 89° 05' 52" East, 4.14 feet; thence,

22. 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,
23. South 27° 45' 19" West, 125.45 feet; thence,
24. South 37° 16' 29" West, 118.42 feet; thence,
25. South 34° 48' 05" West, 65.01 feet; thence leaving said right of way line of Perimeter Center Parkway and running with property now or formerly owned by Dekalb County, Georgia per Deed Book 16716, Page 397 recorded among the Land Records of Dekalb County, Georgia
26. 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,
27. South 68° 05' 43" West, 58.40 feet; thence,
28. 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,
29. 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,
30. South 89° 50' 29" West, 425.07 feet to the west line of Land Lot 329; thence, leaving the aforesaid property of Dekalb County, Georgia and running with the said Land Lot line
31. North 00° 47' 51" West, 367.71 feet to the POINT OF BEGINNING, containing 554,219 square feet or 12.7231 acres of land, more or less.

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is executed by the DUNWOODY DEVELOPMENT AUTHORITY, a public body corporate and politic created and existing under the laws of the State of Georgia (the “**Authority**”) to be effective the ___ day of _____, 20__ (the “**Consent Agreement**”).

WITNESSETH:

A. The Authority is the lessor under the Lease Agreement, dated as of December 1, 2016, between Atlanta Office Investment, L.L.C., a Delaware limited liability company (the “**Company**”), and the Authority (as now or later amended, the “**Bond Lease**”), with the short form of the Bond Lease being recorded on December 15, 2016, in Deed Book 25977, Pages 86 - 91 in the Office of the Clerk of Superior Court of DeKalb County, Georgia records (the “**Records**”), encumbering certain real property more particularly described in the Bond Lease and on Exhibit "A" of the below-defined Document to which this Consent Agreement is attached (the “**Property**”).

B. The Company has requested that the Authority consent to the easements and rights benefitting the Property, and the obligations and agreements of the Company, as set forth in that certain Hardscape Easement Agreement (the “**Document**”) to be dated on or about the date of this Consent Agreement (and to which this Consent Agreement is to be attached), and which will be recorded in the Records; and the Authority desires, for the consideration set forth, to consent to Company entering into the Document.

IN CONSIDERATION of the sum of Ten (\$10.00) Dollars in hand paid by the Company to the Authority and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

The Authority consents, upon the terms and conditions contained in this Consent Agreement, to the execution and recording of the Document.

Nothing contained in this Consent Agreement will impair, alter or diminish, (1) except as expressly provided in this Consent Agreement, the effect of the Bond Lease on the applicable Property or (2) any of the rights and remedies of the Authority granted in the Bond Lease. Further, in no event shall the Authority’s agreement to execute and deliver this Consent constitute, or be deemed to constitute, any agreement by the Authority to perform any obligations or to assume any obligations of the Company set forth in the Document.

This Consent Agreement is and will be binding upon the Authority and its successors and assigns and will inure to the benefit of the parties to and bound by both the Bond Lease and the Document, and their respective successors and assigns.

In executing this Consent Agreement, notwithstanding anything to the contrary contained herein or in the Document, the Authority makes no representations or warranties regarding the status of its title in the Property, the encumbrances thereon or the Company’s legal authority to assume any obligations of any nature whatsoever that are set forth in the Document. The Company expressly acknowledges that no personal liability whatsoever shall attach to, or be incurred by the Authority, any director, officer, official, counsel, agent or employee, as such,

past, present or future, of the Authority or of any successor body, either directly or through the Authority or any successor body, under or by reason of any other obligations, covenants, promises, or agreements entered into by the Company contained in the Document or to be implied therefrom, and that all personal liability of that character against the Authority, each director, officer, official, counsel, agent or employee is, by the execution of, and as a condition to, and as part of the consideration for, the execution of the Consent Agreement, expressly waived and released.

This Consent Agreement will be governed by the laws of the State of Georgia.

IN WITNESS WHEREOF, the duly authorized representative of the Authority has executed this Consent Agreement under seal to be effective as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

(NOTARY SEAL)

AUTHORITY:

DUNWOODY DEVELOPMENT AUTHORITY, a
public body corporate and politic of the State of
Georgia

By: _____
Title: _____

Attest: _____
Title: _____

ACKNOWLEDGED

The undersigned acknowledges this Consent Agreement and agrees to the provisions hereof that are applicable to it.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

(NOTARY SEAL)

COMPANY:

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

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

Its: Member

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____