



MEMORANDUM

Date: June 18, 2013

To: Mayor and City Council for the City of Sandy Springs

From: Wendell Willard
City Attorney

Subject: Purchase and Closing of 6204 Roswell Road, Sandy Springs, Georgia

Background:

Pursuant to the direction of the Mayor and Council, the City has entered into a Purchase and Sale Agreement, and a First Amendment to Purchase and Sale Agreement of certain property located at 6204 Roswell Road, Sandy Springs, Georgia for One Million One Hundred Sixty Thousand and 00/100 Dollars (\$1,160, 000.00). The Amendment calls for the transaction to be closed on or before June 19, 2013.

The City has performed its due diligence with respect to this land acquisition. The City Manager signed and executed the Purchase and Sale Agreement on the 24th of April, 2013. And the City Manager has signed and executed the First Amendment to Purchase and Sale Agreement on the 11th of June, 2013.

The Property will be used as part of the City Center Complex pursuant to the plans approved by the Mayor and Council. The Property will be paid from budgeted funds set aside for the City Center Complex.

At this time, the City Manager is requesting authorization to close on the above-referenced property pursuant to the terms of the Purchase and Sale Agreement subject to: (1) the completion of the City's due diligence; and (2) approval of the Legal and Finance Departments.

Attached hereto is a copy of the following documents:

1. Purchase and Sale Agreement, dated the 24th of April, 2013;
2. First Amendment to Purchase and Sale Agreement, dated the 11th of June, 2013.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is made and entered into as of the 24th day of April, 2013, by and between HDK Properties, LLLP, a Georgia limited liability company (hereinafter called "Seller"); and the City of Sandy Springs, Georgia, a municipal corporation, (hereinafter called "Purchaser").

WITNESSETH:

1. Purchaser hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following property:

That certain parcel of land known as 6204 Roswell Road, Sandy Springs, Georgia 30328, according to the current system of numbering in Sandy Springs, Fulton County, Georgia lying and being in Land Lot 89, of the 17th District, of Fulton County and as more particularly described as set forth Exhibit A attached hereto, with such improvements as are located thereon, together with all lighting fixtures, attached thereto, all electrical, mechanical, plumbing, air conditioning, and any other systems or fixtures as are attached thereto, and all plants, trees and shrubbery now a part of the property (herein referred to as the "Property").

2. Purchase Price, Method of Payment. The purchase price for the Property, hereinafter called the "Purchase Price," shall be One Million One Hundred Sixty Thousand and 00/100 Dollars (\$1,160,000.00). The Purchase Price, after crediting the Earnest Money, and subject to the prorations and adjustments hereinafter described, shall be paid by Purchaser to Seller by wire transfer to an account designated by Seller or other payment medium acceptable to Seller on the Closing Date.

3. Access and Inspection. Between the date of the execution of this Agreement and the Closing Date, Purchaser shall have the right to enter into the Property and the premises thereon for the purpose of conducting such inspections as are contemplated pursuant to this Agreement.

4. Earnest Money. Prior to or contemporaneously with the execution of this Agreement, Purchaser shall pay to Michael G. Leff, Attorney at Law Iolita Account, as Escrow Agent, the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as an earnest money deposit. All earnest money deposits provided in this Paragraph 4 are herein called the "Earnest Money". On the Closing Date, the Earnest Money and any interest earned, if any, thereon shall be applied as part payment of the Purchase Price, in accordance with Paragraph 2 hereof. The Earnest Money shall otherwise be held and disbursed in accordance with the terms and provisions of this Agreement. All interest accruing on the Earnest Money shall in all events be the sole property of Seller.

5. Closing. Subject to the terms of this Agreement, the closing of the purchase and sale of the Property, hereinafter called "Closing," shall be on or before June 14, 2013 at City Hall, 7840 Roswell Road, Sandy Springs, GA 30350; or at law offices of the closing attorney as chosen by Purchaser; provided, however, should Purchaser desire to extend the closing date by and additional thirty (30) days, Seller may obtain such extension upon written notice of the same to Seller and the payment of an additional sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as an additional Earnest Money deposit to Escrow Agent, all of which deposit shall be deemed nonrefundable yet applicable to the Purchase Price

6. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Purchaser and Seller at Closing, or thereafter if Purchaser and Seller shall agree:

(a) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property, hereinafter called the "Taxes", for the year in which Closing occurs shall be prorated as of the Closing Date. In the event the Taxes for such year are not determinable at the time of Closing, said Taxes shall be prorated as of the Closing Date, based upon the Property's share of the undivided interest in the common elements as defined in the Declaration, and the parties shall re-prorate the Taxes for such year promptly upon the receipt of the tax bills for such year and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount of the Taxes used as a basis for the proration at Closing and the actual amount of the Taxes for such year. In the event any of the Taxes are due and payable at the time of Closing, the same shall be paid at Closing. If the Taxes are not paid at Closing, Seller shall deliver to Purchaser the bills for the Taxes promptly upon the receipt thereof and Purchaser shall thereupon be responsible for the payment in full of the Taxes within the time fixed for payment thereof and before the same shall become delinquent.

(b) All rents and incomes generated from the Property to the extent actually collected by Seller shall be prorated as of the Closing Date.

(c) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

All prorations and adjustments to be made in conjunction with the Closing shall be made as of the Closing Date and shall be effected at Closing, except as otherwise provided and as further specified herein.

7. Title.

For the purposes of this Agreement, "good and marketable fee simple title" shall mean such title as is insurable by a title insurance company licensed to do business in Georgia, under its standard form of Georgia owner's policy of title insurance, at its standard rates, subject only to the following, hereinafter called the "Permitted Exceptions": (i) the standard exclusions therein; (ii) ad valorem taxes assessed against the Property not due and payable on or before the Closing Date; and (iii) all matters, if any, waived by Purchaser.

(a) Title Objections. Within thirty (30) days following the execution of this Agreement by all parties, Purchaser shall present Seller with any objections to free and clear title on the Property.

(b) Seller shall have until ten (10) days from the date of Purchaser's initial notice of objections in which to review such notice and, if Seller elects, in which to give Purchaser notice of any objections specified therein which Seller does not intend to attempt to cure or otherwise satisfy. If Seller gives Purchaser such notice with respect to any objection specified in Purchaser's initial notice of title objections, then Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice to Seller within ten (10) days after Seller's notice, in which event the Earnest Money shall promptly be refunded to Purchaser and all further rights and obligations of the Parties hereunder shall terminate (provided, however, that Seller shall retain One Hundred

DS/mst

Dollars (\$100.00) of the Earnest Money as full and adequate consideration to Seller for this Agreement).

8. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Purchaser the following documents and instruments, all in form and substance reasonably satisfactory to Purchaser and Seller, duly executed by or on behalf of Seller: (i) a limited warranty deed conveying the Property; (ii) a Sellers' affidavit with respect to the Property, qualified to the knowledge of Seller and providing that nothing contained therein shall in any way enlarge or otherwise modify the warranty of title given in the deed of conveyance at Closing; and (iii) such other documents as reasonably requested by the Purchaser or the closing attorney.

(b) Purchaser shall pay the Purchase Price to Seller in accordance with the provisions of this Agreement.

9. Costs of Closing. Purchaser shall pay the State of Georgia Realty Transfer Tax payable on the transfer of the Property and the Improvements. Purchaser shall pay all recording costs, the cost of all surveys contemplated herein, the premium for any owner's policy of title insurance issued in favor of Purchaser insuring Purchaser's title to the Property, and Purchaser's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the Purchaser. Purchaser shall pay all costs associated with procuring any loans or mortgages on the property.

10. Warranties, Representations. Seller represents, warrants and covenants that:

(i) Seller shall have, at closing, good and marketable fee simple title to the Property, and Seller has the lawful right, power, authority and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement;

(ii) There are no lawsuits pending or threatened against or involving Seller or the Property which affect title;

(iii) To the best of Seller's actual knowledge, Seller has not received any notice of pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning or other adverse claims affecting the Property other than those such notices generated by Purchaser;

(iv) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any such person could claim a lien against the Property or if Seller is indebted to such entity, Seller will save and defend Purchaser from any and all claims relating thereto, and will discharge the lien at Closing in a manner satisfactory to the Purchaser's title insurance company.

(v) Seller will pay or cause to be paid promptly when due all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property between the date hereof and the Closing Date.

(vi) Seller warrants to the Purchaser that no hazardous substances are known to exist on the Property.

11. Possession at Closing. Seller shall surrender possession of the Property to Purchaser on the Closing Date.

12. Remedies.

(a) If the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a breach or default by Purchaser under this Agreement, Seller shall retain escrow money as full satisfaction and accord of any claims against Purchaser.

(b) If the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a breach or default by Seller under this Agreement, Purchaser may exercise the following rights and remedies: (i) in the event of any default by Seller, Purchaser shall have the right to terminate this Agreement, the Earnest Money shall be promptly refunded to Purchaser and all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; or (ii) Purchaser shall have the right to sue Seller for specific performance of this Agreement; or (iii) if, and only if, Seller's default is a bad faith refusal by Seller to convey the Property to Purchaser as required by Paragraph 8(a) of this Agreement, then Purchaser shall have the right to sue Seller for specific performance of this Agreement, or Purchaser shall have the right to sue Seller for monetary damages. The inability of Seller to convey good and marketable fee simple title to the Property on the Closing Date shall not constitute a default by Seller under this subparagraph 12(b) of this Agreement unless such defect arises by reason of an affirmative act or omission to act of Seller.

13. Damage or Destruction. If any portion of Improvements on the Property are damaged or destroyed by casualty prior to Closing, Seller shall promptly commence and diligently prosecute to completion the repair of such damage, and the final Closing Date hereunder shall be extended by the number of days reasonably required to repair such damage; provided, however, if the repairs shall extend the Closing Date by in excess of sixty (60) days, the Purchaser may elect to terminate this Agreement and receive a full refund of all escrow funds. If any portion of the Improvements is damaged or destroyed by casualty prior to Closing and the purchase and sale of the Property contemplated by this Agreement is thereafter actually consummated: (i) the Purchase Price shall be reduced by the total of any insurance proceeds actually received by Seller with respect to such casualty and not expended by Seller prior to Closing for the repair or restoration of the Improvements; and (ii) at Closing, Seller shall assign to Purchaser all rights of Seller in and to any insurance proceeds payable thereafter by reason of such casualty.

14. Condemnation. If all or any material part of the Project is taken by eminent domain proceedings, or if there is the commencement or bona fide threat of the commencement of any such proceedings, prior to Closing, Purchaser shall have the right, at its option, to terminate this Agreement by giving written Notice to Seller on or before the date ten (10) days after the date upon which Seller gives Purchaser written Notice of such taking, in which event all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. In the event of a taking of less than all or a material part of the Project, Purchaser shall have no right to

terminate this Agreement by reason of such taking. If all or any part of the Project is taken by eminent domain proceedings prior to Closing and the purchase and sale of the Property contemplated by this Agreement is thereafter actually consummated: (i) the Purchase Price shall be reduced by the total of any awards or other proceeds actually received by Seller with respect to any taking and not expended by Seller prior to Closing for the repair or restoration of the Property; and (ii) at Closing, Seller shall assign to Purchaser all rights of Seller in and to any awards or other proceeds payable thereafter by reason of such taking. For the purposes of this Paragraph, a taking shall be deemed to be of a "material" part of the Project only if such taking involves either: (i) the taking of more than twenty (20%) of the parking spaces on the Property; or (ii) the taking of more than ten percent (10%) of the interior space in the Improvements.

15. Assignment. This Agreement may not be assigned by Purchaser, in whole or in part, without the prior written consent of Seller.

16. Parties. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Purchaser and Seller and their respective legal representatives, successors and assigns.

17. Brokerage Commission; Disclosure. Purchaser warrants that no brokerage fee or commission is due to any party or entity as a result of this transaction. Seller warrants that any brokerage fee or commission due to any party on behalf of Seller will be paid by Seller and Purchaser shall be indemnified and held harmless from any such claim through Seller.

18. Modification. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding between Seller and Purchaser with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of Seller and Purchaser.

19. Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

20. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

21. Time. Time is and shall be of the essence of this Agreement.

22. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify or amplify the terms of this Agreement.

23. Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

24. Notices. All notices, requests, demands, tenders and other communications hereunder shall be in writing. Any such notice, request, demand, tender or other communications

shall be deemed to have been duly given if personally delivered or on the third business day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below its execution hereof. Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth herein.

Seller: HDK Properties, LLLP
Michael Leff, Registered Agent
3789 Roswell Road
Atlanta, GA 30342

With copy to

Michael Leff
Sard and Leff
3789 Roswell Road
Atlanta, GA 30342

Purchaser: City of Sandy Springs, Georgia
7840 Roswell Road
Sandy Springs, GA 30350
Attn: John McDonough

With a copy to:
Wendell K. Willard and
Cecil G. McLendon, Jr.
7840 Roswell Road
Sandy Springs, GA 30350

25. Survival. Except as otherwise specified in this Agreement, all conditions or stipulations shall merge with the closing herein.

26. Miscellaneous. If the final date for any period provided for herein for the performance of any obligation or for the taking of any action falls on Saturday, Sunday, or banking holiday, then the time of the period shall be deemed extended to the next day which is not a Saturday, Sunday, or banking holiday.

27. Special Stipulations.

(a) Purchaser shall be allowed to enter upon the Property immediately upon execution of this Agreement for the purposes of boring, drilling, and such other activities as necessary to complete Phase II environmental testing.

(b) Except as set forth in Special Stipulation (a) above, Seller shall allow Purchaser thirty (30) days from the execution of this Agreement to inspect the Property and conduct its due diligence. Should Purchaser deem the property unfit for its use prior to the expiration of the thirty (30) day inspection period, Purchaser may terminate this Agreement and be refunded the entirety of the Earnest Money deposit, provided Purchaser informs Seller of its intent to terminate the Agreement in

writing, and provided Purchaser repairs any damage to the Property caused by Purchaser or Purchaser's agents during its entry, inspection and/or testing of any kind on or at the Property.

(c) Seller acknowledges that the Purchaser's obligations shall be conditioned upon the City Council of Sandy Springs, Georgia's approval and ratification of this Agreement; provided, however, Purchaser shall present this Agreement for approval and ratification and make its determination within the thirty (30) day inspection period set forth in subsection (b) above or this provision shall be waived.

(d) [Intentionally Omitted]

(e) Seller shall warrants at closing that the Property is not encumbered by any Lease or other obligation to a third party. Within ten (10) days of the execution of this Agreement Seller shall provide Purchaser with a copy of documentation regarding any encumbrance on the Property and/or the termination of the last lease regarding the Property.

(f) [Intentionally Omitted]

(g) Subject to the express terms of this Agreement, at Closing Purchaser accepts the premises in "as-is" condition.

(h) Purchaser acknowledges that this is a cash offer and not subject to financing contingency.

28. Time for Acceptance. This Agreement shall be regarded as an offer made by the Purchaser on April 23, 2013 to the Seller and is open for acceptance by the Seller on or before 5:00 p.m. Eastern Daylight Savings Time on April 25, 2013. The only manner of acceptance binding upon the Purchaser shall be the execution of this Agreement by the Seller and receipt by the Purchaser of one executed copy on or before 5:00 p.m. on April 25, 2013.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed and sealed by their duly authorized representatives, all as of the day and year first above written.

SELLER:
HDK Properties, LLLP

24 APRIL 2013
Date Executed

Dorothy K. Steinheimer
By: DOROTHY K. STEINHEIMER
Its: MANAGING PARTNER

(Signatures Continued on Following Page)

PURCHASER:
THE CITY OF SANDY SPRINGS, GEORGIA
a Municipal Corporation of the State of Georgia

4/23/2013
Date executed

John McDonough
By: John McDonough
Its: City Manager

Exhibit "A"

All that tract or parcel of land lying and being in land lot 89 of the 17th District, Fulton County, Georgia, as shown by plat of survey for Estate of Clyde R. Dewald, et al, by C.B. Mitchell, Jr., Registered Land Surveyor, 1442, dated December 7, 1973, being part of lots 2 and 3, W.O. Hardeman's property, and a part of lot 18, B.H. Allen's property, and being more particularly described as follows:

Commencing at a point on the west side of Roswell Road (said road being shown as having a 65 foot right-of-way) said point being located 84.75 feet northerly, along the westerly side of Roswell Road, from the intersection of the northwesterly side of Mount Vernon Highway (being shown on said plat as having a 30 foot right-of-way) and the westerly side of Roswell Road, running thence north 85 degrees 17 minutes 35 seconds west 76.6 feet to a Nail Set; thence north 06 degrees 25 minutes east 22.8 feet to an iron pin; thence north 83 degrees 30 minutes west 100.85 feet to a point; thence north 01 degrees 04 minutes west 22.0 feet to an iron pin located on the southeasterly corner of a 15 foot alley; thence north 09 degrees 38 minutes 30 seconds east, along the easterly side of said alley, 42.0 feet to an iron pin; thence north 85 degrees 26 minutes 30 seconds east 31.0 feet to an iron pin; thence south 83 degrees 30 minutes east 139.4 feet to an iron pin on the westerly side of Roswell Road; thence south along the westerly side of Roswell Road, 90.5 feet to a Nail set and the point of the beginning, being improved property with a building thereon, and being shown on said plat as being 0.313 acres.

Also, the following described parcel of property being in the same Land Lot, District, County and State:

Commencing at a point on the northwesterly side of an alley (said alley being shown on said plat as 15 feet in width) and said point being located 179.6 feet southwesterly, along the northwesterly side of the said alley, from a Nail found located at the intersection of the northwesterly side of said alley and the southwesterly side of Johnson Ferry Road (said Johnson Ferry Road being shown on said plat as having a 40 foot right-of-way); thence south 09 degrees 38 minutes 50 seconds west along the northwesterly side of said alley, 52.0 feet to an iron pin; thence south 80 degrees 11 minutes 25 seconds west, 25.0 feet to an iron pin; thence north 08 degrees 23 minutes 45 seconds east 62.1 feet to an iron pin; thence south 76 degrees 16 minutes 40 seconds east 25.0 feet to an iron pin and the point of beginning; said property being shown on said plat as being 0.031 acres.

Deed Book 52244-1 pg. 128
Cathy Lorne Robinson
Clerk of Superior Court
Fulton County, Georgia

DS/mgl

FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (hereinafter "Amendment") is made and entered into as of the 11th day of June, 2013, by and between HDK Properties, LLLP, a Georgia limited liability company (hereinafter called "Seller"); and the City of Sandy Springs, Georgia, a municipal corporation, (hereinafter called "Purchaser").

WITNESSETH:

WHEREAS, the parties entered into that certain Purchase and Sale Agreement dated April 24, 2013 regarding the sale of property located at 6204 Roswell Road, Sandy Springs, Georgia, 30328 (hereinafter the "Purchase and Sale Agreement"); and

WHEREAS, said Purchase and Sale Agreement set forth an initial Closing Date of June 14, 2013; and

WHEREAS, the parties have mutually agreed to extend the Closing to June 19, 2013;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the parties agree to amend the Purchase and Sale Agreement as follows:

1. Paragraph 5 of the Purchase and Sale Agreement is amended to change the Closing Date from June 14, 2013 to June 19, 2013. All other provisions of Paragraph 5 shall remain in full force and effect including Purchaser's ability to extend the Closing Date with addition Earnest Money.
2. Notwithstanding anything to the contrary in the Purchase and Sale Agreement; the parties agree that all prorations of costs shall be effective on June 12, 2013.
3. All other provisions of the Purchase and Sale Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed and sealed by their duly authorized representatives, all as of the day and year first above written.

SELLER:

HDK PROPERTIES, LLLP

Dorothy K. Steinitzer

11 June 2013

Date Executed

By: DOROTHY K. STEINITEIMER
Its: MANAGING PARTNER

(Signatures Continued on Following Page)

PURCHASER:
THE CITY OF SANDY SPRINGS, GEORGIA
a Municipal Corporation of the State of Georgia

6-11-13
Date executed

John McDonough
By: John McDonough
Its: City Manager