



MEMORANDUM

To: Mayor and City Council
From: Warren Hutmacher, City Manager
Date: June 12, 2013
Subject: **Lease of property at 4470 North Shallowford Road**

ITEM DESCRIPTION

The City of Dunwoody is considering a lease agreement with a private sector tenant to lease space at 4470 North Shallowford Road.

BACKGROUND

In 2011, the City of Dunwoody purchased 5 acres of land and a 12,000 sq. foot building at 4470 North Shallowford Road. The purchase of the building and surrounding land is intended for an extension of Peachford Road to Dunwoody Park Drive. The timeline of the project makes it possible for the City to monetize the building while the project to extend the roadway takes shape. The extension involves additional land acquisition and funding. Staff expects that the property will not be needed for at least the next five years.

ANALYSIS

The City has the opportunity to monetize a deteriorating asset by leasing the space to a private sector company. The City has received an unsolicited offer to operate a call center in the building. Attached to this memorandum is an Letter of Intent (LOI) from the prospective tenant that has been signed by the City and the tenant. The LOI is not binding on either party and does not represent a contract. By its nature, an LOI is simply a framework of business terms that both parties agree should be memorialized in a formal lease agreement.

The basic terms of the forthcoming lease agreement are that the City will lease the building for five years with no obligation to extend the lease. The tenant will be responsible for all tenant improvements to the building and maintenance of the grounds at their cost. The City will be paid \$4.50 per sq. foot on a monthly basis. Revenue over a 5-year period will amount to approximately \$270,000. The tenant has requested occupancy on July 1, 2013.

RECOMMENDATION

Staff recommends the Council approve the lease agreement that is forthcoming for public review.



May 3, 2012

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Re: Offer to Lease 4470 North Shallowford Road, Dunwoody, Georgia 30338

Dear Fred:

TopTel USA, (the "Lessee") would like to submit for your review and consideration an offer to lease the above-referenced property. The terms are as follows:

1. **Property.** 4470 North Shallowford Road, Dunwoody, GA 30338 (the "Property"), which is improved with 12,000 square feet of office building(s).
2. **Lease Rate.** The lease rate for the Property shall be \$4.50 absolute Net per square foot, with 2.% yearly escalations.
3. **Operating Expenses.** Tenant shall be responsible for payment of operating expenses. Please state 2012 operating expenses below. The City has not operated the building since its acquisition and has no history. We estimate operating expenses to be between \$4 and \$5/rsf/year subject to Tenant's use and improvements.
4. **Term.** Five year term.
5. **Rent Commencement.** 150 days after possession regardless of opening.
6. **Occupancy.** Tenant to have possession upon lease execution.
7. **Option to Extend.** Tenant shall have the right to extend the lease for up to five (5) one (1) year extensions subject to the Landlords sole discretion. Tenant shall notify the Landlord in writing no less than 180 days prior to the lease expiration of the primary term and any subsequent extensions of Tenant's desire to extend the lease for one additional year. Landlord in its sole discretion may approve or disapprove such proposed one year extension. Landlord will have fifteen (15) days from the date of receipt of the notify the Tenant regarding the Landlord's approval or disapproval of the request. If the Landlord does not respond in writing to the Tenant within the fifteen (15) day period, the request is automatically disapproved and the lease will end on the termination date.

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8. **Right to Assign and Sublease.** Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent.

In addition, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3rd party subtenant of a type and quality suitable for a first-class office building with Landlord's prior written consent which will not be withheld, conditioned or delayed .

9. **Access.** Tenant requires access to the Premises seven (7) days per week, 24 hours per day, 365 days per week.

10. **Other Condition(s).** Condition of the property is "As is, where is". Landlord will not warranty any condition of the building or its systems including but not limited to the roof, parking lot, HVAC, structure, plumbing or electrical.

11. **Right of First Refusal.** Intentionally deleted.

Tenant to have right of first Offer to purchase in the event of an unsolicited offer to purchase the building and if the City in its sole discretion decides to sell the property or if the City decides to offer the property for sale to the marketplace.

12. **Lessor's Responsibility. Tenant will accept the premises on an "AS IS, Where IS" basis.**

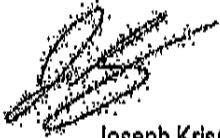
Intentionally deleted.

13. **Entry Drive from North Shallowford/Peachford Intersection:** It is understood by all parties that the Lessor has the right to make alterations to the entry drive to the property from North Shallowford at its sole discretion. The Lessor will ensure that the access to the leased premises remains open at all times and will limit any disruption to Lessee as a result of such alterations during the term of the Lease and any extensions.

This letter of intent is not intended to be a binding contract and is subject to the preparation and execution of the Lease Agreement containing terms and conditions mutually acceptable to Lessee and Lessor. The terms and conditions of this proposal to lease are subject to, and contingent upon, the approval and authorization of Lessor and legal counsel. This proposal is not meant to be an offer, nor is it meant to be all inclusive or exhaustive, and only the final Lease Agreement when fully negotiated, approved and executed by all parties and delivered, will constitute a contract between the parties.

Please signify your agreement to the basic terms set forth in this letter of Intent by executing where indicated below and delivering this letter to Purchaser. This offer is valid until May 24, 2013 at which time this Letter of Intent terminates and will be null and void.

Sincerely,



Joseph Kriss

LESSEE: Toptel USA, LLC.

Agreed and accepted

By: [Signature]

Its: President & CEO

Date: 5/30/13

LESSOR: CITY OF DUNWOODY

Agreed and accepted

By: W.A. [Signature]

Its: CITY MANAGER

Date: 5/29/13

**AN ORDINANCE ADOPTING AND AUTHORIZING A LEASE AGREEMENT
BETWEEN THE CITY OF DUNWOODY AND TOPTTEL USA FOR LEASE OF
PROPERTY ADDRESSED AT 4470 SHALLOWFORD ROAD**

WHEREAS, the City of Dunwoody owns certain property whose address is 4470 Shallowford Road, consisting of a usable office building and surrounding property, including parking lot; and

WHEREAS, TopTel USA is a corporation that desires to utilize said property for office space to conduct its business and desires to lease said space from the City of Dunwoody; and

WHEREAS, the Mayor and City Council desire to enter into a Lease Agreement, under its proprietary power, to lease said property to TopTel USA for an agreed-upon term and lease amount; and

WHEREAS, Section 2.10 of the City Charter requires that any leases that encumber City of Dunwoody land be authorized by Ordinance.

THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY AS FOLLOWS:

Section 1. That the Lease Agreement between the City of Dunwoody and TopTel USA, for the lease of 4470 Shallowford Road, is hereby approved and adopted.

Section 2. That the Mayor, City Manager and City Attorney are hereby authorized to execute all applicable and appropriate documents to effectuate the execution of said Lease Agreement.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2013.

Approved:

Michael G. Davis, Mayor

ATTEST:

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**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2013-XX-XX

Sharon Lowery, City Clerk

(Seal)

APPROVED AS TO FORM:

City Attorney