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MEMORANDUM

To: Mayor and City Council

From: Warren Hutmacher, City Manager

Date: October 28, 2013

Subject: **Spruill Center for the Arts - Consent to Proposed Ground Lease**

ITEM DESCRIPTION

Due to the City's inherited remainder interest in the property, the Spruill Center for the Arts requests the City's consent to a proposed ground lease.

BACKGROUND

In 1991, the Spruill family donated 5.14 acres located at 4681 Ashford Dunwoody Road to the Spruill Center for the Arts (formerly known as the North Arts Center). The Warranty Deed, by which the property was transferred, requires the Spruill Center for the Arts continue to (1) operate as a non-profit corporation and (2) utilize the property "to aid, encourage and develop cultural arts in DeKalb County, Georgia' as one of its purposes." In the event either requirement is no longer met, the property would revert to DeKalb County for a park.

In 2010, the City acquired all parkland inside the municipal limits from DeKalb County. The City has thus inherited the remainder interest from DeKalb County.

UPDATE

The Spruill Center for the Arts has stated they are without sufficient resources to fund and expand their arts programs. Earlier this year the Spruill Center for the Arts released a request for proposals in an effort to find a private sector partner to lease a portion of the property. They anticipate such a lease would provide monthly income to support their efforts to encourage and develop cultural arts.

The Spruill Center for the Arts has requested the City consent to their intention to sign a ground lease for a portion of their property. By consenting to the ground lease, the City is essentially agreeing it will not use the ground lease as a reason for the City to invoke its remainder interest in the property and convert it to a park.

RECOMMENDATION

Legal counsel has reviewed the Consent to the Ground Lease and found no issues. Although the City is underserved in parkland, staff believes the Spruill Center for the Arts provides a great benefit to our community. Staff does not believe that consent to the ground lease would limit our ability to inherit the property in the unlikely event that the Spruill Center for the Arts ceased to operate as a non-profit or ceased to encourage and develop cultural arts as one of its purposes. Staff recommends an action item authorizing the Mayor to sign the Consent to the Ground Lease on behalf of the City.

STATE OF GEORGIA
 COUNTY OF DEKALB
 CITY OF DUNWOODY
 _____, 2013

CONSENT TO GROUND LEASE

WITNESSETH THAT: As a charitable gift, Ethel Warren Spruill and Onnie Mae Spruill deeded the certain realty described on Exhibit "A" (the "Real Estate") to The North Arts Center, Inc. by Warranty Deed dated August 23, 1991, recorded in Deed Book 7134, page 776 of the records of the Clerk of the Superior Court, DeKalb County, Georgia (the "Vesting Deed").

WITNESSETH THAT: After the conveyance of the Real Estate, The North Arts Center, Inc. legally changed its name to Spruill Center for the Arts, Inc. (the "Sпруill Center").

WITNESSETH THAT: After the conveyance of the Real Estate, the City of Dunwoody, Georgia was formed inside of DeKalb County, Georgia, and all of the park lands inside the City of Dunwoody limits were conveyed by DeKalb County, Georgia to the City of Dunwoody.

WITNESSETH THAT: The Vesting Deed contained a requirement to relocate and restore the former home of Stephen T. Spruill, deceased (the "Sпруill Historic Farmhouse"). The parties hereto evidence their agreement that this requirement has been fulfilled, as the Spruill Historic Farmhouse has been relocated and restored, and is being well maintained and used by the Spruill Center as an art gallery, which is consistent with the deed requirement to provide for the home's historic preservation and use for educational purposes.

WITNESSETH THAT: The Vesting Deed also contained a requirement that the Real Estate be developed, maintained and used at least in part for educational, visual and performing arts purposes. The parties hereto evidence their agreement that this requirement has been and continues to be fulfilled by the Spruill Center.

WITNESSETH THAT: The Spruill Center is without sufficient resources to fund and expand its arts programs in the City of Dunwoody, DeKalb County, Georgia or to build additional arts facilities on the Real Estate. The Spruill Center is in negotiations with certain third parties (a or any "Proposed Lessee") to lease a portion of the Real Estate (a or any "Proposed Lease"), in which event the Proposed Lessee would be required to provide monthly income to the Spruill Center, which income the Spruill Center has committed to use solely to aid, encourage and develop cultural arts in the City of Dunwoody, DeKalb County, Georgia.

WITNESSETH THAT: A Proposed Lease (or leases) may be executed in the near future with one or more Proposed Lessees, or it may be executed several years from now. In addition, if a Proposed Lessee defaults under a Proposed Lease or if a Proposed Lease terminates after being executed, the Spruill Center may elect to sign a new Proposed Lease (or leases) with different parties;

WITNESSETH THAT: It is understood that the Spruill Historic Farmhouse shall remain on the Real Estate in connection with any Proposed Lease, which will continue to be used for educational purposes.

WITNESSETH THAT: The income received from a Proposed Lessee under a Proposed Lease would further support The Spruill Center's educational, visual and performing arts programs in the City of Dunwoody, DeKalb County, Georgia.

WITNESSETH THAT: In light of the proposed commercial uses for a portion of the Real Estate, Lessee has sought the consent to a Proposed Lease from the parties named below, who represent all of the interested parties (or their successors) named in the Vesting Deed.

WITNESSETH THAT: The parties below confirm that the City of Dunwoody, Georgia, now holds the remainder interest in the Real Estate and is the proper party to consent to a Proposed Lease;

THEREFORE, the parties who have signed below are: (1) W.A. Smitherman, as Executor under the Estate of Ethel Warren Spruill, deceased; and (2) Hugh Spruill and Kathleen Spruill Miers, both among the residuary beneficiaries under the will of Onnie Mae Spruill, who was the other grantor of the Vesting Deed and who died June 15, 2000 leaving a will that was duly probated in DeKalb County, Georgia; and (3) the City of Dunwoody, Georgia. By execution of this document, the parties acknowledge that: (a) in their judgment, a Proposed Lease as described above with the requirement that the Spruill Historic Farmhouse remain on the Real Estate is consistent with the original intent of the Vesting Deed to foster educational, visual and performing arts purposes in the City of Dunwoody, DeKalb County, Georgia; and (b) they waive any objection to the execution of a Proposed Lease (or leases) by the Spruill Center with a Proposed Lessee (or lessees) for the portion of the Real Estate; and (c) they consent to the execution of a Proposed Lease (or leases) now or in the future provided that the Spruill Historic Farmhouse remain on the Real Estate and the income received by the Spruill Center continue to be used for educational, visual and performing arts programs in the City of Dunwoody, DeKalb County, Georgia.

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IN WITNESS WHEREOF, the Parties have signed and sealed this Agreement for themselves, their respective heirs, successors and assigns.

_____(SEAL)
W. A. Smitherman, as Executor of the Estate of
Ethel Warren Spruill, Deceased

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
(AFFIX NOTARIAL SEAL)

_____(SEAL)
Hugh Spruill, in his individual capacity

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
(AFFIX NOTARIAL SEAL)

_____(SEAL)
Kathleen Spruill Miers, in her individual capacity

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
(AFFIX NOTARIAL SEAL)

_____(SEAL)
Michael G. Davis, Mayor of Dunwoody

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____
(AFFIX NOTARIAL SEAL)

WARRANTY DEED

STATE OF GEORGIA
 COUNTY OF DEKALB

THIS INDENTURE, made the 23rd day of August, in the year one thousand nine hundred ninety-one, between

ETHEL WARREN SPRUILL and ONNIE MAE SPRUILL
 of the Counties of Fulton and DeKalb, State of Georgia, as parties of
 the first part, hereinafter called Grantors, and

NORTH ARTS CENTER, INC.

as party of the second part, hereinafter called Grantee (the word
 "Grantee" to include its successors by name change or merger).

WITNESSETH that: Grantors, for and in consideration of the premises herein stated and for the purpose of making a gift, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, convey and confirm unto the said Grantee, upon the uses and for the purposes hereinafter expressed and subject to the provisions and conditions hereinafter stated, the defeasible fee simple title to the following described property:

All that tract and parcel of land lying and being in Land Lot 350 of the 18th District of DeKalb County, Georgia, and being particularly shown and delineated on plat of survey dated 6-14-91 made by Joseph C. King, Land Surveyor, for North Arts Center, as follows:

BEGINNING on the eastern right of way line of Ashford Dunwoody Road at a point located 1613.43 feet south from the north line of said Land Lot 350 as measured along the eastern right of way line of Ashford Dunwoody Road; and running thence South 05° 47' 39" East 236.37 feet to a point; thence South 89° 57' 39" East 829.30 feet to the western side of a proposed 100' Road; thence North 00° 02' 21" East 327.99 feet to the southern line of a proposed 60' Road; thence running in a general southwesterly and westerly direction along the southern line of said proposed 60' Road the following courses and distances: North 89° 57' 39" West 99.09 feet; thence along a curve to the right having an arc distance of 128.26

feet along a curve subtended by a chord having a distance of 127.45 feet along a line having a bearing South 78° 49' 47" West and a radius of 327.80 feet; thence South 67° 37' 13" West 123.80 feet; thence along a curve to the left having an arc distance of 258.49 feet subtended by a chord having a distance of 254.42 feet along a line having a bearing South 85° 16' 41" West and a radius of 419.38 feet; thence North 77° 03' 52" West 15.44 feet; thence along a curve to the right having an arc distance of 130.31 feet subtended by a chord having a distance of 129.75 feet along a line having a bearing South 86° 18' 52" West and a radius of 403.59 feet; thence South 84° 26' 08" West 117.27 feet to the eastern right of way of Ashford Dunwoody Road and the point of beginning; containing 5.1435 acres according to said plat of survey.

It is the purpose and intention of Grantors by the execution and delivery of this deed to convey defeasible fee simple title to Grantee, defeasible only upon the happening of one or more of the following events if such event happens, namely: Grantee (i) ceases to exist as a non-profit corporation (ii) ceases and abandons use of said property "to aid, encourage and develop cultural arts in DeKalb County, Georgia", as one of its purposes and uses.

Upon the happening of either such event, the title hereby conveyed to Grantee shall thereupon be divested and shall vest in DEKALB COUNTY, GEORGIA, in fee simple, for use as a park and recreational area, and Grantors, the premises and foregoing consideration considered, hereby grant, bargain, sell and convey to DEKALB COUNTY, GEORGIA, its successors and assigns, such remainder interest in said property, with right of possession to commence upon the defeasible fee simple title conveyed to NORTH ARTS CENTER, INC. being divested on account of the happening of one or both of the aforesaid events which give rise to such divestment.

As a part of the consideration of this conveyance, NORTH ARTS CENTER, INC. agrees to do and accomplish the following:

- (a) Remove the Stephen T. Spruill, deceased, house wherein he resided at the time of his death and relocate the same in its entirety within the bounds of the above described property and restore the same within a reasonable time to

good condition, giving consideration both to appearance and soundness, to provide for its historic preservation and use for educational purposes.

- (b) Develop, maintain and use the property for educational, visual and performing arts purposes.

TO HAVE AND TO HOLD the said tract or parcel of land with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining to the only proper use, benefit and behoof of the said Grantee in defeasible FEE SIMPLE, defeasible and subject to its title being divested only upon the happening of the event or events hereinabove specified; and if and when and upon such happening title of Grantee shall be divested and thereupon title in FEE SIMPLE shall vest in DEKALB COUNTY, GEORGIA, its successors and assigns, for perpetual use of said property as a park and recreational area, and for historic preservation of the said Stephen T. Spruill, deceased, dwelling house as a part of such use. DEKALB COUNTY, GEORGIA, thereupon and only in such event TO HAVE AND TO HOLD said tract or parcel of land with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining to the only proper use, benefit and behoof of the said County, forever in FEE SIMPLE.

AND THE SAID Grantors will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons claiming by, through and under Grantors.

IN WITNESS WHEREOF, the Grantors have signed and sealed this deed, the day and year above written.

Signed, sealed and delivered: Ethel Warren Spruill [SEAL]
ETHEL WARREN SPRUILL

in the presence of: Onnie Mae Spruill [SEAL]
ONNIE MAE SPRUILL

Sheek Posey
Sym M. Duckett
Notary Public

Notary Public, Dekalb County, Georgia.
My Commission Expires March 5, 1994