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## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager

**Date:** September 17, 2013

**Subject:** **Lease of Property at 4555 North Shallowford Road**

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### **ITEM DESCRIPTION**

The City is considering a lease agreement with a private sector tenant to lease space at 4555 North Shallowford Road.

### **BACKGROUND**

In 2012, the City of Dunwoody purchased the land and a 22,000 square foot building located at 4555 North Shallowford Road. The purchase of the building and surrounding land is part of the Project Renaissance redevelopment initiative. This particular building is located on the "19 acre property" at the corner of North Shallowford Road and Pernoshal Court. The adjacent building (located directly to the east) is likewise part of the "19 acre property" but has an existing ground lease through 2022. Based on the Project Renaissance timeline for redevelopment of this area and the ground lease of the adjacent building, staff expects that the property will not be needed for at least the next ten 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 from Emory to operate an out-patient surgery center in the building. Attached to this memorandum is a 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.

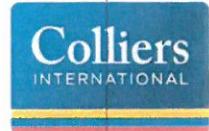
The basic terms of the lease agreement are that the City will lease the building for ten years with no obligation to extend the lease. The tenant will be responsible for all tenant improvements to the building and maintenance of the grounds at their cost. Following a six-month abatement, the City will be paid \$5.40 per sq. ft. on a monthly basis with a 2.5% annual escalation. Revenue over the 10-year period will amount to approximately \$1,200,000. Tenant has requested occupancy on October 1, 2013.

### **RECOMMENDATION**

Staff recommends the Council approve the lease agreement. The final version of the lease is forthcoming.

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September 3, 2013

Mr. Bruce Propst  
Principal  
Cassidy Turley  
171 17<sup>th</sup> Street  
Suite 1400  
Atlanta, GA 30363

Sent via email:

Re: Offer to Lease 4555 North Shallowford Road, Dunwoody, Georgia 30338

Dear Bruce:

Thank you for your client's interest in leasing medical office space from the City of Dunwoody ( Lessor). Lessor will lease the above referenced property to The Emory Clinic, Inc., an affiliate of Emory Healthcare, Inc., (Tenant) under the following terms and conditions.

1. **Property.** 4555 North Shallowford Road, Dunwoody, GA 30338 (the "Property"), which is improved with approximately 22,000 square feet of office building on two floors.
2. **Rent.** The rent that Tenant will be obligated to pay for occupancy and use of the Property shall be \$5.40 per square foot absolute net, with 2.5% annual escalations.
3. **Operating Expenses.** Tenant shall be responsible for payment of operating expenses. The Lessor has no operating history for the building and has not operated the building. It is estimated operating expenses to be between \$5.00 and \$7.00/rsf/year subject to Tenant's use and operating hours.
4. **Term.** Ten year firm term.
5. **Rent Commencement.** May 1, 2014.
6. **Occupancy.** Upon the full execution of the lease contemplated herein, Tenant shall be granted access to the property for the purpose of constructing the necessary improvements to the Building.
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 Lessor's sole discretion. Tenant shall notify the Lessor in writing no less than one year 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. Lessor in its sole discretion may approve or disapprove such proposed one year extension. Lessor will have fifteen (15) days from the date of receipt to notify the Tenant regarding the Lessor's



approval or disapproval of the request. If the Lessor 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. If the Lessor permits the first one year extension the absolute net rental rate will be the market rate for similar medical office buildings, based on criteria including Property age, age of improvements to the Property and occupied premises, condition of the Property, Property use, and other appropriate market factors, in the North Central Office Submarket of Atlanta as determined by an appraiser who has been approved by Lessor and Tenant. Once the market rate is established, the absolute net rate for any subsequent extensions will be the initial extension agreed upon market rate plus a market based annual escalation.

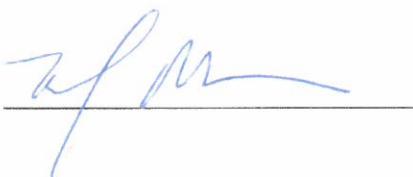
8. **Right to Assign and Sublease.** Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent 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 Lessor's prior written consent which will not be withheld, conditioned or delayed .
9. **Access.** Tenant will be given immediate access to the Premises upon the full execution and delivery of the lease.
10. **Other Condition(s).** Condition of the property is "As is, where is". Lessor will not warranty any condition of the building or its systems including but not limited to the roof, parking lot, HVAC, structure, elevator, plumbing or electrical. It is understood by all parties that the parking immediately adjacent to and along the rear property line is shared with the adjacent medical office building whose ground lease is owned by Lessor.
11. **Disclaimer.** 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 September 4, 2013 at which time this Letter of Intent terminates and will be null and void.

Sincerely,

Tenant:

A handwritten signature in blue ink, appearing to read "JLM".

Agreed and accepted:

By:

Its:

Date:

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE 2013-09-XX**

**AN ORDINANCE ADOPTING AND AUTHORIZING A LEASE AGREEMENT  
BETWEEN THE CITY OF DUNWOODY AND THE EMMORY CLINIC FOR LEASE OF  
PROPERTY ADDRESSED AT 4555 NORTH SHALLOWFORD ROAD**

**WHEREAS**, the City of Dunwoody owns certain property whose address is 4555 North Shallowford Road, consisting of a usable office building and surrounding property, including parking lot; and

**WHEREAS**, the Emory Clinic, Inc. 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 for a multi-year lease term; and

**WHEREAS**, the Mayor and City Council desire to enter into a Lease Agreement, as attached hereto and incorporated herein, under its proprietary power, to lease said property to the Emory Clinic, Inc. 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 the Emory Clinic, Inc., in materially identical form as attached hereto and incorporated herein, for the lease of 4555 North 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 23<sup>rd</sup> day of September, 2013.

Approved:

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Michael G. Davis, Mayor

**#L.1.**

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**ORDINANCE 2013-09-XX**

ATTEST:

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Sharon Lowery, City Clerk

(Seal)

APPROVED AS TO FORM:

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City Attorney