



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council
From: Cecil McLendon, City Attorney
Date: April 27, 2020
Subject: Consideration of Approval of Amendment to Purchase and Sale Agreement for 4553 & 4555 North Shallowford Road

ITEM DESCRIPTION

Following a solicitation of bids, the City of Dunwoody entered into a Purchase and Sale Agreement with SHG Dunwoody, LLC regarding the City’s property located at 4553 and 4555 North Shallowford (hereinafter “Shallowford Agreement”).

Subsequent to the agreement being executed, COVID-19 began to break out on a worldwide basis. Based upon the disruption which has occurred due to the COVID-19 Pandemic along with the associated emergency declarations and responses, the implementation of the requirements under the Shallowford Agreement have been delayed. This is not surprising especially since Emory Healthcare is involved in the transaction.

As a result, the City has worked with SHG Dunwoody, LLC to negotiate an amendment to the Shallowford Agreement which defers the relevant dates within the agreement. The amendment gives the parties more time to implement the agreement’s requirements.

Lynn Deutsch Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6



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RECOMMENDED ACTION

Approval by Council.

A copy of the proposed First Amendment to Purchase and Sale Agreement is attached hereto as Exhibit "A."

Lynn Deutsch Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

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FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (“Amendment”) is made and entered into as of this ___ day of April, 2020 by and between **SHG Dunwoody, LLC**, a North Carolina limited liability company, (“Purchaser”) and **City of Dunwoody, Georgia**, a municipal corporation organized and existing under the laws of the State of Georgia (“Seller”).

W I T N E S S E T H:

WHEREAS, Purchaser and Seller entered into that certain Purchase and Sale Agreement with an Effective Date of March 9, 2020 (the “Agreement”), whereby Seller agreed to sell, and Purchaser agreed to purchase, subject to the terms and conditions stated in the Agreement, all of Seller’s right, title and interest in and to the Property, as more particularly described in the Agreement; and

WHEREAS, in consideration of the unprecedented hardships caused by COVID-19, including the issuance of stay at home orders across the country and prohibitions on gatherings of persons, and the self-quarantining of large segments of the population, the Seller and Purchaser have agreed to extend certain deadlines and critical dates set forth within the Agreement for a period of sixty days to provide the Purchaser additional time to fulfill its obligations under Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meaning given them in the Agreement.

2. Subsection 4(a) Title Examination. The third sentence of the Subsection shall be deleted and replaced with the following:

“On or before July 7, 2020, the Purchaser shall search title to confirm that Seller owns “Good and Marketable Fee Simple Title” (as hereinafter defined) to the Property (the “Title Objection Period”).”

3. Subsection 4(c) Title Objections. The Subsection shall be deleted in its entirety and replaced with the following:

“Prior to the expiration of the Title Objection Period, the Purchaser shall complete its title examination of the Property (including matters of survey) and deliver to Seller written notice of any objections to same.”

4. Subsection 4(d) Cure Period. The third sentence of the Subsection shall be deleted and replaced with the following:

“Any Existing Title Exceptions to which the Purchaser does not object prior to the expiration of the Title Objection Period (other than Monetary Encumbrances) shall become Permitted Title Exceptions.”

5. Subsection 5(c) Purchaser’s Right to Terminate. The first sentence of the Subsection shall be deleted and replaced with the following:

“In the event Purchaser’s inspection and investigation of the Property results in a determination by the Purchaser that the Property is unsatisfactory for Purchaser’s intended uses or is otherwise unsuitable or unacceptable in any respect, the Purchaser may terminate this Agreement by delivering to Seller (with copy to the Escrow Agent) written notice of same, on or before the close of business (5:00 pm local time) on July 22, 2020 (the “Free Look Period”).”

6. Subsection 24(a) Rezoning Contingency.

6.1 The second paragraph of the Subsection shall be deleted in its entirety and replaced with the following:

“Purchaser agrees that it shall, at its sole cost and expense: (1) submit a fully compliant rezoning application based solely on the reasonable determination of Dunwoody’s Director of Community Development to the City of Dunwoody no later than June 22, 2020 and (2) diligently pursue a rezoning application for the Property upon execution of this Agreement. Seller agrees that it shall consider Purchaser’s rezoning application consistent with consideration of any other rezoning application submitted to Seller. In the event Purchaser fails to file a fully compliant rezoning application on or before June 22, 2020, then Seller may terminate this Agreement and except as otherwise set forth herein, neither party shall have further obligation to the other pursuant to this Agreement. In the event of a termination by Seller pursuant to this rezoning contingency, Purchaser shall be entitled to a refund of all Earnest Money.”

6.2 The fifth paragraph of the Subsection shall be deleted in its entirety and replaced with the following:

“In the event the rezoning process has not been completed as evidenced solely by a vote of Dunwoody’s City Council on or before November 9, 2020, through no fault of Purchaser and provided Purchaser is diligently pursuing same, Purchaser shall have the one time right to extend this Agreement through and until January 8, 2021, to allow for completion of the rezoning process, as evidenced solely by a vote of Dunwoody’s City Council. In any event, if the Property has not been rezoned prior to March 2, 2021, this Agreement, unless otherwise extended by the mutual agreement of the Seller and Purchaser, shall become null and void with neither party having further obligation to the other pursuant to this Agreement, except as otherwise expressly set forth herein, with Purchaser being entitled to a full refund of the Earnest Money.”

7. Section 25. Time for Acceptance. The first two sentences of the subsection shall be deleted in their entirety.

8. In the event of any conflict between the provisions of the Agreement and this Amendment, this Amendment shall control.

9. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be duly executed on its behalf as of the day and year first above written.

PURCHASER:

SHG DUNWOODY, LLC,
a North Carolina limited liability company

By: **SUMMIT HEALTHCARE GROUP, LLC,**
a North Carolina limited liability company, its
Manager

By: _____ (SEAL)
Name: Joseph S. Joseph, Jr.
Title: Manager

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SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]**

SELLER:

THE CITY OF DUNWOODY, GEORGIA, a
municipal corporation of the State of Georgia

By: _____

Eric Linton

Its: City Manager

[CORPORATE SEAL
OF SELLER]