

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is made and entered into as of the Effective Date specified below, by and between the **CITY OF DUNWOODY, GEORGIA**, a municipal corporation organized and existing under the laws of the State of Georgia (hereinafter collectively called "Seller"), and **SHG DUNWOODY, LLC**, a North Carolina limited liability company (hereinafter called "Purchaser").

### W I T N E S S E T H:

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:

Those certain fee simple parcels of land and easements comprising a portion of what is currently known as Tax Parcels 18 344 01 009 and 18 344 01 007 in the City of Dunwoody, DeKalb County, Georgia, and lying and being in Land Lot 344, of the 18<sup>th</sup> Land District of DeKalb County, Georgia, and as more particularly described as set forth on Exhibit A attached hereto, including all plants, trees and shrubbery now a part of such fee simple parcels (the "Land"), with the existing building, paving, fencing, and such other land improvements as are located on such fee simple parcels and owned by the Seller, including all lighting fixtures, all electrical, mechanical, plumbing, air conditioning, and any other systems or fixtures as are attached thereto (collectively, the "Improvements").

Less and except that certain property depicted in red on Exhibit B attached hereto which shall be retained by the Seller for the purposes of future right-of-way (the "Retained Right of Way"); provided, however, Purchaser shall have an easement to cross the Retained Right of Way using the driveways located on the Property (the "Easement") (the Land, Easement and Improvements less and except the Retained Right of Way shall be referred to herein as the "Property").

The Property is located at 4553 North Shallowford Road and 4555 North Shallowford Road according to the current system of addressing property in the City of Dunwoody, Georgia (hereinafter the "4553 Parcel" and "4555 Parcel" respectively).

2. Purchase Price, Method of Payment. The purchase price for the Property, hereinafter called the "Purchase Price," shall be SIX MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,800,000.00). The Purchase Price, subject to the prorations and adjustments hereinafter described, shall be paid by Purchaser to Seller on the Closing Date by wire transfer to an account designated by Seller, or other payment medium acceptable to Seller.

3. Earnest Money.

(a) Within three (3) business days after the Effective Date, as defined herein below, Purchaser shall pay to Mozley Finlayson & Loggins LLP ("Escrow Agent") the sum of **TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00)** as the initial earnest money deposit (the "Initial Earnest Money Deposit"). The Initial Earnest Money Deposit and the Extension Deposit, if any, paid to the Escrow Agent by the Purchaser pursuant to this Agreement

are herein referred to, individually and collectively as the context may require, the "Earnest Money."

(b) If Closing should occur hereunder, Escrow Agent shall pay the Earnest Money to the closing agent and the Earnest Money shall be applied and credited in reduction of the Purchase Price.

(c) If Closing does not occur hereunder because: (1) Purchaser exercises any unexpired right or option under this Agreement to rescind, cancel or terminate this Agreement within the time provided herein, (2) Seller fails or is unable to deliver Seller's deed and other Seller Deliveries to the Purchaser conveying the quality of title to the Property required by this Agreement, or (3) Seller defaults under this Agreement and fails to cure such default within the period allowed for cure, the Purchaser shall have the option to notify Escrow Agent, after the passage of any required notice period, to immediately refund the Earnest Money to Purchaser, less the sum of TWO HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$225.00), which shall be paid to Seller in consideration for this Agreement, whereupon this Agreement shall terminate and the parties to this Agreement shall have no further rights, duties or obligations to the other, except as otherwise specifically provided by this Agreement.

(d) Otherwise, the Earnest Money shall be deemed non-refundable and shall be paid to the Seller upon the termination of this Agreement. Until one of the preceding conditions should exist, the Earnest Money shall be held and disbursed by Escrow Agent strictly in accordance with the terms and provisions of **Section 6** of this Agreement.

#### 4. Title.

(a) Title Examination. Seller discloses and Purchaser acknowledges that the Property is encumbered by certain ground leases and other obligations. Seller makes no warranty or representation as to the existing status of title to the Property except as expressly provided herein. Within sixty (60) days from the Effective Date (the "Title Objection Period"), Purchaser shall search title to the Property to confirm that Seller owns "Good and Marketable Fee Simple Title" (as hereinafter defined) to the Property. In the event the title report indicates Seller does not own Good and Marketable Fee Simple Title to the Property, Purchaser shall proceed as set forth in the subsections below.

(b) Good and Marketable Fee Simple Title / Existing Title Exceptions. For all purposes of this Agreement, "Good and Marketable Fee Simple Title" shall mean fee simple title insurable by a title insurance company selected by the Purchaser which is licensed to do business in Georgia under such title company's standard ALTA 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. "Existing Title Exceptions" means all zoning and land use laws, codes and regulations, liens, easements, encumbrances, leases and other restrictions of public record affecting Seller's Good and Marketable Fee Simple Title to the Property on the Effective Date, but including matters of survey.

(c) Title Objections. Purchaser shall have sixty (60) days following the Effective Date to conduct an examination of the condition of Seller's title to the Property (including matters of survey), and to deliver to the Seller written notice of any objections by the Purchaser to the condition of the Seller's title.

(d) Cure Period. Seller shall have until thirty (30) days from the date of Purchaser's initial notice of objections, if any, in which to review such title objections, and, if Seller elects, to give Purchaser notice of any objections specified in such notice which Seller intends to attempt to cure. With the exception of any "Monetary Encumbrances," as defined herein, Seller shall have no obligation to take any action whatsoever to cure any objections by Purchaser to the condition of Seller's title which are Existing Title Exceptions. Any Existing Title Exceptions to which the Purchaser does not object within the 60-day period provided herein (other than Monetary Encumbrances) shall become Permitted Title Exceptions at the end of such 60-day period. Unless Seller notifies the Purchaser within such 30-day period of any of Purchaser's objections which the Seller intends to cure, the Seller shall be deemed to have declined to cure any such objections. Seller shall have a reasonable time, but not more than thirty (30) days after the delivery of Purchaser's notice of title objections, to remove any of Purchaser's objections to Seller's title which the Seller has agreed to attempt to cure, provided that the Seller shall not be deemed to be in default of this Agreement, if the Seller fails or is unable to remove any such title objections.

(e) Removal of Monetary Encumbrances. Notwithstanding any other provision of this Agreement, the Seller shall be obligated to remove not later than Closing all security deeds, mortgages, tax liens, financing statements and other liquidated financial encumbrances of any kind affecting Seller's title to the Property incurred by, against or at the instance of the Seller and Seller's predecessors, whether or not such matters were included in any notice of objection by the Purchaser to Seller's title ("Monetary Encumbrances"). The closing attorney shall withhold and disburse from the Purchase Price a sufficient amount thereof to satisfy all such Monetary Encumbrances.

(f) Purchaser's Termination Right. If Seller fails to attempt or is unable to cure all of the Purchaser's reasonable objections to the condition of the Seller's title hereunder, or if the Seller fails to remove all such objections, if any, which the Seller has agreed to attempt to cure within the time allowed herein, then at the option of the Purchaser, to be exercised by the Purchaser within ten (10) days after the last date on which the Seller may elect to attempt to remove such title objections, if no such election is received, or, if Seller elects to attempt to cure or satisfy some or all of such objections, then within ten (10) days after the last date on which the Seller may provide evidence that all such objections have been cured and satisfied, Purchaser may, in Purchaser's sole discretion: (1) waive all of Purchaser's unsatisfied objections (other than Monetary Encumbrances) and purchase the Property, in which case, all remaining Existing Title Exceptions other than Monetary Encumbrances shall become Permitted Exceptions; or (2) terminate this Agreement by written notice to the Seller, in which case Seller shall promptly refund any Earnest Money paid (less the sum of TWO HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$225.00), which shall be paid to Seller in consideration for this Agreement) and, upon receipt of such refund, except as otherwise expressly provided by this Agreement, neither Purchaser nor Seller shall have any further liability or obligations to the other.

(g) Changes in Condition of Seller's Title after the Effective Date. Seller agrees and covenants with the Purchaser that, from and after the Effective Date, Seller will not enter into any new easement, restriction, encumbrance, or other matter adversely affecting Seller's title to the Property ("Unpermitted Encumbrance") without Purchaser's prior written consent and agrees that Seller's entry into or recording of such Unpermitted Encumbrance shall be included in the definition of Seller Default as set forth in **Section 10(b)** hereof. Provided, if Purchaser fails to object to any proposed Unpermitted Encumbrance within 10 days of written notice thereof from Seller, Purchaser shall be deemed to have consented thereto. Further, notwithstanding **Subsection (e)** hereof, in the event that, after the county record date of the Purchaser's examination of title or title commitment and before Closing, Purchaser discovers any Unpermitted Encumbrance (other than Monetary Encumbrances) which did not first appear of record until after the Effective Date of this Agreement, and which Seller did not provide prior written notice thereof, Purchaser shall have the additional right to object to such new matters at any time prior to the Closing; and, in the event of such objections, Seller shall have thirty (30) days within which to cure all such objections. If Seller should fail to cure all such new objections within such 30-day period, Purchaser shall have the right to elect within ten (10) days following the end of such 30-day period between the actions described in **Paragraphs (1) and (2) of Subsection (f)** hereof. If the Purchaser elects to close notwithstanding such objections, all title restrictions of record on the Closing Date (other than Monetary Encumbrances) shall become Permitted Exceptions.

5. Purchaser's Inspection and Other Due Diligence.

(a) Access and Inspection. From the Effective Date of this Agreement (as defined below) until the Closing Date, Seller hereby grants Purchaser the right to enter upon the Property at reasonable times after reasonable prior notice to the Seller, subject to the terms of any leases on the Property and tenant's rights to notice, and at the Purchaser's sole risk, for the purpose of conducting inspections and investigations contemplated by this Agreement. Notwithstanding the foregoing, without forty-eight (48) hours prior notice to Seller and the Seller's express consent, representatives of the Purchaser shall not enter the interior of the buildings located upon the Property or any fenced and gated areas without a representative of the Seller having a reasonable opportunity to be present.

(b) Seller Due Diligence Deliveries. Seller shall deliver to the Purchaser within ten (10) business days after the Effective Date complete and accurate copies of any surveys, inspections, leases, environmental test and reports, or other documents in Seller's possession evidencing any encumbrances existing on the Property.

(c) Purchaser's Right to Terminate. In the event that 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 delivery to the Seller (with a copy to the Escrow Agent) of written notice of termination on or before close of business (5:00 p.m. local time) seventy-five (75) days after acceptance of this Purchase and Sale Agreement (the "Free Look Period"). Upon receipt of a timely notice of termination, the Escrow Agent shall promptly refund all Earnest Money paid (less the sum of TWO HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$225.00), which shall be paid to Seller in consideration for this Agreement), and, upon receipt of such refund, except as otherwise expressly provided by this Agreement, neither

Purchaser nor Seller shall have any further liability or obligations to the other. If the Purchaser does not deliver such written notice of termination on or before such date, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this **Section 5**, and such right shall expire, become null and void and shall have no further force or effect. Except in the case of an express written waiver, nothing herein shall be deemed, however, to result in a waiver of any other express right or option of the Purchaser to terminate this Agreement, including the Purchaser's right to terminate under **Section 24(a)**, which shall be conditions separate from the Purchaser's termination right hereunder.

(d) **Free Look Extension.** Purchaser shall have the one-time right, but not the obligation, to extend the Free Look Period for an additional thirty (30) days, if on or before the expiration of the Free Look Period, Purchaser provides Seller written notice of its intent to exercise its right to extend the Free Look Period ("Free Look Extension"). Said Free Look Extension shall begin on the first day after the expiration of the Free Look Period. In consideration for the Free Look Extension, Purchaser shall deposit an additional TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) ("Extension Deposit") with the Escrow Agent, within two business days of the expiration of the Free Look Period. Purchaser's right to terminate this Agreement and receive a refund of the Earnest Money as set forth in **Section 5(c)** above shall also apply to the Free Look Extension.

(d) **Inspections at Purchaser's Risk and Expense.** All inspections and testing of the Property by Purchaser and its agents shall be performed at the sole cost and risk of the Purchaser. If this Agreement is terminated, Purchaser shall promptly return to Seller all information that exists in any form or media regarding the Property provided by or on behalf of Seller, together with copies, at no cost to Seller, of all title, surveys, engineering, traffic, environmental, soils and other reports and studies obtained by Purchaser through its investigation of the Property.

## 6. Escrow Instructions.

(a) **Handling of Earnest Money.** Escrow Agent shall promptly advise Seller and Purchaser if the Earnest Money is not received by Escrow Agent within three (3) days after the Effective Date. Escrow Agent shall promptly deposit and hold the Earnest Money in the federally insured, non-interest bearing account at the banking institution where the Escrow Agent maintains the other funds it holds in escrow for its clients and others ("Escrow Account"). Escrow Agent may commingle the Earnest Money with funds of other clients in the Escrow Account. Escrow Agent shall not be accountable for any direct or indirect incidental benefit which Escrow Agent may receive from the depository bank which is attributable to the Earnest Money. Purchaser and Seller shall split equally any fees for Escrow Agent incurred in holding the Earnest Money.

(b) **Disbursement of Funds.** At such time as Escrow Agent receives written notice from Seller or Purchaser, or both, stating the identity of the party to whom the Earnest Money is to be disbursed, Escrow Agent shall disburse such Earnest Money pursuant to such notice; provided, however, that if such notice is given by either Seller or Purchaser but not both, and the person to whom the Earnest Money is to be disbursed is other than the closing attorney, Escrow Agent shall notify the other party in writing of such notice and shall withhold disbursement of the Earnest Money for a period of five (5) calendar days after giving such notice. If the Escrow Agent receives written notice from either Seller or Purchaser within such five (5) day period, which notice

countermands or objects to the earlier notice of disbursement, then Escrow Agent shall withhold such disbursement until both Seller and Purchaser can agree upon a disbursement of the Earnest Money. Notwithstanding the foregoing, if Purchaser notifies Escrow Agent on or before the expiration of the Free Look Period or the Free Look Extension, if any, of its election to terminate this Agreement pursuant to **Section 5**, then no confirming notice from Seller shall be required by Escrow Agent, and Escrow Agent shall promptly disburse the Earnest Money as provided in **Section 5** without requesting or waiting for confirming notice from Seller. Seller and Purchaser agree to send to the other a duplicate copy of any written notice sent to Escrow Agent requesting disbursement or countermanding or objecting to a request for disbursement.

(c) **Limited Liability.** In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for any gross negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement, and, accordingly, Escrow Agent shall not incur any such liability with respect to the following: (1) any action taken or omitted in good faith upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this Agreement; or (2) any action taken or omitted in reliance on any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a person or persons having authority to sign or present such instrument, and to conform with the provisions of this Agreement.

(d) **Disputes / Interpleader.** Notwithstanding anything in this Agreement to the contrary, upon a dispute between Seller and Purchaser sufficient in the sole discretion of Escrow Agent to justify its doing so, or if Escrow Agent has not disbursed the Earnest Money on or before the thirtieth (30th) day following the Closing Date specified in **Section 7**, then Escrow Agent shall be entitled, but not required, to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such pleadings as it may deem appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement (other than with respect to any liabilities for negligence, willful misconduct or breach of trust by Escrow Agent). The Escrow Agent may reimburse itself from the Earnest Money for a reasonable attorney's fee and other reasonable costs of filing any such interpleader action. The Escrow Agent may also, in its discretion, elect to refrain for any period from initiating any such interpleader action, and may in lieu thereof, continue to hold the Earnest Money in escrow subject to the terms and conditions of this Section pending a resolution of all disputes between the parties.

7. **Closing.** The term "Closing," as used herein, means the consummation of the purchase and sale of the Property pursuant to this Agreement. The Closing shall include, *inter alia*, the delivery and acceptance of the Purchase Price by the Seller and the execution and delivery by the Purchaser and Seller as applicable of the Closing Documents and other Deliveries described herein.

(a) **Closing Date.** The term "Closing Date," as used herein, means the date on which the Closing is consummated.

(1) **Initial Closing Date.** The Closing shall take place on or before forty-five (45) days after the final rezoning as contemplated in Special Stipulation 24(a), at a time and date mutually agreeable to both Seller and Purchaser, or if no such date is mutually determined otherwise, then on the forty-fifth day following date of the final rezoning action at 1:00 p.m. local time at 4800 Ashford Dunwoody Road, Dunwoody, GA 30338 or at the law office of the closing attorney, as elected by Purchaser, within 15 miles of the City of Dunwoody, Georgia; provided, however, in no event shall Purchaser be required to close prior to the expiration of the Free Look Period or the Free Look Extension, if any.

(b) **Closing Documents.** On the Closing Date:

(1) **Seller Deliveries.** Seller shall deliver to Purchaser the following documents and instruments, all in a standard form and substance reasonably satisfactory to legal counsel for the Purchaser and Seller, duly executed by or on behalf of Seller (where applicable under oath or in proper legal form for recording): (i) a limited warranty deed conveying Seller's Good and Marketable Fee Simple Title to the Property to the Purchaser, subject only to Permitted Exceptions; (ii) any curative documents which the Seller may agree to furnish in connection with the Closing pursuant to **Section 4** hereof; (iii) a Seller's affidavit of ownership 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; (iv) a tenant estoppel certificate satisfactory to Purchaser for each lease at the Property, or evidence that the Property is unencumbered by any leases or tenants in possession; (v) a copy of the final bill for each utility servicing the Property, showing the cancellation of the utility and payment in full of all outstanding charges; (vi) a quitclaim deed attaching the legal description from Purchaser's survey, if any; (vii) any assignment and assumption of leases and transfer of security deposits, if any; (viii) Parking Easement; (ix) an affidavit and indemnity agreement in standard form regarding contractor's and materialmen's liens on the Property acceptable to Purchaser's title insurer; (x) Brokers' affidavits; and (xi) such tax certifications, affidavits of authority, residency, non-foreign status, tenant notices, 1099-S, and other customary closing documents as reasonably requested by the title company.

(2) **Purchaser Deliveries.** Purchaser shall pay the balance of the Purchase Price to Seller in cash in accordance with the provisions of this Agreement, and shall also execute and deliver other customary closing documents as may be reasonably requested and counterparts to the relevant Seller Deliveries set forth above.

(3) **Closing Memorandum.** Purchaser and Seller shall execute and deliver a settlement statement, HUD-1 Form or closing memorandum disclosing the prorations, adjustments, funds paid and received by and to all parties at the Closing in reasonable detail, together with such other information concerning the Closing as the closing attorney should reasonably consider necessary and proper to properly and accurately document the Closing.

(c) **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:

(1) 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 between the Seller and the Purchaser.

(2) Any other items, including but not limited to rents and utilities, 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 such prorations and adjustments to be made in conjunction with the Closing shall be made as of the Closing Date and shall be effective at Closing, except as otherwise provided and as further specified herein.

(3) Seller shall be responsible for and pay any and all applicable rollback or deferred taxes assessed on the Property.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, Seller shall deliver to Purchaser the bills therefor promptly upon receipt thereof and Purchaser shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent. In making the prorations required by this Paragraph, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Purchaser.

(d) Costs of Closing. At Closing:

(1) the Seller shall pay: (i) the fees of the Seller's attorney and any other advisors, (ii) the State of Georgia Real Estate Transfer Tax, if any, payable on the recording of the Seller's deed and all other taxes associated with the sale of the Property to the Purchaser, (iii) the cost of satisfying all Monetary Encumbrances and removing the same from the public records, (iv) the cost of preparing and filing any curative documents which the Seller may agree to deliver pursuant to **Section 4** hereof, and (v) any other costs which the Seller may expressly agree to pay pursuant to this Agreement, but no other charges;

(2) The Purchaser shall pay: (i) all recording costs not payable by the Seller, (ii) all costs of Purchaser's title examination, title commitment and any updates and Purchaser's title premiums, (iii) all costs of Purchaser's surveys, appraisals, soils and environmental testing, wetlands investigations and other due diligence costs incurred in connection with the Purchaser's due diligence investigation of the Property; and (iv) any other costs and expenses of the transaction which are not the obligation of any other person hereunder.

Each party shall be responsible for the payment of its respective attorney fees.

8. Warranties and Representations of the Seller / Limitations and Merger. Seller represents, warrants and covenants that, to the best of Seller's present actual knowledge, without investigation:



(a) Seller has the right, power, authority, discretion and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement;

(b) There are no there are no legal actions, suits or other legal or administrative proceedings pending or threatened in writing against or involving Seller which affect, or may, if adversely determined, affect Seller's title to the Property;

(c) Seller has not received any notice of pending or threatened claims; condemnations; planned public improvements; annexation; special assessments, whether pending or confirmed; rezoning; changes contemplated in any applicable laws, ordinance or restrictions affecting the Property; or, other adverse claims affecting the Property;

(d) To the best of Seller's knowledge, as of the Effective Date of this Agreement: (i) the Property does not contain any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants in violation of applicable federal, state or local environmental laws; and (ii) the Property is not subject to federal, state or local regulations because of the presence, in unlawful amounts, of stored, leaked, spilled or disposed petroleum products, waste materials or debris, "PCBs", underground storage tanks, asbestos, or any dangerous, hazardous or toxic substance as defined in or regulated by applicable federal, state or local laws, regulations or orders. Seller further represents and warrants to Buyer that Seller shall not bring any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants onto the Property during the pendency of this Agreement, except for de minimis amounts of such materials ordinarily used in the course of maintaining the Property, if any;

(e) To the best of Seller's knowledge and belief, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; and (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound;

(f) Except as otherwise disclosed to Purchaser with Seller's Due Diligence Deliveries: (i) Seller has not sent any notice to any tenant under a lease terminating its lease or claiming that such tenant is in default; (ii) Seller has not received notice that any tenant disputes the computation of any rent or other amounts payable pursuant to its lease or claiming any breach by the landlord thereunder; and (iii) no rent under any lease has been paid more than thirty (30) days in advance of its due date.

(g) On the Closing Date, there will be no liability of Seller or Purchaser to any tenant or related party under any of the leases or to any real estate broker or salesperson for: (i) amounts applicable to any period after the Effective Date which the landlord under the leases would have received from the tenants under the leases if the obligation to pay such amounts had not been abated or otherwise made not payable by reason of any rental abatements, rental credits, construction credits or any other economic concessions or incentives granted to a tenant under any of the leases; (ii) any work required to be completed prior to the occupancy by a tenant of the portion of the Improvements demised pursuant to the terms and conditions of such tenant's lease and the commencement of the

payment of rent therefor; (iii) any work required to be completed or paid for by the landlord under a lease in connection with the initial occupancy by the tenant thereunder of the space demised thereby (irrespective of whether such work is to be performed prior to or after such initial occupancy); or (iv) any real estate commission or brokerage fee or agreements applicable to any leases. Between the Effective Date and the Closing Date, Seller shall not enter, modify, or terminate any lease or other agreement for the use, occupancy or possession of all or any part of the Property without the prior written approval of Purchaser;

(h) 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;

(i) There are no management, maintenance, service or other contracts with respect to the Property to which Seller is a party and which will survive Closing; and

(j) Subject to prorations as provided herein, 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 Effective Date and the Closing Date.

The representations and warranties of Seller contained herein shall survive the Closing of the transaction contemplated hereunder but shall automatically expire nine (9) months after the Closing Date.

EXCEPT AS SET FORTH HEREIN, SELLER DOES NOT MAKE, AND PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES, ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY AND ALL OF THE PROPERTY. Purchaser is willing to and shall accept the Property "AS IS, WHERE IS" "WITH ALL FAULTS" on the date of the Closing and shall be solely responsible for complying with, and with respect to the Property, waives and releases Seller of and from any and all claims, demands, liabilities and obligations of whatsoever kind or nature, direct or indirect, and whether contingent, conditional or otherwise, known or unknown, arising under, pursuant to, from or by reason of or in connection with, any and all federal, state and local laws, statutes, ordinances, rules, regulations, permits, or standards; and except as may be expressly set forth in this Agreement. PURCHASER, ON ITS OWN BEHALF AND ON BEHALF OF EACH OF ITS SUCCESSORS AND ASSIGNS AND EACH AND ALL OF ITS AND THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES OR SUBSIDIARIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "WAIVER PARTIES"), HEREBY RELEASES SELLER FROM, AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS AND LIABILITY AGAINST SELLER FOR OR ATTRIBUTABLE TO, ANY AND ALL LOSSES, COSTS, CLAIMS, LIABILITIES, EXPENSES, DEMANDS OR OBLIGATIONS OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN AND FORESEEN OR UNFORESEEN, ATTRIBUTABLE TO THE PROPERTY OR THE OWNERSHIP AND OPERATION THEREOF, WHETHER ARISING OR ACCRUING BEFORE, ON OR AFTER THE CLOSING AND WHETHER ATTRIBUTABLE TO EVENTS

OR CIRCUMSTANCES WHICH HAVE HERETOFORE OR MAY HEREAFTER OCCUR, INCLUDING ALL PRESENT OR FUTURE LOSSES, COSTS, CLAIMS, LIABILITIES, EXPENSES, DEMANDS AND OBLIGATIONS WITH RESPECT TO THE STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION OF THE PROPERTY INCLUDING CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY OR REMOVAL OF ANY HAZARDOUS MATERIALS IN, AT, UNDER OR ABOUT THE PROPERTY AND ANY CLAIMS FOR CONTRIBUTION RELATED THERETO. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

9. Purchaser's Representations and Warranties. Purchaser represents, warrants and covenants that the Purchaser is, or will be prior to Closing, a limited liability company duly-authorized to do business in under the laws of the State of Georgia. Purchaser has obtained all necessary approvals of this Agreement, and Purchaser has the right, power, authority, discretion and capacity to purchase the Property in accordance with the terms, provisions and conditions of this Agreement. The individual who has signed this Agreement on behalf of the Purchaser in his representative capacity is duly authorized to do so.

10. Default and Remedies.

(a) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Purchaser under this Agreement and such default is not cured within ten (10) days of Purchaser's receipt of written notice of such default from Seller, the Earnest Money shall be delivered to Seller and Seller may elect one of the following, as its sole and exclusive remedy therefor: (a) to terminate this Agreement by delivery of written notice to Purchaser; or (b) to institute proceedings in any Court of competent jurisdiction DeKalb County, Georgia to enforce any rights it may have at law or in equity, including, but not limited to specifically enforce the performance by Purchaser of the terms of this Agreement (and if Seller is successful in obtaining such specific performance, Purchaser agrees to indemnify Seller for all Seller's costs and expenses, including without limitation reasonable attorney's fees and court costs, incurred in such action). Should Seller elect to terminate this Agreement pursuant to clause (a) of the preceding sentence, Purchaser shall also reimburse Seller for its actual, documented, out of pocket expenses incurred in connection with this Agreement.

(b) If (i) any representation or warranty of Seller set forth in this Agreement shall prove to be untrue or incorrect in any material respect, or (ii) Seller shall fail to keep, observe, perform, satisfy or comply with any of the material terms, covenants, conditions, agreements, requirements, restrictions or provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller, or (iii) the purchase and sale of the Property is otherwise not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement (the matters described in the foregoing clauses (i), (ii) and (iii) are herein sometimes collectively called "Seller Defaults"), and such Seller Default is not cured within ten (10) days of Seller's receipt of written notice of such default from Purchaser, the Earnest Money shall be delivered to Purchaser and Purchaser may elect one of the following, as its sole and exclusive remedy therefor: (a) to terminate this Agreement by delivery of written notice to Seller; or (b) to institute proceedings in any Court of competent jurisdiction DeKalb County, Georgia to enforce any rights it may have at law or in

equity, including, but not limited to specifically enforce the performance by Seller of the terms of this Agreement (and if Purchaser is successful in obtaining such specific performance, Seller agrees to indemnify Purchaser for all Purchaser's costs and expenses, including without limitation reasonable attorney's fees and court costs, incurred in such action). Should Purchaser elect to terminate this Agreement pursuant to clause (a) of the preceding sentence, Seller shall also reimburse Purchaser for its actual, documented, out of pocket expenses incurred in connection with this Agreement.

11. Damage, Destruction or Condemnation Before Closing.

(a) Seller shall bear the risk of all loss or damage to the Property from all causes through the time of recordation of the deed, and in connection therewith, Seller covenants and agrees to maintain (or cause to be maintained) through the Closing Date "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering the Property in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Property, including coverage for loss of rents or business interruption. In the event any of the Property should be damaged or destroyed as a result of fire or other casualty or any other cause whatsoever which occurs prior to the Closing Date, Seller shall promptly give Purchaser written notice of such destruction or damage. The rights and obligations of Seller and Purchaser by reason of such destruction or damage shall be as follows:

(1) **Nominal Damage.** If the cost of repair and restoration of such destruction or damage shall be \$100,000.00 or less, the obligations of Seller and Purchaser with respect to the Property shall not be affected by such destruction or damage and Purchaser shall accept title to the Property in its destroyed or damaged condition. In such event: (i) at the Closing, Seller shall deliver any proceeds of insurance theretofore received by Seller in connection with such damage or destruction (less the actual cost of any repairs or restoration performed and paid for by Seller with Purchaser's consent prior to Closing) and assign to Purchaser all of Seller's right, title and interest in and to the proceeds of any insurance carried by such Seller and payable with respect to such damage or destruction (less the actual cost of any repairs or restoration performed and paid for by Seller with Purchaser's consent prior to Closing); and (ii) the Purchase Price shall be reduced by the amount, if any, equal to the amount by which the cost of repair and restoration exceeds the amount of such proceeds available for repair or restoration (less the actual cost of any repairs or restoration performed and paid for by Seller with Purchaser's consent prior to Closing). If the cost of repair or the amount of insurance proceeds has not been determined on or prior to the Closing Date, out of the Purchase Price payable at the Closing, Seller shall deposit in escrow with the Escrow Agent an amount equal to 125% of the estimated remaining cost of repair and restoration (determined as set forth in **Section 11(a)(3)**). Upon the determination of the amount of such proceeds as are necessary for repair or restoration, the Escrow Agent shall release the amount so deposited with it to Seller or Purchaser in the manner as such proceeds would have otherwise been distributed in accordance with the provisions of this **Section 11(a)(1)**.

(2) **Material Damage.** If the cost of repair and restoration of such destruction or damage shall exceed \$100,000.00, Purchaser shall have the option either to: (i) accept title to the Property in its destroyed or damaged condition; or (ii) terminate this Agreement by giving notice to such effect to the Seller not later than ten (10) days after the cost of repair and restoration is determined. If Purchaser elects to accept title to the Property in its destroyed or damaged condition,

then: (x) at the Closing, Seller shall deliver to Purchaser the proceeds of insurance theretofore received by Seller (less the actual cost of any repairs or restoration performed and paid for by Seller with Purchaser's consent prior to the Closing) and assign to Purchaser all of Seller's right, title and interest in and to all insurance proceeds payable with respect to such damage or destruction; (y) the Purchase Price shall be reduced by the amount, if any, equal to the amount by which the cost of repair and restoration exceeds the amount of such insurance proceeds; and (z) if the amount of such proceeds have not been determined on or prior to the Closing Date, out of the Purchase Price payable at the Closing, Seller shall deposit in escrow with Escrow Agent an amount equal to 125% of the estimated remaining cost of repair and restoration (determined as set forth in **Section 11(a)(3)**) and the provisions of the last sentence of **Section 11(a)(1)** shall be applicable with respect to the release of the amount so deposited. If Purchaser shall elect, in accordance with clause (ii) above, to terminate this Agreement, upon the giving of such notice by Purchaser, Purchaser shall be entitled to the immediate return of the Earnest Money, and thereafter, except as otherwise expressly provided in this Agreement, neither Seller nor Purchaser shall have any further obligation or liability hereunder.

(3) **Cost of Repair and Restoration.** For the purpose of this **Section 11**, the phrase "cost of repair and restoration" shall mean an estimate of the actual cost of repair and restoration obtained by Purchaser from a reputable contractor, architect or engineer regularly doing business in the county where the Property is located and reasonably acceptable to Seller.

(b) **Condemnation.** If prior to Closing Date all or substantially all of the Property is subjected to actual or threatened condemnation or eminent domain proceedings, Seller will promptly notify Purchaser of such event, and Purchaser shall have the option of either: (i) terminating this Agreement, in which event the Earnest Money shall be returned to Purchaser and thereafter this Agreement shall become null and void and without further force and effect; or (ii) proceeding to Closing, in which event, Seller shall either pay to, or assign to, Purchaser at closing of the sale of Property all of the proceeds or any right thereto from any such condemnation. If prior to the Closing Date a portion of the Property that does not involve the taking of any Improvements or the reduction of any parking is subjected to actual or threatened condemnation or eminent domain proceedings, Seller will promptly notify Purchaser of such event, but Purchaser shall have nonetheless have the obligation to proceed to Closing, in which event, Seller shall either pay to, or assign to, Purchaser at closing of the sale of Property all of the proceeds or any right thereto from any such condemnation.

12. **Assignment.** This Agreement may be assigned by Purchaser, in whole or in part, to an affiliate of Purchaser with the prior written consent of Seller, which consent shall not be unreasonably withheld; provided, however, Purchaser shall remain liable for its obligations under this Agreement.

13. **Binding Effect.** 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 permitted assigns, pursuant to **Section 26** below.

14. **Brokerage Commission; Disclosure.** Seller and Purchaser hereby represent and warrant to the other that he/she/they have not dealt with any real estate broker, agent or salesperson so as to create any legal right or claim in any such broker, agent or salesperson for a commission or similar fee or compensation with respect to the negotiation and/or consummation of this Contract, with the exception of Colliers International ("Seller's Broker") representing Seller, and

Cushman & Wakefield of Georgia, Inc. ("Purchaser's Broker") representing Purchaser, and Seller shall be responsible for payment of a real estate commission to the Broker at Closing pursuant to a separate agreement between Seller and Broker. Purchaser and Seller agree to cause their respective brokers to execute such broker affidavits as may be requested by the Purchaser's title insurer. If any party hereto is not represented by a broker, that party acknowledges full responsibility for protecting his/ her/their own interests. The provisions of this Section shall survive the Closing or any termination of this Agreement.

15. 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.

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

17. 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. Notwithstanding the foregoing, Seller shall deliver to Purchaser one original signed copy of this Agreement.

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

19. 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.

20. 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.

21. 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 delivered by electronic mail (provided a copy of said notice is deposited with an overnight courier for next business day delivery), on the next business day if sent by overnight courier for the next business day, 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: City of Dunwoody, Georgia  
Attn: City Manager  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338

Eric.Linton@dunwoodyga.gov

With a copy to: City of Dunwoody, Georgia  
Attn: City Attorney  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338  
cecilmclendon@hotmail.com

Purchaser: Joseph S. Joseph, Jr.  
Summit Healthcare Group, LLC  
4244 Goodyear Drive  
Winston-Salem, NC 27104  
jjoseph@summithg.com

With a copy to: Barbara R. Christy, Esq.  
Adrianne F. Edmonds, Esq.  
Schell Bray  
230 North Elm Street  
Suite 1500  
Greensboro, NC 27401  
BChristy@schellbray.com  
AEdmonds@schellbray.com

Escrow Agent: Andy Meyer, Esq.  
Mozley, Finlayson & Loggins LLP  
1050 Crown Pointe Parkway  
Suite 1500  
Atlanta, GA 30338  
Ameyer@mflaw.com

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

23. 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.

24. Special Stipulations. The following Special Stipulations, if conflicting or inconsistent with any of the preceding portions of this Agreement, or any exhibit, addendum attached hereto, shall control the rights and obligations of the parties and the interpretation of this Agreement:

(a) Rezoning Contingency. Purchaser and Seller agree that Purchaser's obligation to purchase the Property pursuant to the terms of this Agreement shall be expressly contingent upon the Property being rezoned by the Seller to allow the demolishing of the existing

building located on the 4553 Parcel and developing a new 40,000 SF medical office building with surface parking. The 4555 Parcel, and the footprint of the existing 22,000 SF medical office building located thereon, will remain unchanged (collectively, "Permitted Uses").

Purchaser agrees that it shall, at its own 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 forty-five (45) days after the Effective Date of the Agreement 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 its consideration of any other rezoning application submitted to Seller. In the event that Purchaser fails to file a fully compliant rezoning application within said forty-five (45) day period, the Seller may terminate this Agreement and except as otherwise expressly 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.

If the Property is successfully rezoned to allow the Permitted Uses with conditions, if any, reasonably acceptable to Purchaser, Purchaser shall proceed to closing on the acquisition of the Property based on the terms of the Agreement.

The parties agree that should the Seller not approve the Purchaser's rezoning application, Purchaser shall at its option: (1) choose to waive this condition and move forward to closing consistent with the results of the zoning action, or (2) terminate this Agreement by providing Seller written notice of termination no later than ten (10) days following the date of the Seller's final determination regarding the zoning of the Property. Upon such notice of termination from Purchaser, Purchaser shall receive a refund of all Earnest Money and except as otherwise expressly set forth herein, neither party shall have further obligation to the other pursuant to this Agreement. In the event of termination by Purchaser pursuant to this rezoning contingency, the termination of the Agreement and refund of all Earnest Money shall be Purchaser's sole remedy regarding Seller's zoning determination and Purchaser shall waive any other rights of remedies it may have under the law regarding Seller's rezoning determination (including but not limited to challenging the zoning determination in a court of law).

In the event that rezoning process has not been completed as evidenced solely by a vote of Dunwoody's City Council within six (6) months of the Effective Date of this Agreement, through no fault of Purchaser and provided Purchaser is diligently pursuing same, Purchaser shall have the one-time right to extend this Agreement for such period of time not to exceed sixty (60) days, 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 December 31, 2020, this Agreement, unless otherwise extended by the mutual agreement of 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, and Purchaser being entitled to a full refund of the Earnest Money.

(b) Parking Easement to Seller. Purchaser and Seller agree that as a material condition of this Agreement, Purchaser shall grant to Seller, a Permanent Public Parking Easement ("Parking Easement"), in a form reasonably acceptable to the Seller, over all designated parking areas of the



Property after Purchaser's, or Purchaser's tenants', customary business hours; a draft of which Parking Easement is attached hereto as Exhibit C. Purchaser shall grant Seller an easement for a certain number of parking spaces (the number of parking spaces to be an amount reasonably acceptable to both parties, but not materially less than those now existing on the site) on the Property that don't interfere with Purchaser's development of proposed 40,000 SF or Purchaser's intended use. The intent is to provide parking to Seller for use by patrons of the City of Dunwoody public park located on Pernoshal Court after business hours on weekdays and on weekends and holidays. Seller acknowledges and agrees that Purchaser, as a safety precaution during periods of construction, shall have the right to temporarily fence or otherwise secure some or all of the Property, preventing use of the Parking Easement, provided that Purchaser shall provide the Seller at least ten (10) days' advance notice of any closures unless such closure is based on emergency or unforeseen dangers which unexpectedly arise and provided Purchaser shall use reasonable efforts to limit complete closure of the Property during construction. Purchaser shall execute all documents reasonably requested to establish and document said Parking Easement and Purchaser further agrees that it shall cause the Parking Easement to be incorporated into any rezoning of the Property as a condition of zoning (the Seller acknowledges and agrees that any zoning condition imposed by the Dunwoody City Council shall be consistent with the terms of the Parking Easement attached hereto as Exhibit C). In the event Purchaser and Seller are unable to agree upon the terms of the Parking Easement within sixty (60) days of the Effective Date of this Agreement, either Seller or Purchaser may terminate this Agreement by providing written notice of such termination to the other party. In the event of such termination, Purchaser shall be entitled to a refund of all Earnest Money and, except as otherwise expressly provided herein, neither party shall have further obligation to the other pursuant to this Agreement. Except for costs that are directly caused by use/misuse of the parking spaces or surrounding Property including the office buildings by people who attend events at Pernoshal Park, the Seller is not responsible in any way for other costs incurred by the Buyer in the operation of the Property. Buyer agrees to provide reasonable evidence that people connected to Pernoshal Park damaged the Property or caused the Seller to incur costs that it otherwise would not have incurred. Based on Seller's reasonable judgment, the Seller will pay the costs directly related to this activity. The Seller agrees to allow Emory to erect parking signage that includes hours of operations and related information that parking is only allowed for activities related to the Pernoshal Park.

(c) The Parties agree that the approval and enforceability of this Agreement shall be subject to the approval and ratification of this Agreement by the Mayor and Council of the City of Dunwoody, Georgia. Should the Mayor and Council fail to approve this Agreement, this Agreement shall become void. The Seller shall place the approval of this Agreement before the Mayor and Council of the City of Dunwoody at the next regularly scheduled meeting following the execution of this Agreement.

25. Time for Acceptance. This Agreement shall be regarded as an offer made by the Purchaser to the Seller on \_\_\_\_\_, and is open for acceptance by the Seller on or before 5:00 p.m. Eastern Time on \_\_\_\_\_ ("Acceptance Date"). 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 fully executed copy not later than 5:00 p.m. on the Acceptance Date, and ratification pursuant to 24(c) above. For the avoidance of doubt, the "Effective Date" of this Agreement shall be the date on which Purchaser is provided a fully executed copy of this Agreement, having been approved by the Mayor and the Dunwoody City Council. The Purchaser

shall confirm the Effective Date by entering the date that all conditions of binding acceptance have been satisfied in the space provided below and returning one copy to the Seller.

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.  
SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Agreement to be signed and sealed by their duly authorized representatives on the dates written below.

**PURCHASER:**

**SHG DUNWOODY, LLC,**  
a North Carolina limited liability company

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

DocuSigned by:

*Joseph S. Joseph, Jr.*

7A22A382A5174C4...

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

Signature Date: 2/27, 2020

By:   
Eric Linton

Its: City Manager

[CORPORATE SEAL  
OF SELLER]

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Purchaser confirms that the Effective Date of this Agreement is \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Initial here

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.  
SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]**

**ESCROW AGENT:**

Mozley Finlayson &amp;Loggins, LLP

Date: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
Andy Meyer  
Its: PartnerAndy Meyer, Esq.  
Mozley Finlayson & Loggins, LLP  
1050 Crown Pointe Parkway  
Suite 1500  
Atlanta, GA 30338

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

**EXHIBIT A****Tax Parcels 18-344-01-007 & 18-344-01-009**

Being all that tract or parcel of land lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

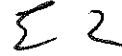
To find the Point of Beginning, commence at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said point and running with the westerly line of said Land Lot 344 and along the property now or formerly owned by Dekalb-Lake Ridge, LLC as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, South 01° 44' 14" West, 279.73 feet to the easterly right of way of North Shallowford Road (having a 80' Right of Way); thence, running along the said easterly right of way of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the right, having a radius of 2,071.45 feet and a chord bearing and distance of South 45° 16' 42" West, 244.20 feet to the northerly right of way of Pernoshal Court (having a 60' Right of Way); thence leaving the northerly right of way of Pernoshal Court and running along a tie line of South 41° 05' 02" East, 60.01 feet to a 1/2" iron rod found at the intersection of the aforesaid easterly right of way of North Shallowford Road and the southerly right of way of aforesaid Pernoshal Court, said point being the True Point of Beginning of the below described tract or parcel of land; thence, leaving the said Point of Beginning and running along the aforesaid southerly right of way of Pernoshal Court the following courses and distances: North 47° 52' 55" East, 198.18 feet to a 1/2" rebar found; thence, 98.93 feet along the arc of a curve deflecting to the right, having a radius of 271.56 feet and a chord bearing and distance of North 58° 19' 06" East, 98.38 feet to a 1/2" rebar found; thence, 104.87 feet along the arc of a curve deflecting to the right, having a radius of 271.56 feet and a chord bearing and distance of North 79° 49' 06" East, 104.22 feet to a 1/2" rebar found; thence, South 89° 07' 05" East, 165.15 feet; thence, 236.91 feet along the arc of a curve deflecting to the right, having a radius of 542.96 feet and a chord bearing and distance of South 76° 37' 05" East, 235.04 feet; thence, South 64° 07' 05" East, 8.26 feet to a 3/4" open top pipe found; thence, leaving aforesaid southerly right of way of Pernoshal Court and running along the property now or formerly owned by RAJ Bhole as described in a deed recorded among the aforesaid Land Records in Deed Book 9475, Page 74 and Dunwoody Trail Apartments Limited as described in Deed Book 4734, Page 63, South 24° 32' 50" West, 327.11 feet to a 1/2" rebar found; thence, running along the property now or formerly owned by Gables Realty Limited Partnership, Dunwoody GA-PDA, LLC, Dunwoody GA-PFG, LLC and Dunwoody GA-PETULA, LLC as described in a deed recorded among the aforesaid Land Records in Deed Book 13058, Page 546 the following courses and distances: North 89° 28' 30" West, 259.75 feet to a 3/8" rebar found; thence, South 61° 30' 43" West, 164.65 feet to a 1/2" rebar found on the aforesaid easterly right of way of North Shallowford Road; thence, running along the aforesaid easterly right of way of North Shallowford Road the following courses and distances: North 40° 01' 14" West, 20.00 feet to a 1/2" rebar found; thence, North 40° 01' 14" West, 281.95 feet to a 1/2" iron rod, and the Point of Beginning.

Containing 210,668 square feet or 4.8363 acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.

**EXHIBIT B****DESCRIPTION OF RETAINED RIGHT-OF-WAY**

[Color diagram currently attached as Exhibit B. Survey  
will be substituted when available.]







**EXHIBIT C**  
**PROPOSED PARKING EASEMENT**

See Attached

**PERMANENT NON-EXCLUSIVE ACCESS AND PARKING EASEMENT  
AGREEMENT**

THIS PERMANENT NON-EXCLUSIVE ACCESS AND PARKING EASEMENT AGREEMENT ("**Agreement**") dated as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and among **SHG DUNWOODY, LLC**, a North Carolina limited liability company, its successors and assigns (collectively, "**Grantor**"), and the **CITY OF DUNWOODY, GEORGIA**, a municipal corporation organized and existing under the laws of the State of Georgia (the "**City**"),

**WITNESSETH:**

WHEREAS, Grantor is the owner of that certain real property located in the City of Dunwoody, Georgia and more particularly described on Exhibit A attached hereto and incorporated herein by reference, having acquired the same from the City (the "**Grantor's Property**");

WHEREAS, the City is the owner of a public park known as Pernoshal Park consisting of approximately \_\_ acres, located adjacent to the Grantor's Property, with an address of 4575 North Shallowford Road, Dunwoody, Georgia, and being more particularly described on Exhibit B attached hereto and incorporated herein by reference ("**Pernoshal Park**"); and

WHEREAS, subject to the terms and limitations of this Agreement, Grantor desires to grant to the City, its patrons, guests, invitees, employees, agents and permittees (collectively, the "**City's Users**"), a non-exclusive easement over and upon any parking spaces located on Grantor's Property from time to time (the "**Parking Easement Area**") for purposes of vehicular parking for the City's Users who are visiting and utilizing Pernoshal Park.

NOW, THEREFORE, in consideration of the mutual grants, covenants and promises contained herein, and of the mutual benefits accruing to each of the parties hereto, their respective heirs, successors, legal representatives and assigns, the parties hereto hereby declare and agree as follows:

1. **Easement Grants.**

(a) Grantor hereby grants to the City, the non-exclusive right and easement, subject to the terms of this Agreement to use the Parking Easement Area, together with the rights of ingress, egress, and regress over and upon Grantor's Property, such easements to be used solely by the City's Users who are visiting Pernoshal Park, and for no other purpose, without Grantor's prior written consent.

(b) No person or entity other than a party to this Agreement or their respective successor or assign shall have the right to enforce the provisions of this Agreement.

2. **Maintenance of Parking Easement Area.** The paved parking lot(s), drive aisles, and paved entrance, along with related improvements located within the Parking Easement Area (the "**Easement Improvements**"), shall be maintained in good condition and repair, or replaced, as reasonably determined, by Grantor. Each party shall be solely responsible for any repair costs of damage resulting from the negligence or willful misconduct of the respective owner or tenant, or by any agent, employee, customer, guest or invitee of such owner or tenant. For purposes of the preceding sentence, normal wear and tear shall not, in and of itself, constitute damage. In the event extraordinary maintenance is required due to the City or City's Users' presence in the Parking Easement Area (e.g. excessive littering of the Parking Easement Area by the City's Users subsequent to an event at Pernoshal Park), the City shall, upon demand by Grantor, reimburse Grantor for one hundred percent (100.00%) of the Costs incurred by Grantor for such extraordinary maintenance. Further, the City agrees to take reasonable steps to ensure the Parking Easement Area is kept clean and free of litter, trash and rubbish caused by the City's Users.

3. **Terms and Conditions.** This Agreement is subject to the following terms, covenants and conditions:

(a) The purpose of the easement is to allow City to provide parking, free of charge, to Pernoshal Park visitors; provided, however, City acknowledges and agrees that its right to utilize the parking spaces located in the Parking Easement Area shall be limited to hours outside the Grantor, or its tenants', normal business hours as designated by Grantor from time to time. The Grantor acknowledges and agrees that the City's Users shall have the irrevocable right to use the Parking Easement Area after 6pm on weekdays, and during Pernoshal Park hours on weekends and holidays (when the businesses located on the Grantor's Property are closed for such holidays).

(b) Grantor may, subsequent to the execution of this Agreement, increase, eliminate, reduce or relocate the number of parking spaces within the Parking Easement Area; however Grantor shall not cause the number of parking spaces to be materially reduced from the number existing on the Property at the time of execution of this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld.

(c) Grantor shall not be obligated to police or monitor the Parking Easement Area, nor shall Grantor be required to tow any vehicles from the Parking Easement Area at any time. Provided, however, Grantor shall have the right to tow vehicles from the Parking Easement Area, in the event Grantor determines that such vehicles are present in the Parking Easement Area in violation of the terms and conditions of this Agreement.

(d) The City and City's Users' use of the Parking Easement Area shall at all times be in accordance with all laws, ordinances and regulations pertaining thereto. Under no circumstances shall the City or City's Users' use of or operations within the Parking Easement Area result in a nuisance to the Grantor's Property, the improvements thereon or the occupants, invitees or employees thereof, nor result in a material interference with Grantor's use, occupancy or operations within the Grantor's Property. The City agrees that the Grantor has the right to erect signage within the Parking Easement Area detailing the terms and conditions of this Agreement. Further, upon consent of the City, which consent shall not be unreasonably withheld or delayed, the Grantor may impose reasonable rules and regulations with respect to parking on Grantor's Property and the City acknowledges and agrees that the following, though not an exhaustive list, are prohibited in the Parking Easement Area: tailgating, picnic activities, loitering, consumption of alcoholic beverages, movie production parking, oversized motor vehicles, and littering.

(e) The City shall maintain or cause to be maintained, with third party insurance carriers reasonably acceptable to Grantor and authorized to do business in Georgia, the following coverage:

- (i) Commercial General Liability. Bodily injury and property damage liability insurance protecting City from claims of bodily injury or property damage which arise from the City and City's Users' presence within the Parking Easement Area. The amounts of such insurance shall not be less than \$2,000,000 bodily injury and property damage liability each occurrence/aggregate. This insurance shall include coverage for contractual liability assumed under the indemnity provision of this Agreement. To be included in Comprehensive General Liability is Broad Form Property Damage Coverage.
- (ii) All insurance required to be maintained by the City hereto shall name the Grantor and Grantor's tenants as additional insureds. Certificates of such insurance will be furnished to Grantor upon request and shall contain provisions that Grantor be given at least thirty (30) days written notice of any intent to amend or terminate by the City, or the insuring company.

4. Temporary Closures. The City acknowledges and agrees that during periods of construction or repair, Grantor shall have the right to temporarily fence, block and/or secure, some or all of Grantor's Property based upon reasonable safety considerations, and that during such periods, the City's rights under this Agreement shall be suspended; provided that Grantor shall provide the City at least ten (10) days' advance notice of any closures unless such closure is based on emergency or unforeseen dangers which unexpectedly arise. The Grantor agrees that it shall make reasonable efforts to limit complete closure of the Parking Easement Area during periods of construction or repair.

5. Indemnities. To the extent allowed by law, the City hereby agrees to indemnify and save harmless Grantor, and Grantor's tenants, from and against any and all claims, demands and actions arising from this Agreement and/or the use by the City or City's Users of the Parking Easement Area, and from and against any and every suit, action or proceeding to enforce any such

damage, claim or action, and from any and all loss, costs, damages and attorneys' fees and expenses which it may at any time suffer or incur as a result thereof.

6. **Easement Term**. For purposes of this Agreement, the access and parking easements shall be permanent and encumber the Grantor's Property in perpetuity until released by the joint agreement of the parties or their heirs, assigns or successors in interest.

7. **Defaults**. An "Event of Default" or "default" shall mean, wherever used in this Agreement, any failure by one or more of the parties hereto to observe and perform any covenant, condition or agreement in this Agreement on its part to be observed or performed and the lapse of a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to such party by the other party, provided, that if such default cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the defaulting party shall within a reasonable period of receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.

7. **Remedies**. If there is an Event of Default by a party, the non-defaulting party hereunder shall each be entitled to all rights and remedies at law or in equity, including specific performance and injunctive or other equitable relief, notwithstanding availability of an adequate remedy at law. The prevailing party in any action to enforce this Agreement shall recover as part of its costs, reasonable attorneys' fees and court costs and interest on funds expended by the prevailing party to cure such default by another party.

8. **No Public Dedication**. Nothing contained in this Agreement shall be deemed to be a gift or dedication to the general public for any public use or purpose whatsoever, it being the intent of the parties that this Agreement shall be limited to and for the purposes herein expressed.

9. **Miscellaneous**.

(a) **Notices**. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, overnight delivery return receipt requested, or delivered personally.

City: City of Dunwoody, Georgia  
Attn: City Manager  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338  
Eric.Linton@dunwoodyga.gov

With a copy to: City of Dunwoody, Georgia  
Attn: City Attorney  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338  
cecilmclendon@hotmail.com

Grantor: Joseph S. Joseph, Jr.  
Summit Healthcare Group, LLC  
4244 Goodyear Drive  
Winston-Salem, NC 27104  
jjoseph@summithg.com

With a copy to: Barbara R. Christy, Esq.  
Adrianne F. Edmonds, Esq.  
Schell Bray  
230 North Elm Street  
Suite 1500  
Greensboro, NC 27401  
BChristy@schellbray.com  
AEdmonds@schellbray.com

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section. Notices shall be deemed delivered on the date sent if addressed as set forth herein.

(b) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and the other Benefitted Parties.

(c) Assignment. The Easement granted herein is personal to the Grantee; Grantee may not assign this Easement, in whole or in part, without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion.

(d) Estoppel. Within fifteen (15) days after written request from time to time by either party, the requested party shall issue to the requesting party, to a prospective or existing lender of requesting party, or to a prospective successor in title to such requesting party, an estoppel certificate stating:

- (i) Whether the party to whom the request has been directed has given any notice to the requesting party of any default by such requesting party under this Agreement that remains uncured, and if there are such defaults of which notice has been given and which remain uncured, specifying the nature thereof;
- (ii) Whether to such party's knowledge this Agreement has been supplemented, modified or amended in any way (and if it has, then stating the nature thereof); and
- (iii) That to such party's knowledge this Agreement as of that date is in full force and effect.

(e) Force Majeure. The parties' respective obligations hereunder, expressly excluding any payment obligations, are subject to extension of the time for performance by the reasonable delays caused by or resulting from casualty, unusual inclement weather, unusual governmental delays, strikes, labor disturbances, unusual materials unavailability or shortages, events of God, or other events beyond the reasonable control of the party whose performance is in question, excluding financial difficulty or inability.

(f) Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(g) Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and their successors or assigns.

(h) Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(i) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

(j) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(k) Relationship of the Parties. No express or implied term, provision or condition of this Agreement shall be deemed to constitute the parties as partners or as joint venturers.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow]



**IN WITNESS WHEREOF**, Grantor and City have caused this Agreement to be signed and sealed by their duly authorized representatives on the dates written below.

**GRANTOR:**

**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.]**

**CITY:**

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

Signature Date: \_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Eric Linton

Its: City Manager

[CORPORATE SEAL  
OF SELLER]

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Purchaser confirms that the Effective Date of this Agreement is \_\_\_\_, 20\_\_.

\_\_\_\_\_  
Initial here

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SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]**

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

[Less And Except Retained Right of Way. Currently depicted on color diagram. Survey will be substituted when available.]

**EXHIBIT A****Tax Parcels 18-344-01-007 & 18-344-01-009**

Being all that tract or parcel of land lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said point and running with the westerly line of said Land Lot 344 and along the property now or formerly owned by Dekalb-Lake Ridge, LLC as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, South 01° 44' 14" West, 279.73 feet to the easterly right of way of North Shallowford Road (having a 80' Right of Way); thence, running along the said easterly right of way of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the right, having a radius of 2,071.45 feet and a chord bearing and distance of South 45° 16' 42" West, 244.20 feet to the northerly right of way of Pernoshal Court (having a 60' Right of Way); thence leaving the northerly right of way of Pernoshal Court and running along a tie line of South 41° 05' 02" East, 60.01 feet to a 1/2" iron rod found at the intersection of the aforesaid easterly right of way of North Shallowford Road and the southerly right of way of aforesaid Pernoshal Court, said point being the True Point of Beginning of the below described tract or parcel of land; thence, leaving the said Point of Beginning and running along the aforesaid southerly right of way of Pernoshal Court the following courses and distances: North 47° 52' 55" East, 198.18 feet to a 1/2" rebar found; thence, 98.93 feet along the arc of a curve deflecting to the right, having a radius of 271.56 feet and a chord bearing and distance of North 58° 19' 06" East, 98.38 feet to a 1/2" rebar found; thence, 104.87 feet along the arc of a curve deflecting to the right, having a radius of 271.56 feet and a chord bearing and distance of North 79° 49' 06" East, 104.22 feet to a 1/2" rebar found; thence, South 89° 07' 05" East, 165.15 feet; thence, 236.91 feet along the arc of a curve deflecting to the right, having a radius of 542.96 feet and a chord bearing and distance of South 76° 37' 05" East, 235.04 feet; thence, South 64° 07' 05" East, 8.26 feet to a 3/4" open top pipe found; thence, leaving aforesaid southerly right of way of Pernoshal Court and running along the property now or formerly owned by RAJ Bhole as described in a deed recorded among the aforesaid Land Records in Deed Book 9475, Page 74 and Dunwoody Trail Apartments Limited as described in Deed Book 4734, Page 63, South 24° 32' 50" West, 327.11 feet to a 1/2" rebar found; thence, running along the property now or formerly owned by Gables Realty Limited Partnership, Dunwoody GA-PDA, LLC, Dunwoody GA-PFG, LLC and Dunwoody GA-PETULA, LLC as described in a deed recorded among the aforesaid Land Records in Deed Book 13058, Page 546 the following courses and distances: North 89° 28' 30" West, 259.75 feet to a 3/8" rebar found; thence, South 61° 30' 43" West, 164.65 feet to a 1/2" rebar found on the aforesaid easterly right of way of North Shallowford Road; thence, running along the aforesaid easterly right of way of North Shallowford Road the following courses and distances: North 40° 01' 14" West, 20.00 feet to a 1/2" rebar found; thence, North 40° 01' 14" West, 281.95 feet to a 1/2" iron rod, and the Point of Beginning.

Containing 210,668 square feet or 4.8363 acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.



EXHIBIT B

LEGAL DESCRIPTION OF PERNOSHAL PARK

**EXHIBIT B**  
**Pernoshal Park**  
**Tax Parcel 18-334-01-003**

Being all that tract or parcel of land, lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

Beginning for the same at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said Point of Beginning and running along the northern line of said Land Lot 344 and the property now or formerly owned by DeKalb-Lake Ridge, LLC, as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, North 89° 50' 23" East, 838.08 feet to a 1/2" rebar found; thence, leaving the northern line of Land Lot 334 and running along the property now or formerly owned by Atlanta Healthcare Management LTD, as described in deed recorded among the aforesaid Land Records in Deed Book 10472, Page 794, South 10° 40' 06" West, 250.69 feet to the northerly Right of Way Line of Pernoshal Court (having a 60 feet wide right of way); thence, running along the said line of Pernoshal Court the following courses and distances, 88.27 feet along the arc of a curve deflecting to the left, having a radius of 602.96 feet and a chord bearing and distance of North 84° 55' 27" West, 88.19 feet; thence, North 89° 07' 05" West, 165.15 feet; thence, 248.83 feet along the arc of a curve deflecting to the left, having a radius of 331.56 feet and a chord bearing and distance of South 69° 22' 55" West, 243.03 feet to an "X" Scribe found; thence, South 47° 52' 55" West, 197.09 feet to the northeasterly Right of Way Line of North Shallowford Road (having an 80 feet wide right of way); thence, running along the said line of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the left, having a radius of 2,071.45 feet and a chord bearing and distance of North 45° 16' 42" West, 244.20 feet; thence, leaving the aforesaid line of North Shallowford Road and running along the westerly line of aforesaid Land Lot 344 and along the aforesaid property of Dekalb-Lake Ridge, LLC, North 01° 44' 14" East, 279.73 feet to a 1" crimp top pipe, and the Point of Beginning.

Containing 243,490 square feet or 5.5897 Acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.