



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

MEMORANDUM

To: Mayor and City Council
From: Linda Nabers, Finance Director
Date: July 26, 2021
Subject: **Listing Agreement for the Sale of 4553/4555 N Shallowford Road**

ITEM DESCRIPTION

Approval of the Listing Agreement for the Sale of 4553/4555 North Shallowford Road.

BACKGROUND

The City has utilized the services of Collier International, Atlanta, an experienced commercial real estate and brokerage firm, in the past to both acquire and sell City property. In 2019, the City designated this firm as listing agent when the City property at 4553/4555 North Shallowford Road was placed up for sale and not long ago to acquire the property on Vermack.

Most recently, the City again solicited an Invitation to Bid (ITB) [reference ITB 21-01] to sale the North Shallowford Road property. Based on the past performance, familiarity with the city and to ensure continuity, the City identified Collier International as the listing agent. It is required that official action be taken to confirm this designation by entering into a formal written Listing Agreement.

Services of this type normally are at amount of 3 to 6 percent commission fee. Collier International has agreed to 4 percent, which is reasonable and the average for a sale contemplated to be in the range of 7 to 10 million dollars. For professional services of this type, procurement law and policies permit the services to be obtained through a negotiated process, which has occurred.

One responsive bid has been received from Summit Healthcare Group, LLC for \$7,750,000, upon which the 4% commission will at closing be paid, along with other standard real estate seller' fees. It should be noted that the total 4% commission is to be split evenly between Colliers (Broker) and the outside real estate agent.

Please see #5 in the attached agreement for the associated brokerage commission.

RECOMMENDED ACTIONS

Staff recommends the approval of the listing agreement, as presented.

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

**EXCLUSIVE LISTING AGREEMENT FOR
SALE OF REAL PROPERTY**

#10..

THIS LISTING AGREEMENT is made and entered into on this the ____ day of July, 2021, between City of Dunwoody, Georgia as owner of the real property described herein, (hereinafter referred to as "Seller"), and Colliers International - Atlanta, LLC. (hereinafter referred to as "Broker").

Seller desires to sell real property situated in Dekalb County, known as 4555 and 4553 North Shallowford Road, Dunwoody, Georgia, an approximately 43,000 SF office building located on five acres of land, as more particularly described in Exhibit " A " attached hereto and by reference incorporated herein, including all buildings and improvements thereon and all fixtures and appurtenances, (all of the foregoing being collectively referred to hereinafter as the "Property").

Broker is licensed by the Georgia Real Estate Commission as a real estate broker and will act as the limited agent of Seller with respect to the negotiations for the sale of Property.

Seller desires to engage the services of Broker to market and offer the Property for sale, and Broker desires to assist Seller in that connection, upon the terms, provisions and conditions contained hereinafter.

FOR AND IN CONSIDERATION OF the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. APPOINTMENT OF BROKER. Seller hereby appoints Broker as its sole and exclusive limited agent for the term hereof with the sole exclusive right to offer the Property for sale, lease or exchange at the Listing Price, on the terms and conditions contained herein, or for such other price and on such other terms as may be acceptable to Seller.

2. BROKER/AGENCY RELATIONSHIPS. Broker has advised Seller of Broker's general company policy regarding cooperating with subagents, purchaser's agents or both. Seller authorizes Broker to cooperate with and compensate subagents representing only the Seller or purchaser's agents representing only the purchaser. Seller also authorizes Broker (and its sales associates) to act as a dual agent representing both Seller and purchaser in the same transaction. (When dual agency occurs, Seller and Broker shall execute a separate agreement.)

3. LISTING PRICE. The Property shall be offered at a price of Seven Million seventy-five thousand dollars and no/100 (\$7,075,000) (the "Listing Price" shall be payable upon the following terms and conditions: At Closing, or any other price or other terms and conditions acceptable to Owner.

4. LISTING TERM. The term of this Agreement shall commence on the first day of June, 2021, and shall terminate on the 31st day of December, 2021 (the "Expiration Date"). This term shall be automatically extended for thirty (30) additional days unless Seller gives Broker written notice prior to said Expiration Date that the term will not be automatically extended. In the event that Seller enters into a sales contract while this Agreement is in effect, the term and other time periods set forth in this Agreement shall be automatically extended for a period of time equal to the number of days between the date of execution of said sales contract and the date said sales contract is finally terminated. Seller, with thirty days prior written notice, may terminate this Agreement subject to Section 5 below.

5. COMMISSION. In consideration of the services to be rendered by Broker to and for the benefit of Seller with respect to the listing for sale and procuring of a purchaser for the Property, Seller agrees to pay Broker a commission in an amount equal to two and one half (2.5%) percent of the gross sales price for the Property in the event that during the term of this Agreement: (A) broker individually procures a person ready, able and willing to purchase the Property at the Listing Price or any other price agreed to by the Seller, or an amount equal to four percent (4.0%) percent of the gross sales price if broker procures a purchaser through an Outside Agent. In the event there is an outside agent the four percent (4.0%) commission would be split equally between Broker and Outside Agent. All agents from Colliers International - Atlanta, LLC other than Fred Sheats shall be treated as Outside Agents. (B) Seller enters into an enforceable contract for the sale or exchange of the Property, or any legal or equitable interest in the Property, with any purchaser, without exclusion as to any purchaser, whether by or through the efforts of Broker or any other person, including Seller. Seller also agrees to pay to Broker said commission if within one-hundred eighty (180) days after termination of this Agreement the Property, or any legal or equitable interest in the Property, is sold, exchanged or conveyed to any prospective purchaser whose attention has been called to the Property by Broker or any cooperating broker/Outside Agent during the term of this Agreement. Broker shall deliver to Seller a notice in writing containing a list of such prospective purchasers on or before ten (10) days after the termination of this Agreement. If Seller enters into a listing agreement with another licensed real estate broker with respect to the Property after the termination of this Agreement, Seller shall exclude sales or exchanges of the Property to any prospective purchaser named in said written notice from said listing agreement for said one-hundred eighty (180) day period. "Prospective purchasers" as used in this paragraph shall include such person or entity, their respective family members, and affiliates or other entities over which they may

exercise control. Seller shall pay Broker said commission at the time of the consummation of the sale or exchange of the Property in immediately available U.S. funds. Seller hereby expressly authorizes Broker to share the commission with any other licensed real estate broker or brokers in any proportion agreeable to Broker.

6. BROKER'S AUTHORITY. Seller authorizes Broker to:

- (A) Utilize such marketing techniques and programs as Broker deems appropriate for and advantageous to the sale of the Property, including the placement of a "For Sale" sign or signs on the Property and the removal of any existing signs;
- (B) Enter the Property at reasonable times with cooperating brokers and their salespersons of the purpose of showing the Property to prospective purchasers

7. SELLER'S COVENANTS. Seller agrees to cooperate with Broker, its sales associates and any cooperating brokers fully with respect to Broker's efforts to sell the Property. Seller agrees to refer to Broker all inquiries received by Seller relating to the sale of the Property and to conduct all negotiations with prospective purchasers of the Property through Broker. Seller agrees to reimburse Broker for all authorized expenses incurred by Broker in marketing the Property that have been preapproved by Seller. Seller represents and warrants to Broker that:

- (A) Seller (i) is the sole fee simple title owner to the Property, (ii) is authorized and has the capacity to execute and deliver this Agreement, and (iii) has the right to convey title to the Property to a purchaser by warranty deed.
- (B) There are no actions, suits or proceedings pending or threatened against Seller or the Property affecting any portion of the Property.
- (C) There are no pending or threatened condemnation actions or special assessments of any nature with respect to the property nor has Seller received any notices of any such condemnation action or special assessment.
- (D) There are no foreclosures pending or threatened with respect to the Property, nor has Seller received any notices of any such foreclosure action being contemplated.
- (E) Seller has not received any notice in writing or otherwise from any governmental agency requiring the correction of any violation with respect to the Property or any part thereof.
- (F) The Property has no known significant or material latent defects and none of the improvements on the Property have been constructed with material know to be a potential health hazard to occupants of the Property, except as disclosed in writing by Seller to Broker in the Owner's Property Disclosure Notice executed by Seller at the time this Agreement is executed. Seller hereby authorizes Broker to disclose to prospective purchasers all information with respect to the Property either furnished by Seller to Broker on the Owner's Property Disclosure Notice, or otherwise furnished to Broker. Seller agrees to hold Broker harmless of and from any and all damages, claims, costs and expenses of every kind and character resulting from or relating to Seller's furnishing to Broker any false, incorrect or inaccurate information with respect to the Property or failing to disclose to Broker any material latent defects in the Property.
- (G) The Property shall be offered, shown and made available for sale to or exchange with all persons on a non-discriminatory basis, without regard to race, color, religion, sex, handicap, familial status or national origin.

8. NOTICES. Any notices required or permitted hereunder shall be deemed delivered on the date such notice is sent by registered or certified mail, return receipt requested, or on the date such notice is delivered in person evidenced by a signed delivery receipt, to the party entitled to receive such notice at the respective address of each party hereto set forth on the signature page hereof or at such other address a party hereto shall hereafter designate by written notice in compliance with the terms of this paragraph to the other party hereto.

9. LIMITATION OF LIABILITY. Seller agrees that Broker and any cooperating brokers shall not be responsible in any manner for personal injury to any person or for any loss or damage to personal or real property due to vandalism, theft, freezing water pipes or any other cause of damage or loss whatsoever with respect to the Property.

10. LEGAL EXPENSES. In the event it is necessary for Broker or Seller to retain an attorney to enforce the provisions hereof, in addition to the commission payable hereunder, the successful party shall be entitled to recover reasonable attorney's fees and all other costs of collection incurred in the connection therewith.

11. SEVERABILITY CLAUSE. If any term, provision or covenant contained herein is found to be invalid or unenforceable by a court of competent jurisdiction, then the parties agree that such invalid term, provision or covenant shall be deemed to be severed and deleted from this Agreement, and the remainder of the Agreement shall continue in full force and effect and shall remain fully valid and enforceable.

12. MISCELLANEOUS. This Agreement shall inure to the benefit of, and be binding upon, the parties thereto, their heirs, administrators, successors, and permitted assigns. Neither this Agreement nor any of the rights, duties or benefits hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. This instrument contains the

entire agreement and understanding to the parties hereto with respect to the subject matter contained herein. No representation, promise or inducement not included in this Agreement shall be binding on any party hereto. This Agreement cannot be amended or canceled except by an agreement in writing executed by each of the parties hereto.

13. DISCLAIMER. The parties hereto hereby acknowledge and agree that: *THIS DOCUMENT HAS IMPORTANT CONSEQUENCES, LEGAL, FINANCIAL AND OTHERWISE. THE PARTIES HAVE BEEN ADVISED THAT THEY SHOULD CONSULT WITH AN ATTORNEY OR OTHER PROFESSIONAL OF THEIR CHOICE WITH RESPECT TO THE TERMS OF, AND/OR THE COMPLETION; MODIFICATION AND/OR EXECUTION OF, THIS DOCUMENT.*

14. SPECIAL STIPULATIONS: N/A

Seller acknowledges that Seller has read and understood the terms of this Agreement and has received a copy of it.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered
in the presence of:

BROKER: Colliers International - Atlanta, LLC

Witness:

By: _____ (Seal)

Name/Title: _____

Address: 1230 Peachtree St. Suite 800
Atlanta, GA 30309

Phone: 404.888.9000

Fax: 404.870.2845

Signed sealed and delivered
in the presence of:

SELLER: City of Dunwoody Georgia

Witness:

By: _____ (Seal)

Name/Title: _____

Address: 4800 Ashford Dunwoody Rd
Dunwoody, GA 30338

Phone: _____

Fax: _____

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 18th 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.