



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

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Starling, Director of Economic Development

**Date:** 6/14/2021

**Subject:** **Art Easement – 500 Ashwood Parkway**

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### **BACKGROUND**

The Public Art Ordinance requires an Art Easement between the City of Dunwoody and the Property Owner where the Art will be installed. In this case, the Property Owner is Branch Ashwood Associates who has agreed to allow the Proposed Mural to be installed on their property.

The Art Commission Approved the Mural on 5/19/2021.

### **RECOMMENDED ACTION**

Staff respectfully requests Mayor and Council to approve the Art Easement at 500 Ashwood Parkway between the City of Dunwoody and Branch Ashwood Associates.

**Addendum 4 – Art Easement Agreement**

After recording return to:

**ART EASEMENT**

THIS AGREEMENT, effective on \_\_\_\_\_ (month/day/year), is between Branch Ashwood Associates, LP (“Grantor”), and the City of Dunwoody, a Georgia municipal corporation (“City”).

**RECITALS**

A. The City has adopted a program for the placement of art in and on public and private locations throughout the City of Dunwoody. The Dunwoody Art Commission administers the City’s public art program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein) and is willing to make said property available to the City for the placement of public art, as defined in the City of Dunwoody Code (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties agree as follows:

1. Grant of Easement. Grantor conveys, grants and warrants to the City, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Artwork described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“property”). The location of the Artwork shall be as approved by the Dunwoody Art Commission.

2. Term of Easement. This easement shall be for a period of ten (10) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew thereafter, and shall remain in full force and effect unless and until terminated.

3. Termination.

- a) At or after the expiration of the easement period, the easement may be terminated by either party upon 30 days written notice to the other party. Grantor expressly agrees and warrants that upon expiration, the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.
- b) Within the initial easement term (or at any time thereafter), the easement may be terminated by Grantor with the City’s consent in writing upon Grantor’s showing of any of the following: i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Artwork substantially impedes Grantor’s reasonable use and enjoyment of the Property. The City shall not unreasonably withhold consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.
- c) The City may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor’s obligations under Section 4, below. Should the City elect to exercise this right of termination, Grantor expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.

4. Maintenance and Removal of Artwork. Grantor shall be responsible for maintaining and if necessary, repairing the Artwork described in Exhibit B during the existence of the easement. The City may remove the Artwork from the



property if, in the sole judgment of the City, the Artwork is being excessively damaged, and Grantor fails or refuses to maintain or repair the Artwork after 30 days written notice from the City requesting Grantor to do so. If the City removes the Artwork from the property, the City will restore the property to its original condition. Alternatively, at the City's sole discretion, the City may access the Artwork to maintain or repair the Artwork if Grantor has failed to do so after 30 days written notice from the City that the Artwork requires maintenance or repair.

5. Right of Entry. The City shall have the right to access the area on the property described in Exhibit A on which the Artwork is located during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this agreement.

6. Binding Effect. The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.

7. Contractual Relationships. Assignment. This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The parties shall not assign this agreement without the prior written consent of the other.

8. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of Dunwoody

City of Dunwoody  
Attn: City Manager  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338

Grantor (name and mailing address)  
Branch Ashwood Associates, LP

c/o Branch Properties, LLC  
3340 Peachtree Road, NE, Suite 2775  
Atlanta, Georgia 30326

9. Amendments. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.

10. Remedies. The parties acknowledge that breaches of this Agreement will affect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to a) liquidated damages in an amount of \$2500 per material breach; b) specific performance of the terms of this agreement, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The rights under this agreement are cumulative. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

11. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

12. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this agreement.

IN WITNESS WHEREOF, the parties/persons have caused this instrument to be executed by its duly authorized representative(s).

**GRANTOR**

Branch Ashwood Associates, LP

By: Branch Atlantic Partners, LLC, its Sole General Partner

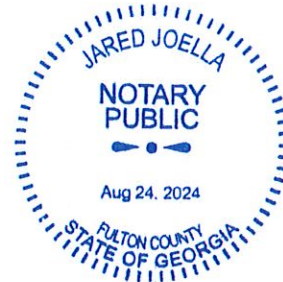
By: Rebecca O'Brien**"NAME OF GRANTOR REPRESENTATIVE"**

Rebecca O'Brien

(print name of grantor representative)

Manager

(print title of grantor representative)



STATE OF Georgia )  
 ) ss.  
 County of Fulton )

This instrument was acknowledged before me on May 12, 2024 by  
Rebecca O'Brien as Manager of the Grantor.

IN WITNESS WHEREOF, the City of Dunwoody, Georgia, has caused this instrument to be executed by its duly authorized representative(s) on \_\_\_\_\_ (date).

CITY OF DUNWOODY

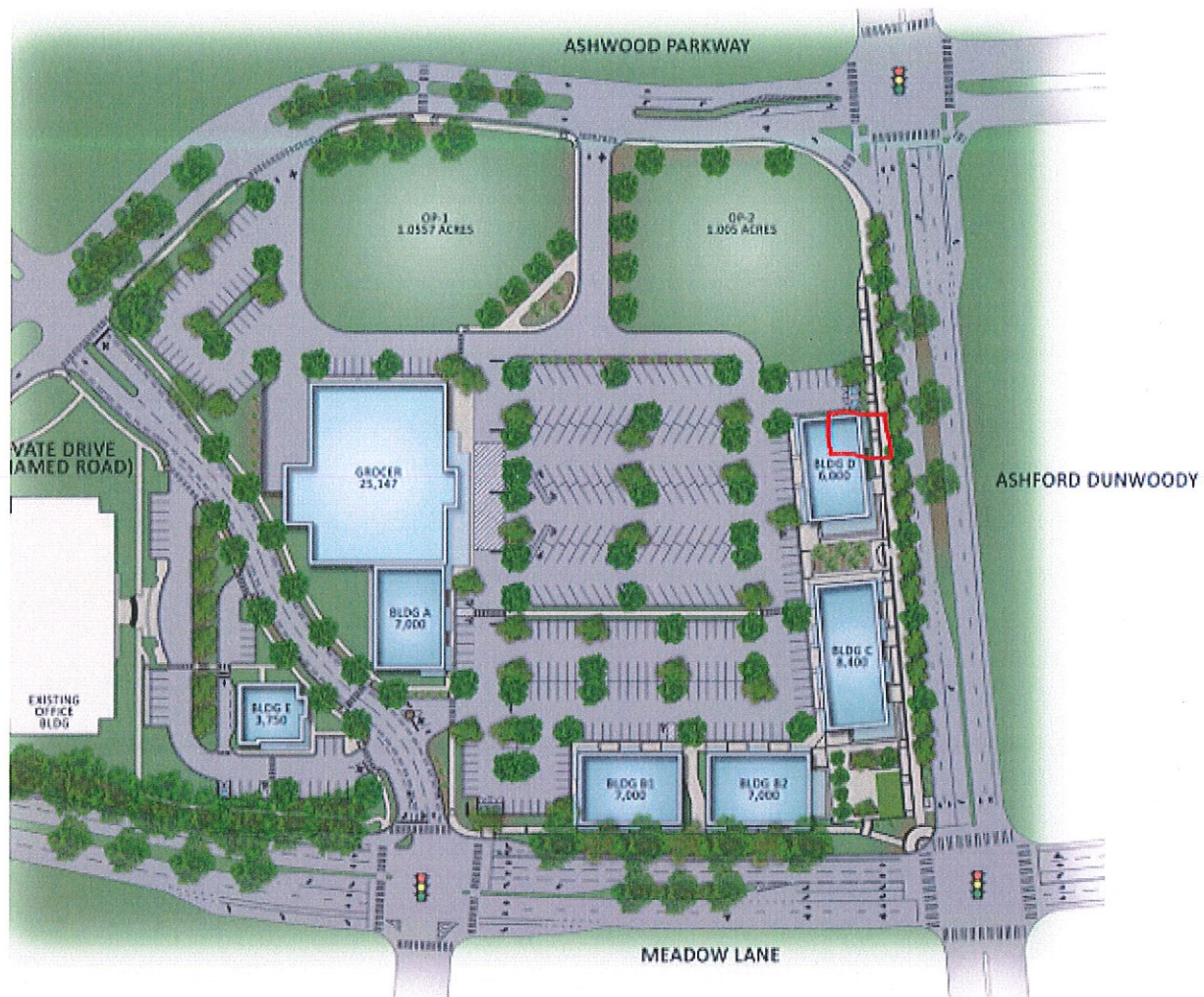
By: \_\_\_\_\_

\_\_\_\_\_  
(print name of city representative)\_\_\_\_\_  
(print title of city representative)



**EXHIBIT A – PROPERTY DESCRIPTION**

500 Ashwood Parkway  
Dunwoody, GA 30338  
Perimeter Marketplace



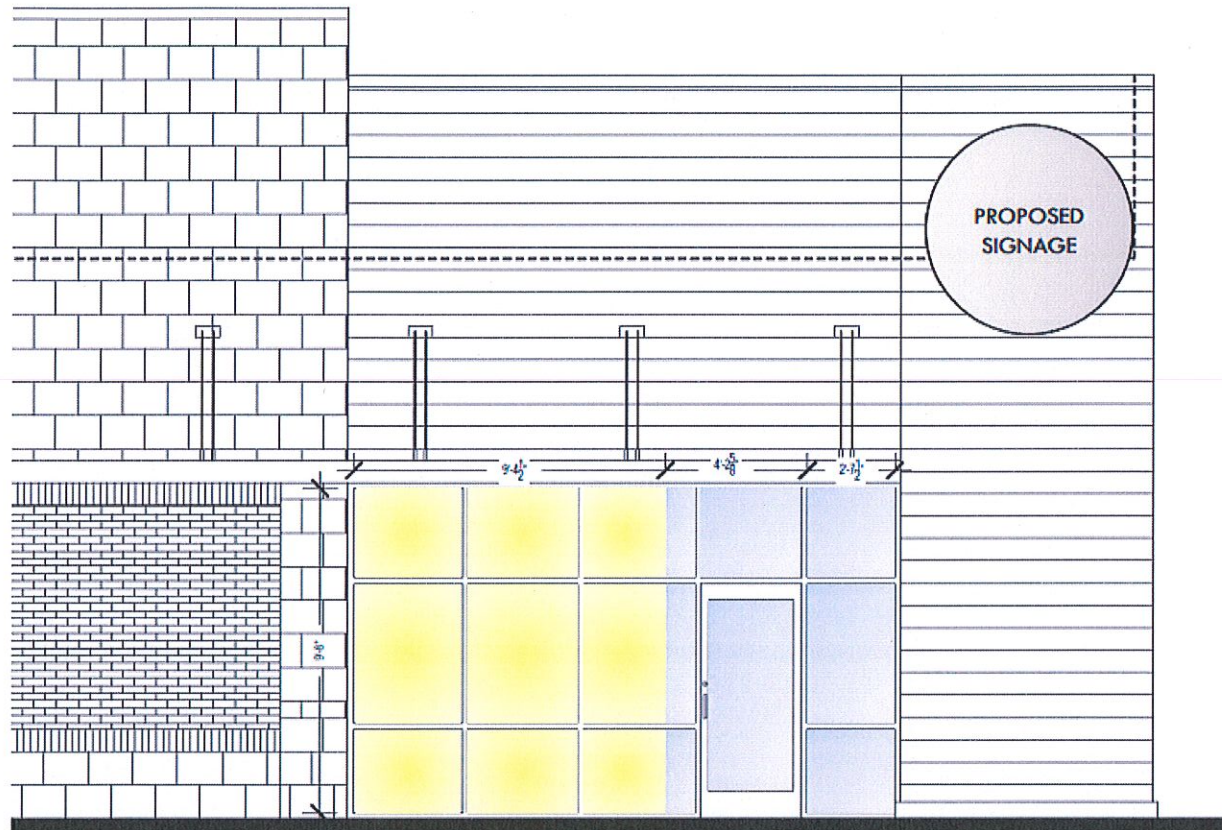
**EXHIBIT B – DESCRIPTION OF ART WORK**

Mural to be created as watercolor on paper and transferred to vinyl and installed over glazing (yellow represents location of mural)

9'-8" High by 9'-4" Wide

Mural sits 8 feet below Ashford Dunwoody Road

Artist – Diana Toma



**PLEASE NOTE: THESE ARE CONCEPTUAL IMAGES FOR THE PROPOSAL AND STILL IN ROUGH SKETCH PHASE – THERE WILL BE SOME MINOR EDITS MADE TO THE CONCEPT FOR THE FINAL ART PIECE.**



## **PANDA RESTAURANT GROUP**

### **DUNWOODY, GA – ART INSTALLATION APPLICATION**

#### **INTENT/THEME:**

Our proposal reflects creative energy, is lively, fun, vibrant, colorful and interestingly explorable. It is about community and diversity and coming together in celebration of unity.

The composition is built around a semicircle, indicative of the shape of an entry portal, or ring signifying unity. Oranges have always been considered as a traditional symbol of good fortune. Again, the circular shape references “fulfillment”, “oneness”, “perfection”, “timelessness”, “wholeness”, and “unity”.

Noodles are a symbol of longevity, and long life, and are a meal often shared across dinner tables by families. The main figure of the composition features a woman joyfully eating noodles with chopsticks. The noodles travel through the painting as a playful element that makes kids laugh and become fascinated by it. The overarching noodles work to bring the individuals shown, together.

The composition also introduces flocks of birds, flowers and natural elements, such as dogwood, which is native to Dunwoody, Georgia. This image reflects youthful exuberance, diversity, and the joy of the outdoors.

#### **THEMES IN PROPOSAL CONSISTENT WITH DUNWOODY:**

- Dunwoody is a place where people work together to make the community better
- Dunwoody is diverse
- Dunwoody celebrates and connects with special events and festivals
- Dunwoody is place where family and neighborhood are at the center
- Dunwoody is a city in transition, everchanging

#### **PANDA'S CULTURE:**

We feel that this mural is a great representation of not only Dunwoody, but of our personal brand as well, celebrating diversity, community, and unity.

#### **CONTACT:**

##### **BO GUILLEN**

Design Manager

[Bo.Guillen@pandarg.com](mailto:Bo.Guillen@pandarg.com)

(626)799-9898; x8515 – Direct: (626)372-8111

##### **PANDA RESTAURANT GROUP**

Restaurant Development Department

1683 Walnut Grove Ave. Rosemead. CA 91770



**DIANA TOMA** is an award winning visual artist currently teaching and creating in Atlanta, Georgia. Influenced by the European culture in which she was raised and enriched with American flavor; her style arrived at a unique cross that blends traditional techniques in a contemporary approach. Holding a Master's Degree in Fine Arts from the prestigious Romanian University of Art and Design in Cluj-Napoca, Diana has been engaging with the art community since 1995 showcasing her work in over a hundred international group exhibitions and eight solo art shows. Diana is often invited to judge and jury art shows and to speak on behalf of the working artist on panels discussions, such as The Mayor's Office of Cultural Affairs, and at The Contemporary Museum in Atlanta, Georgia. Between 1995 and 2021 Diana won an array of awards locally as well as on an international level. Her artworks have been featured in art magazines, on billboards, and acquired for display in public spaces. Diana is the demonstration chair for Georgia Watercolor Society and the former IWS USA branch president of the International Watercolor Society. Diana also teaches painting classes for adults in the greater Atlanta area, and at other art centers within the USA and abroad. Her teaching approach focuses on fast, free-flowing painting release, and overcoming creative blockages.

### **Artist Information**

work samples: <http://artbydianatoma.tumblr.com>

website: [www.artbydianatoma.com](http://www.artbydianatoma.com)

facebook: [www.facebook.com/ArtByDianaToma](http://www.facebook.com/ArtByDianaToma)

instagram: [www.instagram/ArtByDianaToma](http://www.instagram/ArtByDianaToma)



## CONCEPT SKETCH: MOMENTS THAT TIE US TOGETHER



PLEASE NOTE: THESE ARE CONCEPTUAL IMAGES FOR THE PROPOSAL AND STILL IN ROUGH SKETCH PHASE – THERE WILL BE SOME MINOR EDITS MADE TO THE CONCEPT FOR THE FINAL ART PIECE.



**COLORED CONCEPT PROPOSAL: MOMENTS THAT TIE US TOGETHER**

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DUNWOODY, GA – ART PROPOSAL



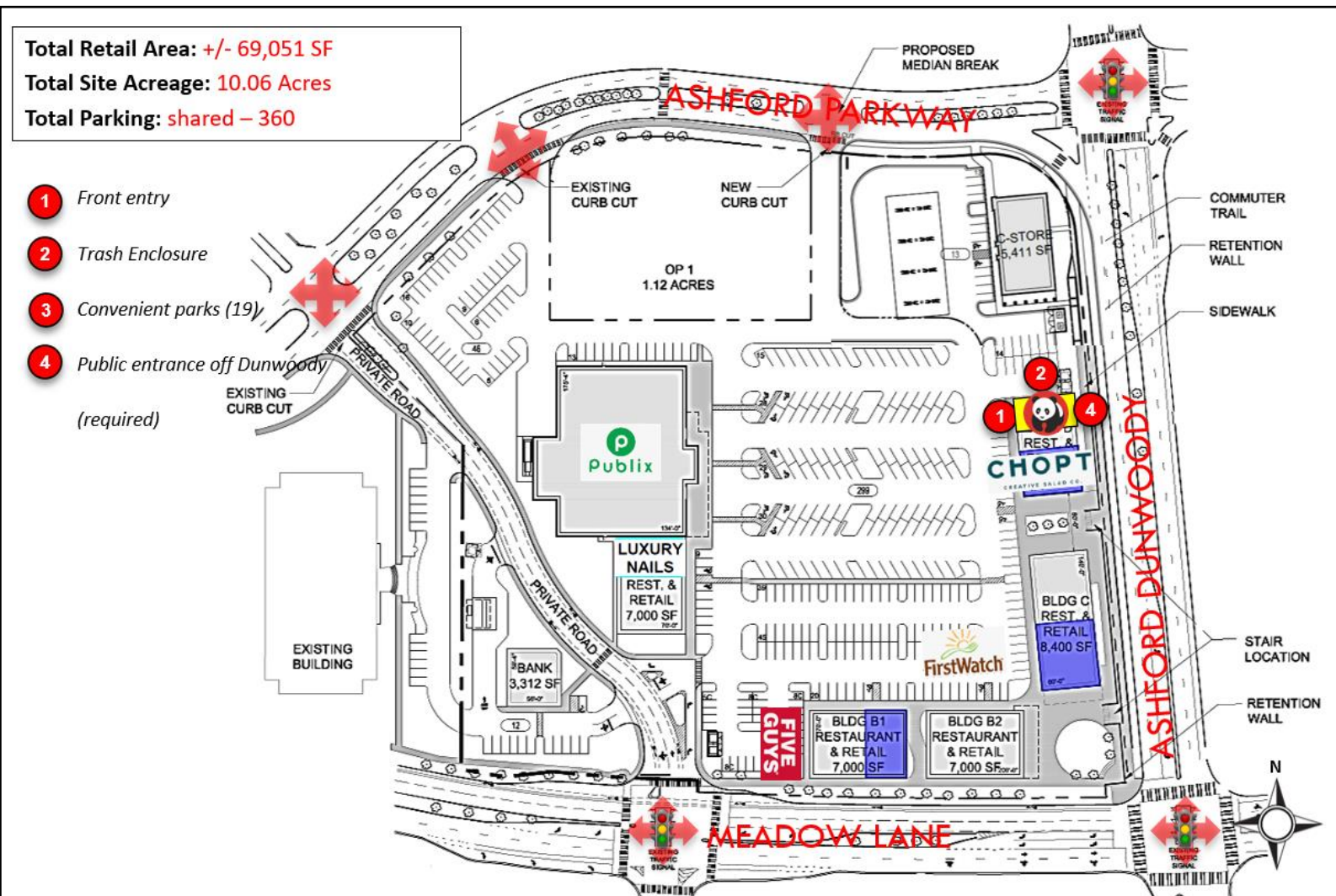
## LOCATION/CONTEXT:

Proposed mural location to be installed at the rear of our restaurant, which fronts the main road of Ashford Dunwoody. This mural location serves two purposes:

- The mural will conceal some unsightly Back of House equipment within our kitchen
- This mural will serve as a welcome adjacent to our guest access directly off of Ashford Dunwoody Road

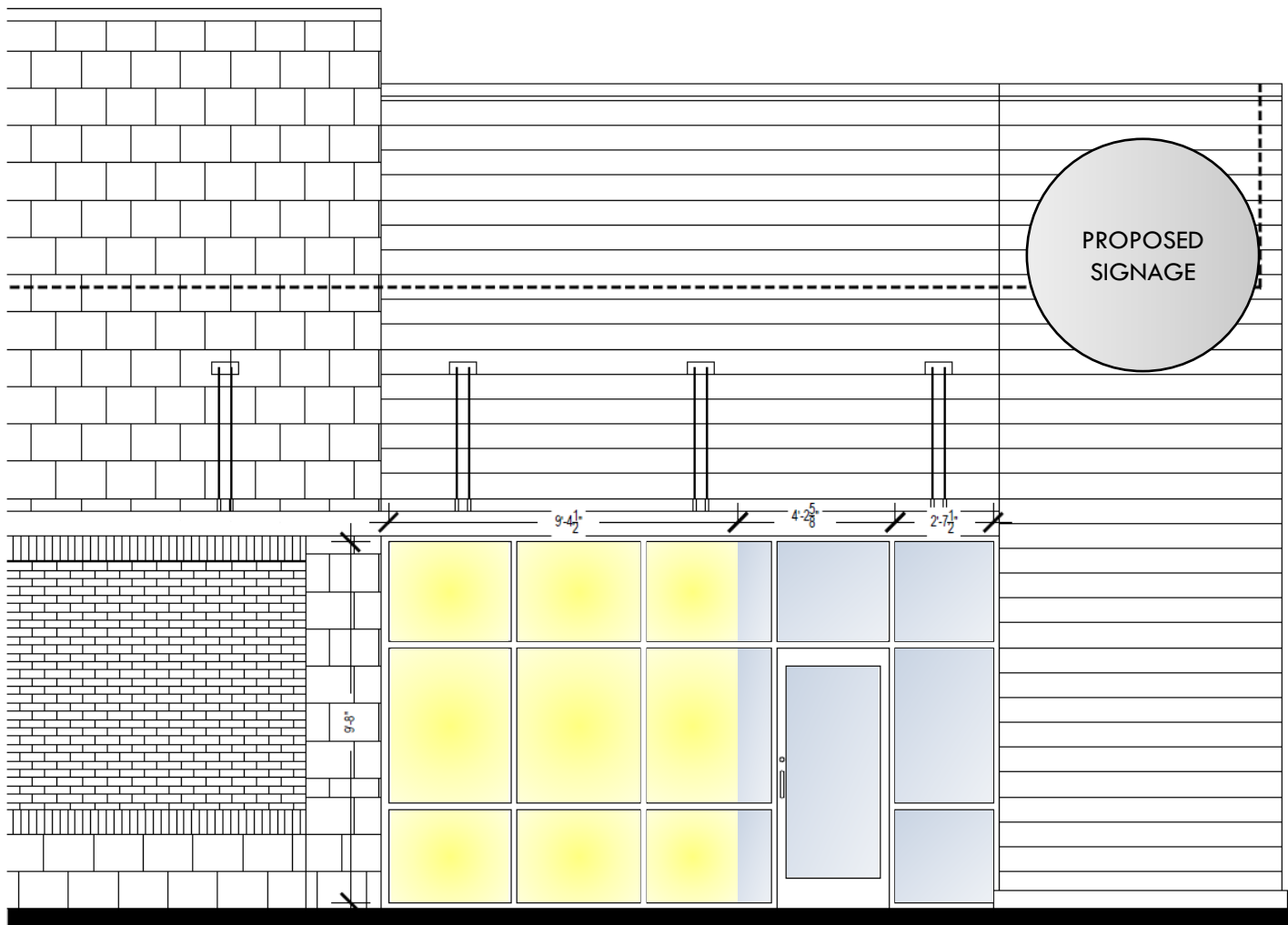
This installation serves as a prime location for art content to reflect the cultural values of Dunwoody, Georgia. Our goal for this installation is that the vibrant content in the mural will serve to energize our secondary entry into the restaurant (#4) off of Ashford Dunwoody Rd., which is also a primary access off the proposed pedestrian sidewalk, cyclist/commuter trail, and patio buffer designed to elevate the transitional area accessing Perimeter Marketplace.

Proposed location is consistent with the locations for Public Art indicated in the Public Art Implementation Plan given it is installed within Perimeter Center Marketplace and will engage, not only Panda Restaurant's guests, but also our community and overall center visitors.



**SIZE/INSTALLATION:**

- proposed size is 9' – 8" high x 9' – 4 1/2" wide (depicted in yellow area)
- Mural sits 8 feet below Ashford Dunwoody Road, and at the Patio buffer and pedestrian sidewalk grade
- Mural to be created in the style of a watercolor on paper , and scanned at 100% @ 800 dpi (approx. 222 Mb file which makes 75 dpi on final mural) for High Quality final image
- Mural to be printed on vinyl and installed over glazing
- mural duration not yet known
- Blue area to remain transparent glass

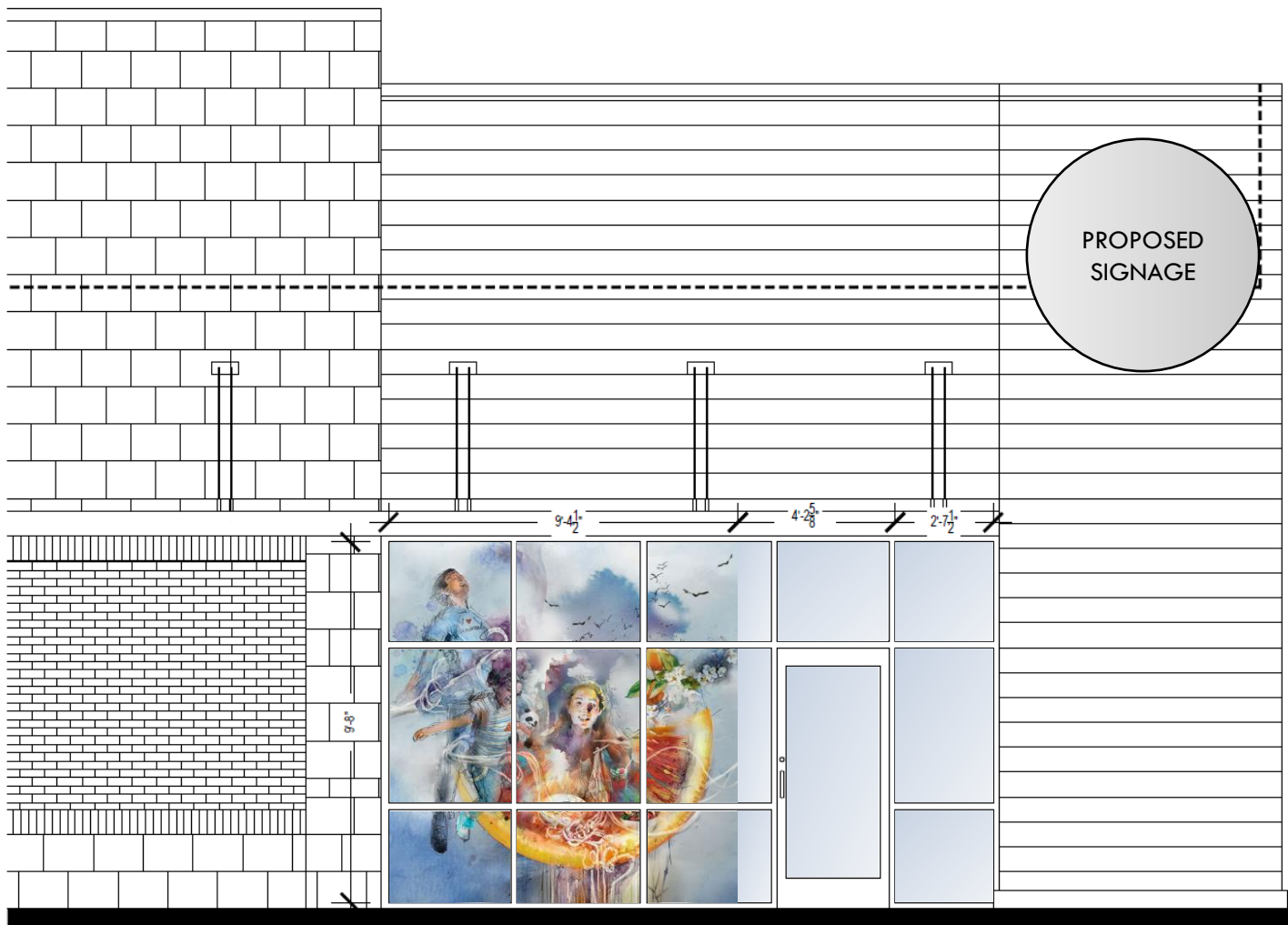


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FOR REFERENCE:



EAST ELEVATION - REAR  
Scale: 3/16" = 1'-0"

ELEVATION FACING ASHFORD AND DUNWOODY ROAD  
MURAL SITS -8' FROM STREET LEVEL



WEST ELEVATION - FRONT  
Scale: 3/16" = 1'-0"

ELEVATION FACING INTERIOR OF CENTER (TOWARDS PUBLIX)



FOR REFERENCE:



ELEVATION FACING INTERIOR OF CENTER (TOWARDS PUBLIX)



### PROPOSED:

- Submittal to Dunwoody, GA Art Commission 4/26/21

***Mural approval needed to pull building permits***

- PX construction Start 6/06/21
- Mural to be installed during construction TBD
- PX Store Opening 8/22/21





## Dunwoody Art Installation Application

The City of Dunwoody approved the Public Art Implementation Plan in November of 2020. The following are excerpts.

**“Public art is an increasingly important part of the life of many communities across the country, and that is true of Dunwoody.”**

Dunwoody has found that arts, culture and placemaking are important for many reasons:

First, these activities can strengthen the city as a place to live, work and visit by creating enjoyable places and memorable moments that strengthen people’s personal attachment to the city. Second, they can express the creativity and vitality of residents and community organizations, conveying the sense that something special and surprising is happening, which in turn can create a fresh new identity for Dunwoody. Finally, they can strengthen connections among the variety of neighborhoods and groups of people that call Dunwoody home, building on the strong social fabric and resiliency that have served the City well in the past.

**Vision** - Public art will take the emerging City of Dunwoody to the next level, connecting the community and visitors through a colorful, fun and explorable collection of art and gatherings.

### Goals

- Improve the city’s visual appearance, especially places where people gather, landmarks and infrastructure.
- Enhance connectivity — physical, social and cultural.
- Create a place that is active, fun, vibrant, livable, engaging and explorable — a place where families want to live, where employees plan to stay after work, and where everyone wants to visit because they know they can find something interesting.
- Change perceptions of the city; reflect its growing creative energy.
- Create a sense of pride and welcoming.

**Themes** - Dunwoody is seeking public art that reflects the spirit of the city and its residents. These are ideas that can inspire and motivate artists working in the city:

- Dunwoody offers big city amenities with small town flair.
- Dunwoody is a place where people work together to make the community better.
- Dunwoody is diverse.
- Dunwoody celebrates and connects with special events and festivals.
- Dunwoody is place where family and neighborhood are at the center.
- Dunwoody is a city in transition, everchanging.

**Locations** – Priority areas for public art. Dunwoody is diverse in its different districts and neighborhoods. Public art approaches should be tailored to the needs and character of each of these areas. The Public Art Implementation Plan indicates areas of the city that are appropriate for public art:

- |                    |                  |                    |
|--------------------|------------------|--------------------|
| • Perimeter Center | • Mt. Vernon     | • Dunwoody Village |
| • Georgetown       | • Winters Chapel | • City Parks       |
| • Jett Ferry       |                  |                    |

Please see the full Public Art Implementation Plan at: <https://www.dunwoodyga.gov/home/showpublisheddocument?Id=1167>

The City of Dunwoody embraces Public Art and encourages its citizens to implement art to be enjoyed and appreciated by the community. Any Dunwoody property owner, leaseholder of a property in Dunwoody, non-profit organization located in Dunwoody, or artist living or employed in Dunwoody may submit an application for a Public Art installation in the City of Dunwoody.

## Public Art Implementation Application www.artbydianatoma.com

Artist Information
Artist Name: <b>DIANA TOMA</b>
Address/Location: <b>2729 MEADOW DRIVE</b>
Telephone Number: <b>678-698-5616</b>
City: <b>MARIETTA</b> State: <b>GA</b> Zip: <b>30062</b>
Email: <b>DIANA@ARTBYDIANATOMA.COM</b> Website:
Applicant Contact Information
Applicant's Name: <b>BO GUILLEN</b>
Developer/Owner/Agent's Name (if different): <b>PANDA RESTAURANT GROUP</b>
Telephone Number: <b>OFFICE: 626-372-8111 / CELL: 626-824-7660</b>
Address: <b>1683 WALNUT GROVE AVE</b>
City: <b>ROSEMEAD</b> State: <b>CA</b> Zip: <b>91770</b>
Email: <b>BO.GUILLEN@PANDARG.COM</b>

**The following items must be submitted with this application.**

- ☒ Resume of the proposed artist, including photographic or video representations of artist's existing work, preferably works of public art. Links to websites or social media can also be submitted to demonstrate works of art.
- ☒ Artist rendering of the proposed Public Art installation, including specific design elements, medium, materials, and description of any work that will require local, state or federal permits.
- ☒ Proposed location (site plan) of the Public Art installation and description of why said location is appropriate and consistent with the locations for Public Art indicated in the Public Art Implementation Plan. The desired length of time said Public Art installation will remain on the property.
- ☒ Explanation of how the Public Art installation meets the theme(s) outlined in the Public Art Implementation Plan approved by the Mayor and City Council.
- ☒ Artist Waiver of Proprietary Rights under the Visual Artists Rights Act.
- ☒ Property Owner Consent Affidavit indicating consent for locating said Public Art installation on the property. After the project has been fully approved an Art Easement form will be completed.
  - Art Easement Form
    - (i) requires the property owner to erect and maintain the Public Art installation at no cost to the City for the life of the installation;
    - (ii) grants the City an easement in the location of the Public Art and grant the City all authority to, in the City's discretion, maintain said installation and claim ownership in said installation (private property only);

\*Applicants are responsible for obtaining necessary permits required with any incurred or proposed changes.

Signed **REVIEWED** By Bo Guillen at 10:59 am, Apr 26, 2021 Date: **04-26-2021**

Scan and e-mail the completed application with all supporting documents to: [rosemary.watts@dunwoodyga.gov](mailto:rosemary.watts@dunwoodyga.gov)



**Steps:**

*Step 1: Prepare and submit required documents* – Complete and check off list of required documents listed on the application, scan and e-mail to: [rosemary.watts@dunwoodyga.gov](mailto:rosemary.watts@dunwoodyga.gov) You may be contacted if your application is missing any information.

*Step 2: Review Process*

After we receive a complete application, the Dunwoody Public Art Commission will review it in an upcoming regular or special meeting. If the Public Art Commission approves the proposed Public Art Installation, the application will be forwarded to the Mayor and City Council which will also review the application.

*Step 3: Decision and Follow-Up*

If approved, you will complete the Art Easement form and be given additional instructions to proceed.

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For questions about the application, please e-mail Rosemary Watts, Business and Cultural Development Manager: [rosemary.watts@dunwoodyga.gov](mailto:rosemary.watts@dunwoodyga.gov)

For questions about community planning, land development, building construction, code compliance and easements, please e-mail Paul Leonhardt: [paul.leonhardt@dunwoodyga.gov](mailto:paul.leonhardt@dunwoodyga.gov)

If you wish your project to be in a City park, please contact Brent Walker at [brent.walker@dunwoodyga.gov](mailto:brent.walker@dunwoodyga.gov) prior to submitting an application

If you wish your project to be on City property that is not a City park (e.g. City streets, City facilities, etc.), please contact Michael Smith at [michael.smith@dunwoodyga.gov](mailto:michael.smith@dunwoodyga.gov) prior to submitting an application.

## Addendum 1 – Public Art Ordinance

See <https://www.dunwoodyga.gov/home/showpublisheddocument?id=1287> for the full ordinance.

Excerpt:

FROM CITY OF DUNWOODY ORDINANCE 2020-XX-XX

### AN ORDINANCE OF THE CITY OF DUNWOODY CREATING PROCEDURES FOR ESTABLISHMENT OF PUBLIC ART INSTALLATIONS AND IMPLEMENTATION OF PUBLIC ART PROGRAM

#### Chapter 29. Public Art.

##### Sec. 29-1. Definitions.

- (a) “Public Art” shall be defined as a work created by an artist as defined herein, as approved by the Public Art Commission created herein, for display in public space or visible from a public space.
- (b) Public Art shall include the following:
  - (1) All forms of limited edition or one-of-a-kind original creations of visual art, both decorative and utilitarian, including but not limited to paintings, drawings, photographs, collages, ceramics, artistic glass, stained glass, and fiber art
  - (2) Functional features or enhancements, such as benches and fountains, that are unique to the location
  - (3) Murals, frescos or mosaics covering walls
  - (4) Sculptures, including statues, reliefs and mobiles, which can be free-standing, wall-supported and/or suspended and made of durable materials suitable to the site and the climate; and
  - (5) Technological media that may develop through artistic pursuit or adaptation of digital, audio, video or graphic media; use of lighting, the internet, and the like;
  - (6) Other suitable artworks as presented to, and approved by, the sole decision of the Public Art Commission.
- (c) Public Art shall not include:
  - (1) Elements incorporated for the primary purpose of advertising a business, product or service, including but not limited to logos, trademarked symbols, colors, images of commercial products, texts or numbers;
  - (2) Directional elements such as super-graphics, signage or color coding except where these elements are integral parts of the original works of art;
  - (3) Mass-produced objects, such as fountains, statutory objects or playground equipment;
  - (4) Reproduction by mechanical or other means of original works of art;
  - (5) Decorative ornamental or functional elements created by the project architect or landscape architect instead of an artist commissioned for this purpose;
  - (6) Electrical, water or mechanical service for activation of the works of art;
  - (7) Art exhibitions and educational activities;
  - (8) Security and publicity concerning the works of art; and
  - (9) Art used as signage.
- (d) “Artist” shall be defined as an individual, or a group of people, who meets one or more of the following criteria:
  - (1) realizes income through the sale, performance, publication or commission of original works of art (2) has previously exhibited, presented, performed or published original works of art in museums, galleries or other recognized art venues and publications
  - (3) has formal training or education in a field of art; and
  - (4) has received awards or other forms of recognition from arts juries, arts grant panels, and similar entities for his/her/their artistic abilities or accomplishments.

## Addendum 2 – Artist Waiver of Proprietary Rights

### Waiver of Proprietary Rights

for Artwork Placed Upon CITY PROPERTY VIA ART EASEMENT DATED 4/26/21 under VARA and CAPA

Artist has designed a work of visual art. In consideration of the City's approval of the Artist design of visual art.

DESCRIPTION: [type, mural, medium]:

Mural to be created in the style of a watercolor on paper , and scanned at 100% @ 800 dpi (approx. 222 Mb file which makes 75 dpi on final mural) for High Quality final image

TITLE, DATE: \_\_\_\_\_

DIMENSIONS: 9' - 8" HIGH X 9' - 4" WIDE

ADDRESS/LOCATION: 500 Ashwood Pkwy Dunwoody, Georgia 30338

("the Work") for the City artist agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) ("VARA") and any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights ("Moral Rights Laws"), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns. If the Work is incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, "Modification") of the Work, artist waives any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the site, and its agents, officers and employees, for Modification of the Work.

The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, in City's sole discretion.

The City has no obligation to pursue claims against third parties for modifications or damage to the Work done without the City's authorization. However, the City may pursue claims against third parties for modifications or damage or to restore the Work if the work has been modified without the City's authorization. In the event that the City pursues such a claim, it shall notify the Artist, and Artist shall cooperate with the City's efforts to prosecute such claims.

If the City modifies the Artwork without the Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a) (2).



**Artist bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice.** Notice of changes must be mailed to the Dunwoody Arts Commission, 4800 Ashford Dunwoody Road, Dunwoody, Georgia 30346.

CITY AGENCY

Agency: \_\_\_\_\_

Authorized Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

ARTIST

ARTIST understands the effect of this waiver and hereby acknowledges that ARTIST is surrendering the rights described herein with respect to the Work.

Artist: DIANA TOMAAddress: 2729 MEADOW DRIVE MARIETTA, GA 30062Email: DIANA@ARTBYDIANATOMA.COMPhone: 678-698-5616SIGNATURE: DATE: 04/ 26 /21

**Addendum 3 – Property Owner Consent Affidavit****PUBLIC ART INSTALLATION  
PROPERTY OWNER CONSENT AFFIDAVIT**Project Name: PANDA EXPRESS, ASHFORD DUNWOODY, GAProperty Address: 500 Ashwood Pkwy Dunwoody, Georgia 30338Building Owner: Branch Ashwood Associates, LP

I, Rebecca O'Brien, Manager on behalf of the                     , owner of property referenced above, do certify and affirm that consent has been provided to BO GUILLEN, PANDA RESTAURANT GROUP, to install and maintain public art as determined by the City of Dunwoody Public Art Ordinance at the property address referenced above.

Branch Ashwood Associates, LP

By: Branch Atlantic Partners, LLC, its Sole General Partner

By: *Rebecca O'Brien*Rebecca O'Brien, Manager

Printed Name

5-12-2021

Dated

The foregoing document was sworn to me this 12<sup>th</sup> day of May, 20 21

*Jared Joella*  
Notary Public

Commission Expiration Date:

08/24/2024

(Notary Seal)



**Addendum 4 – Art Easement Agreement**

After recording return to:

**ART EASEMENT**

THIS AGREEMENT, effective on \_\_\_\_\_ (month/day/year), is between Branch Ashwood Associates, LP (“Grantor”), and the City of Dunwoody, a Georgia municipal corporation (“City”).

**RECITALS**

A. The City has adopted a program for the placement of art in and on public and private locations throughout the City of Dunwoody. The Dunwoody Art Commission administers the City’s public art program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein) and is willing to make said property available to the City for the placement of public art, as defined in the City of Dunwoody Code (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties agree as follows:

1. Grant of Easement. Grantor conveys, grants and warrants to the City, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Artwork described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“property”). The location of the Artwork shall be as approved by the Dunwoody Art Commission.

2. Term of Easement. This easement shall be for a period of ten (10) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew thereafter, and shall remain in full force and effect unless and until terminated.

3. Termination.

- a) At or after the expiration of the easement period, the easement may be terminated by either party upon 30 days written notice to the other party. Grantor expressly agrees and warrants that upon expiration, the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.
- b) Within the initial easement term (or at any time thereafter), the easement may be terminated by Grantor with the City’s consent in writing upon Grantor’s showing of any of the following: i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Artwork substantially impedes Grantor’s reasonable use and enjoyment of the Property. The City shall not unreasonably withhold consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.
- c) The City may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor’s obligations under Section 4, below. Should the City elect to exercise this right of termination, Grantor expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the City.

4. Maintenance and Removal of Artwork. Grantor shall be responsible for maintaining and if necessary, repairing the Artwork described in Exhibit B during the existence of the easement. The City may remove the Artwork from the



property if, in the sole judgment of the City, the Artwork is being excessively damaged, and Grantor fails or refuses to maintain or repair the Artwork after 30 days written notice from the City requesting Grantor to do so. If the City removes the Artwork from the property, the City will restore the property to its original condition. Alternatively, at the City's sole discretion, the City may access the Artwork to maintain or repair the Artwork if Grantor has failed to do so after 30 days written notice from the City that the Artwork requires maintenance or repair.

5. Right of Entry. The City shall have the right to access the area on the property described in Exhibit A on which the Artwork is located during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this agreement.

6. Binding Effect. The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.

7. Contractual Relationships. Assignment. This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The parties shall not assign this agreement without the prior written consent of the other.

8. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of Dunwoody

City of Dunwoody  
Attn: City Manager  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338

Grantor (name and mailing address)

Branch Ashwood Associates, LP

c/o Branch Properties, LLC  
3340 Peachtree Road, NE, Suite 2775  
Atlanta, Georgia 30326

9. Amendments. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.

10. Remedies. The parties acknowledge that breaches of this Agreement will affect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to a) liquidated damages in an amount of \$2500 per material breach; b) specific performance of the terms of this agreement, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The rights under this agreement are cumulative. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

11. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

12. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this agreement.

IN WITNESS WHEREOF, the parties/persons have caused this instrument to be executed by its duly authorized representative(s).

**GRANTOR**

Branch Ashwood Associates, LP

By: Branch Atlantic Partners, LLC, its Sole General Partner

By: Rebecca O'Brien**"NAME OF GRANTOR REPRESENTATIVE"**

Rebecca O'Brien

(print name of grantor representative)

Manager

(print title of grantor representative)



STATE OF Georgia )  
 ) ss.  
 County of Fulton )

This instrument was acknowledged before me on May 12, 2024 by  
Rebecca O'Brien as Manager of the Grantor.

IN WITNESS WHEREOF, the City of Dunwoody, Georgia, has caused this instrument to be executed by its duly authorized representative(s) on \_\_\_\_\_ (date).

CITY OF DUNWOODY

By: \_\_\_\_\_

\_\_\_\_\_  
(print name of city representative)\_\_\_\_\_  
(print title of city representative)