

August 14, 2020

INTERGOVERNMENTAL AGREEMENT BETWEEN GWINNETT COUNTY AND DEKALB COUNTY

THIS INTERGOVERNMENTAL AGREEMENT, (the “Agreement”) is made this ____ day of _____ 2020 by and between GWINNETT COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, "Gwinnett County"), and DEKALB COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, "DeKalb County are, collectively, the Parties.

RECITALS

WHEREAS, development is proposed on certain real property which is located at 6945 Button Gwinnett Drive, an address located in Gwinnett County, lying in Land Lots 219 and 220, 6th District, Gwinnett County, and in Land Lots 317 and 318, 18th, District, City of Doraville, DeKalb County, and containing approximately 20.09 acres of land, as described by the metes and bounds set out in the survey document attached hereto and incorporated herein by reference as Exhibit “A”, (hereinafter, the “Property”); and

WHEREAS, there is a contract for the purchase and sale of the Property for development into an end-user distribution center (hereinafter, the “Project”) which is more particularly described in a Layout and Stacking Plan prepared by Eberly & Associates dated July 28, 2020, (hereinafter the “Plan”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “B”; and

WHEREAS, as shown on Exhibit “B”, the Project shall contain an approximately 121,017 square foot building that will be constructed on the DeKalb County/Gwinnett County line with a portion of the project in both jurisdictions, will provide parking for employees of the Project and will provide parking spaces for semi-tractors and for delivery vans.

WHEREAS, the Developer of the Project is SEEFRIED INDUSTRIAL PROPERTIES, INC., (hereinafter, the Developer”) and the Owner of the Property is IMPROVE GEORGIA, LLC, (hereinafter, the “Owner”); and

WHEREAS, both the Developer and Owner are intended third-party beneficiaries of this Agreement made hereunder between Parties and are entitled to the rights and benefits hereunder and may enforce those provisions against Gwinnett County or DeKalb County as if they were Parties to this Agreement; and

WHEREAS, DeKalb County has the authority to provide fire and emergency medical services to property within its corporate limits which includes that part of the Property within DeKalb County; and DeKalb County desires for Gwinnett County to provide all fire protection and emergency medical services for the Project; and

WHEREAS, DeKalb County is willing to allow Gwinnett County to use its public streets to provide fire protection and emergency medical services to the Project; and

WHEREAS, Gwinnett County is willing to provide fire protection and emergency medical services to the Project; and

WHEREAS, pursuant to the provisions of Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, as amended, and the general, special and local laws of the State of Georgia, DeKalb County and Gwinnett County, by and through their respective government authorities, are each authorized to enter into agreements with each other and with private persons for the provision of certain public services outside their jurisdictional limits; and

WHEREAS, in order to ensure the orderly, economical and logical provision of certain public services to the Project, the Parties hereto desire to enter into this Agreement to resolve any potential governmental conflicts between DeKalb County and Gwinnett County concerning provision of fire protection, and emergency medical services to the entire Project,

NOW THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the foregoing recitals and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

TERMS AND CONDITIONS

1. Recitals

The above Recitals are true, correct, form a material part of this Agreement and are incorporated herein by reference.

2. Fire and Emergency Medical Services

- a) Gwinnett County shall provide all fire protection and emergency medical services to the Project. For the purpose of this Paragraph 2, the Project's address shall be 6945 Button Gwinnett Drive, Doraville, Georgia 30340, an address located in Gwinnett County.
- b) DeKalb County grants to Gwinnett County the rights, of access over and upon, and use of, all roads and intersections located within DeKalb County as may be necessary to allow Gwinnett County vehicles and personnel providing such fire protection and emergency medical services to have access to the portion of the Project located in DeKalb County.

3. Term and Termination

- a) The Parties agree that the term of this Agreement (the "Term") shall begin at 12:00 a.m. on September 1, 2020 and each subsequent year thereafter for a total term of fifty (50) years, during or after the termination of which the parties may seek to renew or enter into a new agreement.

- b) This Agreement may be amended at any time by mutual consent of both parties so long as such amendment is in writing and approved by official action of the respective governing authority. Either party may terminate this Agreement with or without cause by giving ninety (90) days prior written notice to the other party.

4. Miscellaneous

- a) Signs shall be posted at the county boundary line, along the curb. The signs shall read "Entering Gwinnett County" on one side and "Entering DeKalb County" and "City of Doraville" on the other side.
- b) This Agreement and the covenants of the Parties set forth herein are intended to run with the land and, subject to Section 13 hereof, shall be binding upon each of the Parties hereto and any subsequent owner of the Project. This Agreement shall be recorded in the real property records of DeKalb County and Gwinnett County.
- c) This Agreement shall not be binding upon the Parties hereto and may not be recorded until formal approval is granted by the appropriate authorities in Gwinnett County and DeKalb County.
- d) By its execution hereof, each of the Parties hereto represents and warrants to the other Parties hereto that:
 - i. all necessary actions and approvals have been taken or obtained, as the case may be, to authorize, approve and perform this Agreement;
 - ii. upon such execution, this Agreement shall be binding on such party, enforceable against such party in accordance with its terms, except (in the case of Improve Georgia) as such enforceability may be limited by general principles of bankruptcy and insolvency and similar laws relating to creditors' rights generally;
 - iii. there is no claim, litigation, proceeding or governmental investigation pending or, so far as is known to such party, threatened, against or relating to such party or the transactions contemplated by this Agreement which does or would reasonably be expected to affect materially and adversely the ability of such party to enter into this Agreement and to carry out its obligations as set forth in this Agreement; and
 - iv. any and all approvals required to be obtained by such party in connection with the execution, delivery and performance of this Agreement have been obtained.

5. Remedies

- a) In the event of a breach or attempted or threatened breach of the provisions of this instrument, the Parties agree that the remedy at law available to enforce this instrument would in all likelihood be inadequate, and therefore, the provisions of this instrument may

be enforced by a mandatory or prohibitory injunction or decree of specific performance upon the application of the party which is enforcing the provision.

- b) The remedies herein are in addition to and not in lieu of any other remedies available under applicable law.

6. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations, and undertakings, whether written or oral, and there are no inducements, representations, warranties or understandings that do not appear within the terms and provisions of this Agreement.

7. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions shall remain in full force and effect as if the illegal or unenforceable provision had never been contained in this Agreement.

8. Successors and Assigns

The provisions of this Agreement shall be deemed and held to be easements, covenants and restrictions appurtenant to and running with the land, and shall bind and inure to the benefit of the Parties and their successors, successors-in-title and assigns.

9. Evidence

The Parties agree that if Gwinnett County is sued in subsequent litigation concerning the Project, the Agreement may be introduced into evidence.

10. Attorneys' Fees

Each party shall bear its own costs, expenses and claims to attorneys' fees incurred or arising out of the Agreement or the Projects.

11. Controlling Law, Venue

This Agreement was made and shall be performed in DeKalb County, Georgia and in Gwinnett County, Georgia, and shall be construed and interpreted under the laws of the State of Georgia. Venue to enforce this Agreement for any dispute arising out of the terms and conditions herein shall be solely in the Superior Court of DeKalb County, Georgia, and all defenses to venue are waived.

12. Further Assurances

The Parties will sign any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

13. Construction

This Agreement has been jointly negotiated and drafted. This Agreement shall be construed as a whole according to its fair meaning. The language of this Agreement shall not be constructed for or against either party.

14. Legal Advice

In entering into this Agreement, the Parties acknowledge that their legal rights are affected by this Agreement and that they have sought and obtained the legal advice of their attorneys. Each Party has made such an investigation of the law and the facts pertaining to this Agreement and of all other matter pertaining thereto as it or they deem necessary. They further represent that the terms of this Agreement have been completely read by them and that all terms are fully understood and voluntarily accepted by them.

15. Amendment of Agreement

No provision of this Agreement may be amended, modified or waived unless such amendment, modification or waiver is agreed to in a writing signed by each of the Parties hereto.

16. Authority

The signature of a representative of any Party to this Agreement is a warranty that the representative has authority to sign this Agreement and to bind any and all principals to the terms and conditions hereof.

17. Headings

The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the Terms and Conditions contained herein or the rights granted hereby.

18. Time

Time is of the essence with all duties and obligations set forth in this Agreement.

19. Notice

For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

August 14, 2020

If to Gwinnett County: Gwinnett County
Attention: County Administrator
75 Langley Drive
Lawrenceville, Georgia 30045-6935

If to DeKalb County: DeKalb County
Attention: Chief Executive Officer
1300 Commerce Drive
Decatur, Georgia 30030

20. Originals

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

August 14, 2020

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, sealed and delivered by the Chief Executive Officer of DeKalb County, and the Chairman of the Gwinnett County Board of Commissioners each thereunto duly authorized to bind their respective Parties in accordance with the laws of the State of Georgia as of the day and year first above written.

Signed, sealed and delivered in the presence of:

DEKALB COUNTY

Unofficial Witness

By: _____
Michael Thurmond,
Chief Executive Officer

Notary Public

Attest: _____
Printed Name:
Title:

My commission expires:

[NOTARY SEAL]

August 14, 2020

Signed, sealed and delivered in the presence of:

GWINNETT COUNTY

Unofficial Witness

By: _____
Charlotte J. Nash
Chairman

Notary Public

Attest: _____
Printed Name:
Title:

My commission expires:

[NOTARY SEAL]

Exhibit A

TRACT 1

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 317 AND 318; 18TH DISTRICT; CITY OF DORAVILLE; DEKALB COUNTY, GEORGIA, AND IN LAND LOT 219; 6TH DISTRICT; GWINNETT COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE ON A POINT AT THE RIGHTS-OF-WAY INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES) WITH THE EASTERLY RIGHT-OF-WAY LINE FOR PLEASANTDALE ROAD (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 1,356.31 FEET TO A 5/8-INCH REBAR SET, SAID REBAR BEING THE POINT OF BEGINNING. THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 31 DEGREES 11 MINUTES 07 SECONDS WEST, A DISTANCE OF 790.25 FEET TO A 1/2-INCH REBAR FOUND; THENCE NORTH 58 DEGREES 33 MINUTES 09 SECONDS EAST, A DISTANCE OF 650.00 FEET TO A POINT; THENCE SOUTH 31 DEGREES 07 MINUTES 55 SECONDS EAST, A DISTANCE OF 703.25 FEET TO A RIGHT-OF-WAY MONUMENT FOUND ON THE AFOREMENTIONED NORTHWESTERLY RIGHT OF WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 50 DEGREES 09 MINUTES 11 SECONDS WEST, A DISTANCE OF 468.79 FEET TO A POINT; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 52 DEGREES 51 MINUTES 57 SECONDS WEST, A DISTANCE OF 186.90 FEET TO AN AFOREMENTIONED 5/8-INCH REBAR SET, SAID REBAR BEING THE POINT OF BEGINNING.

TRACT 2

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 317; 18TH DISTRICT; CITY OF DORAVILLE; DEKALB COUNTY, GEORGIA, AND IN LAND LOTS 219 AND 220; 6TH DISTRICT; GWINNETT COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE ON A POINT AT THE RIGHTS-OF-WAY INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES) WITH THE EASTERLY RIGHT-OF-WAY LINE FOR PLEASANTDALE ROAD (RIGHT-OF-WAY VARIES); THENCE ALONG THE AFORESAID RIGHT-OF-WAY LINE FOR NORTHEAST EXPRESSWAY, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 2,012.00 FEET TO AN "X" FOUND IN CONCRETE, SAID "X" BEING THE POINT OF BEGINNING. THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 31 DEGREES 07 MINUTES 55 SECONDS WEST, A DISTANCE OF 785.84 FEET TO A POINT; THENCE NORTH 43 DEGREES 57 MINUTES 35 SECONDS EAST, A DISTANCE OF 480.67 FEET TO A 5/8-INCH REBAR SET ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE FOR PONCE DE LEON CIRCLE (80-FOOT RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY LINE SOUTH 31 DEGREES 18 MINUTES 25 SECONDS EAST, A DISTANCE OF 860.56 FEET TO A 5/8-INCH REBAR SET ON THE NORTHERLY RIGHT-OF-WAY LINE FOR BUTTON GWINNETT DRIVE A/K/A NORTHEAST EXPRESSWAY (RIGHT-OF-WAY VARIES); THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 54 DEGREES 12 MINUTES 15 SECONDS WEST, A DISTANCE OF 419.04 FEET TO A POINT; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 42 DEGREES 09 MINUTES 15 SECONDS WEST, A DISTANCE OF 51.67 FEET TO THE AFOREMENTIONED "X" IN CONCRETE, SAID "X" BEING THE POINT OF BEGINNING;

August 14, 2020

Exhibit B