

AGREEMENT AND RELEASE

WHEREAS, the City of Dunwoody (“City”) established an Adopt-A-Spot program to encourage public participation in beautifying public rights-of-way and keeping such property clean and free of debris in exchange for public recognition of a participant’s efforts in the form of a sign bearing the name of the participant;

WHEREAS, the City had set aside a limited number of locations for adoption within the City as a part of the Adopt-A-Spot program;

WHEREAS, Joseph Hirsch (“Hirsch”) submitted an application on behalf of a group named “Dunwoody Public Works Director Michael Smith is an \$#%@” (the “Group”) to participate in the City’s Adopt-A-Spot program and to have the Group recognized on the sign to be erected;

WHEREAS, the Group’s first location of choice to adopt was a location described as “Ashford Ctr Pkwy – nearest to Ashford Dunwoody Road” and the second location of choice was described as “Chamblee Dunwoody @ Vermack Rd.”, both of which describe locations set aside by the City for participation in the Adopt-A-Spot program;

WHEREAS, Hirsch, for himself and as the designated and empowered agent for the Group, agreed to abide by and comply with the guidelines and requirements of the City’s Adopt-A-Spot program;

WHEREAS, the application submitted by Hirsch on behalf of the Group was denied by the City on April 25, 2012;

WHEREAS, a second application identical to the first application was submitted by Hirsch on behalf of the Group seeking to participate in the City's Adopt-A-Spot program;

WHEREAS, Hirsch, for himself and as designated agent for the Group, agreed to abide by and comply with the guidelines and requirements of the City's Adopt-A-Spot program;

WHEREAS, the application submitted by Hirsch on behalf of the Group was denied by the City on May 25, 2012;

WHEREAS, Hirsch filed a *Complaint and Demand for Injunctive Relief* on August 13, 2012 in the United States District Court for the Northern District of Georgia, Atlanta Division styled Joseph Hirsch v. City of Dunwoody, Georgia, Civil Action File No. 1:12-cv-02799-AT (the "Lawsuit");

WHEREAS, the Lawsuit alleges that the denial of the applications violated the First Amendment to the United States Constitution as well as the rights to Due Process and Equal Protection protected by the Fourteenth Amendment to the United States Constitution and violated corresponding provisions in the State of Georgia Constitution;

WHEREAS, the Lawsuit seeks an award of attorneys' fees and costs as well as damages arising from what is alleged to be unlawful denial of the applications;

WHEREAS, the City filed its *Answer and Defenses to Complaint and Demand for Injunctive Relief* on September 6, 2012 denying any and all liability for the claims asserted and relief sought; and

WHEREAS, Hirsch, for and on behalf of himself and the Group, and the City (collectively, the “Parties”) desire to resolve their outstanding disputes and the Lawsuit;

NOW, THEREFORE, the Parties agree to the following terms, conditions, and representations of this *Agreement and Release* (the “Agreement”) to resolve their disputes and the Lawsuit with the Parties acknowledging that this Agreement is subject to presentation to and acceptance by the City’s Mayor and Council in order to become effective:

1. Within fifteen (15) days of the approval of this Agreement by the City’s Mayor and Council, the City will issue a permit allowing adoption of the spot designated in the applications as “Ashford Ctr Pkwy – nearest to Ashford Dunwoody Road.” The City will arrange for, purchase, and install at this location an adopt-a-spot recognition sign consistent with the City’s policy, practice and custom for such signage. The Parties further agree that the sign shall bear for participant recognition only the name of “Reserved for Teacher Parking.”

2. Within fifteen (15) days of the approval of this Agreement by the City’s Mayor and Council, Hirsch will file a Notice of Dismissal With Prejudice in the form attached as Exhibit A hereto bearing all required signatures dismissing with prejudice the matter styled Joseph Hirsch v. City of Dunwoody, Georgia, Civil Action File No. 1:12-cv-02799-AT pending in the United States District Court for the Northern District of Georgia, Atlanta Division.

3. Within fifteen (15) days of the approval of this Agreement by the City’s Mayor and Council, the City shall (a) issue a check payable to Hirsch in the amount of

Five Hundred Fifty-One Dollars and No Cents (\$551.00) and (b) issue a check payable to Webb, Klase & Lemond, LLC in the amount of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00). Other than as described in this paragraph 3, neither Hirsch, the Group, nor Webb, Klase & Lemond LLC (or anyone in its behalf) is not entitled to any other monetary amount from the City, and the City is not obligated to provide any other remuneration to or on behalf of Hirsch, the Group, or Webb, Klase & Lemond LLC (or anyone in its behalf).

4. Except as otherwise provided for in this Agreement, Hirsch and the Group shall be subject to and required to comply with all Adopt-A-Spot program requirements, terms and conditions, and guidelines as contained in the Adopt-A-Spot Program Guidelines and Adopt-A-Spot Agreement attached hereto as Exhibit B.

5. In further consideration of the promises and obligations undertaken and to be undertaken by the Parties upon execution of this Agreement:

a. Hirsch, for himself, his heirs, executors, assigns, and representatives of every type and kind and on behalf of and as the designated agent for the Group and its heirs, executors, successors, assigns, predecessors, and representatives of every type and kind, releases the City, its elected and appointed officials, employees, assigns, and representatives of every type and kind from every action, cause of action, claim, dispute, charge, complaint, controversy, loss, cost, or expense of any type or kind, known or unknown, through the date of execution of this Agreement, the intent being to provide a mutual general release.

b. The City, for itself and its successors, assigns, and representatives of every type and kind, releases Hirsch, his heirs, executors, assigns, and representatives of every type and kind from every action, cause of action, claim, dispute, charge, complaint, controversy, loss, cost, or expense of any type or kind, known or unknown, through the date of execution of this Agreement, the intent being to provide a mutual general release.

6. Hirsch represents and warrants that he is authorized to enter into and execute this Agreement on behalf of the Group and that he has the full and lawful authority to do so on behalf of the Group and to bind the Group to the provisions of this Agreement, including the Group's release per paragraph 5.a. above. Hirsch further represents and warrants that neither he nor the Group has assigned, transferred or purported to assign or transfer to any person or entity, either voluntarily or involuntarily, any claim, cause of action, or right, or any portion thereof, based upon, arising out of or in connection with any matter, fact, or thing described or set forth in this Agreement. Hirsch covenants to indemnify and hold harmless the City against any breach of the warranty set forth in this paragraph 6.

7. The Parties acknowledge that this Agreement represents the compromise of doubtful and disputed claims and defenses and is not and should not be understood as an admission of liability of any claim or an admission that any claim or defense presented lacks merit.

8. The Parties understand, acknowledge and agree that this Agreement constitutes the entire agreement among and between the Parties and that this Agreement and its terms, provisions, covenants, and conditions may not be altered, amended,

modified, waived or otherwise changed in any respect whatsoever except by a writing duly authorized and executed by the signatories hereto. No amendment, modification or waiver of any term or condition of this Agreement shall be made orally or implied from conduct or otherwise.

9. This Agreement sets forth and is intended to be an integration of all of the covenants, promises, agreements, warranties, and representations between the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreement, warranties, representations, or other understandings, oral or written, express or implied, between the Parties relating to any and all disputes that exist or might exist between the Parties or as to the terms and conditions of this Agreement and resolution of the Lawsuit. This Agreement constitutes and is intended to constitute the entire agreement between the Parties.

10. Because the Parties have had the opportunity to negotiate the terms of this Agreement and to review the Agreement before its execution, should there be any claim or contention of ambiguity of any provision hereof, there shall be no presumption of construction in favor of or against any Party or any person or entity released due to the drafting of this document.

11. This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of the State of Georgia.

12. **THE PARTIES ACKNOWLEDGE AND UNDERSTAND THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT AND THE AGREEMENT'S**

**BINDING EFFECT DO NOT AND WILL NOT BECOME EFFECTIVE AND
ENFORCEABLE UNTIL SUCH TIME AS THE AGREEMENT IS APPROVED
BY THE MAYOR AND COUNCIL FOR THE CITY OF DUNWOODY AND
EXECUTED BELOW.**

JOSEPH HIRSCH, for himself and
on behalf of the Group as its
duly authorized agent and
representative

DATED: _____, 2012.

CITY OF DUNWOODY

By: _____

Its: Mayor

DATED: _____, 2012.