

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

CITY OF SANDY SPRINGS, GEORGIA )  
 )  
 Petitioner/Condemnor, )  
 )  
 v. )  
 )  
 CERTAIN REAL PROPERTY LOCATED IN )  
 LAND LOT 89, 17th DISTRICT, FULTON )  
 COUNTY, GEORGIA, FLAMBEAU REALTY, )  
 INC., IRMA STRAUS REALTY CORP., )  
 THE GREAT ATLANTIC & PACIFIC TEA )  
 COMPANY, INC., THE KROGER CO., )  
 GOODWILL INDUSTRIES OF NORTH )  
 GEORGIA, INC., HONORABLE PINKIE )  
 TOOMER, and ARTHUR E. FERDINAND, )  
 Tax Commissioner )  
 )  
 Respondents/Condemnees. )

CIVIL ACTION

FILE NO: 2015 CV 255755

PETITION TO CONDEMN BEFORE SPECIAL MASTER

COMES NOW, the CITY OF SANDY SPRINGS, GEORGIA, a political subdivision of the State of Georgia and brings this petition for condemnation of lands hereinafter described.

1.

This petition is brought under and pursuant to the provisions of O.C.G.A §§ 22-2-100, *et seq.*

2.

The lands herein sought to be condemned are located with the City of Sandy Springs, Fulton County, Georgia, and are, under the Constitution and laws of the State of Georgia, subject to the jurisdiction of this Honorable Court.

3.

The lands herein sought to be condemned are described as all that tract or parcel of land lying and being in Land Lot 89 of the 17<sup>TH</sup> District of Fulton County, Georgia, consisting of 2.97 acres, more or less, being commonly known as 237 Johnson Ferry Road (also known as

221 Johnson Ferry Road), in Sandy Springs, Georgia, Parcel ID: 17-0089-LL-111-4 ("Property"), and being more particularly described in the Limited Warranty Deed found at Deed Book 7948, Page 48 of the Land Records of Fulton County, Georgia and the Limited Warranty Deed found at Deed Book 19527, Page 171 of the Land Records of Fulton County, Georgia. Copies of said Warranty Deeds are attached hereto as Exhibit "A".

4.

The City of Sandy Springs, the Condemnor herein acting through its City Council by resolution adopted and approved on December 2, 2014, and duly entered on the Minutes of said City Council, has determined that the Property is necessary for the implementation of a capital improvement plan for the current and planned City Hall and government facilities for the City of Sandy Springs, which project has heretofore been approved by City Council. A certified copy of said Resolution is attached hereto as Exhibit "B".

5.

Condemnor further shows that the acquisition of the Property hereinbefore described for the implementation of a capital improvement plan for the current and planned City Hall and government facilities for the City of Sandy Springs is necessary, and that all questions of necessity and public convenience with respect to said project and the necessity of acquiring the Property herein described have been determined by said City Council.

6.

Condemnor desires to condemn said described Property and acquire the fee simple title thereto.

7.

The names and addresses of persons whose property or rights are to be taken or otherwise affected, so far as known, are as follows:

Flambeau Realty Inc.  
Straus Irma Realty Corp.  
c/o Mr. Steven Straus  
104 St. Andrews Place  
Yonkers, NY 10705-3133

Charles L. Ruffin, Esq.  
Baker Donelson Bearman Caldwell & Berkowitz PC  
300 Mulberry Street, Suite 201  
Macon, GA 31201

The Great Atlantic & Pacific Tea Company, Inc.  
c/o Blumberg Excelsior Corporate Services, Inc.  
2000 Riveredge Parkway, #885  
Atlanta, GA 30328

The Kroger Co.  
c/o CSC of Cobb County, Inc.  
Registered Agent for The Kroger Co.  
192 Anderson Street S.E., Suite 125  
Marietta, GA 30060

Goodwill Industries of North Georgia, Inc.  
c/o Paul A. Jordan  
235 Peachtree Street  
North Tower, Suite 2300  
Atlanta, Georgia 30303

Pinkie Toomer, Judge  
Fulton County Probate Court  
136 Pryor Street SW, Suite C-230  
Atlanta, GA 30303

Arthur E. Ferdinand, Tax Commissioner  
Fulton County Tax Commissioner  
c/o Sharon Feltner, Admin. Coordinator  
141 Pryor Street, Suite 1085  
Atlanta, GA 30303

8.

Said Owners and known Tenants, and all lienors and any other persons known and unknown, claiming any right, title, power, interest, ownership, equity, claim or demand in and to the Property and all occupants, tenants, lessees, licensees thereof and all holders, owners and users of ways and easements in, across, and over said Property, are made party Condemnees

to the action to the end that they may come into Court and made claim to such interest or ownership or other right as they may have in the same and to the proceeds arising therefrom.

9.

All unpaid State, County or City taxes against said described Property for the year, and for prior years, constitute liens against said Property.

10.

By reason of the necessity for a quick determination of the just and adequate compensation to be paid to the Owners of said Property, and by reason of the other circumstances enumerated in O.C.G.A § 22-2-101, it is necessary and desirable to have a judicial ascertainment and judicial supervision of all questions and proceedings connected with the condemnation of said Property and the compensation to be first paid to the Condemnees for the taking of said Property.

11.

Petitioner alleges that the City of Sandy Springs, Georgia, through its properly constituted authority, is willing to pay the true owners and all persons having an interest in said Property just and adequate compensation for the Property to be condemned and all damages to which the respective owners are legally entitled.

12.

Petitioner further alleges that the said Condemnor has provided, appropriated and made available sufficient funds to pay the adequate and just compensation for said described Property that may be awarded by the Court pursuant to the Petition.

13.

Petitioner has met all statutory prerequisites for the bringing of this proceeding seeking to exercise the power of condemnation.

14.

Petitioner further seeks to have the Court appoint a Special Master, after holding a hearing pursuant to O.C.G.A § 22-2-102.

**WHEREFORE**, Petitioner prays:

- (a) That the Court take jurisdiction of this proceeding pursuant to O.C.G.A. §§ 22-2-100 *et. seq.*, as a proceeding in rem, and that said proceeding be referred to a Special Master as provided in said Code sections;
- (b) That the Court provide for service of this Petition upon all persons in possession of the Property described and upon all persons whose interests are to be affected in the manner provided in O.C.G.A § 22-2-107;
- (c) That the Court make an order requiring all persons concerned to appear before said Special Master as provided by law;
- (d) That, subject to the right of appeal provided by law, Petitioner City of Sandy Springs, Georgia, have a judgment condemning said property in rem and in fee simple for the use of Petitioner upon payment of just and adequate compensation into the Registry of the Court as provided by law; and
- (e) That Petitioner have such other and further relief as the Court may deem appropriate and just.

This the 9<sup>th</sup> day of JANUARY, 2015.



WENDELL K. WILLARD  
Sandy Springs City Attorney  
Attorney for Petitioner/Condemnor  
GA Bar No: 760300

7840 Roswell Road  
Suite 330  
Sandy Springs, GA 30350  
[lawoffice@wendellwillard.com](mailto:lawoffice@wendellwillard.com)

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EXHIBIT "A"  
WARRANTY DEEDS  
(Attached)

LIMITED WARRANTY DEED

STATE OF  
COUNTY OF

THIS INDENTURE, Made this 26th day of August in the  
Year of Our Lord One Thousand Nine Hundred and Eighty-One between  
THE GRAND UNION COMPANY a Successor to Cobis-Sandy Springs, Inc. Through Dissolution  
of the State of New York and County of of the first part, and  
SANDY SPRINGS ASSOCIATES, a Pennsylvania Limited Partnership  
of the State of and County of of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of

TEN (\$10.00) DOLLARS AND OTHER VALUABLE CONSIDERATION

in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, itself, its successors and assigns,

Legal Description Attached Hereto as Exhibit "A" and Made an Essential Part Hereof.

Fulton County Georgia  
Real Estate Transfer Tax  
Paid \$ 1075.00  
Date Sept 8, 1981  
BARBARA J. PRICE  
Clerk Superior Court  
By: [Signature]  
Deputy Clerk

GEORGIA, Fulton County, Clerk's Office Superior Court  
Filed & Recorded, SEP 8 1981 at 2:33 Barbara J. Price

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said party of the second part, itself, its successors and assigns, forever, in Fee Simple.

AND THE SAID party of the first part, for itself, its successors and assigns, will warrant and forever defend the right and title to the above described property, unto the said party of the second part, its successors and assigns, against the claims of all persons claiming by, through or under Grantor herein.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal, the day and year above written.

Signed, sealed and delivered in presence of:  
[Signature]  
Unofficial Witness  
[Signature]  
Notary Public  
PATRICIA L. CARSON  
NOTARY PUBLIC, OF NEW JERSEY  
My Commission Expires Feb 20, 1984



THE GRAND UNION COMPANY a Successor to  
Cobis-Sandy Springs, Inc. Through Dissolution  
BY: [Signature] (Seal)  
Louis Sherwood, Vice President  
..... (Seal)  
..... (Seal)

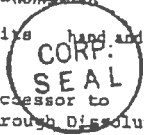


EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN  
LAND LOT 89 OF THE 17TH DISTRICT, FULTON COUNTY,  
GEORGIA.

BEGINNING AT THE NORTHEAST INTERSECTION OF THE RIGHT OF  
WAYS ( R/W ) OF MOUNT VERNON HIGHWAY AND SANDY SPRINGS  
CIRCLE; THENCE ALONG THE NORTHERLY R/W OF MOUNT VERNON  
HIGHWAY 448.2 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE LEAVING SAID R/W N 03-49-27 W 373.78 FEET TO A  
POINT; THENCE N 86-10-33 E 60.63 FEET TO A POINT;  
THENCE N 03-49-27 W 168.20 FEET TO A POINT ON THE R/W  
OF JOHNSON FERRY ROAD; THENCE ALONG SAID R/W S 74-51 E  
232.77 FEET TO A POINT; THENCE LEAVING SAID R/W S  
02-20-04 E 169.38 FEET TO AN IRON PIN (I.P.); THENCE S  
76-01-51 E 96.59 FEET TO AN I.P.; THENCE S 12-54-15 W  
79.56 FEET TO A POINT; THENCE S 81-09-27 W 111.88 FEET  
TO AN I.P.; THENCE S 04-06-20 E 159.77 FEET TO THE R/W  
OF MOUNT VERNON HIGHWAY; THENCE ALONG SAID R/W S 80-39  
W 174.16 FEET TO A POINT; THENCE S 81-34 W 61.60 FEET  
TO THE POINT OF BEGINNING. SAIDTRACT CONTAINS 2.973  
ACRES.



042595-3929

STATE OF NEW JERSEY )  
COUNTY OF BERGEN )

After Recordation Return To: (1)  
William R. Wickham  
Lawyers Title Insurance Corporation  
950 East Paces Ferry Road, Suite 2850  
Atlanta, Georgia 30326

LIMITED WARRANTY DEED

THIS INDENTURE, made this 1st day of May, 1995 between SANDY SPRINGS ASSOCIATES, a Pennsylvania Limited Partnership, Grantor, and FLAMBEAU REALTY, INC., a New York corporation with respect to an eighty percent (80%) undivided interest, and IRMA STRAUS REALTY CORP., a New York corporation with respect to a twenty percent (20%) undivided interest (collectively "Grantees").

W I T N E S S E T H

That Grantor, for and in consideration of the sum of Ten (\$10.00) Dollars and other valuable consideration in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said Grantees, itself, its successors and assigns, the property described by legal description attached hereto as Exhibit "A" and made an essential part hereof.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantees, itself, its successors and assigns, forever, in Fee Simple.

AND THE SAID Grantor, for itself, its successors and assigns will warrant and forever defend the right and title to the above described property, unto the Grantees, its successors and assigns, against the claims of all persons claiming by, through or under Grantor herein.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal, the day and year above written.

BERGEN COUNTY

MAY -2 1995

Fulton County, Georgia  
Real Estate Transfer Tax  
Paid \$ 1375.00  
Date 5-2-95  
JUANITA HICKS  
Clerk, Superior Clerk

By: [Signature]  
Deputy Clerk

SANDY SPRINGS ASSOCIATES,  
a Pennsylvania limited partnership  
By: DVL, Inc., doing business  
in Georgia as DVL, Inc. ("Delaware")  
general partner



By: [Signature]  
Robert W. LoSchiavo  
Vice President

Signed, Sealed and Delivered  
in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

NOTARY PUBLIC, COUNTY OF BERGEN, NEW JERSEY  
My Commission Expires Oct. 17, 1998  
I.D. # 004021



BOOK 19527 PAGE 171

SANDY SPRINGS

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN  
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ACRES.

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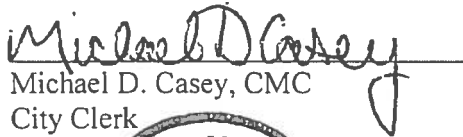
EXHIBIT "B"  
COUNCIL RESOLUTION  
(Attached)



CERTIFICATE

I, Michael D. Casey, City Clerk and Custodian of Records for the City of Sandy Springs, Georgia, hereby certify that the three (3) pages of photocopied matter attached hereto is a true and correct copy of **RESOLUTION NO. 2014-12-115: A RESOLUTION TO AUTHORIZE THE USE OF EMINENT DOMAIN TO ACQUIRE PROPERTY LOCATED AT 237 JOHNSON FERRY ROAD (ALSO KNOWN AS 221 JOHNSON FERRY ROAD) IN SANDY SPRINGS, GEORGIA (PARCEL ID: 17-0089-LL-111-4) FOR PUBLIC USE**, resolved by the City Council of the City of Sandy Springs on December 2, 2014.

This 2<sup>nd</sup> day of January, 2014.

  
Michael D. Casey, CMC  
City Clerk

(Seal)



STATE OF GEORGIA  
COUNTY OF FULTON

A RESOLUTION TO AUTHORIZE THE USE OF EMINENT DOMAIN TO ACQUIRE  
PROPERTY LOCATED AT 237 JOHNSON FERRY ROAD (ALSO KNOWN AS 221  
JOHNSON FERRY ROAD) IN SANDY SPRINGS, GEORGIA (PARCEL ID: 17-0089-LL-  
111-4) FOR PUBLIC USE

WHEREAS, the City of Sandy Springs ("City") has determined that it is necessary to develop a City center and infrastructure project ("Project"); and

WHEREAS, on December 18, 2012, the City adopted a City Center Master Plan following a comprehensive study conducted by an independent firm; and

WHEREAS, the City Center Master Plan contemplates acquisition by the City of certain property within the City limits for use as, among other things, a City government complex, green space, parks and rights-of-way for channels of trade and travel; and

WHEREAS, such uses constitutes "public use" within the meaning of O.C.G.A. § 22-1-1, et seq. ("Act"); and

WHEREAS, the property located at 237 Johnson Ferry Road (also known as 221 Johnson Ferry Road), in Sandy Springs ("Property") (Parcel ID: 17-0089-LL-111-4) is property within the scope of the Project, and therefore the City desires to acquire fee simple interest in the Property to accomplish the Project; and

WHEREAS, the City Attorney has caused to be conducted an appraisal of the Property and the owner or his/her designated representatives were given an opportunity to accompany the appraiser during inspection of the Property; and

WHEREAS, the City has offered the owner of the Property its September 29, 2014 appraised value of \$3,900,000 to acquire fee simple title; and

WHEREAS, the City has funds available to purchase the Property; and

WHEREAS, the City Attorney has made every reasonable effort to acquire the Property expeditiously by negotiation; and

WHEREAS, the City has been unable to reach an agreement with the Property owner to acquire the Property; and

WHEREAS, the Mayor and City Council deem it in the public interest to acquire fee simple title to the Property to insure timely implementation and completion of the Project consistent with the City Center Master Plan.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sandy Springs, Georgia, while in regular session on December 2, 2014, at 6:00 p.m. as follows:

1. The Council hereby authorizes the City Attorney's Office to acquire the property located at 237 Johnson Ferry Road (also known as 221 Johnson Ferry Road), in Sandy Springs (Parcel ID: 17-0089-LL-111-4) through the use of eminent domain by any method allowed by law, in order to insure the timely completion of the Project.

**RESOLUTION NO. 2014-12-115**

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

All that tract or parcel of land lying and being in Land Lot 89 of the 17<sup>th</sup> District, Fulton County, Georgia.

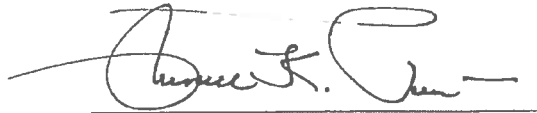
Beginning at the northeast intersection of the right of ways (R/W) of Mount Vernon Highway and Sandy Springs Circle; thence along the northerly R/W of Mount Vernon Highway 448.2 feet to the true point of beginning; thence leaving said R/W N 03-49-27 W 373.78 feet to a point; thence N 86-10-33 E 60.63 feet to a point; thence N 03-49-27 W 168.20 feet to a point on the R/W of Johnson Ferry Road; thence along said R/W S 74-51 E 232.77 feet to a point; thence leaving said R/W S 02-20-04 E 169.38 feet to an iron pin (I.P.); thence S 76-01-51 E 96.59 feet to an I.P.; thence S 12-54-15 W 79.56 feet to a point; thence S 81-09-27 W 111.88 feet to an I.P.; thence S 04-06-20 E 159.77 feet to the R/W of Mount Vernon Highway; thence along said R/W S 80-39 W 174.16 feet to a point; thence S 81-34 W 61.60 feet to the point of beginning. Said tract contains 2.973 acres.

RESOLUTION NO. 2014-12-115

2. The Mayor is specifically authorized to execute any documents necessary to further the filing of any petition related to the same.
3. The Property sought to be acquired is more fully described in Exhibit "A" attached hereto and incorporated herein by reference.

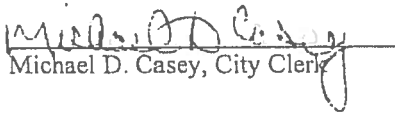
RESOLVED this the 2<sup>nd</sup> day of December, 2014.

Approved:



Russell K. Paul, Mayor

Attest:



Michael D. Casey, City Clerk

(Seal)



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

CITY OF SANDY SPRINGS, GEORGIA  
a municipal corporation,  
Petitioner/Condemnor

CIVIL ACTION  
FILE NO: 2015 CV 255755

vs

CERTAIN REAL PROPERTY LOCATED IN  
LAND LOT 89, 17th DISTRICT, FULTON  
COUNTY, GEORGIA, FLAMBEAU REALTY, INC.,  
IRMA STRAUS REALTY CORP.,  
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,  
THE KROGER CO., GOODWILL INDUSTRIES OF NORTH  
GEORGIA, INC., HONORABLE PINKIE TOOMER, and  
ARTHUR E. FERDINAND, Tax Commissioner  
Respondents/Condemnees

**SUMMONS**

TO THE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Peitioner's attorney, whose name and address is:

Wendell K. Willard  
7840 Roswell Road  
Suite 330  
Sandy Springs, GA 30350

an answer to the complaint which is herewith served upon you, within thirty (30) days after the service of this summons upon you exclusive of the day of service, unless proof of service is not filed within five (5) days of such service. **If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.**

This 12 day of Jan, 2015.

Cathelene Robinson  
Clerk of Superior Court

By: Delicia Lopez  
Deputy Clerk

To Defendant upon whom this petition is served: \_\_\_\_\_  
This copy of the complaint and summons was served upon you on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Deputy Sheriff