

**A RESOLUTION
BY TRANSPORTATION COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT BY AND BETWEEN THE CITY OF ATLANTA AND RUBY TUESDAY, INC. FOR VEHICLE PARKING ON LAND OWNED BY THE CITY OF ATLANTA LOCATED AT 1200 VIRGINIA AVENUE IN LAND LOTS 127 AND 130 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the “City”) owns and operates Hartsfield-Jackson Atlanta International Airport (“Airport”), which includes 5.324 acres of real property located on Virginia Avenue in Hapeville, Georgia (“Land”); and

WHEREAS, the City leased the Land to Carousel Hotel Corporation (“Carousel”) pursuant to that certain Restated and Consolidated Lease Agreement dated December 9, 1997 (the “Lease”); and

WHEREAS, Carousel constructed certain improvements on the Land to include a 280+ room hotel and vehicle parking; and

WHEREAS, the Lease was assigned to the Diplomat Construction Corporation (“Diplomat”) on May 18, 1998, as authorized by Resolution Number 98-R-0720 which was adopted by the City Council on April 20, 1998 and approved by the Mayor on April 21, 1998; and

WHEREAS, Diplomat entered into a Collateral Assignment to Secure Debt with Integrity Bank dated January 16, 2002; and

WHEREAS, Diplomat subsequently filed for protection under Chapter 11 of the United States Bankruptcy Code on April 3, 2009; and

WHEREAS, the Lease was placed in receivership on December 29, 2009; and Integrity Bank purchased the Lease, among other assets not owned by the City; and

WHEREAS, pursuant to a Collateral Assignment to Secure Debt the Lease was purchased by and assigned to the State Bank of Texas (“SBT”) on January 4, 2010; and

WHEREAS, Diplomat entered Chapter 7 of the United States Bankruptcy Code on May 21, 2010 and a Trustee was appointed to act on behalf of the Diplomat Estate; and

WHEREAS, Khushal Hospitality LLC (“KHL”) subsequently purchased the leasehold interest from SBT and the Trustee; and

WHEREAS, the assignment of the Lease from SBT to KHL was authorized by the City pursuant to Resolution Number 12-R-0603 which was adopted by City Council on May 7, 2012 and approved by the Mayor on May 16, 2012; and

WHEREAS, the City through its Department of Aviation has met with KHL regarding its plans for the further development and improvement of the Land and the improvements constructed thereon; and

WHEREAS, the City and KHL have agreed to fully amend and restate the Lease to include terms and conditions for improving the Land and the improvements constructed thereon that are in the best interests of the City and the Airport; and

WHEREAS, authorization to amend and restate the Lease was provided by the City Council by adopting Resolution Number 13-R-0020 on January 22, 2013 and approved by operation of law on January 31, 2012; and

WHEREAS, the terms and conditions authorized by Resolution 13-R-0020 include, among others, the return of land previously under lease by KHL to the City to include parking improvements constructed thereon that are used by Ruby Tuesday, Inc. (“Ruby Tuesday”) for vehicular parking for its restaurant located on an adjacent parcel; and

WHEREAS, Ruby Tuesday is unable to develop its own parking facilities and has requested to continue to lease the parking improvements previously under lease from KHL directly from the City; and

WHEREAS, the terms and conditions for improving the Land and the improvements constructed thereon agreed to by and between the City and KHL include the requirement for the City to continue to provide parking for Ruby Tuesday under substantially the same terms and conditions as previously agreed to by and between Ruby Tuesday and KHL; and

WHEREAS, the City and Ruby Tuesday have agreed to enter into a Lease Agreement covering its use of the parking improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, that the Mayor is hereby authorized to execute on behalf of the City of Atlanta a Lease Agreement authorizing the use of land owned by the City for vehicular parking for customers of Ruby Tuesday, Inc.; and

BE IT FINALLY RESOLVED that a Lease Agreement shall not become binding on the City and the City shall incur no liability until the agreement has been executed by the Mayor, attested to by the Municipal Clerk, and approved as to form by the City Attorney and delivered to the appropriate parties.

Proposed Parking

Tract 1 parking: 91
Tract 2 parking: 147
Total Parking: 238

Airport Connector

Existing Monument Sign

Tract 3

Brick pier & wrought iron fence

Tract 4

Tract 2

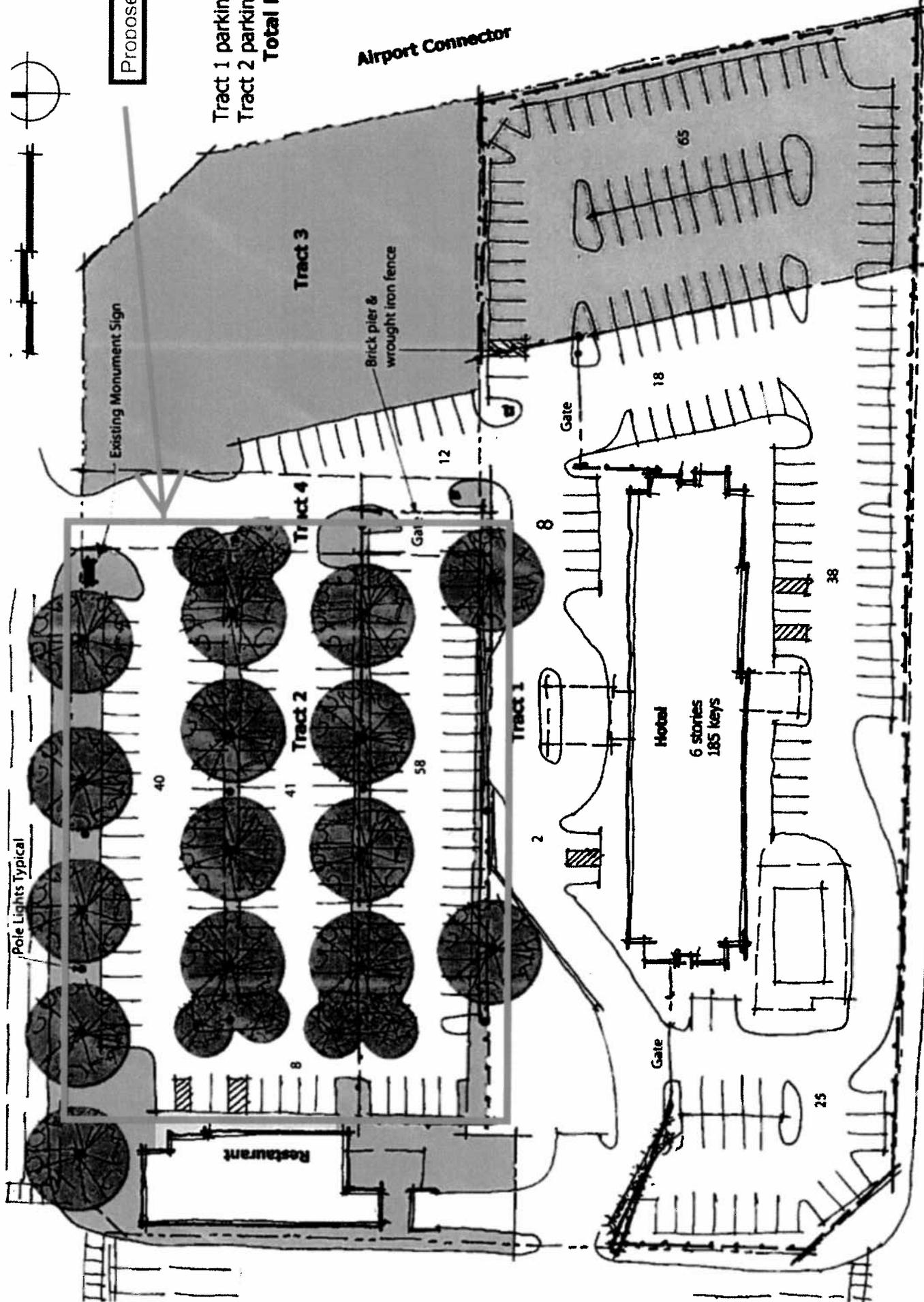
TRACT 1

Hotel

6 stories
185 keys

Restaurant

Pole Lights Typical



Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the execution of Lease Agreement for vehicular parking on Land owned by the City of Atlanta.

2. Please provide background information regarding this legislation.

The City owns roughly 5.324 acres of real property located in land lots 127 and 130 of the 14th District of Fulton County, Georgia ("Land"). The Land is situated south of Virginia Avenue and located at the intersection of Virginia Avenue and Toffie Terrace. The Land has been leased by various entities since 1959.

In December of 1997, the City entered into a Restated Consolidated Lease Agreement with the Carousel Hotel Corporation ("Carousel") for the entire 5.324 acres. At the time the lease was executed, a Red Roof Hotel had been constructed on the Land.

In May of 1998, the lease was acquired by The Diplomat Construction Company ("Diplomat") through financing provided by Integrity Bank of Georgia in the amount of approximately \$10,500,000.

In 2003, Diplomat paved a portion of the leased premises to provide parking for a Ruby Tuesday restaurant, which was being constructed on an adjacent and abutting parcel of land. Diplomat had agreed to provide parking as the parcel on which the restaurant was being constructed was too small to provide adequate parking for its patrons. Diplomat constructed the parking improvements without obtaining consent from the City which caused the Department of Aviation ("DOA") to enter into discussions with Diplomat shortly thereafter to address the unauthorized parking improvements. The restaurant opened in November

2004 and the City allowed the Ruby Tuesday to use the newly constructed parking improvements while discussions progressed between the City and Diplomat.

As part of the discussions between the parties to address the issues created by the unauthorized parking improvements, the Diplomat produced preliminary plans to further develop the 5.324 acres which included the construction of two (2) additional buildings and related infrastructure. For a number of reasons including concerns from the Red Roof Corporation and deteriorating economic conditions, the Diplomat abandoned its development plans in late 2008. Discussions on a larger business deal for the Land terminated and the City and the Diplomat immediately agreed to terms to amend the existing lease agreement to address the parking improvements. An amendment to the Restated Consolidated Lease Agreement lease was executed on April 2, 2009.

Later in 2009, Diplomat declared Chapter 11 bankruptcy still owing a significant amount on the financing provided by Integrity Bank. Shortly thereafter, Integrity Bank was taken into receivership by the FDIC and the State Bank of Texas subsequently purchased Integrity's interest in the ground lease. In May of 2010, Diplomat's bankruptcy was converted to Chapter 7 and a Trustee was appointed to liquidate the Diplomat estate.

Khushal Hospitality LLC ("KHL") purchased the State Bank of Texas' interest in the lease and immediately met with DOA regarding its acquisition of the leasehold interest. During this initial meeting and in several subsequent meetings, KHL outlined its plan to make a substantial investment in the Land to upgrade the brand/identity of the hotel. Also discussed during these meetings were changes necessary to the Restated and Consolidated Lease to facilitate these improvements. DOA and KHL have agreed to specific terms for an amendment to the Restated Consolidated Lease Agreement that includes a provision whereby KHL has agreed to relinquish a substantial portion of the 5.324 leasehold to the City. The parking improvements constructed by the Diplomat for the Ruby Tuesday restaurant are a part of the relinquished leasehold and will now require that the City enter into a Lease Agreement with Ruby Tuesday, Inc. to provide parking for the restaurant.

The specific terms agreed to between the City and Khushal also establishes the rate to be charged to the restaurant at \$21,775 per annum which is the rate previously charged by Diplomat for vehicular parking as outlined by the first amendment to the lease.

The Department of Aviation is of the firm opinion that the parking improvements as constructed are the highest and best use of the Land and is seeking approval from the City Council to execute a Lease Agreement with Ruby Tuesday, Inc. to provide parking for patrons of the Ruby Tuesday restaurant.

3. If Applicable/Known:

- (a) Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) Source Selection:**
- (c) Bids/Proposals Due:**
- (d) Invitations Issued:**

- (e) Number of Bids:
- (f) Proposals Received:
- (g) Bidders/Proponents:
- (h) Term of Contract: Five years

4. Fund Account Center (Ex. Name and number):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: Example: Local Assistance Grant

6. Fiscal Impact: Because the DOA is an Enterprise fund, there will be no fiscal impact on the City.

Example: *This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.*

7. Method of Cost Recovery: Rental revenues

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: David Sellers

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 3/08/13

Anticipated Committee Meeting Date(s): 3/27/13

Anticipated Full Council Date: 4/15/13

Legislative Counsel's Signature: Richard Rubin *Richard Rubin - Senior Assistant City Atty.*

Commissioner's Signature: *[Signature]*

Chief Financial Officer: N/A

Chief Information Officer Signature (for IT Procurements) N/A

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT BY AND BETWEEN THE CITY OF ATLANTA AND RUBY TUESDAY, INC. FOR VEHICLE PARKING ON LAND OWNED BY THE CITY OF ATLANTA LOCATED AT 1200 VIRGINIA AVENUE IN LAND LOTS 127 AND 130 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)
Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: 3.6.13 *[Signature]*
(date)

Reviewed by: *[Signature]*
(date)

Submitted to Council: _____
(date)