



City Council Meeting & Public
Hearing
JULY 22, 2019

ALPHARETTA CITY HALL
COUNCIL CHAMBERS
2 PARK PLAZA
6:30 PM

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE TO THE FLAG

IV. PRESENTATIONS

A. Lieutenant Greg Jones 30-Year Service Award

V. CONSENT AGENDA

A. Council Meeting Minutes (Meeting of 7/15/2019)

B. Alcoholic Beverage License Applications

PH-19-AB-17 Shree & Shree LLC
d/b/a Shell
2005 Hembree Road
Alpharetta, GA 30005

Convenience Store
Retail Package Sales
Beer, Wine, Sunday Sales

Owner: Ritaben Brahmhatt
Registered Agent: Ritaben Brahmhatt

VI. PUBLIC HEARING

A. V-19-02: 112 Thompson Street / Bed & Breakfast Variance

Consideration of a variance request to allow parking between the building and the road and to allow buffer averaging to accommodate a stream buffer encroachment. The property is located at 112 Thompson Street is legally described as being located in Land Lot 748, 1st District, 2nd Section, Fulton County, Georgia.

B. V-19-07 Northwest Exterminating Variance

NOTE: This item has been deferred at the request of the applicant and will be neither heard nor discussed at this meeting. The item has been rescheduled to the August 26, 2019 City Council Meeting.

C. V-19-08 Hembree Center Variance

Consideration of variance requests to eliminate the requirement for a property to have street frontage, eliminate requirement for parking lot tree islands, allow fee simple climate controlled self-storage condominium units on land under 1 acre in the LI (Light Industrial) district and to allow an off-site monument sign. The property is located at 1815 Hembree Road is legally described as being located in Land Lot 650, 1st District, 2nd Section, Fulton County, Georgia.

VII. OLD BUSINESS

A. Ordinance: Calling The City Of Alpharetta General Election (2nd Reading)

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF THE CITY OF ALPHARETTA GENERAL CITY ELECTION; TO PROVIDE FOR PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A CANDIDATE QUALIFICATION PERIOD; TO REAFFIRM CANDIDATE QUALIFICATION FEES; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

B. Ordinance: Calling of a Referendum (Special) Election (2nd Reading)

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF THE ELIMINATION OF THE INCOME RESTRICTION FOR THE \$10,000.00 HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES FOR RESIDENTS 65 YEARS AND OLDER; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

C. Ordinance: Calling of a Referendum (Special) Election (2nd Reading)

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF AN ADDITIONAL \$5,000.00 REGULAR HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

VIII. NEW BUSINESS

A. Retail Condominium Unit (Milton Avenue Parking Deck) - Award ITB 19-012 and Purchase and Sale Agreement

B. Contract: License Plate Reader Program

C. Ordinance to Amend Chapter 46 of the Code of the City of Alpharetta by adding a new Article VI entitled "Automated Traffic Enforcement Safety Systems" (1st Reading)

D. Local Jobs Creation Grant Renewal

E. On-Call Equipment Rental for Events (RFP 19-116)

F. Wills Park Equestrian Center Survey

IX. WORKSHOP

**A. Changes to the City Code of Alpharetta Alcohol Ordinance
Council Sponsor: Dan Merkel**

Consideration of changes to Chapter 4 Alcoholic Beverages pertaining to City department enforcement and the definition of mixed use development district.

- X. PUBLIC COMMENT
- XI. REPORTS
- XII. ADJOURNMENT TO EXECUTIVE SESSION



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: City Clerk
Submitted By: Erin Cobb
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: COUNCIL MEETING MINUTES (MEETING OF 7/15/2019)

II. RECOMMENDATION:

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: NO

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST:

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

V. ALTERNATIVES:

VI. ATTACHMENTS:

City Council Meeting draft minutes 7-15-2019



City Council Meeting
July 15, 2019
Office of the City Clerk
ALPHARETTA CITY
HALL COUNCIL
CHAMBERS
2 PARK PLAZA
6:30 PM

This summary is provided as a convenience and service to the public, media and staff. It is not the intent to record proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted as heard by Council, but not quoted or paraphrased. This document includes limited presentation by Council and invited speakers in summary form. This is not an official record of the Alpharetta City Council Meeting proceedings. Official Minutes are recorded and available for review.

I. CALL TO ORDER

- *Mayor Gilvin called the meeting to order at 6:30 p.m.*

II. ROLL CALL

- Council Members
 - Mayor Jim Gilvin
 - Mayor Pro Tem Donald F. Mitchell
 - Jason Binder
 - Ben Burnett
 - John Hipes
 - Dan Merkel
 - Karen Richard
- Staff
 - Bob Regus, City Administrator
 - Michael Stacy, Asst. City Attorney
 - James Drinkard, Asst. City Administrator
 - Peter Sewczwicz, Director of Public Works
 - Trent Lindgren, Major – Police Operations
 - Morgan Rodgers, Director of Recreation, Parks & Cultural Services
 - Kathi Cook, Director of Community Development
 - Tom Harris, Director of Finance

III. PLEDGE TO THE FLAG

IV. CONSENT AGENDA

A. Council Meeting Minutes (Meeting of 7-8-2019)

- ❖ Council Member Merkel offered a motion to approve the consent agenda
 - The motion received a second from Council Member Burnett
 - The motion was approved unanimously (7-0)

V. NEW BUSINESS

A. Speed Detection Camera System for School Zones (RFP 20-103)

- Mayor Gilvin removed this item from the agenda and it will be neither heard nor considered during this meeting.

B. Fiscal Year 2020 Local Maintenance and Improvement Grant

- Director of Public Works, Pete Sewczwicz, came forward to present this item.
- Staff recommends Mayor and Council adopt the resolution providing approval of the submission of the Fiscal Year 2020 Local Maintenance and Improvement Grant application to the Georgia Department of Transportation.
- The Georgia Department of Transportation (GDOT) began accepting applications for the Fiscal Year 2020 Local Maintenance and Improvement Grant (LMIG) Program on July 1, 2019.
- Per GDOT guidelines, the following projects are allowable under the LMIG program:
 - Preliminary engineering (including engineering for right-of-way plans and utility plans)
 - Construction supervision and inspection
 - Utility adjustments or replacement
 - Patching, leveling, and resurfacing a paved roadway
 - Grading, drainage, base, and paving existing or new roads
 - Replacing storm drainpipe or culverts
 - Intersection improvements
 - Turn lanes
 - Bridge repair or replacement
 - Sidewalk adjacent (within right-of-way) to a public road or street
 - Roadway signs, striping, and guardrail installation
 - Signal installation or improvement
 - Aggregate surface course for dirt road maintenance

- The following projects are not eligible with LMIG funds:
 - Right-of-way acquisition
 - Street lighting
 - Beautification and streetscapes
 - Walking trails and tracks
 - Landscaping
 - Administrative services

- The LMIG budget for FY 2020 is based on the collection of motor fuel taxes from FY 2019. The amount of each local government's allocation is based on the total centerline road miles for your local road system and the total population of your city/county as compared with the total statewide centerline road miles and total statewide population.

- LMIG funds can be escrowed by the local government for a maximum of three fiscal years for the construction of larger projects, but GDOT expects the vast majority of the projects to be completed within the fiscal year of the grant.

- All LMIG projects must be completed as soon as possible, but substantially complete within three years from the date of the LMIG application. All preconstruction activities, advertisements, lettings, and quality control of work and materials will be the responsibility of the local government.

- The Public Works Department proposes to use the FY20 LMIG allocation and match to fund the following milling and resurfacing projects:
 - Fieldstone Crossing - Windward Parkway to Cul De Sac
 - Fieldstone Way- Fieldstone Crossing to End
 - Fieldstone Edge- Fieldstone Crossing to Cul De Sac
 - Fieldstone Landing- Fieldstone Crossing to Cul De Sac
 - Fieldstone Path-Fieldstone Crossing to Cul De Sac
 - Fieldstone Walk- Fieldstone Crossing to Cul De Sac
 - Copper Circle -Schooner Ridge to Schooner Ridge
 - Seven Seas Court- Schooner Ridge to Cul De Sac
 - Clipper Court-Seven Seas Court to Cul De Sac
 - Caney Creek Landing-Newport Bay Passage to Cul De Sac
 - Landings Court-Caney Creek Landing to Cul De Sac
 - Landings Overlook-Caney Creek Landing to Cul De Sac
 - Landings Cove-Caney Creek Landing to Cul De Sac
 - Welford Trace-Rucker Road to Cul De Sac
 - Spring Place Lane-Rucker Road to Cul De Sac
 - Laurelwood Farm Drive -Rucker Road to Cul De Sac
 - Selbridge Way-Rucker Road to Brookmill Point
 - Brookmill Point-End to End
 - Watermill Falls-Brookmill Point to end
 - Hughes Branch Close-Crabapple Chase Drive to Cul De Sac
 - Celestial Way-Crabapple Meadow Way to Cul De Sac
 - Crabapple Tree Court-Crabapple Chase Drive to Cul De Sac
 - Crabapple Meadow Way -Crabapple Chase Dr. to Crabapple Chase Dr.
 - Park Glenn Drive -Webb Bridge to Cul De Sac
 - Chicory Way-Park Glenn Drive to Cul De Sac
 - Amberlilly Dr-Park Glenn Drive to Cul De Sac
 - Newport Court-Newport Bay Drive to Cul De Sac
 - Newport Terrace-Newport Bay Drive to Cul De Sac
 - Newport Heights -Newport Bay Drive to Cul De Sac

- o Newport Trace-Newport Heights to Cul De Sac
 - o Newport Fairway-Newport Bay Drive to Cul De Sac
 - o Newport Green-Newport Bay Drive to Newport Bay Drive
 - o Brookeview Court -Park Brooke Trace to Cul De Sac
 - o Brook Forest Court -Park Brooke Trace to Cul De Sac
 - o Park Brooke Court -Park Brooke Drive to Cul De Sac
 - o Brookline Court-Brookline Drive to Cul de Sac
 - o Brookline Drive-Park Brooke Drive to Cul De Sac
 - o Park Brooke Way -Park Brooke Drive to Cul De Sac
 - o Benson Court-Richards Circle to Cul De Sac
 - o Vance Court-Richards Circle to Cul De Sac
 - o Schooner Ridge - Southlake Drive to Southlake Drive
- Note: This application is due on January 1, 2020.
 - Asst. City Attorney, Michael Stacy, read the resolution aloud.

Public Comment:

- No Public Comment
- ❖ Mayor Pro Tem Mitchell offered a motion to adopt the resolution providing approval of the submission of the Fiscal Year 2020 Local Maintenance and Improvement Grant application to the Georgia Department of Transportation.
 - The motion received a second from Council Member Richard
 - The motion was approved unanimously (7-0)

C. Fiscal Year 2020 Milling and Resurfacing (ITB 20-001)

- Director of Public Works, Pete Sewczwicz, came forward to present this item.
- Staff recommends Mayor and Council approve Bid No. 20-001 to Allied Paving Contractors, Inc. in an amount not to exceed \$5,073,000.00 for the FY 2020 Milling and Resurfacing Project and authorize the Mayor to execute all necessary documents.
- The City of Alpharetta maintains over 500 lane miles of roadway. Each year the City budgets dollars towards the milling and resurfacing of these roads. Accomplishing this task extends the roads' useful life and increases the roads' ability to handle traffic volumes.
- In FY 2019 Alpharetta funded a project to evaluate city roadway conditions. The objective was to collect accurate data and information about the City's road inventory and surface condition that would allow the City's staff to optimize their plan for road network repair and rehabilitation under budget constraints. The new information collected, in conjunction with historical repair and rehabilitation information, and traffic information helps the City make consistent and cost-effective decisions for roadway preservation. Based on these ratings, 60 locations (39 lane miles) were included in the annual offering. These roads include:

- Nighttime:
 - N1. North Point Parkway - Old Milton PKWY to Webb Bridge
 - N2. North Point Parkway - Webb Bridge Road to Windward PKWY
 - N3. Windward Parkway - North Main Street to Cogburn Road

- Daytime:
 1. Old Milton Parkway - Wills Road to Hwy 9
 2. Canton Street - Hopewell Road to Hwy 9
 3. Canton Street - Mayfield Road to Hopewell Road
 4. Hopewell Road - Canton street to City Limits
 5. Clubhouse Drive - Lake Windward Drive to Lake Shore overlook
 6. Golf Club Drive - Windward Parkway to Club Court
 7. Lake Windward Drive - Webb Bridge Road to Lake Windward Overlook
 8. Lake Windward Drive - Harbour Ridge Drive to Clubhouse Drive
 9. Fieldstone Crossing - Windward Parkway to Cul De Sac
 10. Fieldstone Way - Fieldstone Crossing to End
 11. Fieldstone Edge - Fieldstone Crossing to Cul De Sac
 12. Fieldstone Landing - Fieldstone Crossing to Cul De Sac
 13. Fieldstone Path - Fieldstone Crossing to Cul De Sac
 14. Fieldstone Walk - Fieldstone Crossing to Cul De Sac
 15. Schooner Ridge - Southlake Drive to Southlake Drive
 16. Copper Circle - Schooner Ridge to Schooner Ridge
 17. Seven Seas Court - Schooner Ridge to Cul De Sac
 18. Clipper Court - Seven Seas Court to Cul De Sac
 19. Caney Creek Landing - Newport Bay Passage to Cul De Sac
 20. Landings Court - Caney Creek Landing to Cul De Sac
 21. Landings Overlook - Caney Creek Landing to Cul De Sac
 22. Landings Cove - Caney Creek Landing to Cul De Sac
 23. Welford Trace - Rucker Road to Cul De Sac
 24. Spring Place Lane - Rucker Road to Cul De Sac
 25. Laurelwood Farm Drive - Rucker Road to Cul De Sac
 26. Selbridge Way - Rucker Road to Brookmill Point
 27. Brookmill Point - End to End
 28. Watermill Falls - Brookmill Point to end
 29. Crabapple Chase Drive - Rucker Road to 372
 30. Hughes Branch Close - Crabapple Chase Drive to Cul De Sac
 31. Celestial Way - Crabapple Meadow Way to Cul De Sac
 32. Crabapple Tree Court - Crabapple Chase Drive to Cul De Sac
 33. Crabapple Meadow Way - Crabapple Chase Dr. to Crabapple Chase Dr.
 34. Park Glenn Dr - Webb Bridge to Cul De Sac
 35. Chicory Way - Park Glenn Drive to Cul De Sac
 36. Amberlilly Dr - Park Glenn Drive to Cul De Sac
 37. Newport Court - Newport Bay Drive to Cul De Sac
 38. Newport Terrace - Newport Bay Drive to Cul De Sac
 39. Newport Heights - Newport Bay Drive to Cul De Sac
 40. Newport Trace - Newport Heights to Cul De Sac
 41. Newport Fairway - Newport Bay Drive to Cul De Sac
 42. Newport Green - Newport Bay Drive to Newport Bay Drive
 43. Park Brooke Trace - Park Brooke Drive to Cul De Sac
 44. Brookeview Court - Park Brooke Trace to Cul De Sac
 45. Brook Forest Court - Park Brooke Trace to Cul De Sac
 46. Park Brooke Court - Park Brooke Drive to Cul De Sac
 47. Brookline Court - Brookline Drive to Cul de Sac
 48. Brookline Drive - Park Brooke Drive to Cul De Sac
 49. Park Brooke Way - Park Brooke Drive to Cul De Sac

- 50. Mayfield Manor Drive - Mayfield Road to Richards Circle
- 51. Benson Court - Richards Circle to Cul De Sac
- 52. Vance Court - Richards Circle to Cul De Sac

- Soil Cement:
 - SC1. Lake Windward Drive - Lake Windward Overlook to Harbour Ridge Drive
 - SC2. Clubhouse Drive - Windward PKWY to Lake Windward Drive
 - SC3. Mayfield Manor Drive - Richards Circle to Cul De Sac
 - SC4. Richards Circle - Mayfield Manor Drive to Mayfield Manor Drive
 - SC5. Jenkins Court - Mayfield Manor Dr. to Cul De Sac
- Work along North Point Parkway and Windward Parkway will be accomplished at night.
- Included in the scope of work is an alternative pavement repair method, Soil Cement. Soil Cement is used when the condition of the subgrade is insufficient and traditional milling and resurfacing is not a viable option. Soil Cement will be used on Lake Windward Drive, Clubhouse Drive, Mayfield Manor Drive, Richards Circle, and Jenkins Court.
- The Departments of Public Works and Finance prepared a request for bids (ITB 20-001) for the locations listed above. The City advertised for competitive bids on May 23, 2019. Bids for the project we received on June 27, 2019, and the City received a total of four bids from the following:
 - CW Matthews, Inc \$4,724,590.00
 - Allied Paving Contractors, Inc \$4,446,874.65
 - Stewart Brothers, Inc. \$6,618,233.73
 - Blount Construction Company, Inc. \$5,291,448.40
- The apparent low bidder, Allied Paving Contractors, has completed multiple roadway and paving projects in the Metro Atlanta area including the City of Sandy Springs, City of Dunwoody, and Gwinnett County. The Department of Public Works contracted with Allied to complete our FY 2018 and FY 2019 milling and resurfacing projects and was pleased with their workmanship.
- Based on the approved budget and the unit prices provided in Allied Paving's bid, City Staff has identified additional roads to be milled and resurfaced. These roads are those identified with the lowest average condition scores (based on the FY19 Pavement Condition Index (PCI) ratings). By increasing the contract to \$5,073,000.00 the City contract will also cover these roads (6 lane miles):
 1. Norcross Street - Cul De Sac to End
 2. Oakview Court - Pin Oak Lane to Cul De Sac
 3. Wildwood Court - Willow Tree Way to Cul De Sac
 4. Thermopylae Court - Cutty Sark Way to Cul De Sac
 5. Summer Breeze Court - Cul De Sac to Cul De Sac
 6. Summer Breeze Terrace - Summer Breeze Court to Cul De Sac
 7. Morning Mist Drive - Summer Breeze Court to Cul De Sac
 8. Ketton Way - Morning Mist Drive to Cul De Sac
 9. Keaton Court - Ketton Way to Cul De Sac
 10. Tumbling Creek Drive - Summer Breeze Court to Cul De Sac
 11. Brook Landing Court - Tumbling Creek Drive to Cul De Sac
 12. Morning Mist Way - Morning Mist Drive to Cul De Sac
 13. Lauren Hall Court - Waters Road to Lauren Hall Court
 14. Olde Lauren Court- Lauren Hall Court to Cul De Sac

15. Hall Court - Lauren Hall Court to Cul De Sac
16. Goldenrod Drive - Cul De Sac to Cul De Sac
17. Bellflower Drive - Park Bridge Parkway to Goldenrod Drive

- On June 27, 2019, city staff met with representatives of Allied Paving Contractors, Inc. to review the scope of work and the City's expectations. Allied assured staff that they could complete the project for the bid amount and within the allocated time frame. Thus, staff determined Allied Paving Contractors, Inc., to be the lowest responsive and responsible bidder.
- As this is a unit price contract, progress payments to the contractor will be based on the quantity of work completed for each item per the values submitted by the contractor in its bid to the City. The City's representative will verify the quantity is correct prior to approving the payment.
- All work included in this project's scope shall be completed by Friday, June 26, 2020.

Public Comment:

- No Public Comment

- ❖ Mayor Pro Tem Mitchell offered a motion to award Bid No. 20-001 to Allied Paving Contractors, Inc. in an amount not to exceed \$5,073,000.00 for the FY 2020 Milling and Resurfacing Project and authorize the Mayor to execute all necessary documents
 - The motion received a second from Council Member Burnett

 - The motion was approved unanimously (7-0)

D. Resolution Authorizing Fulton County Board of Registration and Elections to Conduct the City of Alpharetta's November 5, 2019 General Election

- City Clerk, Erin Cobb, came forward to present this item.
- Staff recommends Mayor and Council's approval of a resolution authorizing Fulton County Board of Registration and Elections to conduct the City of Alpharetta's November 5, 2019 General Election.
- At the July 8, 2019 City Council Meeting, Council voted to approve an Intergovernmental Agreement between the City of Alpharetta and Fulton County Board of Registration for the November 5, 2019 Municipal General Election.
- This resolution is required by the County, in conjunction with the executed IGA, to formalize the City's intent to have Fulton County conduct our 2019 Municipal Election.
- Additionally, Fulton County has sent a revised quote for election services. The updated quote is for \$137,894, which is \$64,051 less than the quote presented at the July 8, 2019 City Council Meeting.

- Asst. City Attorney, Michael Stacy, read the resolution aloud.

Public Comment:

- No Public Comment

- ❖ Council Member Merkel offered a motion to adopt the Resolution Authorizing Fulton County Board of Registration and Elections to Conduct the City of Alpharetta's November 5, 2019 General Election
 - The motion received a second from Council Member Burnett
 - The motion was approved unanimously (7-0)

E. Ordinance: Calling the City of Alpharetta General Election (1st Reading)

- City Clerk, Erin Cobb, came forward to present this item.
- Staff recommends Mayor and Council's approval of the ordinance calling for the 2019 Alpharetta General Election.
- The Georgia Election Code requires that when a municipality authorizes their County to conduct their election, the municipality shall by Ordinance, authorize such an action. This Ordinance services to meet that statute requirement and in addition provides the following:
 1. Calls the Alpharetta General Election.
 2. Provides Publication and Notice of the Alpharetta General Election.
 3. Provides notification of the candidate qualification period and reaffirms the associated fees.
 4. Provides notice of the voter registration deadline for the Alpharetta General Election.
- Asst. City Attorney, Michael Stacy, read the ordinance aloud.

Public Comment:

- No Public Comment

- ❖ Council Member Merkel offered a motion to approve the Ordinance Calling the City of Alpharetta General Election for November 5, 2019
 - The motion received a second from Council Member Richard
 - The motion was approved unanimously (7-0)

F. Ordinance: Calling of a Referendum (Special) Election (1st Reading)

- City Clerk, Erin Cobb, came forward to present this item.
- Staff recommends Mayor and Council's approval of an ordinance to regulate and provide for the calling of a referendum (special) election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of the elimination of the income restriction for the \$10,000 homestead exemption from City of Alpharetta ad valorem taxes for residents 65 years and older; to provide for the publication and notice of the election; and to establish a voter registration cut-off date.
- House Bill 430 was passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019. House Bill 430 allows the City of Alpharetta to eliminate the income restriction for the \$10,000.00 homestead exemption from the City's ad valorem taxes for residents 65 years and older.
- The additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the City limits. The Act further provides that the City shall conduct an election for purposes of submitting the Act to the electors. This special election will be held in conjunction with the state-wide general election on November 5, 2019.
- Asst. City Attorney, Michael Stacy, read the ordinance aloud.

Public Comment:

- Don Nahser, 305 Karen Drive, Alpharetta, came forward in support of this item.
- ❖ Council Member Merkel offered a motion to approve the Ordinance Calling of a Referendum (Special) Election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of the elimination of the income restriction for the \$10,000 homestead exemption from City of Alpharetta ad valorem taxes for residents 65 years and older; to provide for the publication and notice of the election; and to establish a voter registration cut-off date
 - The motion received a second from Council Member Binder
 - The motion was approved unanimously (7-0)

G. Ordinance: Calling of a Referendum (Special) Election (1st Reading)

- City Clerk, Erin Cobb, came forward to present this item.
- Staff recommends Mayor and Council's approval of an ordinance to regulate and provide for the calling of a referendum (special) election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of an additional \$5,000.00 regular homestead exemption for City of Alpharetta ad valorem taxes; to provide for the publication and notice of the election; and to establish a voter registration cut-off date.

- House Bill 431 was passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019. House Bill 431 allows the City to provide an additional \$5,000.00 homestead exemption for the City's ad valorem taxes.
- The additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the City limits. The Act further provides that the City conduct an election for the purpose of submitting the Act to the electors for approval or rejection.
- The election will be held in conjunction with the state-wide general election on November 5, 2019.
- Asst. City Attorney, Michael Stacy, read the ordinance aloud.

Public Comment:

- Don Nahser, 305 Karen Drive, Alpharetta, came forward in support of this item.
- ❖ Council Member Binder offered a motion to approve the Ordinance Calling of a Referendum (Special) Election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of an additional \$5,000.00 regular homestead exemption for City of Alpharetta ad valorem taxes; to provide for the publication and notice of the election; and to establish a voter registration cut-off date
 - The motion received a second from Mayor Pro Tem Mitchell
 - The motion was approved unanimously (7-0)

VI. PUBLIC COMMENT

- Don Nahser, 305 Karen Drive, Alpharetta, came forward in support of the elimination of the income restriction for the \$10,000 homestead exemption from City of Alpharetta ad valorem taxes for residents 65 years and older and the additional \$5,000.00 regular homestead exemption for City of Alpharetta ad valorem taxes.

VII. REPORTS

- No Reports

VIII. ADJOURNMENT TO EXECUTIVE SESSION

- ❖ Council Member Merkel offered a motion to adjourn to Executive Session
 - The motion received a second from Council Member Richard
 - The motion was approved unanimously (7-0)
- ❖ With no further business to discuss or items to be heard, Mayor Gilvin adjourned the meeting at 6:58 PM

Respectfully submitted,

A handwritten signature in cursive script that reads "Erin Cobb".

Erin Cobb, City Clerk



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Administration
Submitted By:
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: ALCOHOLIC BEVERAGE LICENSE APPLICATIONS

PH-19-AB-17 SHREE & SHREE LLC
D/B/A SHELL
2005 HEMBREE ROAD
ALPHARETTA, GA 30005

CONVENIENCE STORE
RETAIL PACKAGE SALES
BEER, WINE, SUNDAY SALES

OWNER: RITABEN BRAHMBHATT
REGISTERED AGENT: RITABEN BRAHMBHATT

II. RECOMMENDATION:

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: NO FISCAL IMPACT: NO
INCLUDED IN CURRENT FY CPTL BUDGET: NO INCLUDED IN CURRENT FY OPRT. BUDGET: NO
TOTAL PROJECT COST:
APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

V. ALTERNATIVES:

VI. ATTACHMENTS:



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Community Development

Submitted By:

Sponsored By:

Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: V-19-02: 112 THOMPSON STREET / BED & BREAKFAST VARIANCE
CONSIDERATION OF A VARIANCE REQUEST TO ALLOW PARKING BETWEEN THE BUILDING AND THE ROAD AND TO ALLOW BUFFER AVERAGING TO ACCOMMODATE A STREAM BUFFER ENCROACHMENT. THE PROPERTY IS LOCATED AT 112 THOMPSON STREET IS LEGALLY DESCRIBED AS BEING LOCATED IN LAND LOT 748, 1ST DISTRICT, 2ND SECTION, FULTON COUNTY, GEORGIA.

II. RECOMMENDATION:

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: NO

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST:

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

V. ALTERNATIVES:

VI. ATTACHMENTS:

112 Thompson BB CC Staff Report 072219, Aerial Map, Zoning Map, Future Land Use, Location Map, Revised Site Plan 6.11.19, Revised Floor Plan 6.10.19, Previous Site Plan 4.24.19, Summary of Citizen Comments Concerns for Thompson St Bed & Breakfast Update 7.16.19, VOYSEY Bed Breakfast Issues July 14_Redacted, CitipartB Complete, ApplicationforCCPacket6.17.19



COUNCIL MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT

SUBMITTED BY: KATHI COOK

DRAFTED BY: MICHAEL WOODMAN

I. AGENDA ITEM TITLE: V-19-02 MAGNOLIA BED & BREAKFAST VARIANCE

CITY COUNCIL: JULY 22, 2019

II. RECOMMENDATION:

Approve V-19-02 Magnolia Bed & Breakfast Variance, subject to the following conditions:

1. Property shall be developed substantially similar to submitted plan, dated 6/11/2019, except for modifications required to comply with the zoning district regulations and conditions below.
2. Building architecture, materials and design shall comply with the Alpharetta Downtown Code regulations, subject to review by the City's Downtown Consultant and final approval by DRB.
3. Building/accessory structures shall have a residential scale and character, as approved by DRB. The building footprint (including decks) of the bed and breakfast shall not exceed 5,450 square feet and total building size shall not exceed 12,450 square feet, which is similar to the footprint and size of the adjacent townhome building in Midwick.
4. Use of the property shall be limited to 'Bed and Breakfast' with no more than 14 guest rooms and one (1) residential unit, with uses only permitted within a new structure, as approved by the DRB. Up to 300 square feet of meeting space shall be permitted within the Bed and Breakfast. A café with seating for no more than 15 people shall be permitted within the Bed and Breakfast for the primary purpose of serving guests but may also be open to the public. A special event facility shall not be permitted to operate on the property.
5. Thompson Street shall generally be improved as follows: 36' half width right-of-way to incorporate 8' sidewalk (concrete with brick paver banding), 6' planting area, 8' on-street parking, and 10' travel lane, with final approval by Staff. Final streetscape shall match the approved streetscape standards and include decorative pedestrian lighting as approved by Staff.
6. Roadways with on-street parking shall incorporate curb extensions at intersections.
7. Decorative paver aprons shall be required at each project driveway, as approved by Staff.
8. Fencing visible from the public right-of-way shall be decorative, as approved by Staff. Unfinished wood fences and decks shall not be permitted.
9. Parking and drive aisle, as depicted on the submitted plan, shall be allowed between the building and the street.
10. Parking area shall be screened from Thompson Street with a low wall, berm and/or decorative hedge, as approved by DRB.
11. Dumpster enclosure shall not be visible from Thompson Street or the Alpha Loop and shall maintain a setback of at least 25' from any residentially-zoned property. Dumpster enclosure shall have exterior materials which are compatible with the primary building.
12. Magnolia grouping along Thompson Street shall be saved, if streetscape improvements do not impact trees with final approval by Staff.
13. Developer shall identify locations with significant tree groupings and incorporate those groupings into the final site plan, as approved by Staff.
14. Off-site tree encroachment shall be limited to no more than 20% on the CRZ and shall require notification/approval by property owner, as approved by administrative variance.
15. There shall be no encroachment on the stream buffer or impervious setback, except to connect to the Alpha Loop.

16. There shall be a minimum 10' heavily planted landscape strip along the eastern and western property lines, as approved by DRB.

III. REPORT IN BRIEF:

The applicant, Rhonda Moss, is requesting consideration of a variance to allow a bed and breakfast building to encroach into the stream buffer, as well as to allow parking between the road and the building. The property owner proposes to redevelop the site with a 15-room 'Bed & Breakfast' with café and special event facility. The subject property is located at 112 Thompson Street on the north side of Thompson Street just east of Kingry Lane.

DISCUSSION

The submitted request, if approved as submitted, would allow for the redevelopment of the subject property with a 15-room 'Bed & Breakfast' with café and special event facility. The applicant proposes variances to allow for encroachment into a portion of a City stream buffer, as well as to allow parking between the road and the building. The subject property is located at 112 Thompson Street on the north side of Thompson Street just east of Kingry Lane.

The 1.54-acre property is developed with a 1-story, 2,416 square foot brick ranch home with a day light basement and built in 1964. A non-perennial stream runs along the north side of the property and impacting approximately 30 – 40% of the property. The property is zoned O-P (Office-Professional). Surrounding properties are zoned DT-R (Downtown Residential) and R-4A (Dwelling, 'For-Sale', Attached Residential) to the north, R-12 (Dwelling, 'For-Sale', Residential) to the west, O-I (Office-Institutional) to the south and DT-LW (Downtown Live-Work) to the east. The Rowes and Academy Park Subdivisions are located to the north, Ransopher Law Offices to the west, US Post Office to the south and Midwick Subdivision to the east.

The applicant is requesting a variance from Unified Development Code (UDC) Appendix A: Alpharetta Downtown Code, Subsection 2.4.6, Vehicle Access and Parking Locations, to allow parking and a drive aisle between a building and the closest street. It is the applicant's intent to provide pedestrian access to the Alpha Loop. The subject property has topographical challenges due to the presence of a stream running along the northern portion of the property. If approved, conditions are recommended requiring aesthetic and screening landscape enhancements to screen the parking area from Thompson Street.

The applicant also requests a variance to allow the building to encroach into the City's stream buffer. Unified Development Code (UDC) Section 3.3.6(C)(1)(a) Stream Buffer Protection – Land Development Requirements requires a 50' undisturbed natural vegetative buffer on both banks of a non-perennial stream and an additional 25' impervious setback. Impervious cover is prohibited within the 25' impervious setback, which includes man-made structures that impede the natural infiltration of water into the ground. The variance request is likely the result of the proposed building and uses being too intense for the property and therefore is not supported by a hardship.

SITE PLAN

The applicant's site plan depicts a 2-story, 19,333 square foot Bed & Breakfast building, including 15 guest rooms, owner's suite, café and special event facility. Due to the site's topography, the building is 2-stories from Thompson Street and 3-stories at the rear. Approximately 34 surface parking spaces and four (4) on-street parallel spaces are depicted on the site plan, of which

three (3) spaces and a one-way drive aisle are shown between the building and Thompson Street. The applicant's site plan appears to account for the required Thompson Street streetscape improvements.

A gazebo and surface parking are depicted within the 75' impervious setback in conjunction with the on-site stream. A section of the Alpha Loop is depicted and has been constructed on the subject property through the City's stream buffer. It is recommended that the bed and breakfast be designed and laid out to have a residential scale and character, including but not limited to, a reduction in the building footprint, elimination of the special event facility, limitations on the size of the café and no encroachments on the stream buffer.

As shown in the table below, the UDC has the following requirements for parking for the proposed use.

Use	Parking Rate	Unit	Parking Required
Bed and Breakfast	1/guest room	15 rooms	15 spaces
Event Space	1/200 SF patron use areas	4,613 SF	23 spaces

VARIANCE REQUIREMENTS

Requests for variances shall follow the procedures described in Section 4.5 and Section 5.2. Variances will be considered only in the following cases:

1. When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.

Response: The applicant's proposal is too intense for the subject property. It is recommended that the special event facility not be permitted, which would allow for the building footprint to be reduced and moved out of the stream buffer. The request to allow parking between the road and the building can be supported due to the topography of the site.

2. Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

Response: The applicant's proposal is too intense for the subject property. It is recommended that the special event facility not be permitted, which would allow for the building footprint to be reduced and moved out of the stream buffer. The request to allow parking between the road and the building can be supported due to the topography of the site.

CONCURRENCES

Staff has reviewed the application and is in general agreement with the variance request to allow parking and a drive aisle between the road and the building as it would provide a better connection to the Alpha Loop. However, staff does not support the variance request to allow for encroachments into the stream buffer. The Comprehensive Land Use Plan designation the property, 'Mixed Use Live Work', supports both residential and commercial uses along the Thompson Street corridor.

The applicant's proposal is too intense for the subject property and should be revised to have a residential scale and character. It is recommended that the special event facility not be

permitted, which would allow the building footprint to be reduced and moved out of the stream buffer. The request to allow parking between the road and the building can be supported due to the topographical challenges of the site. In addition, a 10' landscape strip should be required along the eastern property line adjacent to Midwick to screen the parking lot, including a heavy evergreen screen, since outdoor deck and patio is closer to eastern property line. A 5' landscape strip should be required along the western property line to screen the parking lot drive aisle.

CITIZEN PARTICIPATION PLAN

The report submitted by the applicant states that the adjacent property owners were contacted regarding the applicant's intent. The applicant's citizen participation report reflects support for the bed and breakfast and concerns from surrounding residents, including concerns over parking, traffic and noise.

The City has received correspondence from surrounding residents with a variety of concerns with the applicant's proposal, including traffic, parking, noise, special event facility use, size of structure and architecture. Many supported the 'Bed and Breakfast' portion with café on a smaller, more residential scale.

COMMUNITY ZONING INFORMATION MEETING

The CZIM was held on May 8, 2019. There were five (5) comments on the sign-in sheet, of which four (4) residents had concerns over parking, traffic, noise, dumpster and the special event use and one (1) comment in support of the proposal.

IV. ATTACHMENTS:

- Site Plan
- Building Elevations
- Summary of concerns from residents

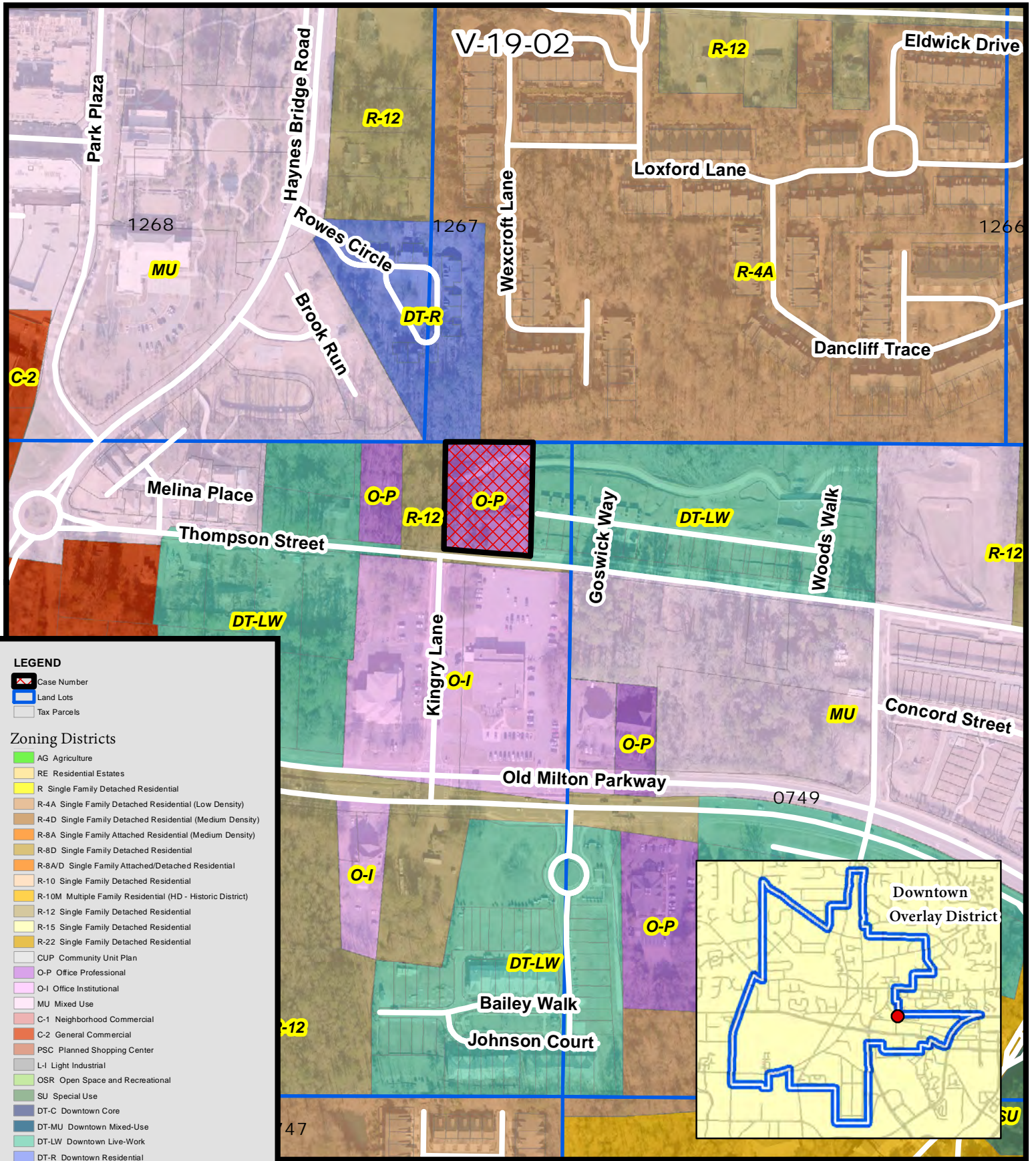


Aerial Map
 Thompson Street Bed & Breakfast
 112 Thompson Street

V-19-02
 D/LL: 1/2/748
 CC Date: 6/17/19



Location Map Provided by:
 Community Development - GIS



LEGEND
 Case Number
 Land Lots
 Tax Parcels

Zoning Districts

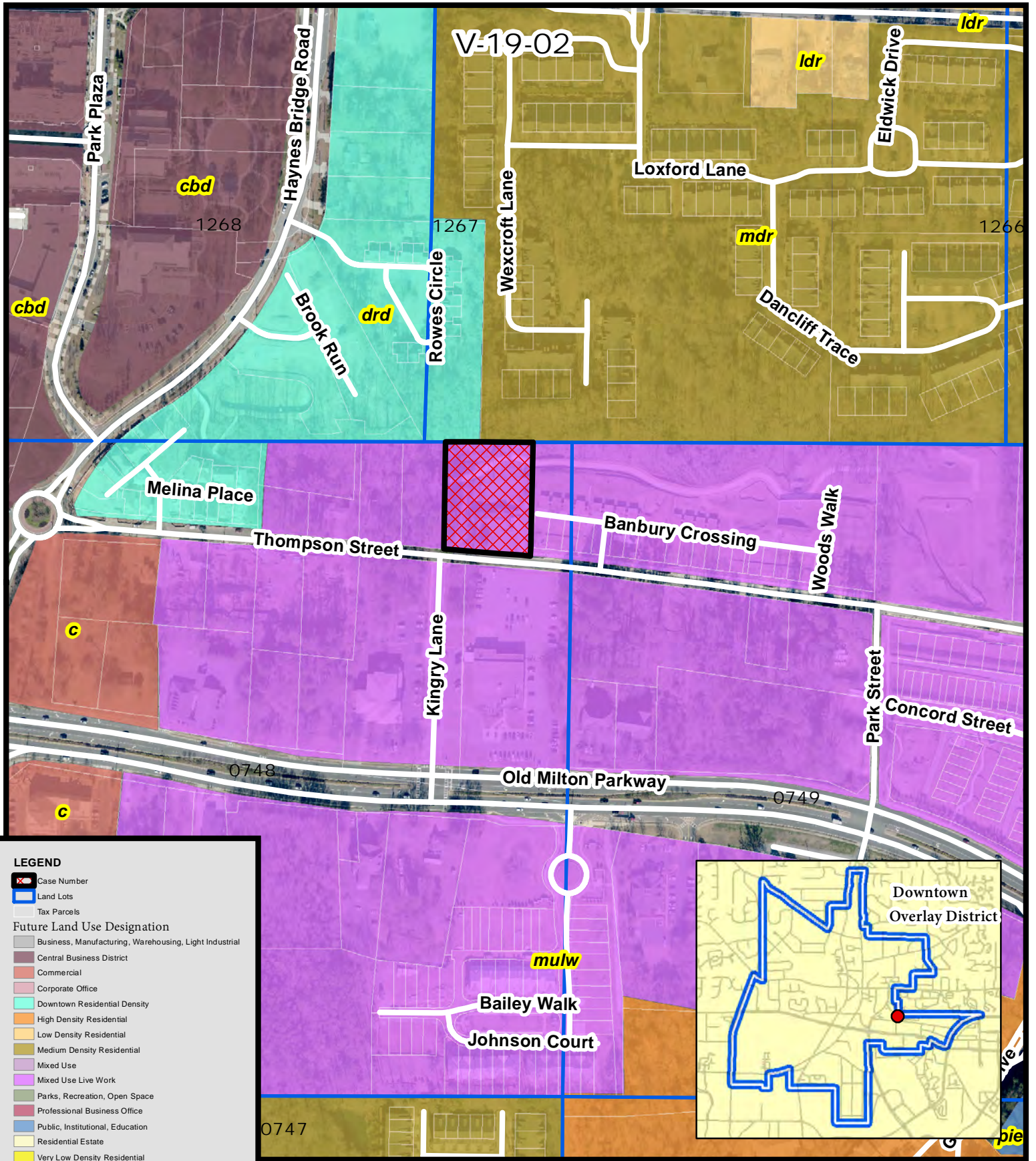
- AG Agriculture
- RE Residential Estates
- R Single Family Detached Residential
- R-4A Single Family Detached Residential (Low Density)
- R-4D Single Family Detached Residential (Medium Density)
- R-8A Single Family Attached Residential (Medium Density)
- R-8D Single Family Detached Residential
- R-8A/D Single Family Attached/Detached Residential
- R-10 Single Family Detached Residential
- R-10M Multiple Family Residential (HD - Historic District)
- R-12 Single Family Detached Residential
- R-15 Single Family Detached Residential
- R-22 Single Family Detached Residential
- CUP Community Unit Plan
- O-P Office Professional
- O-I Office Institutional
- MU Mixed Use
- C-1 Neighborhood Commercial
- C-2 General Commercial
- PSC Planned Shopping Center
- L-I Light Industrial
- OSR Open Space and Recreational
- SU Special Use
- DT-C Downtown Core
- DT-MU Downtown Mixed-Use
- DT-LW Downtown Live-Work
- DT-R Downtown Residential

Zoning Map
 Thompson Street Bed & Breakfast
 112 Thompson Street

V-19-02
 D/LL: 1/2/748
 CC Date: 6/17/19



Location Map Provided by:
 Community Development - GIS



LEGEND

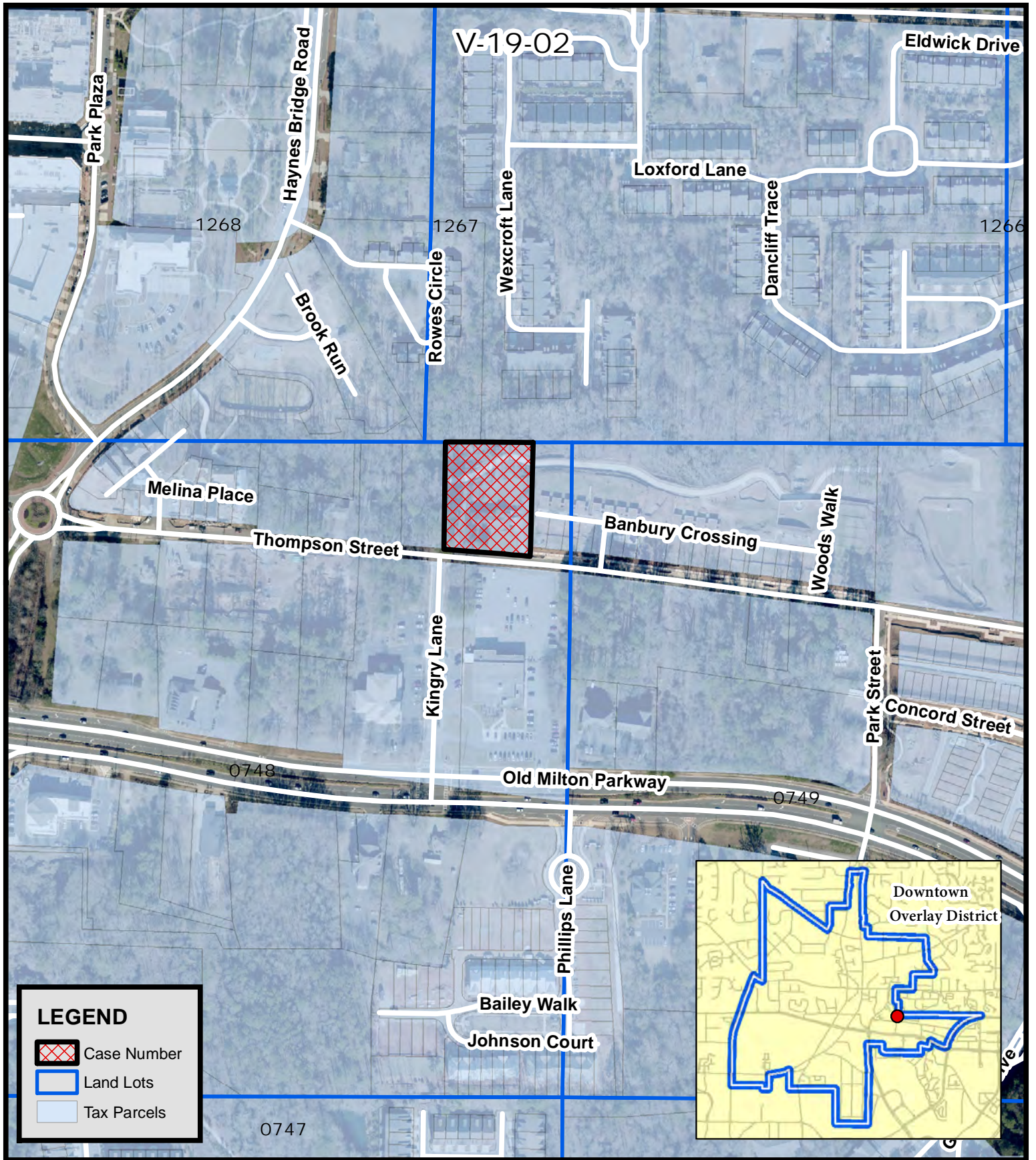
-  Case Number
-  Land Lots
-  Tax Parcels
- Future Land Use Designation**
-  Business, Manufacturing, Warehousing, Light Industrial
-  Central Business District
-  Commercial
-  Corporate Office
-  Downtown Residential Density
-  High Density Residential
-  Low Density Residential
-  Medium Density Residential
-  Mixed Use
-  Mixed Use Live Work
-  Parks, Recreation, Open Space
-  Professional Business Office
-  Public, Institutional, Education
-  Residential Estate
-  Very Low Density Residential

Future Land Use
 Thompson Street Bed & Breakfast
 112 Thompson Street

V-19-02
 D/LL: 1/2/748
 CC Date: 6/17/19



Location Map Provided by:
 Community Development - GIS



Location Map
 Thompson Street Bed & Breakfast
 112 Thompson Street

V-19-02
 D/LL: 1/2/748
 CC Date: 6/17/19



Location Map Provided by:
 Community Development - GIS

6/11/19

Revised Site Plan

LL 268 LL 1267

N/F Green Residential, LLC

N/F City of Alpharetta

2nd District

1st District

PF 1'0T S 88°12'32"E

IPF 4RB

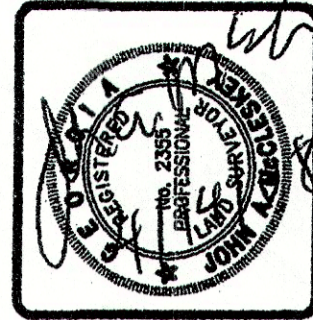
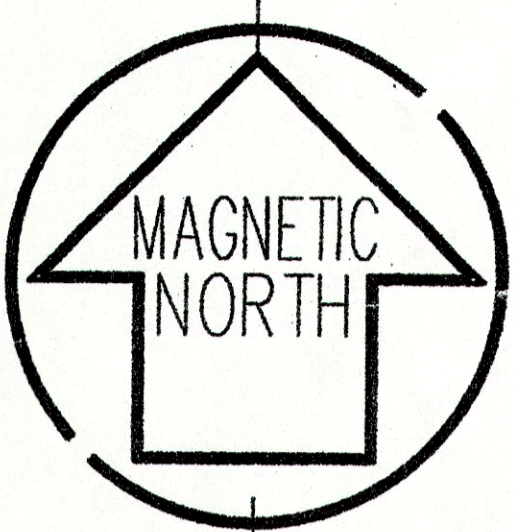
N 90°00'00"E

94.87'

LL 748

25' STATE CREEK BUFFER 3,154 SF

SENSITIVE TYPE B DOUBLE ROW SILT FENCE STAKED ROCK BAGS FOR SEDIMENT CONTROL

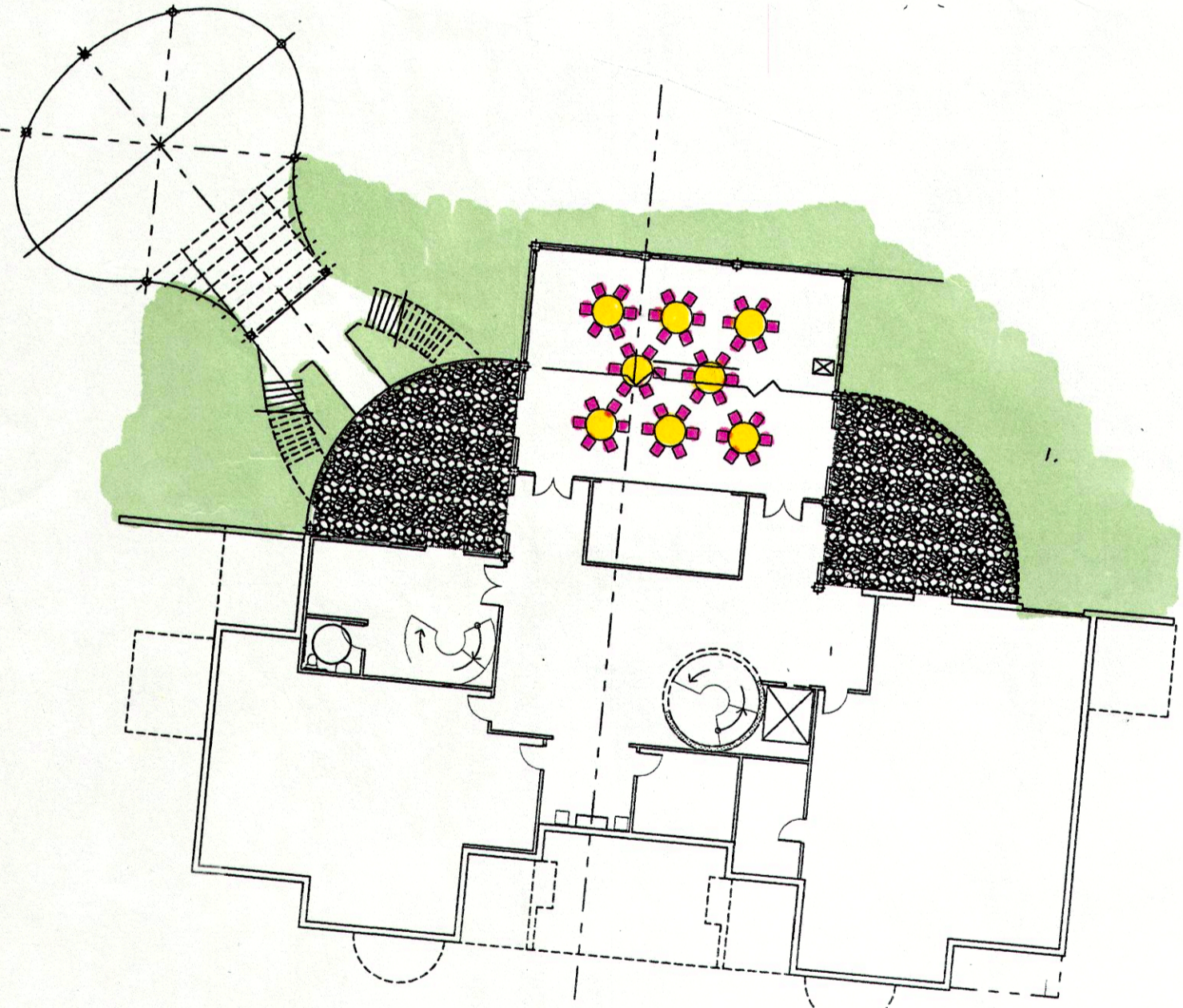
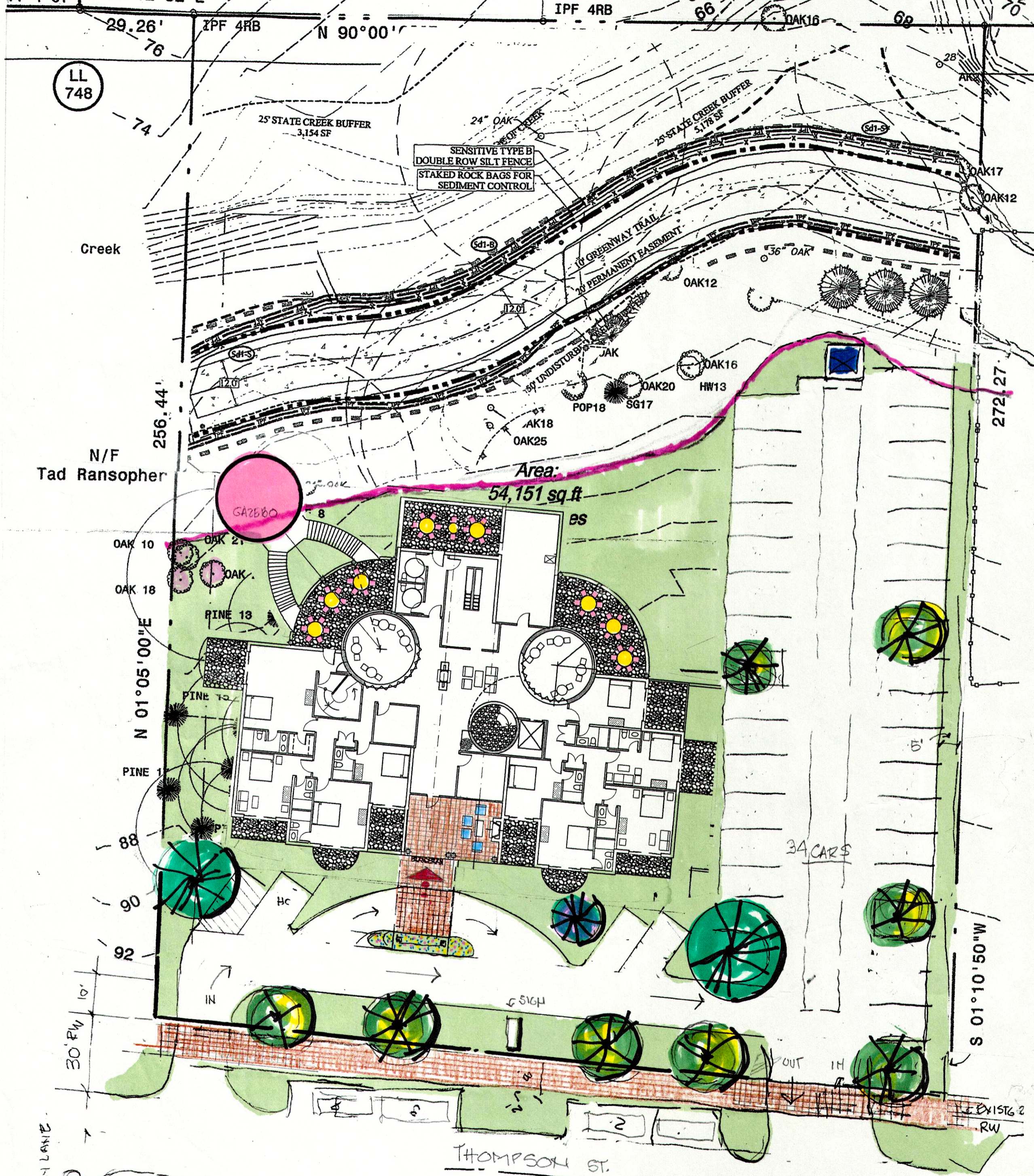


2430 HERODIAN WAY, SUITE 101
SHIRAZ, GEORGIA 30080
PHONE (770) 955-1094
FAX (770) 955-1094
A REGISTERED PROFESSIONAL ENGINEERING FIRM
ALBANY AUGUSTA SAVANNA
Stevenson & Palmer
Engineering
INCORPORATED

No.	Revision	DATE BY
1.		
2.		
3.		
4.		

Project No. 07-041
 Drawn By: J.A.M.
 Field Dates: 07/31/07
 Plan Date: 04/13/08
 Scale: 1" = 20'

Parking Plan
 for
 Leslie MOSS
 of
 112 Thompson Street
 Land Lot 748, 1st District, 2nd Section
 City of Alpharetta, Fulton County, Georgia

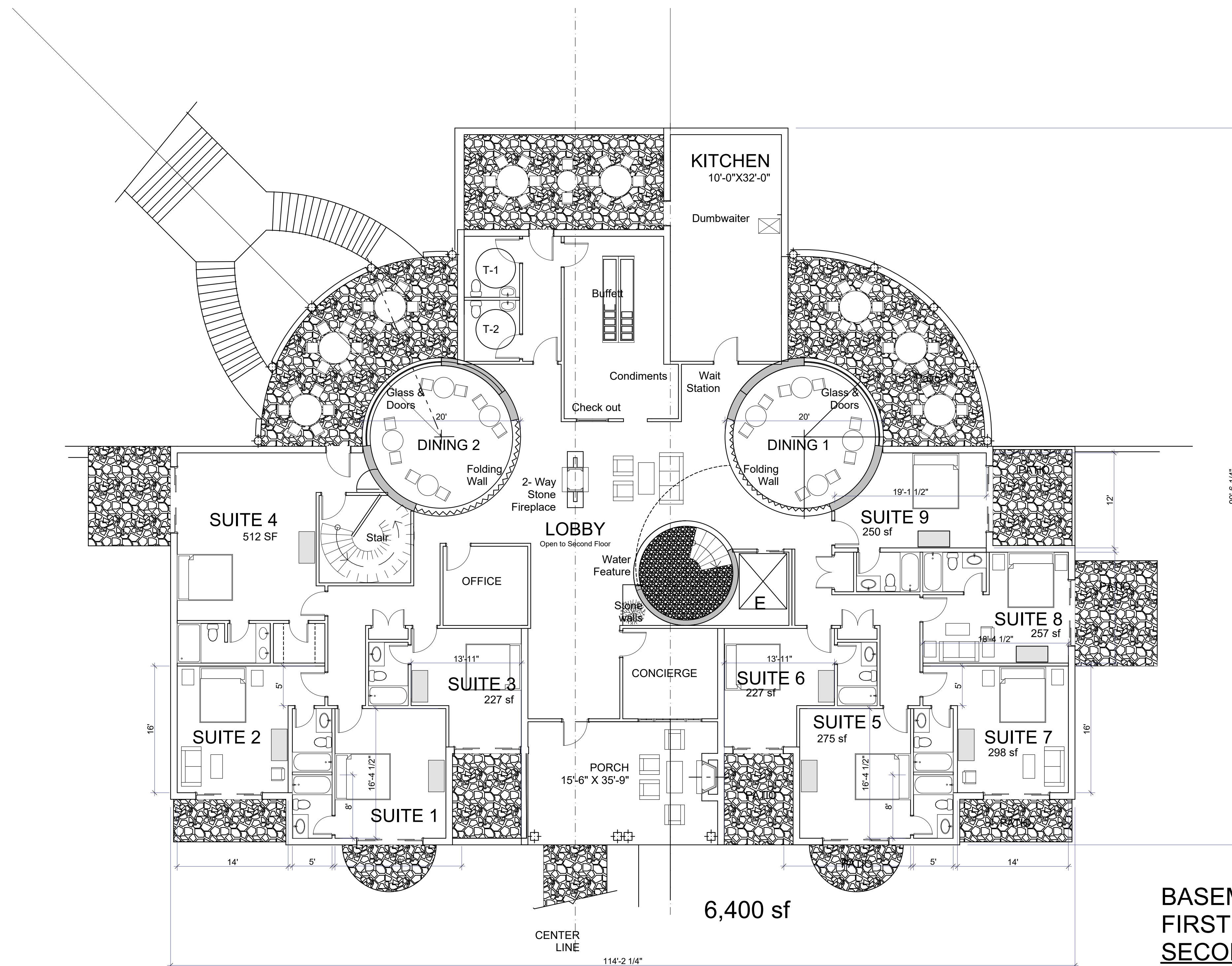


6-11-19

MAGNOLIA HOUSE DECK & BREAKFAST

1" = 20' 6-10-19

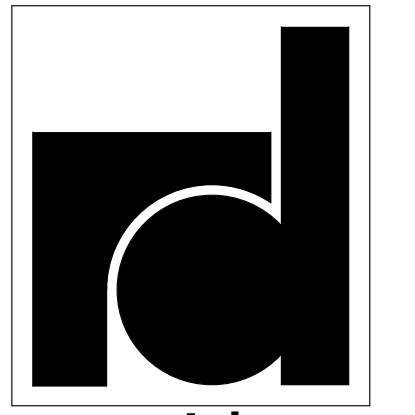
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BASEMENT	6,49
FIRST FLOOR"	6,40
SECOND FLOOR: 6,44	
TOTAL	19,338

1 FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'

REDUCED 12' 6.17.19



rjd
architect,
llc

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**MAGNOLIA HOUSE
BED & BREAKFAST**

112 Thompson Street
Alpharetta Georgia
30009 USA

MARK	DATE	DESCRIPTION

PROJECT NO: 2019-02

MODEL FILE:
REMOVE 12 FEET 6.10.19.pln

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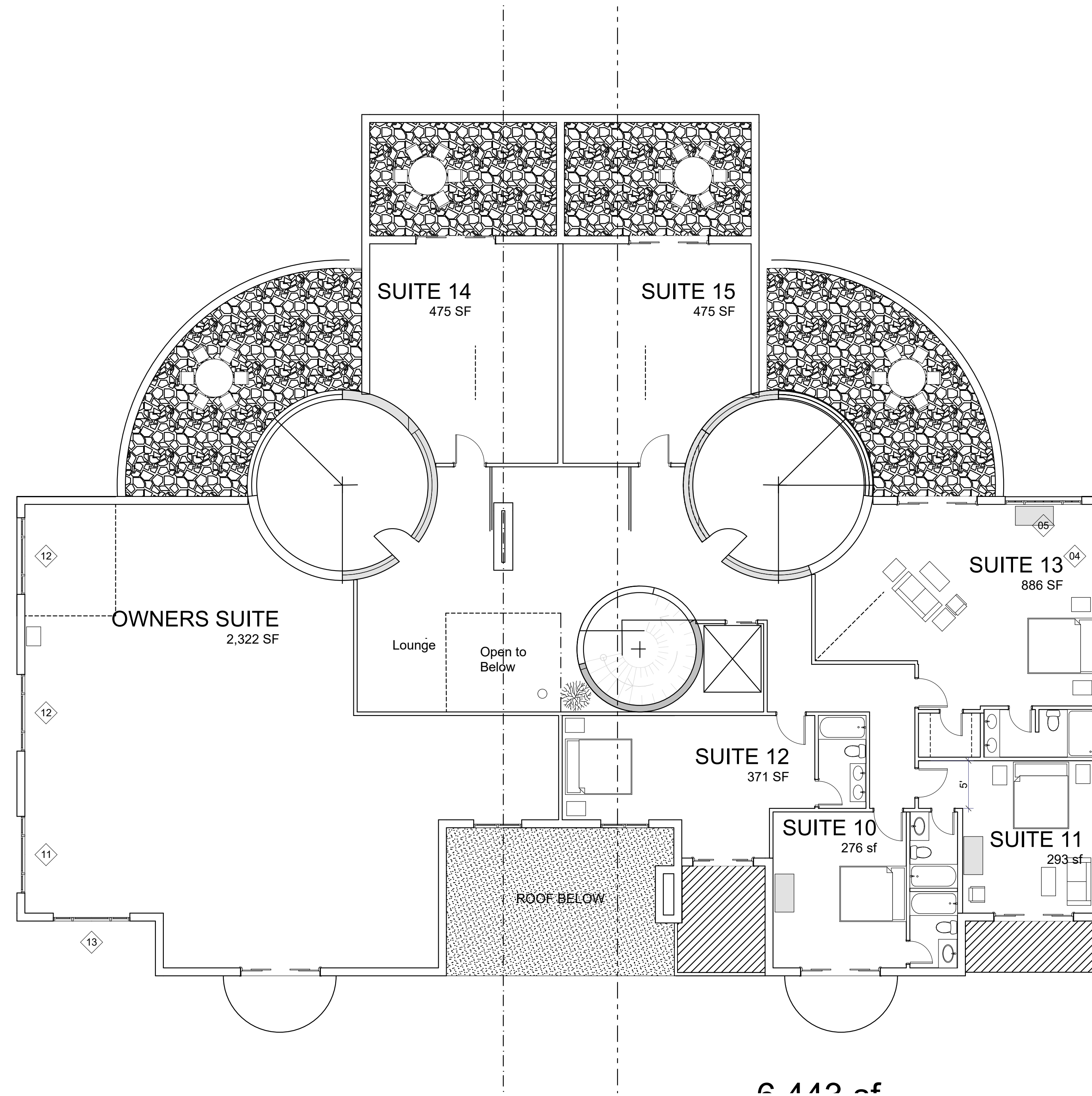
SHEET TITLE

FIRST FLOOR PLAN

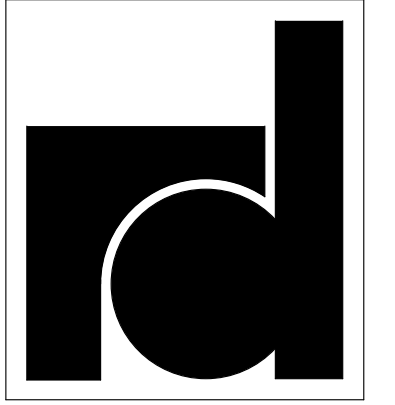
A-1

SHEET 3 OF

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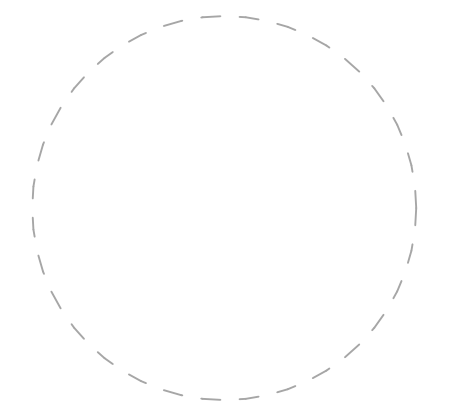
1 SECOND FLOOR PLAN
 SCALE: 1/8" = 1'-0"
 0 4' 8' 16'



rjd
architect,
llc

231 VAUGHAN DRIVE
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**MAGNOLIA HOUSE
 BED & BREAKFAST**

112 Thompson Street
 Alpharetta Georgia
 30009 USA

MARK	DATE	DESCRIPTION

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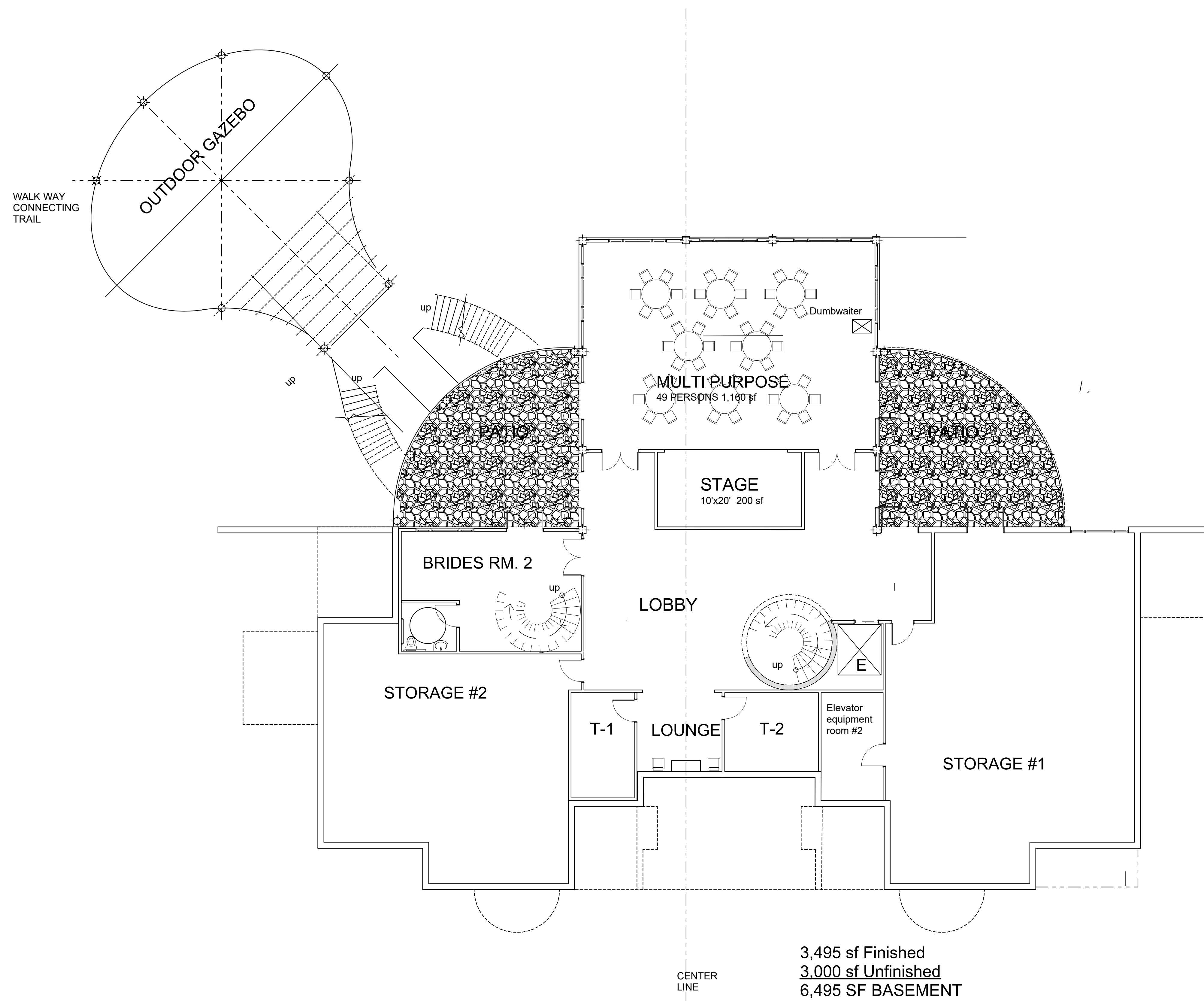
SHEET TITLE
SECOND FLOOR PLAN

REDUCED 12' 6.17.19

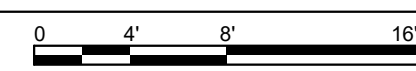
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SHEET 4 OF

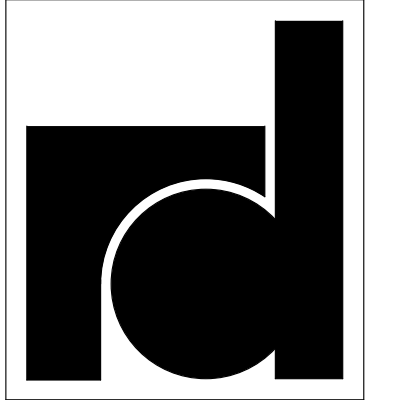
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1 BASEMENT FLOOR PLAN
SCALE: 1/8" = 1'-0"



REDUCED 12' 6.17.19



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**MAGNOLIA HOUSE
BED & BREAKFAST**

112 Thompson Street
Alpharetta Georgia
30009 USA

MARK	DATE	DESCRIPTION

PROJECT NO: 2019-02

MODEL FILE:
REMOVE 12 FEET 6.10.19.pln

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SHEET TITLE

BASEMENT FLOOR PLAN

A-3

SHEET 5 OF



Purpose of Plan:
To show existing and proposed parking.

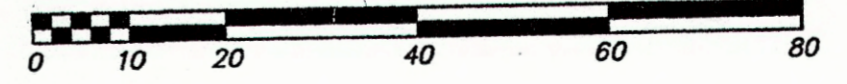
- NOTES:
- EXISTING ADDRESS: 112 Thompson Street, Alpharetta, Ga., 30004
 - EXISTING TAX PARCEL ID: 1270307480716
 - EXISTING ZONING: R-12
 - SETBACK REQUIREMENTS PER ZONING:
30' FRONT
30' REAR
10' SIDE
 - FLOODPLAIN INFO: NO FLOODPLAIN IS LOCATED ON THIS SITE PER REF#6
 - PROPERTY OWNER: LESLIE MOSS PHONE# 770-772-9458

DMT. 82 7 17-(12'CLG+3'FL.)
F.F. 99 12-(9'CLG+3'FL.)
S.F. 111
2-28-19

LEGEND

RBF	REBAR FOUND	LL	LAND LOT LINE
RBS	REBAR SET	- - -	FENCE
CMF	CONCRETE MARKER FOUND	- - -	TELEPHONE LINE
R/W	RIGHT OF WAY	- - -	GAS LINE
CL	CENTER LINE	- - -	WATER LINE
P	PROPERTY LINE	- - -	SANITARY SEWER LINE
STA	STATION	- - -	POWER LINE
LL	LAND LOT	CB	CATCH BASIN
BM	BENCH MARK	JB	JUNCTION BOX
INV.	INVERT ELEVATION	DI	DROP INLET
M	MANHOLE	YI	YARD INLET
PC	PROPERTY CORNER	WI	WEIR INLET
PP	POWER POLE	SMH	SAN. SEWER MANHOLE
FH	FIRE HYDRANT	CD	CLEANOUT
LP	LIGHT POLE	WM	WATER METER
ICV	IRRIGATION CONTROL VALVE	GP	GUY WIRE
WV	WATER VALVE	GW	GUY WIRE
EM	ELECTRICITY METER	EM	ELECTRICITY METER

GRAPHIC SCALE



85°34'29"E
93.73'



Stevenson & Palmer
Engineering, Inc.
INCORPORATED
2450 HERDMAN WAY, SUITE 101
ALBANY, GA 31707
PHONE (770) 952-2481
FAX (770) 952-1084

DATE	BY

Project No. 07-041
Drawn By: J.A.M.
Field Dates: 07/31/07
Plan Date: 04/13/08
Scale: 1" = 20'

Parking Plan
for
Leslie MOSS
112 Thompson Street
Land Lot 748, 1st District, 2nd Section
City of Alpharetta, Fulton County, Georgia

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

COMMENT #1

I am writing in regards to the variance you are considering for the Bed and Breakfast/Event venue on Thompson street.

This variance causes me great concerns.

- Parking / traffic for events that could be up to 150 people
- Disturbing the tranquility of the Alpharetta loop due to noise, parking etc.
- No buffer between subdivision and this venue.
- The square footage of this venue will dominate the lovely architecture and tranquility of the Thompson street area.
- Bed / Breakfast seems to be thrown in to get through variance, when in fact it is a secondary business.
- Proprietor's limited knowledge and experience running this type of business

My suggestions

- Small quaint Bed and Breakfast that blends in with the architecture surrounding it
- Small cafe to serve guests staying at the property. (open to public)
- Required landscape that contributes to the Alpha loop and buffer between Subdivision and other neighboring homes
- Gravel Parking for the establishment on in front of property not impacting the limited parking presently available

It is not my habit to impact someone's dream, but this property is not equipped to support a large event venue.

COMMENT #2

After seeing the size of the structure we have become deeply concerned; below are our key concerns:

1. **PARKING PROBLEMS:** Parking is already an issue in Subdivision and Thompson Street. It will be even worse with the new neighborhood coming across the street. If the Bed and Breakfast are full, it will take up 15 parking spaces, plus the parking for the employees, and the owners have already three cars. On top of that, we will have restaurant guests all day long with a restaurant open from breakfast, lunch, and dinner. For the events, they are planning to offer valet parking. Thompson Street is already a small street, and it gets blocked up. If they have an event with over 150 guests and employees, we might expect that they are parking close to 80 cars in a short amount of time.
2. **RESIDENTIAL ZONE:** When we purchased our house last year, we thought we were buying in resident zoning; now are being asked to live next door to an event place and a hotel with over 150 people celebrating weddings or partying. When we sit on our deck or are in our living room and bedroom, we will absolutely be hearing the music from the event place. Also, keep in mind that we have young families moving in with children and we have a number of senior citizens living in Subdivision. This would also be considered noise pollution to the Alpha loop that is so quiet and peaceful. We are deeply concerned that this will negatively impact our property value if this property is allowed to be this large.

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

3. WASTE: An operation like this will need a big dumpster that may be visible from our property; that would be absolutely unacceptable. We did not purchase our property to live in an industrial zone; we do not want to live next to a dumpster or see or smell trash. If you intend to approve this construction, we expect that the property will have to adhere to strict sanitary rules and that dumpsters would be inside their building and not facing or visible from our neighborhood.
4. DIMINISHED PROPERTY VALUE: We are delighted with living in Alpharetta and have invested in a prime location at a peaceful spot on the Alpha Loop. We are deeply concerned that the value of our home will be diminished, and resale would be compromised because now it would be adjacent to this huge event place.

However, we would be happy to see the current owners clean up the lot and hopefully take away the rotted and molded shed. We would consider this shed a health hazard, as it is, and dangerous to children. We recommend you have your environmental health inspector assess the current state of that part of the property.

In summary, we believe the proposed construction plan is far too large and looks intrusive. A smaller bed and breakfast, perhaps without the large event place, and a smaller cafe rather than a larger restaurant would possibly improve the community. However, this construction is simply far too large of a business to put in a neighborhood that is already overcrowded.

Comment #3

I'm typically in favor of development, but hope the City will take a hard look at this proposal? If the owner can supply onsite parking for B&B guests I'm fine with that. But I'm hopeful the City will not support the idea for a wedding venue and retail cafe for the following reasons:

- 1) Parking on Thompson St would be significantly hindered
- 2) Late night noise from live bands and DJ's
- 3) Safety issues having late night partiers stumbling up and down Thompson St and the Loop, plus the noise this would create within a residential space

I'm open to ideas and discussions.

Comment #4

I don't think an establishment of this size and type belongs on Thompson Street.

Large functions would result in noise, congestion, traffic, etc. on a very narrow residential street. Also, parking is already an issue, and it would get much worse.

The property is not well kept up now, and I am concerned that the new establishment won't be well kept up.

There would be no buffer between the establishment and our subdivision.

Comment #5

Rhonda Moss did a great job at presenting her plan and showed all the modifications she made to gain approval by the City, even including the approval to allow the Alpha Loop to be connected behind her

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

property. Personally, I think she was brave to stand before residents who were not in favor of her proposal. If this does not work out, her leverage was to leave an eye sore property there and go travel the world. I'm not in the world of city planning and don't know what leverage the City has with regards to this property but I would assume some developer would eventually pay her a pretty penny for this property if she does not receive the City's approval.

Having been part of a project in designing architectural plans and developing business plans, I know how time consuming and expensive they can be. It appears Rhonda has done all she can do to appease the City.

Thompson Street is a great residential street with already lots of people walking back and forth to Avalon and downtown Alpharetta. At first I thought 112 Thompson Street was going to be a 'quaint cafe' accessible from the Alpha Loop and Thompson Street. Even more ideal, any cafe parking would be contained on her property. It wasn't until I learned about the event add-on did I become concerned.

Rhonda did explain she has an agreement with the school across from the Post Office off Old Milton (an Academy school?) that she can valet overflow cars at the Academy school. I asked why she wouldn't valet at the bank or post office. She asked the Bank and they said she could not use their parking lot even if it was after hours. The post office said they could not authorize patrons to park there but there would be no one to stop people from parking there for her events. I had the same idea when we throw a party at our house is to use the bank and post office as overflow.

The conversation got interesting when we discussed the Wellstar parking garage. If she could negotiate a deal with Wellstar that could really address and contain her event parking overflow and keep patrons closer to her location. If the City does approve her plan I hope this will be a consideration.

I do have compassion for the time (appx 18 months?) and money she has poured into this project but it makes me nervous that the City has been encouraging her to keep moving forward with an Event Facility on a residential street. I understand her need to have this be a B&B, cafe AND event facility to make money. She said the City has brought the event number down to 90, which is still a significant number. Also, the building she has designed is beautiful but seems out of place on this Charleston home style street.

As a homeowner, I don't want an event facility on this street. Even if Wellstar parking garage is secured she would never be able to control or contain all the parking to just valet or just the Academy school. Realistically, parking would overflow to other undesignated areas. This event facility is too small for Thompson Street. As you know, Midwick already struggles with no ability to park in our driveways and unless you have small cars you are limited to what you can park in the garage. Most of our neighborhood has overflow on to the street and we are only 50% full.

I've been so impressed at the City's vision in the evolution of Alpharetta! Bravo!! But please don't take away this residential cozy street and overwhelm it with congestion.

COMMENT #6

Ms Moss came to our door re: the opening of a B & B. Sounded neighborly, lovely & seemed to be her dream. We hate to quash anyone's vision, but the proposed plan is untenable. The proposal, as shown, would be a nightmare:

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

An event center for 120/150/200 people is a NO. Traffic on a narrow residential street already well-traveled would be ridiculous during "events." All public parking on the street + 1 lane of traffic flow will be consumed, & then some. The use of the bank parking lot by the post office would NOT mitigate the problem.

Proximity to the natural beauty of the Alpha Loop is ridiculous as shown; people partying/drinking, loud music until late at night, trash in dumpsters or on the trail itself...horrible.

Ms. Moss doesn't currently maintain the property properly. We assume you have walked it front & back; weeds, belongings piled up on the porches/inside, an eyesore. Continuing this pattern by one who doesn't care for 1 house is likely. She seems to lack business acumen which fosters high risk of failure & possibly a vacated facility.

There is no place for staging materials to build an enormous structure as pictured. The plan as shown will ruin the quiet of the neighborhood, devalue our homes & the entire reason folks flock to downtown Alpharetta to live in peace.

We've no opposition to a charming B & B which is already OK per zoning. The event facility would supersede that & is not permitted, as we understand it.

COMMENT #7

I do have a huge concern about the proposed B&B for several reasons:

1. No buffer provided
2. I have a grandchild that will be staying with me several days a week and I don't want the noise or the traffic keeping him awake at night
3. Music could be until 10:30 -11pm 7 days a week, this is a residential area
4. Additional over flow parking issues on Thompson Street which is already an issue

COMMENT #8

I just got to review the plans for the Bed & Breakfast. I have to say that B&B is way too big for our community. We have families in Midwick and the noise (past kids bedtime) and limited parking would in my opinion not be good for the area. It just doesn't fit with all of the other nice homes being built on the street. It has been really nice seeing all the new construction and seeing people walking up the streets and being really friendly. I appreciate you letting me share my thoughts and I hope you would consider not approving these plans.

COMMENT #9

It has come to my attention that someone is trying to open a Bed and Breakfast on Thompson St next to the Midwick development. It is also my understanding that the property is currently a private residence and that the plan is for a restaurant and a Wedding Venue. The proposed plan includes little or no parking and will depend on street parking and the City Parking Garage. I am a home owner in the Voysey addition and I am concerned about a future parking problem. Parking is already tight on Thompson Street with all the construction.

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

What are Alpharetta's requirements for parking for a business establishment? Doesn't the business need enough onsite parking to support a minimum amount of activity? Assuming there are parking requirements, what is the process for seeking a variance Thanks in advance for your thoughts.

Comment #10

B&B Not Only Income Source: The majority of B&B's are not the owners' primary source of income. This is also true with Rhonda and her proposed B&B. She told us of 4 potential income sources since 1 or 2 sources alone cannot provide her with sustainable income:

- 1) a 15-room bed & breakfast with parking onsite;
- 2) an event facility for 150 people with third-party catering and third-party music;
- 3) restaurant with the option to provide alcoholic drinks;
- 4) a commercial kitchen to make sweet potato pies to sell at farmer's markets, etc. - this is Rhonda's personal business and where she plans on putting her time.

Four businesses on our residential street is excessive.

Incomplete B&B Plans: The plans shown at the May 8th meeting at City Hall was the 2nd set we've seen and we're not confident these are the final plans. On the 2nd level, suite 14 and 15 do not have bathroom facilities. Also, the building has no laundry facility, which for a 15-room hotel would include several washers, dryers, ironing & folding stations.

Evening Noise: Midwick residents include families with pre-school children (as young as 2 years old), school-age children and senior citizens. Hotel/Event noise would be disruptive as one of the families is just 3 homes down from the hotel.

A 15-room B&B, with varying arrival and departure times, loading and unloading of suitcases and slamming of doors/trunks during all times is disruptive to a family community. As an FYI, we currently manage a vacation rental property and our guests often arrive after midnight and departure prior to 5am.

In addition, the 150-person facility handling events during the week and on weekends would be disruptive. There was a suggestion to cap events to 10:30pm. Even with a conservative additional 30 minutes to allow guests to wait for their valets, caterers & musicians to pack-up, and employees to clean up and leave the property, an 11pm time seems too late to keep young children up, especially on school nights.

Building Up Against Midwick: The average B&B is 5,700 square feet (<https://paii.wildapricot.org/About-the-Industry>).

The Thompson St. Bed & Breakfast plans show a total of 20,473 square feet (including a 7,015 sq. ft. basement Event Hall with seating for 202 people; a 7,015 sq. ft. 1st floor with a commercial kitchen, restaurant, and guest suites 1-9; and a 6,443 sq. ft. 2nd floor has guest suites 10-15 & owner's suite). Such a large facility allows no buffer between the B&B and our Midwick neighborhood. The building and parking show as budding up to our property line. While we understand that this parcel is

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

zoned for alternative use, having a hotel built right up to our property line will lower our property values.

More Like a Hotel: According to the Professional Association of Innkeepers International, the “typical B&B has between 4 and 11 rooms, with 6 being the average.” (<https://paa.wildapricot.org/About-the-Industry>). Additionally, The Bed & Breakfast Institute revenue calculator only calculates to a max of 10 rooms (<https://www.bedandbreakfastinstitute.com.au/index.cfm/apg/calculator>).

While the state of Georgia considers 15 rooms a B&B, this is not common for the industry. This is not a quaint Bed & Breakfast, but more of a small hotel and event facility.

Employees Consideration: For a reference, a large 8.5-room B&B employs 4.6 workers (<http://www.sbdnet.org/small-business-research-reports/bed-and-breakfasts>).

The Thompson St. B&B is 15 bedrooms. Consideration must be made for hotel staff of at least 8 employees (partner, receptionist, housekeeping & laundry, chef, servers, maintenance/handyman). Additional staff must be added for the event and restaurant businesses.

Limited Parking: Parking shows 29 spots. With 3 spots taken for owner's current cars and 8 employees, that leaves 18 parking spots. The remaining spots would be for the hotel tourists, restaurant guests, event attendees, caterers (per owner, the B&B would not provide food for events), musicians, additional event waitstaff, etc. More parking would be necessary.

Parking Esthetics – Diagram shows parking close to the actual Alpharetta Loop walkway taking away from natural aesthetic of the loop.

Event Parking: Owner said that valet parking would be provided at the bank opposite the post office with valets for the 150 guests running across the street to the bank. Please note we currently have a daily high speeding problem along Thompson Street. The addition of valets running across day and night should be considered dangerous and high-risk. Additionally, valeted cars for 150 guests could cause blocking on Thompson Street.

Parking Overflow: Thompson Street parking in front of Midwick is currently maxed out by Midwick residents. There would be no way to control event parking from overflowing down Thompson street – which will take precious parking spots from residents and causing an even greater parking shortage.

Current State of Proposed B&B Property: The property currently houses stacks of furniture and bedding up against walls and windows, an unusable, deteriorated shed, and an unkept yard. Based on past results, a large B&B showing the same lack of care will cause surrounding property values to suffer.

In summary, we do not feel this is the best addition to the Thompson Street community. Thompson Street is a popular residential, walkable area and any zoning other than residential will lower property values and diminish the beautiful esthetics of the street.

Comment #11

We understand the public hearing on July 22 is about a parking variance for the proposed Bed & Breakfast at 112 Thompson St. We want you to know **our concerns about noise and possible evening disturbance** if the B&B's **event facility** is approved and **how it would directly impact us, our property value, and our quiet enjoyment of our home.**

We are opposed to the event facility in the proposed Magnolia B&B at 112 Thompson St. It would be located directly behind us.

The event facility would hold events such as weddings, reunions, graduation parties, etc., and these activities could possibly take place every weekend. It would face our backyard, deck and patio, as well as our living room and master bedroom. Of course every event will be different, but one fact remains..... **these events are for celebration**, and we do not believe this kind of noisy event facility belongs in a residential neighborhood.

Noise

Ms. Moss stated at a meeting for our community homeowners that the music will be **inside** the venue space. Will there not be any music during a celebration that takes place outside or in the gazebo? A wedding with no music? How about amplified music that will surely be a choice of many event planners? It seems highly unlikely that the guests will remain inside on a pleasant evening. How can there be any control of keeping the doors closed to avoid disturbing the neighborhoods adjacent to the proposed B&B site?

- Wedding parties are fun, lively, with dancing and lots of joyous noise. How can there be a control of noise or **additional** friends who might arrive to join in the fun, thus increasing the crowd to over 50?

- When does the music stop? When does the crowd noise filter out? How is that controlled when the party is at its most festive? We've all been to weddings where there **We would not want to have to continually bother the police to enforce the noise ordinance.**

Property Value

. Moss also states in the application that our properties should increase in value by providing a place for our guests to stay nearby and next to the loop. **This is not a facility that will enhance our property value.**

We in Academy Park, especially on Wexcroft Lane, have endured 2+ years of noise, hammering and vibration from the building of homes on Tiffany Square, at Thompson St's developments, Voysey, and others. All of these projects are enhancing Alpharetta - we understand the noise is temporary. However, **a party venue in our backyard will not be temporary.**

We appreciate the City Council members' review of this proposed facility and its impact on us, our neighbors and our residential community. **We urge you to deny the use of the planned event facility for social events.**

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

Comment #12

Based on what we heard and what Rhonda Moss shared after you departed from the group, my husband and I are no longer in favor of any type of business Rhonda is proposing. Tonight she continued to say the facility will be an event place. When we corrected her based on what you told us (and we heard weeks ago the City was not going to approve an event facility) Rhonda acted surprised. I lost faith that she is being upfront with us. Surely she would know before us that the event facility is not approved.

At our last meeting she told me a number of times personally that she cannot afford to just do a bed & breakfast/cafe ONLY. She "needs the revenue from the events." None of the homeowners there tonight believe this B & B will be contained to just a Bed & Breakfast.

Originally I was open to the idea of having a public cafe but did not consider deliveries and worst of all the garbage bin that will sit up against Midwick and the Alpha Loop. We moved into a neighborhood with no expectations of living next door to a commercial dumpster. (smell, pests, noise)

There are still very grave concerns about parking overflow onto Thompson Street even with her additional parking spots.

Like someone said tonight....if this was a historical building then it would add to the charm but to pop up a business amongst this residential street is not welcomed. Midwick, the flats and Academy Park bear the brunt of this decision.

Also, I worked in the hazardous waste industry and was curious what has been determined with her runoff near the creek and downstream for us?

Very disappointed and very concerned...even if she turns this into a daycare. I'm no expert in city planning but how is this zoned as a business on this residential street?

Comment #13

I am writing to state my opposition to the proposed bed & breakfast on Thompson Street. I had originally thought a bed and breakfast might be a nice idea in the local area. However, I've come to change my mind and am opposed once I learned of the various details in this application. My views are based on verbal input from the owner presented recently at an Academy Park meeting and at last night's open house at City Hall about the application.

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

Owner is proposing a revised concept but details were not available. However, based on her verbal input from the owner and her “investor” who was at the AP meeting, here’s what I am opposing:

1. a 15 room bed and breakfast
2. a Cafe (aka restaurant) open to the general public
3. an Event facility - sized for 50, available for rental outside the use of the bed and breakfast (reduced from apparently an original request of 150 person)

Making decisions on land use can be very difficult but I propose this one is a simple one to DENY based upon the following:

1. Impact to surrounding properties will be detrimental due to the (a) size of proposed B&B, (b) a large event facility and (c) a public restaurant making this a large commercial establishment nestled in the midst of a residential area. None of these individually are appropriate for the area and even worse when combined into all three commercial purposes being on a single 2 acre property nestled between residential properties.

While the property can be used for a bed and breakfast, the unified development code allows city council to evaluate the impact on surrounding properties (code states:

....It is determined that the use of the facility as a Bed and Breakfast will not detrimentally impact surrounding properties by virtue of noise, traffic, excess activity and other factors which could undermine the character and normal enjoyment of the surrounding property....”

https://library.municode.com/ga/alpharetta/codes/unified_development_code?nodeId=ARTIUSLA ST_S2.7MIRE

The surrounding properties - with the exception of the Post Office - are primarily dense residential areas. A multi-use facility that consists of essentially a hotel, a restaurant, and event center is a high traffic commercial establishment and is not congruent with the surrounding land use being residential.

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

2. Size of proposed B&B - unified code states a bed and breakfast have '2. *No more than fifteen (15) guests are permitted at any time*'. The proposed 15 bedroom bed and breakfast - minus 1 room for owner, is essentially a 14 room "hotel / inn" that could house up to 28 guests. The proposed size is 2X the average size of a B&B of six rooms (according to industry statistics <http://www.paii.com/About-the-Industry>). The average size is 5,700 square feet with the proposed 15 room facility being much larger than that. The proposed size and number of rooms makes this proposal more in line of an inn, lodge, or boutique hotel.

https://library.municode.com/ga/alpharetta/codes/unified_development_code?nodeId=ARTIIUSLA_ST_S2.7MIRE

Examples of other bed and breakfast facilities that have the term INNS and LODGES or HOTELS in their name and are SMALLER in size than this proposed one:

1. Blue Ridge INN Bed and Breakfast - called an INN and has 8 rooms <http://www.blueridgeinn.com>
2. Mountain Top LODGE Bed and Breakfast Hotel - has 12 rooms but these are split between **two separate buildings.**
3. Hotel Covell - new concept of "micro hotel" which has only 5 rooms <https://www.hotelcovell.com/hotel-covell>
4. Hotel Alma - 15 room boutique hotel - link provided so you have a visual of what this size entails <https://www.almahistoricahotel.com/en/>

All of the examples provided above except for Hotel Alma are much smaller than the proposed 15 room bed and breakfast and even their size does not feel appropriate for the primarily residential area surrounding the existing property.

3. Lack of confidence in city laws to ensure the facility does not become the "party house" in Alpharetta for rental which would be detrimental to the surrounding areas for noise and more importantly safety risks.

Today's world is a much different world with the ability for homes to be rented out easily using websites. Even areas that are not zoned for commercial used are being listed on these new websites and being used for concerts and large parties - all accelerated by a new industry

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

of “mega party planners” leveraging the new websites. Local enforcement officers are challenged to enforce existing laws. Example: The current challenges the city of Atlanta is facing with 4499 Garmon Road should give us cause to be concerned on the “unintended consequences” of a decision. The current owner of the proposed B&B may not have plans to rent the entire house, but plans changes, buildings get sold, and new owners sometimes have different views, funding, and business models. With the location of this property being situated so closely to city of Alpharetta and Avalon events, it is prime for being a highly valuable location for congregating groups together for party events.

See the links about 4499 Garmon Road as well as links about luxury home rentals as

[Latest Buckhead house party pushes Matzigkeit, mayor to possibly
...https://www.mdjonline.com/...newspapers/.../news/...party.../article_7b9b4658-9d0d-11e...](https://www.mdjonline.com/...newspapers/.../news/...party.../article_7b9b4658-9d0d-11e...)

[Stop the Garmon Party House \(@STOPGarmonParty\) |
Twitterhttps://twitter.com/stopgarmonparty?lang=en](https://twitter.com/stopgarmonparty?lang=en)

[PARTY HOUSES IN ATLANTA GEORGIA: Atlanta to crack down on
...https://www.wsbtv.com/news/local/atlanta-to-crack-down-on...party...-/963677999](https://www.wsbtv.com/news/local/atlanta-to-crack-down-on...party...-/963677999)

Example of new websites to easily book luxury and/or party event properties:

<https://www.bookluxexotiks.com>

<https://www.eventhomes.com>

<https://www.peerspace.com/venues/atlanta--ga/party-venue>

<https://www.thebigdomain.com/party-houses> (UK based but I’m sure there’s an equivalent for US)

I ask that you DENY the application as being proposed.

Comment #14

Hi there,

I live in Midwick on Thompson Street. I am very concerned about the impact the proposed bed and breakfast will have on our neighborhood. My concerns include congestion, parking issues, noise and traffic.

Summary of Citizen Comments for V-19-02 Thompson St. Bed & Breakfast

CZIM Comments

1. Dumpster, Parking, Sustainability of Business, Business Model
2. Parking, Noise from Events
3. Too close to residential, events w/noise, bands, music, catering, floor plan shows 150 capacity
4. Great Addition to neighborhood

July 14, 2019

**Dear Mr. Mayor of Alpharetta and
City Council Representatives Mitchell, Burnett, Richard, Hipes, Binder and Merkel,**

Former residents of Thompson St in Alpharetta voted to approve mixed zoning (residential and commercial space) on Thompson. Over time, approved development by the City has evolved Thompson St to become more residential than commercial. Yet the “old” vote for commercial space on Thompson exists. Thus, the reason one resident at 112 Thompson has applied to construct and operate a Bed & Breakfast Hotel, Restaurant and Event/Meeting business.

We are residents of Voysey at the corner of Thompson and Haynes Bridge, a neighborhood immediately adjacent to the B&B business that would affect Thompson and the Loop. Per the March mailing notification list, we were surprised Rhonda Moss formally notified only 2 Voysey residents of plans to open her business. We’ve since rounded up the following concerns and requests from all but 4 Voysey owners out of town (Kathi Cook did not participate). Michael Woodman has been copied on this letter, and one previously sent to him week of July 7th:

- **Citing Section 2.6.1.A of the Alpharetta Unified Code article on Neighborhood Compatibility, we ask the City Council to please consider whether a Hotel/Restaurant/Meeting/Event facility of this size and scope is a compatible structure on a street that has since become entirely residential.**
- We are not in favor of a B&B, a Public Restaurant or any type of Event/Meeting/Party space at 112 Thompson St.
- We oppose the City’s recommendation to consider such a large business for what has become an entirely residential street. We hope the City will please consider and understand our perspective.
- Add to this, constant delivery trucks and commercial and customer traffic on Thompson.
- This is not a B&B, but rather, an Event Hotel...in the middle of a residential street. Can Council Members and City Planners please reconsider the imposing size of this business on what has evolved into residential Thompson?
- If the 150 person event space is also approved, the entire facility would potentially service a minimum of 250-300 people at any given time (hotel guests + owner residents + 150 event guests + meeting attendees + restaurant customers + customers *waiting* for tables + wait staff, catering, cleaning and hotel employees).
- *Prior businesses on Thompson were smaller, quieter operations that did not incur constant delivery vehicles and traffic (ie. Attorney office, Chiropractor). These are the types of businesses Thompson residents expected to have co-exist among our homes, not a large 15 bedroom hotel, restaurant, or meeting/event/party room.*
- City explained this was initially to be a small 3-4 bedroom B&B with a professional kitchen where the owner could cook for guests and sell her pies. No restaurant, no meeting or event room. This type of small operation appealed to local residents.
- City zoning plans for Thompson indicate the street as part of the downtown live/work/play design. However, City approved projects have instead transformed Thompson, and the adjacent Loop, into an entirely residential street. How is it fair to suddenly impose a non-compatible large business in the midst of a residential neighborhood?
- The Citizen Participation Report from Rhonda Moss “reflects support for the bed and breakfast” but offers no proof of those statements.

It is our hope Alpharetta City Council will consider these concerns from the “new” residents of Thompson St (Voysey and surrounding), none of who voted for commercial properties to exist on this street.

As Thompson St feeds easily to Avalon, It's a "cut through" for auto, cyclist and foot traffic. Pedestrian traffic on Thompson will lessen when the Loop opens. Yet walkers and cyclists will still use Thompson to avoid crowds/dogs on the Loop, as well as enjoy the beautiful frontal aspect of the tree-lined street. Ultimately, Thompson has become more residential-pedestrian in nature. We believe adding a large commercial B&B/Restaurant/Event facility to Thompson will negatively alter the nature of the street and will cause many of the following issues.

With regard to traffic, there has been near miss accidents between drivers and pedestrians in front of our homes on Thompson, warranting the possibility of future speed bumps for this road. USPS *and* commercial delivery trucks are constant offenders in terms of high speed driving. Adding active commercial traffic, including delivery trucks to the facility, would worsen speed and traffic issues we already have.

Further, we ask the City Council to strongly consider the risk that exists from the business owner having no experience in the hospitably or restaurant industry, especially for a project of this size and scope. Bankruptcy could lead to a large unfinished project in the middle of Thompson, affecting home values.

We are requesting the Alpharetta City Council and City planners PLEASE read and consider the information herein to better understand the perspective of current Thompson St homeowners, and it is our hope this business will not be further approved:

1. Property Values Safeguarded

The application submitted by the business owner, Rhonda Moss, states the facility would increase surrounding home values. What is she basing this on?

- A. Per survey of local realtors and developers, all stated that an imposing B&B Hotel/ Restaurant/Event facility will absolutely reduce the residential property values on Thompson Street and surrounding residences.
- B. Please be mindful of current Thompson St resident taxpayer's ability to protect home values that have resulted from living on what has transformed into a residential street.
- C. A full service hotel is already being built in downtown Alpharetta, which would count 11 hotels within 1.5 miles of Thompson. Why jeopardize the home values on Thompson St with a 12th hotel? Why the need for such a large business on residential Thompson?
- D. Should the business fail, have City Council members considered the negative affect on Thompson & Loop home values, and street safety? (Again, the business owner has no experience in hospitality or restaurant industries.)
- E. PLEASE consider the overall high risk posed by an inexperienced business owner for a project of this size (*design, construction and operation*)?

6. Traffic

As stated, traffic issues *already exist* between drivers and pedestrians on Thompson as drivers travel at high speeds "cutting through" from Avalon to Main St. Overflow from a commercial business of this size on Thompson would increase traffic incidents requiring constant police and emergency response.

4. Parking

Street parking for residents and guests on Thompson St now, *without* a B&B facility, is difficult, and *will worsen when 22 new homes are completed adjacent to Voysey (Thompson St Flats + Alcovy).*

- A. Adding overflow from a commercial facility will significantly increase street parking issues on Thompson.
- B. Why are *any* businesses being considered for residential Thompson when there exists little to no parking to support *even the residential* traffic on this street?

- C. The B&B owner stated last week her intent to utilize Thompson St parking spaces for Valet Parking, with overflow going into the GUVEN Jeweler's parking lot on Old Milton. Has she submitted this Valet Parking plan to the City; is the City in favor of this? Has Guven approved her overflow use of their lot?
- D. **Please allow existing homeowners/taxpayers, to enjoy the little parking that exists on Thompson for our own guests and family, rather than have it completely monopolized by B&B/Restaurant/Event Customers and Valet.**

5. Heavy Vehicles that service BB events and Restaurant

- A. Loading/Unloading...where will parking exist for large vehicles and trucks servicing the B&B, Restaurant and Events facility? Will "temp parking" in the middle of Thompson be allowed while loading/unloading?
- B. Oversized equipment & motor home vehicles - where will these park overnight?
- C. Restaurants and Event Spaces are active businesses with constant deliveries and truck traffic - how can this busy activity be safe for existing residential communities on Thompson?
- D. **Again, is it fair to residents to withstand constant commercial traffic on a street that has since evolved into being entirely residential?**

6. Operating Hours, Noise Factor, Trespassing

- A. A B&B Hotel/Event/Meeting/Restaurant facility at ANY TIME on ANY DAY will increase commercial noise on *residential* Thompson St / Alpha Loop.
- B. Regardless of laws for operating hours, it is likely guests will violate rules.
- C. Increased noise complaints on a quiet street will require constant police oversight.

7. Trespassers

- A. Thompson St and Alpha Loop homes adjacent to the commercial facility will be subject to trespassers given customer's easy access to private residences.
- B. How will the business owner, and the City, regularly monitor and police customer trespassing from Thompson and the Alpha Loop?
- C. Should the business fail and become vacant, homeowners are concerned about trespassers and squatters. Will the current City operating budget allow for increased police support to Thompson & Loop homeowners to help maintain home values and safety? Or would this increased policing lead to a tax burden on Thompson and Alpha Loop residents (who did not support the business at the outset)?

8. Owner Occupied & Operated

Per City Bed and Breakfast Ordinance, the establishment must be "owner occupied and operated". Have City Planners and Council Members received an operating plan from the business owner, showing who will be operating the multiple businesses within the facility? Are you certain all business at the facility will be operated by the owner?

9. Alcohol Serving

Events will likely have party guests who will overflow into the street and onto the Alpha Loop. Again, increased noise complaints, trespassing and legal incidents will occur, requiring constant police oversight.

11. Overflowing Trash and Control

Please consider the waste affect to residences and the Loop, which will regularly occur from a business facility. *Rodent populations on Thompson and the Loop will increase significantly.*

12. Topography Issues

Per the application, topography issues exist that need investigation before a business is considered for operation on the stream bordering the back of the property.

13. Sex Offender Concerns

- A. State of Georgia law requires that no sex offender live or work within 1000 ft of schools/playgrounds, school bus stops, libraries etc, where children congregate.
- B. Currently there is an elementary bus stop in the middle of Thompson, also at Melina Pl which is 350 ft from the proposed B&B. There is City Library which is 850 Ft from the proposed B&B.
- C. Can the B&B/Hotel owner and the City ensure adherence to sex offender laws on a residential street?

14. Design of BB

- A. The City has stated the design of homes on Thompson St and the Alpha Loop need to look similar to Voysey style homes. Yet local residents have noted the plans for the B&B are "Greek Revival" or "Roman" in style, a design that does not reflect "Voysey".
- B. Voysey is a successful design. Please do not allow further building structures that are inconsistent with the City's stated vision for residential Thompson St.

15. B&B Guests

- A. We understand Ameris Bank Amphitheater performers have expressed interest in renting whole facility B&B's in Alpharetta. Please research that celebrity guests and their entourages notoriously cause damage to hotel facilities (query hotel owners!). This is a type of guest we do not want in our neighborhood. We cannot express this point strongly enough - high risk hotel customers do not belong in a residential community.
- B. Experienced hotel facilities are better equipped to handle this type of customer.

Thank you for considering all of the above issues. Our hope is Alpharetta City Council will decide in favor of safety, topography, cleanliness and revenue protection for *what has become quiet, residential Thompson Street*, and will vote against *any* further inquiries for the proposed business facility (B&B Hotel/Restaurant/Event or Meeting Rooms) at 112 Thompson St.

Thank you also, for serving on City Council, we know it's a time consuming and difficult role. Please know we appreciate the care that you've given to transform Alpharetta into an amazing city! (**please note PS inquiries at bottom of doc)

Respectfully,

Mary Beth & Bram Krieger

2290 Melina Pl
[REDACTED]

Angie and Pat Mooney

2300 Melina Pl
[REDACTED]
[REDACTED]

Scott Fleming

2320 Melina Pl
[REDACTED]

Tracey & Terry Harper

2330 Melina PI

[REDACTED]
[REDACTED]

Donna Jakulski

2370 Melina PI

[REDACTED]

Lori & Michael Kaplan

2340 Melina PI

[REDACTED]
[REDACTED]

Natalie & Scott Lance

2360 Melina PI

[REDACTED]
[REDACTED]

Leslie & Jim Avioli

2380 Melina PI

[REDACTED]
[REDACTED]

Fran & Nick Christie

2420 Melina PI

[REDACTED]
[REDACTED]

Judi & Jeff Renner

2430 Melina PI

[REDACTED]
[REDACTED]

Karen & Jarrett Long

2305 Melina PI

[REDACTED]
[REDACTED]

Michelle & Randy Gritters

2295 Melina PI

[REDACTED]
[REDACTED]

PS - Can you please provide answers to the following:

- A. Our name exists on a list as having received a notification letter from Rhonda Moss in March 2019, but we never received it. Could City Council please consider a more reliable digital method for informing surrounding property owners of new developments, which could confirm digital receipt of delivery?(FYI - Rhonda's list includes *non-property owners*, duplicate and triplicate recipients and only 2 Voysey residents on the list, Does this list legally meet the City's notification requirements?)
- B. What other commercial businesses have been "City Planning recommended" for Thompson St as of this writing?
- C. Since the B&B dwelling includes hotel, meeting, event, restaurant and living space for the business owner, what is the *building type* the construction code would follow in Alpharetta Unified Code requirements?
- D. The current Site Plan on file with the City does not label the rooms that will exist within the building. Will City Planners and City Council members require the business owner to label all the rooms prior to the July 22 vote, so we'll have a more clear vision of what Rhonda is constructing? How can a vote occur with this kind of detail missing?

CITIZEN PARTICIPATION FORM - PART A /B

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: Magnolia B&B

Contact Name: Rhonda Moss Telephone: 404-226-8267

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

Peggie Wiggins 269 Thompson St Great addition

Nick Greacu

Tomi Fetzpatrick parking

Diane Eylvester

Geil Lafleche parking, traffic, noise

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- | | |
|---|---|
| <input type="checkbox"/> Letter | <input checked="" type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input checked="" type="checkbox"/> Group Meeting |
| <input checked="" type="checkbox"/> Email | <input type="checkbox"/> Other (Please Specify) _____ |

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

April 2, 2019

Dear Property Owner:

Magnolia Bed & Breakfast has filed a Variance request to allow parking between the building and road and to allow buffer averaging to allow a stream buffer encroachment. The property is located at 112 Thompson Street, Alpharetta, GA 30009.

The case number is V-19-02. Approval will allow the property to be used as a bed & breakfast with an event facility.

The city will hold a Community Zoning Information Meeting on Wednesday, May 8, 2019 from 6 pm to 7 pm in the rotunda at City Hall.

This item will be considered by The City Council on May 28, 2019 at 6:30 pm in Council Chambers at City Hall.

If you have any questions or would like additional information, please contact Rhonda Moss at:

770-569-2283

r.l.moss@att.net

112 Thompson St.

Alpharetta GA 30009

Sincerely,

Rhonda Moss

CITY OF ALPHARETTA

PUBLIC HEARING APPLICATION

THOMPSON ST BED & BREAKFAST
FOR OFFICE USE ONLY

Case #: _____

Fee Paid Initial: _____

COMMUNITY DEVELOPMENT DEPARTMENT • 2 PARK PLAZA • ALPHARETTA, GA 30009

1. This page should be the first page in each of your completed application packets.
2. It is preferred that all responses be typed. Illegible applications will not be accepted.
3. Prior to signing and submitting your application, please check all information supplied on the following pages to ensure that all responses are complete and accurate. Incomplete applications will not be accepted.
4. Payment of all applicable fees must be made at the time of application. Payment may be made via cash, credit card (American Express, Master Card or Visa), or check made payable to "City of Alpharetta."
5. Applications will be accepted only on the designated submittal dates between the hours of 8:30 AM and 3:30 PM.
6. If you have any questions regarding this form, please contact the Community Development Department by calling 678-297-6070.

Contact Information:

Contact Name: RHONDA / Leslie Moss Telephone: 404-226-8267

Address: 112 THOMPSON ST. Suite: _____

City: ALPHARETTA State: GA Zip: 30009 Fax: _____

Mobile Tel: 404-226-8267 Email: R.L.MOSS @ ATT.NET

Subject Property Information:

Address: 112 THOMPSON ST. Current Zoning: _____

District: _____ Section: _____ Land Lot: _____ Parcel ID: _____

Proposed Zoning: _____ Current Use: _____

This Application For (Check All That Apply):

- | | | |
|---|---|------------------------------------|
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> Master Plan Amendment | <input type="checkbox"/> Exception |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Master Plan Review | |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Public Hearing | |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input type="checkbox"/> Other (Specify): _____ | |

APPLICANT REQUEST AND INTENT

What is the proposed use(s) of the property?

PROPOSED FOR MIX-USE PROJECT:

- BED & BREAKFAST
- EVENT FACILITY
- CAFE

Applicant's Request (Please itemize the proposal):

- ~~RE ZONING~~
- VARIANCE
 - reduce stream buffer
 - allow parking b/w road and building

Applicant's Intent (Please describe what the proposal would facilitate):

- INTENT IS TO BUILD A BED AND BREAKFAST MIXED WITH AN EVENT FACILITY AND CAFE.
- THIS FACILITY WILL CREATE OPPORTUNITIES FOR GUESTS TO STAY WHILE ENJOYING THE ALPHA LOOP.
- A CAFE WILL BE AVAILABLE TO LOCAL COMMUNITY.

PROPERTY OWNER AUTHORIZATION

Property Owner Information:

Contact Name: Leslie Rhonda Moss Telephone: 404-226-8267

Address: 112 Thompson St. Suite: _____

City ALPHARETTA State: GA Zip: 30009

Authorization:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Application for Public Hearing before the City of Alpharetta, Georgia.

As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Public Hearing in request of the items indicated below.

- Annexation
- Special Use
- Rezoning
- Conditional Use
- Variance
- Master Plan
- Land Use Application
- Other _____

Identify Authorized Applicant:

Name of Authorized Applicant: Rhonda Moss Telephone: 404-226-8267

Address: 112 Thompson St Suite: _____

City ALPHARETTA State: GA Zip: 30009

So Sworn and Attested:

Owner Signature: *Rhonda Moss* Date: 3/19/19

Notary: 

Notary Signature: *C McLamb* Date: 3/19/19

DISCLOSURE FORM

The Official Code of Georgia Annotated requires disclosure of campaign contributions to government officials by an applicant or opponent of a rezoning or public hearing petition (O.C.G.A. 36-67 A-1).

Applicants must file this form with the City of Alpharetta Community Development Department within ten (10) days after filing for rezoning or public hearing. Opponents to a rezoning or public hearing petition must file this form five (5) days prior to the Planning Commission meeting at which the subject rezoning or public hearing petition is scheduled to be heard.

Name of Applicant or Opponent: Rhonda & Leslie Moss

Subject Public Hearing Case: 112 Thompson St Bed and Breakfast

Campaign Contribution Information:

Please provide the requested information for each contribution with a dollar amount or value of \$250 or more made within the past two (2) years to an Alpharetta Official by the individual identified above. Please use a separate form for each Alpharetta Official to whom such a contribution as been made.

If the individual identified above has made no such contributions to an Alpharetta Official within the past two (2) years, please indicate this by entering "N/A" on the appropriate lines below.

Name of Official: N/A Position: _____

Description of Contribution: _____ Value: Ø

Description of Contribution: _____ Value: _____

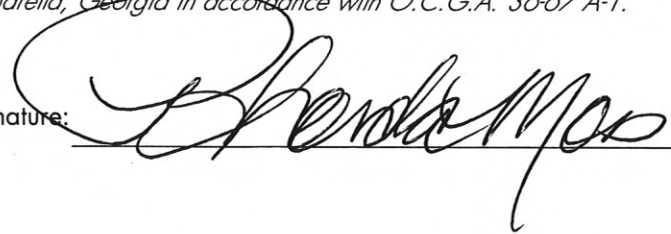
Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Campaign Contribution Information:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Disclosure Form is true and accurate and that I have disclosed herein any and all campaign contributions made to an Official of the City of Alpharetta, Georgia in accordance with O.C.G.A. 36-67 A-1.

Signature:  Date: 3/19/19

ALPHARETTA PLANNING COMMISSION REVIEW CRITERIA

How will this proposal be compatible with surrounding properties?

How will this proposal affect the use and value of the surrounding properties?

SURROUNDING PROPERTIES SHOULD INCREASE IN VALUE.
SURROUNDING RESIDENTS WILL HAVE A CLOSE
SOURCE BOARDING OUT OF TOWN GUESTS & A PLACE FOR EVENTS

Can the property be developed for a reasonable economic use as currently zoned? Please explain why or why not.

YES. PROPERTY IS ALREADY ZONED TO
ACCOMMODATE A BED & BREAKFAST FACILITY.

What would be the increase to population and traffic if the proposal were approved?

FACILITY WILL HAVE A CAPACITY FOR 15 GUEST
ROOMS AND 150 FOR SPECIAL EVENTS MAX.

What would be the impact to schools and utilities if the proposal were approved?

N/A

How is the proposal consistent with the Alpharetta Comprehensive Plan; particularly the Future Land Use Map?

Are there existing or changing conditions which affect the development of the property and support the proposed request?

On a separate sheet or sheets, please provide any information or evidence that supports your request and the statements that you have provided in this application.

BOARD OF ZONING APPEALS REVIEW CRITERIA

Please respond to the following ONLY if you are applying for a zoning variance.

Are there extraordinary and exceptional conditions pertaining to the subject property because of its size, shape, or topography? Please describe them.

Yes, property has topographic issues with stream at rear of property.

Would the application of the Zoning Code standards as they relate to the subject property create an unnecessary hardship? Please explain.

Are there conditions that are peculiar to the subject property? Please describe them in detail.

Yes, property has topographic issues.

Would relief, if granted, cause substantial detriment to the public good or impair the purpose and intent of the Zoning Code? Please defend your response.

No, the proposal will bring a needed use to the City.

On a separate sheet or sheets, please provide any information or evidence that supports your request and the statements that you have provided in this application.

CITIZEN PARTICIPATION FORM - PART A

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: MAGNOLIA BED AND BREAKFAST

Contact Name: RHONDA MOSS Telephone: 404-226-8267

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

SEE ATTACHED LIST

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- Letter
- Telephone
- Email
- Personal Visits
- Group Meeting
- Other (Please Specify) _____

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

THOMPSON ST BED & BREAKFAST

3.19.19

ACADEMY PARK NEIGHBORHOOD ASSN
INC
12102 DANCLIFF TRC
ALPHARETTA GA 30009

AYCOCK ELVIN L
8465 STEEPLECHASE DR
ROSWELL GA 30076

BLACKWATER VENTURES LLC
306 CHAMPIONS CT
WOODSTOCK GA 30188

BUCKLEY KERRY M TR
1985 SOUTHERS CIR
SUWANEE GA 30024

COPLIN CARROLL
12511 WEXCROFT LANE
ALPHARETTA GA 30009

CRP EAH TS L L C
2303 CUMBERLAND PKWY SE
ATLANTA GA 30339

DREYFUS PROPERTIES L L C
6094 ODELL ST
CUMMING GA 30040

EASLAN TIFFANY SQUARE LLC
3525 PIEDMONT RD NE BLDG/STE 8 205
ATLANTA GA 30305

EATON JOANNE
12526 WEXCROFT LN
ALPHARETTA GA 30004

GLEITER LINDA DICKERSON
12500 WEXCROFT LN
ALPHARETTA GA 30004

HENDERLIGHT CAROL W
12506 WEXCROFT LN
ALPHARETTA GA 30009-8761

JOSEPH F & MARILYN W FOOS REVOCABLE TRUST
THE
P O BOX 1313
ALPHARETTA GA 30004

KAIROS CAMP LLC
410 PEACHTREE RD STE 424
CUMMING GA 30041

KAIROS OLD MILTON LLC
410 PEACHTREE PKWY STE 4245
CUMMING GA 30041

LUMSDEN DONNA KAY
12502 WEXCROFT LANE UNIT 283
ALPHARETTA GA 30009

LUXE PROPERTIES INC
2974 HARDMAN CT NE
ATLANTA GA 30305

MATT'S WALTER J & SANDRA L
12504 WEXCROFT LN
ALPHARETTA GA 30009-8761

MELROSE RICHARD MELROSE BEVERLEY DAWN
12522 WEXCROFT LN
ALPHARETTA GA 30009-8761

MOSS LESLIE MOSS RHONDA
112 THOMPSON ST
ALPHARETTA GA 30004

NEWHALL LAND CO
2974 HARDMAN CT
ATLANTA GA 30305

NOTTING HILL OF ALPHARETTA LLC
5100 PEACHTREE PKWY STE 200
NORCROSS GA 30092

OLD MILTON HOLDINGS LLC
5100 PEACHTREE PKWY STE 200
NORCROSS GA 30092

PORTER DAVID E
376 AIR ACRES WAY
WOODSTOCK GA 30188-2910

RANSOPHER TAD D
82 THOMPSON ST
ALPHARETTA GA 30004

RONALD D & LINDA J COLEMAN TRUST
AGREEMENT THE
514 WHITE PELICAN CIR
VERO BEACH FL 32963

SCOTT ROBERT J & SCOTT NANCY H
12524 WEXCROFT LANE
ALPHARETTA GA 30009

SEIDMAN SANFORD H & SEIDMAN GAIL L
12513 WEXCROFT LANE
ALPHARETTA GA 30009

STATE BANK & TRUST COMPANY
4219 FORSYTH RD
MACON GA 31208

TORTORELLO MICHAEL F
12515 WEXCROFT LN
ALPHARETTA GA 30009

UNITED STATES POSTAL SERVICE
1735 NORTH BROWN RD SUITE 200
LAWRENCEVILLE GA 30043-8153

3.19.19

V-19-02

THOMPSON ST BED & BREAKFAST

VALLERIE SUSAN
12528 WEXCROFT LANE
ALPHARETTA GA 30009

HAGLER GORDON
12420 DANCLIFF TRC
ALPHARETTA GA 30009

ACADEMY PARK NEIGHBORHOOD ASSN INC
1950 SULLIVAN RD
ATLANTA GA 30337

ACADEMY PARK NEIGHBORHOOD ASSN
INC
P.O. BOX 87363
ATLANTA GA 30337

KRIEGER BRAM & MARY BETH
2290 MELINA PL
ALPHARETTA GA 30009

LONG JARRET & LONG KAREN
2305 MELINA PL
ALPHARETTA GA 30009

GRITTERS RANDALL D & GRITTERS
MICHELLE J E T
2295 MELINA PL
ALPHARETTA GA 30009

GAYASUDDIN MOHAMMED
92 THOMPSON ST
ALPHARETTA GA 30009

KRISTJANSSON SIGURJON
300 BANBURY XING
ALPHARETTA GA 30009

GRECCO NICHOLAS J & SYLVESTER DIANE
310 BANBURY XING
ALPHARETTA GA 30009

SWARTZ JEANNE
320 BANBURY XING
ALPHARETTA GA 30009

FUNDERBURK CLAYTON S
330 BANBURY XING
ALPHARETTA GA 30009

BEGLEY DIANN & DENNIS JR
340 BANBURY XING
ALPHARETTA GA 30009

BOGART REVOCABLE TRUST
360 BANBURY XING
ALPHARETTA GA 30009

STRAND RICHARD A
370 BANBURY XING
ALPHARETTA GA 30009

HODSDON PATRICIA
385 BANBURY XING
ALPHARETTA GA 30009

LAPHAM GREGORY W & YVONNE M
395 BANBURY XING
ALPHARETTA GA 30009

LAFLECHE PHILLIP R & GAIL M
415 BANBURY XING
ALPHARETTA GA 30009

3.19.19

V-19-02

THOMPSON ST BED & BREAKFAST

Deed Book 45052 Pg 449
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 575 of the 1st District 2nd Section of Fulton County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING, beginning at a point found at the intersection of the northeasterly side of Thompson Street (30 foot Right-of-Way) and the south line of Land Lot 748, said point is located 95 feet from an iron pin found along the northeasterly side of Thompson Street (30 foot Right-of-Way) at the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING continue along Thompson Street (30 foot Right-of-Way) running North 85 feet 34 minutes 29 seconds West a distance of 205.00 feet to an iron pin set along Thompson Street (30 foot Right-of-Way); leaving Thompson Street (30 foot Right-of-Way) run thence North 01 degree 05 minutes 00 seconds East a distance of 256.44 feet to an iron pin set at the intersection of Land Lots 1268 and 1267; run thence North 90 degrees 00 minutes 00 seconds East a distance of 205.15 feet to an iron pin set; run thence South 01 degree 10 minutes 50 seconds West a distance of 272.27 feet to an iron pin found at the TRUE POINT OF BEGINNING; said tract or parcel of land contains 1.243 acres, more or less, according to the survey of for Leslie Moss, by Tru-Line Surveying Company, prepared under the seal and certification of W.E. Clonts, Georgia Registered No. 2166, dated April, 5, 2007, bearing a Job No. 01-6028 as shown on attached Exhibit "B."



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Community Development

Submitted By:

Sponsored By:

Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: V-19-07 NORTHWEST EXTERMINATING VARIANCE

NOTE: THIS ITEM HAS BEEN DEFERRED AT THE REQUEST OF THE APPLICANT AND WILL BE NEITHER HEARD NOR DISCUSSED AT THIS MEETING. THE ITEM HAS BEEN RESCHEDULED TO THE AUGUST 26, 2019 CITY COUNCIL MEETING.

II. RECOMMENDATION:

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: NO

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST:

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

V. ALTERNATIVES:

VI. ATTACHMENTS:

Northwest Exterminating N Main Variance CC Staff Report, Aerial Map, CZIM NW Exterminating, 2019-7-1 Citizens Part B (printed), Public Notification Letter, CombineApplicationforPacket7.10.19



CITY COUNCIL MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT

SUBMITTED BY: KATHI COOK

DRAFTED BY: MICHAEL WOODMAN

I. AGENDA ITEM TITLE: V-19-07 NORTHWEST EXTERMINATING/193 NORTH MAIN STREET VARIANCE

CITY COUNCIL:

JULY 22, 2019

II. RECOMMENDATION:

Approve V-19-07 Northwest Exterminating/193 North Main Street Variance request to allow parking areas between a building and the street and to reduce the 50' undisturbed buffer and Deny variance request to allow a dumpster within the building setback along North Main Street, subject to the following conditions:

1. Property shall be developed substantially in accordance with submitted plan, dated 6/11/2019, except for modifications required to comply with the conditions below.
2. Parking shall be limited to no more than nine (9) spaces. Parking area shall be laid out to have the least impact to existing trees (on- and off-site), as approved by Staff. New parking areas (drive aisles and parking stalls) shall be constructed of pervious pavers.
3. Pedestrian connection shall be provided from front door to the public sidewalk.
4. Minimum 10' landscape strip along North Main Street shall be installed and shall be exclusive of overhead utilities and utility easements. If landscape material is removed during Hwy 9 construction, property owner shall be required to reinstall any lost vegetation.
5. Minimum 15' heavily planted buffer shall be provided along the rear property line.
6. Property owner shall install required parking lot screening shrubs, minimum 2' tall at installation, around the perimeter of parking areas, as approved by Staff. If shrubs are removed during Hwy 9 construction, property owner shall be required to reinstall any lost vegetation.
7. Property owner shall obtain a land disturbance permit (LDP).
8. All previous zoning conditions included in CU-03-04 shall remain in effect, except where previous conditions conflict with the conditions above.

III. REPORT IN BRIEF:

The applicant, Max Searan on behalf of Northwest Exterminating, is requesting a variance to allow a drive aisle between a building and the street, allow a dumpster enclosure within the front building setback along North Main Street and reduce the 50' undisturbed buffer at the rear of the property to allow for parking. GDOT's North Main Street project will result in the loss of an existing parking area, which is currently located in the front yard. The subject property is located at 193 North Main Street on the east side of North Main Street just south of Mayfield Road.

DISCUSSION

The submitted request, if approved, would allow a drive aisle between a building and the street, a dumpster enclosure within the front building setback along North Main Street and a reduction in the 50' undisturbed buffer at the rear of the property. GDOT's North Main Street project impacts the existing parking lot, which is located in the front yard of the property. The subject property is located at 193 North Main Street on the east side of North Main Street just south of Mayfield Road.

The property is developed with a 1-story, 2,737 square foot structure that was formerly used as a residence before being converted to offices for Northwest Exterminating. The subject property is zoned C-1 (Neighborhood Commercial) and is located in the Downtown Overlay. Surrounding properties are zoned C-1 to the north, west and south and DT-R (Downtown Residential) to the east. Taylor Morrison is developing a single-family detached subdivision to east, \$20 Chiropractic Everyday is located to the south, CVS is located to the west, and Morningside of Alpharetta Senior Living is located to the north.

As described below, the applicant is requesting three (3) variances from Unified Development Code (UDC):

1. UDC Appendix A: Alpharetta Downtown Code, Subsection 2.4.6, Vehicle Access and Parking Locations to allow a drive aisle between a building and the closest street.
2. UDC Appendix A: Alpharetta Downtown Code, Section 2.6 Neighborhood Compatibility, to reduce the 50' undisturbed buffer at the rear of the property.
3. UDC Subsection 2.2.14(D) C-1 District Regulations, to allow a dumpster enclosure within the front setback along North Main Street.

Northwest Exterminating received conditional use approval in 2003 to allow the pest control business on the C-1 property. In order to accommodate additional parking at that time, a variance was requested to encroach into the 50' undisturbed buffer at the rear of the property. However, the applicant withdrew the variance request upon notification that the property owner to the rear opposed the requested buffer reduction. The conditional use application indicated that Northwest Exterminating consisted of ten (10) employees with hours of operation from 7:30 AM to 5:00 PM Monday – Friday. City Council conditions were placed on the conditional use approval prohibiting a dumpster and outdoor storage. In 2008, the applicant submitted a similar variance request to reduce the 50' undisturbed buffer at the rear of the property and to allow a gravel parking lot in order to expand parking (11 additional spaces) for the pest control business. The request was ultimately denied by City Council.

The property currently has nine (9) parking spaces located in the front yard and under the carport. GDOT's Main Street project will impact the applicant's existing parking lot, resulting in most of the parking being lost. To address the loss of parking, the applicant proposes to add a one-way drive aisle around the building including thirteen (13) parking spaces at the rear and north side of the property, as well as in the carport. 'Office' use in the Downtown Overlay requires three (3) parking spaces per 1,000 square feet, or eight (8) spaces. If approved, conditions are recommended limiting the number of parking spaces to no more than nine (9) spaces.

SITE PLAN

The applicant's site plan depicts the 2,737 square foot structure surrounded by a one-way drive aisle with parking at the rear and side, as well as a dumpster enclosure in the northwest corner of the site. Thirteen (13) parking spaces are depicted, including ten (10) angled parking spaces within 10' of the east (rear) property line, two (2) parallel spaces within 5' of the north (side) property line and one (1) space in the existing carport. A 10' landscape buffer is proposed at the rear of the property.

The tree information on the site plan depicts several trees on the property that would be impacted by the applicant's proposal, as currently shown. Existing trees are primarily located

around the perimeter of the property. If approved, conditions are recommended requiring parking areas be constructed of pervious pavers to protect the CRZ of existing trees.

VARIANCE REVIEW CRITERIA

The City of Alpharetta Unified Development Code Article IV, Section 4.5.3 outlines the criteria set forth for granting a variance. The ordinance specifically states..."a variance may be granted in whole or in part, or with conditions, in such individual case of unnecessary hardship upon a finding that":

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; or

Response: Generally, the variance requests are related to impacts to the property, or a loss of parking, resulting from GDOT's Main Street project. However, the business is currently served by nine (9) parking spaces and the Downtown Code would require eight (8) parking spaces for the use. Therefore, the applicant's site plan, which depicts a total of 13 parking spaces, should be redesigned to include no more than nine (9) parking spaces. In addition, the parking area should be laid out to have the least impact on the existing tree canopy and a dumpster should be prohibited.

(2) The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or

Response: Generally, the variance requests are related to impacts to the property, or a loss of parking, resulting from GDOT's Main Street project. However, the business is currently served by nine (9) parking spaces and the Downtown Code would require eight (8) parking spaces for the use. Therefore, the applicant's site plan, which depicts a total of 13 parking spaces, should be redesigned to include no more than nine (9) parking spaces. In addition, the parking area should be laid out to have the least impact on the existing tree canopy and a dumpster should be prohibited.

(3) There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned; or

Response: Generally, the variance requests are related to impacts to the property, or a loss of parking, resulting from GDOT's Main Street project. However, the business is currently served by nine (9) parking spaces and the Downtown Code would require eight (8) parking spaces for the use. Therefore, the applicant's site plan, which depicts a total of 13 parking spaces, should be redesigned to include no more than nine (9) parking spaces. In addition, the parking area should be laid out to have the least impact on the existing tree canopy and a dumpster should be prohibited.

(4) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the City of Alpharetta ordinances.

Response: Approval of the requested variances should not cause substantial detriment to the public good, if conditions are approved prohibiting a dumpster and limiting the number of parking spaces to no more than nine (9) spaces.

CONCURRENCES

Staff has reviewed the applicant's proposal and finds that it can generally support the variances to allow a drive aisle between the building and the street and to reduce the 50' undisturbed buffer. However, the variance to allow a dumpster within the front building setback along North Main Street is not supported given past Council conditions on the property, which limit garbage pick-up to residential service. If approved, conditions are recommended requiring a minimum 15' heavily planted buffer at the rear of the property, as well as parking lot screening.

The variance requests are generally related to impacts to the property, or a loss of parking, resulting from GDOT's Main Street project. However, the business is currently served by nine (9) parking spaces and the Downtown Code would require eight (8) parking spaces for the use. Therefore, the applicant's site plan, which depicts a total of 13 parking spaces, should be redesigned to include no more than nine (9) parking spaces. In addition, the parking area should be laid out to have the least impact on the existing tree canopy.

CITIZEN PARTICIPATION PLAN

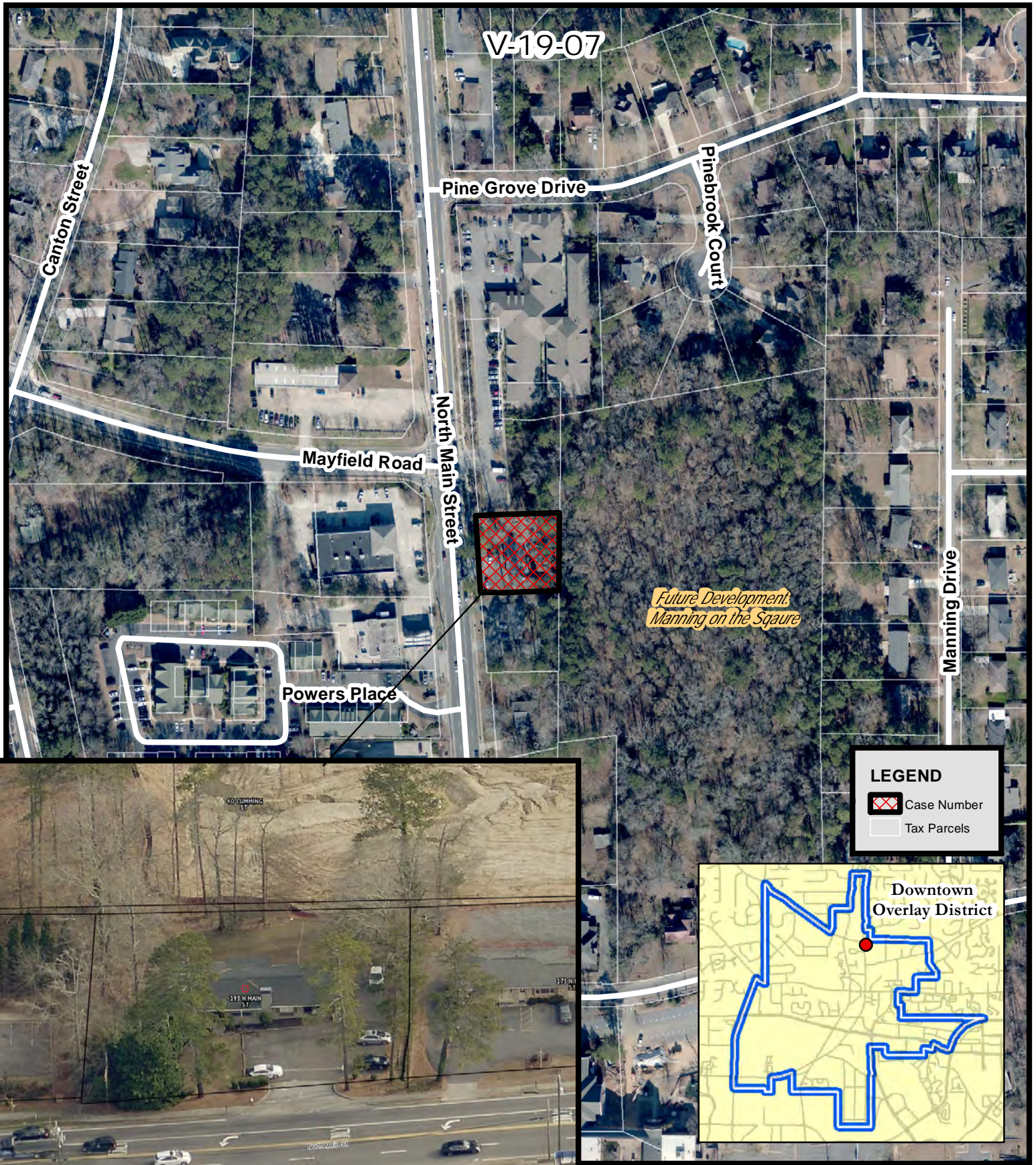
The report submitted by the applicant states that property owners within 500' were contacted regarding the applicant's intent. The report states that the applicant spoke with a representative from Taylor Morrison, who is developing a residential subdivision to the rear of the subject property. There were no objections expressed by Taylor Morrison.

COMMUNITY ZONING INFORMATION MEETING



The CZIM was held on June 12, 2019. There were two (2) public comments on the sign-in sheet with no objection to the variance requests.

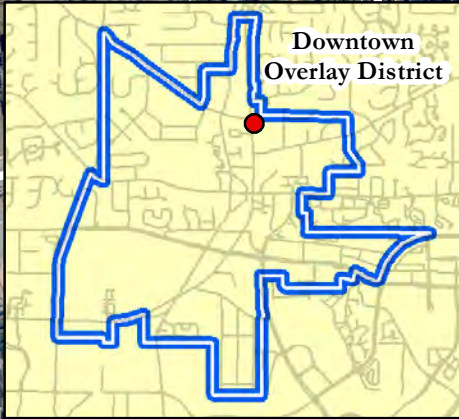
IV. ATTACHMENTS:

- Site Plan



LEGEND

-  Case Number
-  Tax Parcels



V-19-07

D/LL: 2/2/1252, 1253

CC Date: 7/22/19

Aerial Map
 Northwest Exterminating Variance
 193 North Main St.



Location Map Provided by:
 Community Development - GIS

CITIZEN PARTICIPATION FORM - PART B

This form must be completed and submitted to the City of Alpharetta Community Development Department a minimum of twenty (20) working days prior to the scheduled Public Hearing. Failure to do so will result in cancellation of the scheduled hearing.

Public Hearing or Project Name: V-19-07 Northwest Exterminating Variance

Contact Name: Max J. Searan

Telephone: 678-205-2026

Please describe comments and concerns provided by any and all individuals contacted as part of the the Citizen Participation Program. If any individuals provided written correspondence, please attach copies of same to this report.

Two people inquired about the project and variances during the citizens participation meeting at city hall. See attached sign in sheet. Applicant and Owner's representative discussed the project, variances and design intent. Comments from visitors were positive and there were no objections.

Adjoining property to east - Taylor Morrison - Contact: Thad Higgins. Applicant provided project information to Taylor Morrison and discussed variances and design intent. Also discussed the buffer reduction and proposed planting and fencing within the buffer. Coordinated proposed buffer planting with approved Tree Protection and Replacement drawing provided by Taylor Morrison. No objections to proposed variances were expressed by Taylor Morrison.(email correspondence attached)

Adjoining property to North - Notification letter was mailed. Applicant attempted to contact director of Design and Construction at Five Star Living Senior Living corporate office by phone to answer any questions related to the variances. Left Message.

Adjoining property to South - Notification letter was mailed. Applicant attempted to contact property Owner by phone to answer any questions related to the variances. Left message.

Method by which these individuals were contacted. Please mark all that apply. *Please provide samples of any and all written communications used to provide notification.*

- | | |
|--|--|
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other <i>(Please Specify)</i> _____ |

Attach a list of people who have been notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified.

See attached list of all people notified.

I, the undersigned, as an authorized representative of the applicant and Public Hearing item identified above, do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Citizen Participation Form - Part B and in any and all documents provided in support of this report are true and accurate. I further understand that any false statements provided by representatives of the applicant as part of this report may result in penalties up to and including denial of the subject application.

Signature of Authorized Agent: _____



Date: _____

Print Form



Land Planning ♦ Site Development ♦ Landscape Architecture

5901 Peachtree Dunwoody Rd.
Building A, Suite 310
Sandy Springs GA 30328

5/23/2019

Dear Property Owner,

We have filed a Public Hearing Application with the City of Alpharetta for consideration of three Variance requests. As you may be aware, The Georgia Department of Transportation is acquiring additional right-of-way on Main Street for improvements including a 12' wide Multi-Use path.

The variances will help alleviate the loss of parking for Northwest Exterminating located at 193 N. Main Street. The Variances will allow the lost parking spaces to be recovered and new parking added by relocating them behind the existing building. It will also allow for the addition of a new dumpster enclosure.

The Case # is V-19-07 Northwest Exterminating Variance. This item will be considered by the City Council on Monday, July 22, 2019 in Council Chambers at City Hall at 6:30 p.m.

The Community Zoning Information Meeting for this item will be Wednesday, June 12, 2019 from 6:00 p.m. to 7:00 p.m. in the Multi-Purpose Room at City Hall.

If you have any questions, please reach out to us at 678-205-2026

Sincerely,

Max J. Searan

A handwritten signature in blue ink, appearing to read "Max Searan".

Site Development Consultants, Inc.

Phone: 678-205-2026

NOTIFICATION LIST

PARCEL ID	OWNER	ADDRESS	
22 481411970656	LOWER LATIGO GROUP LLC	244 N MAIN ST	ALPHARETTA GA 30009
22 481411970847	HAYMEADOW GROUP LLC	244 N MAIN ST	ALPHARETTA GA 30009-3625
22 481411970862	STONEWALK MAYFIELD CORNERS LLC	660 GLENOVER DR	ALPHARETTA GA 30004
22 481411970870	CITY OF ALPHARETTA	2 SOUTH MAIN ST	ALPHARETTA GA 30004
22 481411970888	MAX AUTO REAL ESTATE LLC	1101 MONROE ST	TOLEDO OH 43604
22 482212520161	MAYFIELD LLC	11785 NORTHFALL LN STE 510	ALPHARETTA GA 30009
22 482212520765	O DONNELL ROBERT J & CHERYL C	134 N MAIN ST	ALPHARETTA GA 30004-1623
22 482212520914	SUMMERS DOLLEH KIM	1660 HAMIOTA RDG	ALPHARETTA GA 30004
22 482212521011	COLE CV ALPHARETTA LLC	P.O. BOX 4900 DEPT 604	SCOTTSDALE AZ 85261-4900
22 482212521037	COLE CV ALPHARETTA LLC	P.O. BOX 4900 DEPT 604	SCOTTSDALE AZ 85261-4900
22 482212521045	GENERAL CONVENIENCE STORE LLC	501 N CENTRAL AVE	ATLANTA GA 30354
22 482212521102	WHITMAN ARNOLD M	3500 LENOX RD NE STE 510	ATLANTA GA 30326
22 482212521110	WHITMAN ARNOLD M	3820 MANSELL RD SUITE 280	ALPHARETTA GA 30022
22 482212521128	WHITMAN ARNOLD	3500 LENOX RD NE STE 510	ATLANTA GA 30326
22 482212521136	MC MANES A SPENCER & A SPENCER JR	1015 POWERS PL	ALPHARETTA GA 30004
22 482212521144	LEE ANGELA D	959 BRIDGEGATE DR	MARIETTA GA 30066
22 482212521151	MERIDIAN GROUP INC THE	1050 POWERS PL	ALPHARETTA GA 30004
22 482212521169	BERMIC RPROPERTIES LLC	1040 POWERS PL	ALPHARETTA GA 30009
22 482212521177	SBLD PROPERTIES LLC	1030 POWERS PL	ALPHARETTA GA 30004
22 482212521185	COLLINS MARINE GROUP LLC	88 ROSWELL ST	ALPHARETTA GA 30009
22 482212521193	BUTTS ROBERT R	5360 FRANKLIN GOLDMINE RD	CUMMING GA 30028
22 482212521201	GEISEL PAMELA A	1000 POWERS PL	ALPHARETTA GA 30004
22 482212521219	SOLLEY ROBERT A	1105 POWERS PL	ALPHARETTA GA 30004
22 482212521227	HI RIVER PROPERTIES LLC	7917 SONATA BAY POINT	LAKE WORTH FL 33467-7067
22 482212521235	LORVEN PROPERTIES LLC	1125 GOLDENROD LANE	SUWANEE GA 30024
22 482212521268	OBEROI MADANJIT OBEROI MADHU	205 W SMOKETREE TER	ALPHARETTA GA 30005
22 482212521276	EHORSE L L C	1070 POWERS PL	ALPHARETTA GA 30004
22 497411960125	212 MANNING DRIVE LLC	P O BOX 2033	ALPHARETTA GA 30023-2033
22 497511960306	MATHEWSON SCOTT & SONYA B	820 PINEBROOK CT	ALPHARETTA GA 30004
22 497511960314	MARKSTIN LLC	830 PINEBROOK CT	ALPHARETTA GA 30009
22 497511960322	HERSHORAN JUSTIN M	831 PINEBROOK CT	ALPHARETTA GA 30004
22 497511960330	GUSALOV SERGEY E & GUSALOVA ANNA	821 PINEBROOK CT	ALPHARETTA GA 30009
22 497511960348	COLE AMBER N & WALDEN DAVID C	811 PINEBROOKE CT	ALPHARETTA GA 30004
22 497511960355	MC KEE BETH QUEEN & INGRAM SUSAN	801 PINEBROOK CT	ALPHARETTA GA 30004
22 498112530027	TAYLOR MORRISON - THAD HIGGINS PM	Contacted by Email Only	ADJOINING PROPERTY TO EAST
22 498112530035	HEARTHSTONE PROPERTY MANAGEMEN	810 COOPER SANDY CV	ALPHARETTA GA 30004
22 498112530043	FARR MARY	192 MANNING DR	ALPHARETTA GA 30009
22 498112530050	WILLIAMS HERMAN T & SANDRA P	180 MANNING DR	ALPHARETTA GA 30004-1617
22 498112530068	CONNELL MICHAEL A & BONE ANDREW J	12460 CRABAPPLE RD SUITE 202-647	ALPHARETTA GA 30004
22 498112530076	TUDOR WAYMOND B & PATRICIA J	160 MANNING DR	ALPHARETTA GA 30004-1617
22 498112530464	HAYWOOD T ASHLEY	P O BOX 485	ALPHARETTA GA 30009
22 482212520989	PHILLIPS ALPHARETTA LLC	830 KENNESAW AVE NW	MARIETTA GA 30060
22 482212520666	BELL LINDA REESE & JONES ELLON W	159 NORTH MAIN ST	ALPHARETTA GA 30009
22 482212520591	LIGHT INVESTMENTS LLC	145 N MAIN ST	ALPHARETTA GA 30009
22 482212520708	KIM KON & SOON JA Contacted by mail. Also attempted phone Contact to Kim Kon.	1160 ALPHARETTA ST	ROSWELL GA 30075 ADJOINING PROPERTY TO SOUTH
22 497011950047	SNH AL GEORGIA LLC	255 WASHINGTON ST	NEWTON MA 02458
22 481411960855	SNH AL GEORGIA LLC	255 WASHINGTON ST	NEWTON MA 02458
22 481411970813	SNH AL GEORGIA LLC Contacted by mail. Also attempted phone contact with Matthew Martin Director of Design & Constr. Five Star Senior Living corporate office.	255 WASHINGTON ST	NEWTON MA 02458 ADJOINING PROPERTY TO NORTH
22 482212521359	MAIN STREET COMMONS OFFICE PARK C	1102 ABBEY CT	ALPHARETTA GA 30004



Max Searan <msearan@gmail.com>

Variance Notification NW Exterminating

3 messages

Max Searan <msearan@gmail.com>
To: thiggins@taylormorrison.com

Thu, May 30, 2019 at 3:00 PM

Thad,
I enjoyed talking to you a couple weeks ago and do appreciate your assistance and support on this. Please see the attached variance notification letter. The tax records show Sarah manning as the property Owner so please confirm Taylor Morrison owns 40 Cumming Street.


Also Thad I am working on a planting plan that shows how we intend to treat the buffer and I will send this to you when complete.

Feel free to call me to discuss the application in more detail if needed.

Thanks Again,
Max J. Searan

Site Development Consultants, Inc.
678-205-2026

This e-mail, including any attached files, may contain confidential and privileged information for the sole use of the intended recipient. Any review, use, distribution, or disclosure without authorization from the sender is strictly prohibited. If you are not the intended recipient (or authorized to receive information for the intended recipient), please contact the sender by reply e-mail and delete all copies of this message.

 **2019-5-23 Public Hearing Notification Letter.pdf**
218K**Thad Higgins** <thiggins@taylormorrison.com>
To: Max Searan <msearan@gmail.com>

Tue, Jun 11, 2019 at 11:53 AM

Here are pages from our approved TRP for your use.

Thad Higginsthiggins@taylormorrison.com

Cell: 810.459.9755

Office: 770.741.0228

From: Max Searan [mailto:msearan@gmail.com]
Sent: Thursday, May 30, 2019 3:00 PM
To: Thad Higgins <thiggins@taylormorrison.com>
Subject: Variance Notification NW Exterminating

This message originated from outside of Taylor Morrison

[Quoted text hidden]

 **Pages from 1633400 - TPR - 05-03-2018.pdf**
9748K**Max Searan** <msearan@gmail.com>
To: Thad Higgins <thiggins@taylormorrison.com>

Tue, Jun 11, 2019 at 1:40 PM

Thad I do appreciate it. Your proposed planting looks great.
I will show your proposed planting on our plan. With the addition of our tall evergreens a very thorough buffer will be provided. The combined width will be 25'.

Thank You,
Max J. Searan
678-523-4918
[Quoted text hidden]

--
Thank You,
[Quoted text hidden]



Max Searan <msearan@gmail.com>

NW Exterminating Rendering

2 messages

Max Searan <msearan@gmail.com>

Fri, Jun 21, 2019 at 10:12 AM

To: Thad Higgins <thiggins@taylormorrison.com>

Thad,
Please see attached rendering of the proposed site plan and feel free to contact me if you need additional information. The Senior Planner, Michael Woodman at the City indicated that the planted buffer area on your side may actually be a bio-swale instead. Please let me know if the planting will change as a result.

Thanks for all your efforts.
Max J. Searan

Site Development Consultants, Inc.
678-205-2026

This e-mail, including any attached files, may contain confidential and privileged information for the sole use of the intended recipient. Any review, use, distribution, or disclosure without authorization from the sender is strictly prohibited. If you are not the intended recipient (or authorized to receive information for the intended recipient), please contact the sender by reply e-mail and delete all copies of this message.



2019-6-12 NW EXT RENDERING.jpg
3140K

Max Searan <msearan@gmail.com>

Fri, Jun 28, 2019 at 12:58 PM

To: Thad Higgins <thiggins@taylormorrison.com>

Hello Thad,
I just wanted to see if you have any questions about our proposed plan.
Also you mentioned that you have no objections to our variance application which we are glad to hear. Do you mind replying to this email confirming you have no objections? I am going to submit the citizens participation report Monday morning and would love to include it.

Thank You,
Max J. Searan
678-523-4918
[Quoted text hidden]

—
Thank You,
[Quoted text hidden]

DATE 5/23/2019

Dear Property Owner,

We have filed a Public Hearing Application with the City of Alpharetta for consideration of three Variance requests. As you may be aware, The Georgia Department of Transportation is acquiring additional right-of-way on Main Street for improvements including a 12' wide Multi-Use path.

The variances will help alleviate the loss of parking for Northwest Exterminating located at 193 N. Main Street. The Variances will allow the lost parking spaces to be recovered and new parking added by relocating them behind the existing building. It will also allow for the addition of a new dumpster enclosure.

The Case # is V-19-07 Northwest Exterminating Variance. This item will be considered by the City Council on Monday, July 22, 2019 in Council Chambers at City Hall at 6:30 p.m.

The Community Zoning Information Meeting for this item will be Wednesday, June 12, 2019 from 6:00 p.m. to 7:00 p.m. in the Rotunda at City Hall.

If you have any questions, please reach out to us at 678-205-2026

Sincerely,

Max J. Searan

Site Development Consultants, Inc.

Phone: 678-205-2026

CITY OF ALPHARETTA

Northwest Exterminating Variance

V-19-07

Case #: _____

Fee Paid Initial: _____

PUBLIC HEARING APPLICATION

COMMUNITY DEVELOPMENT DEPARTMENT

2 PARK PLAZA

ALPHARETTA, GA 30009

1. This page should be the first page in each of your completed application packets.
2. It is preferred that all responses be typed. Illegible applications will not be accepted.
3. Prior to signing and submitting your application, please check all information supplied on the following pages to ensure that all responses are complete and accurate. Incomplete applications will not be accepted.
4. Payment of all applicable fees must be made at the time of application. Payment may be made via cash, credit card (American Express, Master Card or Visa), or check made payable to "City of Alpharetta."
5. Applications will be accepted only on the designated submittal dates between the hours of 8:30 AM and 3:30 PM.
6. If you have any questions regarding this form, please contact the Community Development Department by calling 678-297-6070.

Contact Information:

Contact Name: Max Searan Telephone: 678-205-2026

Address: 5901 Peachtree Dunwoody Rd, BLDG -A Suite: 310

City: Sandy Springs State: GA Zip: 30328 Fax: _____

Mobile Tel: 678-523-4918 Email: msearan@gmail.com

Subject Property Information:

Address: 193 N. Main ST Current Zoning: C-1

District: 2nd Section: 2nd Land Lot: 1252, 1252 Parcel ID: 22 482212520989

Proposed Zoning: C-1 Current Use: Office

This Application For *(Check All That Apply):*

- | | | |
|---|--|------------------------------------|
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> Master Plan Amendment | <input type="checkbox"/> Exception |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Master Plan Review | |
| <input checked="" type="checkbox"/> Variance | <input checked="" type="checkbox"/> Public Hearing | |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input type="checkbox"/> Other <i>(Specify):</i> _____ | |

APPLICANT REQUEST AND INTENT

Northwest Exterminating Variance

What is the proposed use(s) of the property?

The use of the property will not change. The current use of the property is an office for Northwest Exterminating.

Applicant's Request (Please itemize the proposal):

Variance 1: To reduce the existing rear 50' Undisturbed Buffer to a 10' Landscape Buffer with opaque fence and vegetative screening. This will allow for the parking to be placed behind the building.

Variance 2: To allow the new driveway to be placed between the building and Main Street. This will allow for efficient and safe vehicular circulation about the site for employees as well as the fire department.

Variance 3: To allow for the Dumpster Enclosure to be located within 50' of the right of way. This will allow for the dumpster to be properly tied to sanitary sewer as required. The site is sewer to Main Street and placing the dumpster behind the building will not allow for the required connection.

Applicant's Intent *(Please describe what the proposal would facilitate).*

As you are aware, GDOT has acquired additional right of way along our frontage on Main Street which will negatively impact the property and our available parking. The new right of way will encroach upon the property approximately 17.5' and will result in a loss of much needed parking as well as create great difficulty for vehicles to safely maneuver in and out of the property. There simply will not be enough room available to allow for adequate vehicular flow.

My intent with the three variances I am seeking is to relocate all of the parking, except for the handicap space, from the front of the building to the back and north side of the building. It will allow for very much needed additional parking spaces and adequate vehicular flow around the site. Also, the addition of a dumpster enclosure is proposed. The parking areas and dumpster enclosure will be accessed by a new looped one-way driveway configuration. The proposed design will utilize green infrastructure practices with the use of permeable pavers.

PROPERTY OWNER AUTHORIZATION

Northwest Exterminating Variance

Property Owner Information:

Contact Name: Steve Phillips Telephone: 770-231-9938

Address: 830 Kennesaw Avenue Suite: _____

City: Marietta State: GA Zip: 30060 - _____

Authorization:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Application for Public Hearing before the City of Alpharetta, Georgia.

As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Public Hearing in request of the items indicated below.

- | | |
|---|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Special Use |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Conditional Use |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Master Plan |
| <input type="checkbox"/> Land Use Application | <input type="checkbox"/> Other |

Identify Authorized Applicant:

Name of Authorized Applicant: Max J. Searan Telephone: 678-205-2026

Address: 5901 Peachtree Dunwoody Rd, BLDG -A Suite: Suite 310

City: Sandy Springs State: GA Zip: 30328 - _____

So Sworn and Attested:

Owner Signature: _____ Date: _____

Notary:

Notary Signature: _____ Date: _____

DISCLOSURE FORM

The Official Code of Georgia Annotated requires disclosure of campaign contributions to government officials by an applicant or opponent of a rezoning or public hearing petition. (O.C.G.A. 36-67 A-1)

Applicants must file this form with the City of Alpharetta Community Development Department within ten (10) days after filing for rezoning or public hearing. Opponents to a rezoning or public hearing petition must file this form five (5) days prior to the Planning Commission meeting at which the subject rezoning or public hearing petition is scheduled to be heard.

Name of Applicant or Opponent: Steve Phillips

Subject Public Hearing Case: _____

Campaign Contribution Information:

Please provide the requested information for each contribution with a dollar amount or value of \$250 or more made within the past two (2) years to an Alpharetta Official by the individual identified above. Please use a separate form for each Alpharetta Official to whom such a contribution as been made.

If the individual identified above has made no such contributions to an Alpharetta Official within the past two (2) years, please indicate this by entering "N/A" on the appropriate lines below

Name of Official	Position		
Description of Contribution	n/a	Value	\$0
Description of Contribution		Value	
Description of Contribution		Value	
Description of Contribution		Value	
Description of Contribution		Value	

Campaign Contribution Information:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Disclosure Form is true and accurate and that I have disclosed herein any and all campaign contributions made to an Official of the City of Alpharetta, Georgia in accordance with O.C.G.A. 36-67 A-1

Signature: _____

Date: _____

6/30/19

BOARD OF ZONING APPEALS REVIEW CRITERIA

Northwest Exterminating Variance

Please respond to the following ONLY if you are applying for a zoning variance.

Are there extraordinary and exceptional conditions pertaining to the subject property because of its size, shape, or topography? Please describe them.

There are extraordinary conditions pertaining to the subject property particularly the small size of the parcel which is .46 acres in size. The conditions are amplified by the additional right of way acquired by GDOT. The new right of way will encroach upon the property approximately 17.5' and will result in a loss of much needed parking as well as create great difficulty for vehicles to safely maneuver in and out of the property. There simply will not be enough room available to allow for adequate vehicular flow.

Would the application of the Zoning Code standards as they relate to the subject property create an unnecessary hardship? Please explain.

Yes, a hardship will be created by application of the zoning code standards in conjunction with the additional right of way acquired by GDOT. We are asking for three variances to help satisfy the City's requirements and to mitigate the hardships to the property owner related to parking and vehicular circulation. Application of the required rear 50' undisturbed buffer prevents the business from relocating all of the parking, except for the handicap space, from the front of the building to the back and north side of the building. The buffer reduction and permission to have the new drive between the building and main street will help us meet the City's desire to not have parking in front of the building and allow for adequate vehicular flow around the site. By utilizing an opaque fence and vegetative screening, an improved visual buffer will be provided within the 10' landscape buffer above and beyond the current 50' undisturbed buffer. The majority of the current buffer is fescue lawn and a few trees, and is providing very little screening. (Pictures of the buffer are provided with the application.) With respect to the allowing the dumpster enclosure within 50' of the right of way. This will allow for the dumpster to be properly tied to sanitary sewer as required. The site is sewer to Main Street and placing the dumpster behind the building will not allow for the required connection. Measures will be taken to adequately screen the dumpster from main street.

Are there conditions that are peculiar to the subject property? Please describe them in detail.

As stated above, the peculiar conditions are related to the small size of the parcel and the additional right of way acquired by GDOT currently as well as in the past. This most current acquisition, once finalized will create a deficiency of parking and further limit the ability to maneuver in and out of the property.

Would relief, if granted, cause substantial detriment to the public good or impair the purpose and intent of the Zoning Code? Please defend your response.

If relief is granted, it would not cause severe detriment to the public good nor would it impair the intent of the zoning code. The ability to request a variance is written into the code for situations exactly like this one. It exemplifies the willingness of the City of Alpharetta to work with the business community and private citizens to resolve issues and to capitalize on opportunities that promote smart growth. It show the ability to work together to reach common goals.

The proposed improvements will create a safer condition for employees, visitors and emergency vehicles as they move about the property. The use of green infrastructure practices will help reduce impervious surfaces and runoff. Visually, the property will look better from main street because the parking will be at the rear of the building. Also and front 10' landscape strip will be planted to further enhance the property. The visual screening of the buffer will be improved even though the size is being reduced.

On a separate sheet or sheets, please provide any information or evidence that supports your request and the statements that you have provided in this application.

CITIZEN PARTICIPATION FORM - PART A

Northwest Exterminating Variance

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: Northwest Exterminating Variance Request

Contact Name: Max J. Searan Telephone: 678-205-2026

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

22 481411970656 LOWER LATIGO GROUP LLC 244 N MAIN ST ALPHARETTA GA 30009

22 482212521011 COLE CV ALPHARETTA LLC P.O. BOX 4900 DEPT 604 SCOTTSDALE AZ 85261-4900

22 481411970847 HAYMEADOW GROUP LLC 244 N MAIN ST ALPHARETTA GA 30009-3625

22 482212521037 COLE CV ALPHARETTA LLC P.O. BOX 4900 DEPT 604 SCOTTSDALE AZ 85261-4900

22 481411970862 STONEWALK MAYFIELD CORNERS LLC 660 GLENOVER DR ALPHARETTA GA 30004

22 482212521045 GENERAL CONVENIENCE STORE LLC 501 N CENTRAL AVE ATLANTA GA 30354

22 481411970888 MAX AUTO REAL ESTATE LLC 1101 MONROE ST TOLEDO OH 43604

22 482212521102 WHITMAN ARNOLD M 3500 LENOX RD NE STE 510 ATLANTA GA 30326

22 482212520161 MAYFIELD LLC 11785 NORTHFALL LN STE 510 ALPHARETTA GA 30009

22 482212521110 WHITMAN ARNOLD M 3820 MANSELL RD SUITE 280 ALPHARETTA GA 30022

22 482212520765 O DONNELL ROBERT J & CHERYL C 134 N MAIN ST ALPHARETTA GA 30004-1623

22 482212521128 WHITMAN ARNOLD 3500 LENOX RD NE STE 510 ATLANTA GA 30326

22 482212520914 SUMMERS DOLLEH KIM 1660 HAMIOTA RDG ALPHARETTA GA 30004

22 482212521136 MC MANES A SPENCER & A SPENCER JR 1015 POWERS PL ALPHARETTA GA 30004

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- | | |
|--|--|
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other <i>(Please Specify)</i> |

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

The individuals will have the opportunity to respond and ask questions in a group meeting to be scheduled at a local, nearby location.

CITIZEN PARTICIPATION FORM - PART A

Northwest Exterminating Variance

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: Northwest Exterminating Variance Request

Contact Name: Max J. Searan Telephone: 678-205-2026

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

22 482212521144 LEE ANGELA D 959 BRIDGEGATE DR MARIETTA GA 30066

22 482212521219 SOLLEY ROBERT A 1105 POWERS PL ALPHARETTA GA 30004

22 482212521151 MERIDIAN GROUP INC THE 1050 POWERS PL ALPHARETTA GA 30004

22 482212521227 HI RIVER PROPERTIES LLC 7917 SONATA BAY POINT LAKE WORTH FL 33467-7067

22 482212521169 BERMIC RPROPERTIES LLC 1040 POWERS PL ALPHARETTA GA 30009

22 482212521235 LORVEN PROPERTIES LLC 1125 GOLDENROD LANE SUWANEE GA 30024

22 482212521177 SBLD PROPERTIES LLC 1030 POWERS PL ALPHARETTA GA 30004

22 482212521268 OBEROI MADANJIT OBEROI MADHU 205 W SMOKETREE TER ALPHARETTA GA 30005

22 482212521185 COLLINS MARINE GROUP LLC 88 ROSWELL ST ALPHARETTA GA 30009

22 482212521276 EHORSE L L C 1070 POWERS PL ALPHARETTA GA 30004

22 482212521193 BUTTS ROBERT R 5360 FRANKLIN GOLDMINE RD CUMMING GA 30028

22 497411960125 212 MANNING DRIVE LLC P O BOX 2033 ALPHARETTA GA 30023-2033

22 482212521201 GEISEL PAMELA A 1000 POWERS PL ALPHARETTA GA 30004

22 497511960306 MATHEWSON SCOTT & SONYA B 820 PINEBROOK CT ALPHARETTA GA 30004

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- | | |
|--|--|
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other <i>(Please Specify)</i> |

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

The individuals will have the opportunity to respond and ask questions in a group meeting to be scheduled at a local, nearby location.

CITIZEN PARTICIPATION FORM - PART A

Northwest Exterminating Variance

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: Northwest Exterminating Variance Request

Contact Name: Max J. Searan Telephone: 678-205-2026

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

22 497511960314 MARKSTIN LLC 830 PINEBROOK CT ALPHARETTA GA 30009

22 498112530043 FARR MARY 192 MANNING DR ALPHARETTA GA 30009

22 497511960322 HERSHORAN JUSTIN M 831 PINEBROOK CT ALPHARETTA GA 30004

22 498112530050 WILLIAMS HERMAN T & SANDRA P 180 MANNING DR ALPHARETTA GA 30004-1617

22 497511960330 GUSALOV SERGEY E & GUSALOVA ANNA M 821 PINEBROOK CT ALPHARETTA GA 30009

22 498112530068 CONNELL MICHAEL A & BONE ANDREW J 12460 CRABAPPLE RD SUITE 202-647 ALPHARETTA GA 30004

22 497511960348 COLE AMBER N & WALDEN DAVID C 811 PINEBROOKE CT ALPHARETTA GA 30004

22 498112530076 TUDOR WAYMOND B & PATRICIA J 160 MANNING DR ALPHARETTA GA 30004-1617

22 497511960355 MC KEE BETH QUEEN & INGRAM SUSAN E 801 PINEBROOK CT ALPHARETTA GA 30004

22 498112530464 HAYWOOD T ASHLEY P O BOX 485 ALPHARETTA GA 30009

22 498112530027 MANNING SARAH P 40 CUMMING ST ALPHARETTA GA 30004-1610

22 482212520666 BELL LINDA REESE & JONES ELLON W 159 NORTH MAIN ST ALPHARETTA GA 30009

22 498112530035 HEARTHSTONE PROPERTY MANAGEMENT LLC 810 COOPER SANDY CV ALPHARETTA GA 30004

22 482212520591 LIGHT INVESTMENTS LLC 145 N MAIN ST ALPHARETTA GA 30009

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- | | |
|--|--|
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other <i>(Please Specify)</i> |

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

The individuals will have the opportunity to respond and ask questions in a group meeting to be scheduled at a local, nearby location.

CITIZEN PARTICIPATION FORM - PART A

Northwest Exterminating Variance

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: Northwest Exterminating Variance Request

Contact Name: Max J. Searan Telephone: 678-205-2026

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

22 482212520708 KIM KON & SOON JA 1160 ALPHARETTA ST ROSWELL GA 30075

22 497011950047 SNH AL GEORGIA LLC 255 WASHINGTON ST NEWTON MA 02458

22 482212521359 MAIN STREET COMMONS OFFICE PARK OWNERS ASSOCIATION INC 1102 ABBEY CT ALPHARETTA GA 30004

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- Letter
- Telephone
- Email
- Personal Visits
- Group Meeting
- Other *(Please Specify)*

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

The individuals will have the opportunity to respond and ask questions in a group meeting to be scheduled at a local, nearby location.

CITIZEN PARTICIPATION FORM - PART B

Northwest Exterminating Variance

This form must be completed and submitted to the City of Alpharetta Community Development Department a minimum of twenty (20) working days prior to the scheduled Public Hearing. Failure to do so will result in cancellation of the scheduled hearing.

Public Hearing or Project Name: _____

Contact Name: _____ Telephone: _____

Please describe comments and concerns provided by any and all individuals contacted as part of the the Citizen Participation Program. If any individuals provided written correspondence, please attach copies of same to this report.

Method by which these individuals were contacted. Please mark all that apply. *Please provide samples of any and all written communications used to provide notification.*

- | | |
|------------------------------------|--|
| <input type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other <i>(Please Specify)</i> _____ |

Attach a list of people who have been notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified.

I, the undersigned, as an authorized representative of the applicant and Public Hearing item identified above, do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Citizen Participation Form - Part B and in any and all documents provided in support of this report are true and accurate. I further understand that any false statements provided by representatives of the applicant as part of this report may result in penalties up to and including denial of the subject application.

Signature of Authorized Agent: _____ Date: _____

Print Form

April 30, 2019

Steve Phillips
Northwest Exterminating
830 Kennesaw Avenue
Marietta, GA 30060

Mike Woodman – Senior Planner
Community Development, Planning & Zoning
2 Park Plaza
Alpharetta, GA 30009

RE: Letter of Intent, Variance Application for Northwest Exterminating

Dear Mike,

Thank You for meeting with my design consultant a few weeks ago for the pre-application meeting. I look forward to working with you throughout the variance process. Northwest Exterminating is a thriving business located at 193 North Main Street within the City of Alpharetta and continues to offer a very important service to the community and surrounding areas.

As you are aware, GDOT has acquired additional right of way along our frontage on Main Street which will negatively impact the property and our available parking. The new right of way will encroach upon the property approximately 17.5' and will result in a loss of much needed parking as well as create great difficulty for vehicles to safely maneuver in and out of the property. There simply will not be enough room available to allow for adequate vehicular flow.

We have realized that we are in need of a new site design with additional parking and better vehicular circulation to operate efficiently and effectively. I believe the proposed site plan along with the approval of the requested variances, allows for a design solution that will satisfy the City and will resolve many if not all of our site related issues. Also, this site plan incorporates comments we received from the Fire Marshall's office.

My intent with the three variances I am seeking is to relocate all of the parking, except for the handicap space, from the front of the building to the back and north side of the building. It will allow for very much needed additional parking spaces and adequate vehicular flow around the site. Also, the addition of a dumpster enclosure is proposed. The parking areas and dumpster enclosure will be accessed by a new looped one-way driveway configuration. The proposed design will utilize green infrastructure practices with the use of permeable pavers.

The first variance is to reduce the existing rear 50' Undisturbed Buffer to a 10' Landscape Buffer with opaque fence and vegetative screening. This will allow for the parking to be placed behind the building. The second variance is to allow the new driveway to be placed between the building and Main Street. This will allow for efficient and safe vehicular circulation about the site for employees as well as the fire department. The third variance is to allow for the Dumpster Enclosure to be located within 50' of the right of way. This will allow for the dumpster to be

Northwest Exterminating Variance

properly tied to sanitary sewer as required. The site is sewer to Main Street and placing the dumpster behind the building will not allow for the required connection.

The existing 50' undisturbed buffer consists mostly of lawn with some trees near the property line. I have included some site photographs that show the condition of the buffer as well as other areas of the property. The property behind us to the east is currently cleared and being developed. The view into the subject property from the adjacent property to the rear will not be substantially altered as a result of the parking. As an added measure, a 6' tall wooden opaque fence and evergreen screen planting will be added along the rear property line.

Chris Barneycastle of Barneycastle Forestry Services, Inc. has visited the site and has evaluated the existing trees. His report and photographs are included with the application. With regards to specimen trees, there are two that are of specimen size although according to Barneycastle Forestry, they are not of specimen quality. I understand the City Arborist will have to make the final determination.

Once again, I believe our proposed site design is a great solution that will satisfy the City while allowing Northwest Exterminating to operate efficiently and effectively. We appreciate your consideration, and your assistance with this matter and ask that you approve the request

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Phillips".

Steve Phillips

PROPERTY OWNER AUTHORIZATION

Property Owner Information:

Contact Name: Steve Phillips Telephone: 770-231-9938
 Address: 830 Kennesaw Avenue Suite: _____
 City: Marietta State: GA Zip: 30060

Authorization:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Application for Public Hearing before the City of Alpharetta, Georgia.

As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Public Hearing in request of the items indicated below.

- | | |
|---|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Special Use |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Conditional Use |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Master Plan |
| <input type="checkbox"/> Land Use Application | <input type="checkbox"/> Other |

Identify Authorized Applicant:

Name of Authorized Applicant: Max J. Searan Telephone: 678-205-2026
 Address: 5901 Peachtree Dunwoody Rd, BLDG -A Suite: Suite 310
 City: Sandy Springs State: GA Zip: 30328

So Sworn and Attested:

Owner Signature: *Steve Phillips* Date: 4/30/19

Notary:

Notary Signature: *Tiffany Davis*



4-3019

Legal Description

All that tracts or parcels of land lying and being in Land Lots 1252 and 1253 of the 2nd District, 2nd section, Fulton County, Georgia, and being more particular described as follows:

Commencing at a point formed by the intersection of the common land lot line formed by land lots 1252 and 1197, and the East right of way of North Main Street;

Thence in a Southerly direction along the East right of way of North Main Street for a distance of 58.71' to the point of beginning;

thence North 89 Degrees 17 Minutes 26 Seconds East a distance of 145.56 feet to a point;

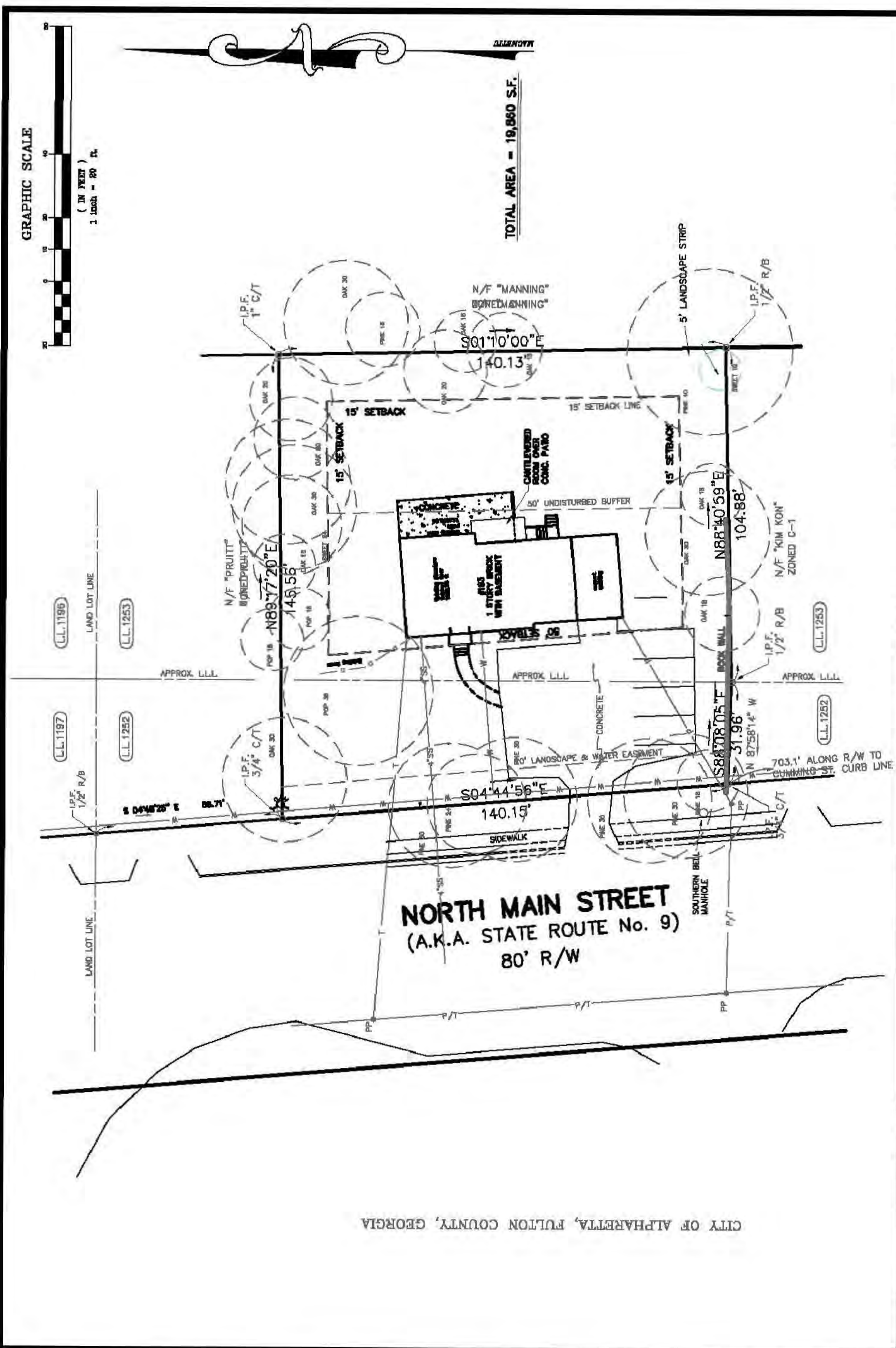
thence South 01 Degrees 10 Minutes 00 Seconds East a distance of 140.13 feet to a point;

thence North 88 Degrees 40 Minutes 59 Seconds East a distance of 104.88 feet to a point;

thence South 88 Degrees 08 Minutes 05 Seconds East a distance of 31.96 feet to a point;

thence South 04 Degrees 44 Minutes 56 Seconds East a distance of 140.15 feet to the point of Beginning.

Tract containing 0.46 acres more or less.



CITY OF ALPHARETTA, FULTON COUNTY, GEORGIA

SURVEYED _____
 DRAWN _____
 DWG NAME _____
 DATE _____
 FILE NO. _____
 THIS DRAWING IS THE PROPERTY OF THIS FIRM AND IS NOT TO BE CHANGED OR ALTERED BY OTHERS IN ANY MANNER.

193 NORTH MAIN STREET
 L.L. 1252 & 1253, DISTRICT 2, SECTION 2
 CITY OF ALPHARETTA
 FULTON COUNTY GEORGIA

J.A. EVANS & ASSOCIATES
 3279 POWDER SPRINGS ROAD
 POWDER SPRINGS, GA. 30127
 SURVEY FOR PH. (770)943-0000
 ED DODD

IN MY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATED AND HAS BEEN PREPARED IN CONFORMITY WITH THE MINIMUM STANDARDS AND REQUIREMENTS OF LAW.
 GEORGIA REGISTERED LAND SURVEYOR

TOTAL AREA = 19,860 S.F.

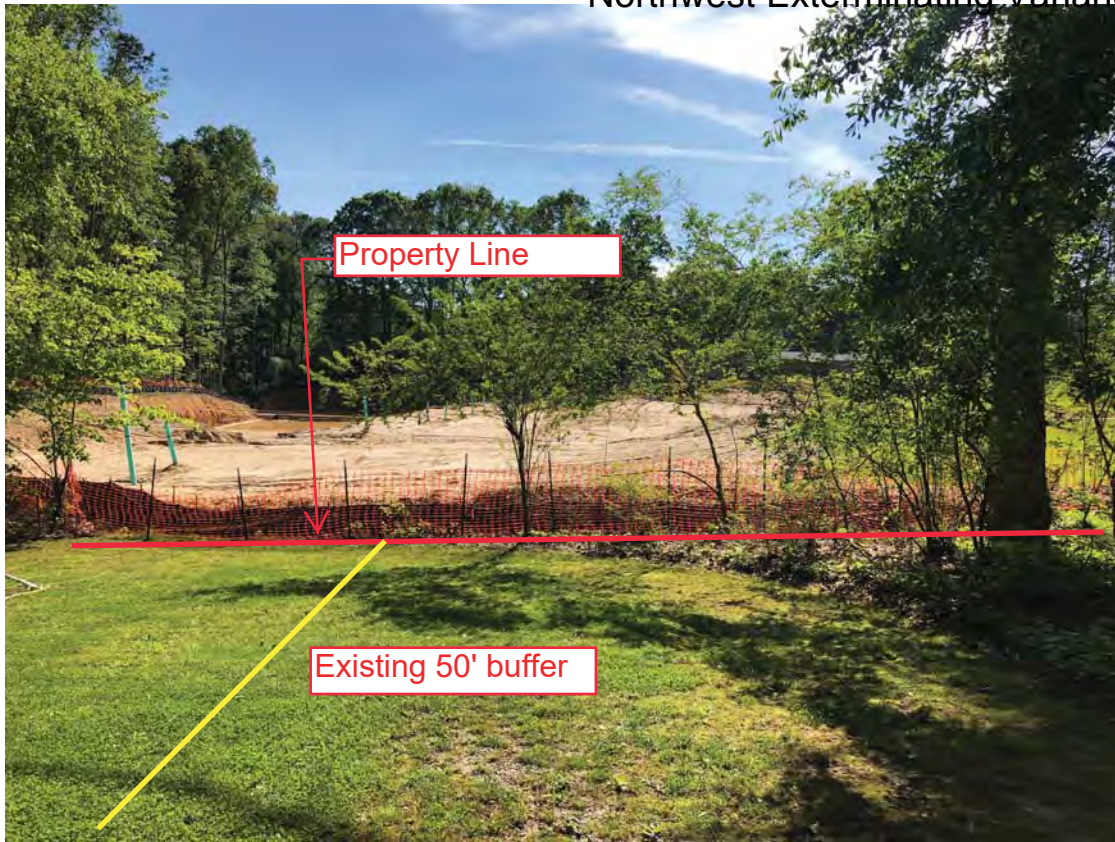
GRAPHIC SCALE
 (IN FEET)
 1 inch = 20 ft



NORTHWEST EXTERMINATING



NEW R/W LOCATION & IMPACTS TO PARKING



Existing 50' Buffer and Adjacent Development to the East



Existing 50' Buffer and Adjacent Development to the East



Existing 50' buffer

View of Existing 50' Buffer

DISCLOSURE FORM

The Official Code of Georgia Annotated requires disclosure of campaign contributions to government officials by an applicant or opponent of a rezoning or public hearing petition (O.C.G.A. 36-67 A-1).

Applicants must file this form with the City of Alpharetta Community Development Department within ten (10) days after filing for rezoning or public hearing. Opponents to a rezoning or public hearing petition must file this form five (5) days prior to the Planning Commission meeting at which the subject rezoning or public hearing petition is scheduled to be heard.

Name of Applicant or Opponent: Steve Phillips

Subject Public Hearing Case: _____

Campaign Contribution Information:

Please provide the requested information for each contribution with a dollar amount or value of \$250 or more made within the past two (2) years to an Alpharetta Official by the individual identified above. Please use a separate form for each Alpharetta Official to whom such a contribution as been made.

If the individual identified above has made no such contributions to an Alpharetta Official within the past two (2) years, please indicate this by entering "N/A" on the appropriate lines below.

Name of Official: _____ Position: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Campaign Contribution Information:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Disclosure Form is true and accurate and that I have disclosed herein any and all campaign contributions made to an Official of the City of Alpharetta, Georgia in accordance with O.C.G.A. 36-67 A-1.

Signature: Steve Phillips

Date: 4-30-19

**BARNEYCASTLE**
FORESTRY SERVICES, INC.

ARBORICULTURE & FORESTRY CONSULTING

chris@barneycastle.net • 678.386.8623 • www.barneycastleforestryservices.com

April 29, 2019

Max Searan
Site Development Consultants, Inc.
4432 Ormond Trace
Marietta, GA 30066

Dear Max:

Per your request, on April 24, I inspected and evaluated the trees at the 193 North Main Street parking remediation project in Alpharetta.

During our on-site meeting, you showed me the approximately location of the new GDOT right of way and landscape strip. It appears that the 7 trees denoted on the site plan located in the ROW and landscape strip will be removed by GDOT.

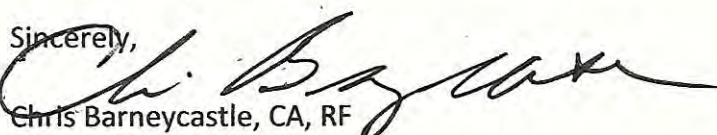
Regarding specimen trees, there are only 2 on the property that are specimen size. The tree denoted as the 33" OAK MULTI is a water oak that is 33 inches in diameter (measured at 4.5 feet above ground). The tree has co-dominant stems with very narrow angles between the stems that fork at 2 feet above ground. One of the stems forks again at 7 feet and the angle is narrow. It is my opinion that this tree does not meet the condition requirements for a specimen tree. I marked this tree with a metal tag numbered #131. I have attached some photos of the tree.

The tree denoted as the 25" OAK is a water oak that is 24 inches in diameter. Almost all of this oak's crown is on the parking lot side of the tree. Two large limbs have been cut from the tree on the parking lot side as well. There is epicormic branching on the tree as well. It is my opinion that this tree does not meet the condition criteria for specimen tree status. This tree has been marked with a #130 metal tag. I have attached photos of this tree as well.

Attached is a spreadsheet listing these and the other trees on the property by description on site plan, species, DBH, and condition status.

Please call me for questions or further assistance.

Sincerely,


Chris Barneycastle, CA, RF

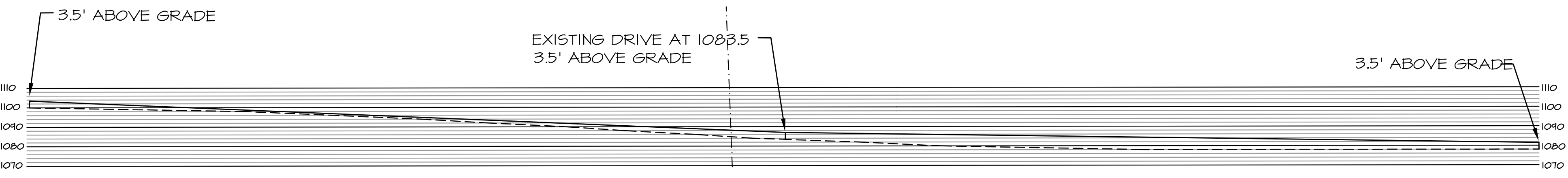
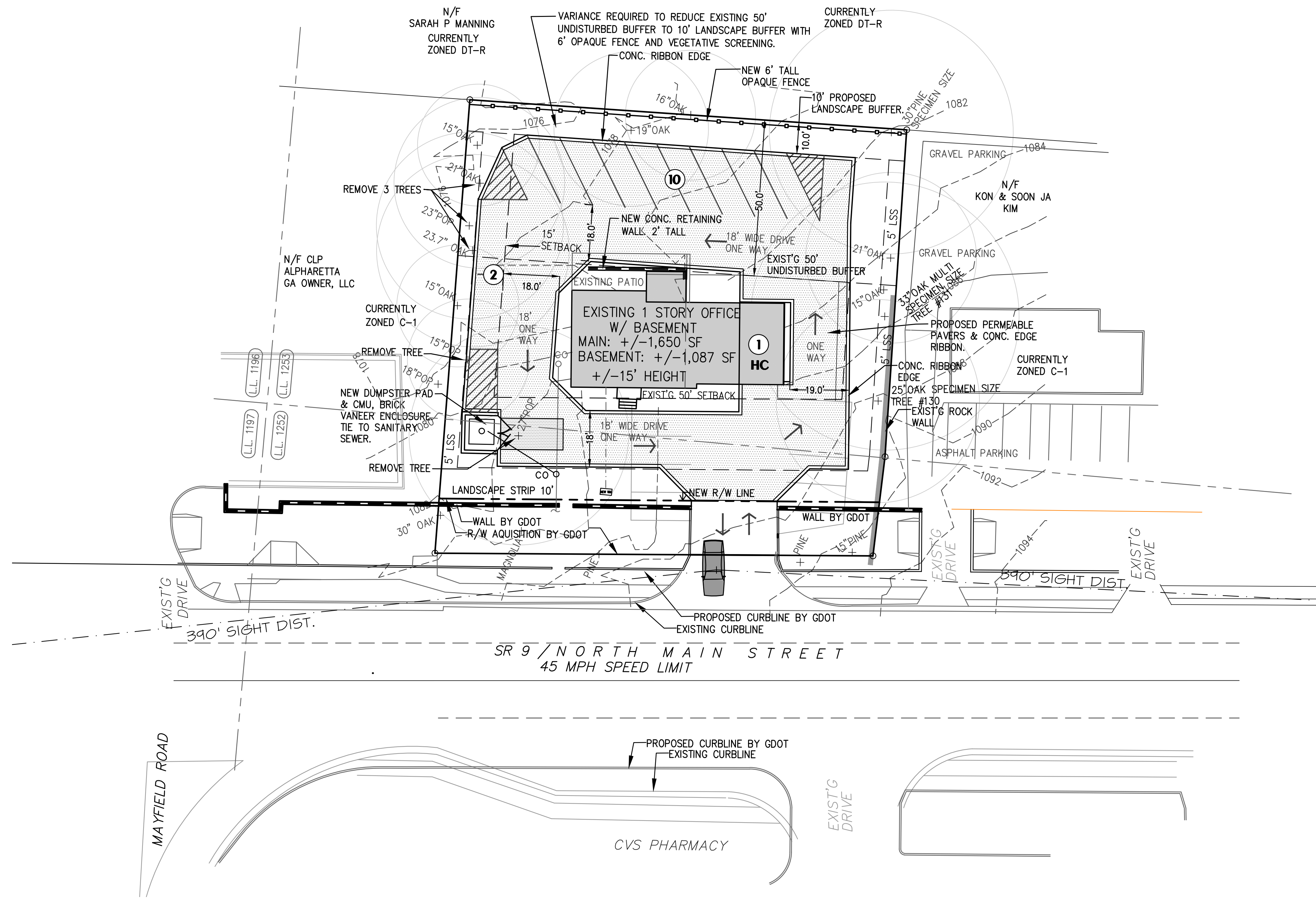
LISTING OF TREES AT 193 NORTH MAIN STREET PROPOSED PARKING REMEDIATION SITE IN ALPHARETTA

Description on Site Plan	Species	DBH	Condition
25"OAK SPECIMEN SIZE	Water oak	24"	All crown on parking lot side. Epicormic branching. Fair condition.
33"OAK MULTI SPECIMEN SIZE	Water oak	33" @ 2'	Co-dominant stems with narrow angles. Fair condition.
15" OAK	Water oak	15"	Leaning to right. Fair condition.
21" OAK	Water oak	21"	Ivy into crown. Fair condition.
30" PINE SPECIMEN SIZE	Loblolly pine	29"	Does not meet size criteria for specimen tree. Good condition.
16" OAK	Water oak	19"	Good condition.
19" OAK	Water oak	23"	Good condition.
15" OAK	Water oak	16"	Lean to left. Fair condition.
21" OAK	Water oak	21"	Good condition.
23" POP	Sweetgum	23"	Good condition.
23.7" OAK	Water oak	23"	Good condition.
15" OAK	White oak	15"	Good condition.
15" POP	No tree	N/A	N/A
27" POP	Yellow poplar	27"	Good condition.

Notes - DBH is diameter at breast height measured at 4.5 feet above ground. Trees with co-dominant stems that fork below 4.5 feet were measured at the narrowest point below the fork.







SIGHT DISTANCE PROFILE
VERT: 1"=40'
HORZ: 1"=40'



LOCATION MAP NTS.

PROJECT DATA

SITE INFORMATION	
CURRENT ZONING	C-1 NEIGHBORHOOD COMMERCIAL
SITE AREA	.46 ACRES
R/W ACQUIRED GDOT	.06 ACRES
NET SITE AREA	.40 ACRES
AREA OF DISTURBANCE:	12,000 SF
BUILDING INFORMATION	
EXIST'G BUILDING GROSS FLOOR SPACE	
MAIN FLOOR:	+/-1,650 SF
LOWER FLOOR:	+/-1,087 SF
TOTAL	+/-2,737 SF
BUILDING HEIGHT	+/-15'
PARKING INFORMATION	
PARKING REQUIRED: 1SP/250SF	11 SPACES
PARKING REQUIRED: 1SP/250SF	11 SPACES
EXISTING PARKING	
STANDARD PARKING	8 SPACES
HC PARKING	1 SPACES
TOTAL	9
PROPOSED PARKING	
STANDARD PARKING (PERVIOUS)	12 SPACES
HC PARKING	1 SPACES
TOTAL	13 SPACES
DRAINAGE INFORMATION	
PRE DEVELOPMENT IMPERVIOUS:	+/-5560 SF
POST DEVELOPMENT IMPERVIOUS:	+/-3,650 SF
NET REDUCTION IMPERVIOUS:	+/- 1,910 SF
PERVIOUS PAVING INFORMATION	
PROPOSED PERMEABLE PAVING +/-	8,762 S.F. PAVERS
CONCRETE EDGE RIBBON RESTRAINT:	+/-641 LF.

- VARIANCES REQUIRED**
1. A variance is required to reduce the existing rear 50' Undisturbed Buffer to a 10' Landscape Buffer with opaque fence and vegetative screen.
 2. A variance is required to allow the new driveway to be placed between the building and Main Street.
 3. A variance is required to allow for the Dumpster Enclosure to be located within 50' of the right of way.

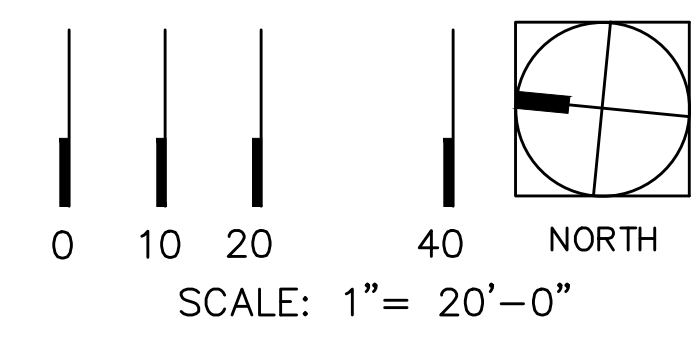


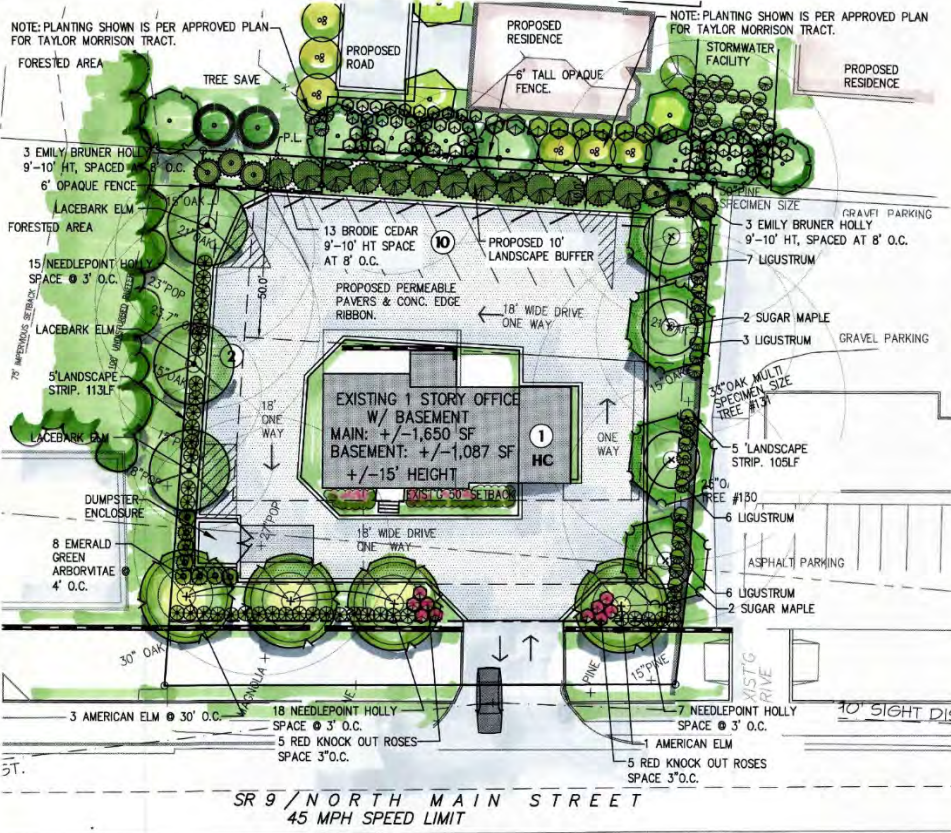
Northwest Exterminating
ALPHARETTA OFFICE
PARKING REMEDIATION
193 N. MAIN STREET

VARIANCE SITE PLAN
(FOR REVIEW ONLY - NOT FOR CONSTRUCTION)
APRIL 29, 2019

SITE LOCATED IN LAND LOTS 1253 AND 1252 OF THE 2ND DISTRICT, 2ND SECTION, FULTON COUNTY, GA. PROPERTY DOES NOT LIE WITHIN THE 100 YR FLOOD ZONE PER FEMA PANEL 13121C0058F DATED: 09/18/2013

Site Development Consultants, Inc.
Land Planning • Site Development • Landscape Architecture
5901 Peachtree Dunwoody Rd., Bldg A Suite 310
Sandy Springs GA 30328, Tel 678-205-2026





TREE DENSITY REQUIREMENTS

PROJECT IS AN EXISTING OFFICE

SITE AREA:	0.46	ACRES
MINUS R/W ACQUIRED BY GDOT:	0.06	+/- ACRES
	0.40	ACRES

130" INCHES PER ACRE OF TREES REQUIRED ON SITE

SDF = 130	X	0.40	=	51.5	INCHES
EXISTING TREES APPLIED TO EDF:			=	0	UNITS
REPLACEMENT DENSITY FACTOR INCHES:			=	56.00	INCHES
RDF =	56.00	-	0	=	56.00

REPLACEMENT DENSITY FACTOR

NEWLY PLANTED TREES:	56.00	INCHES
TOTAL TREE CALIPER INCHES ON SITE	56.00	INCHES

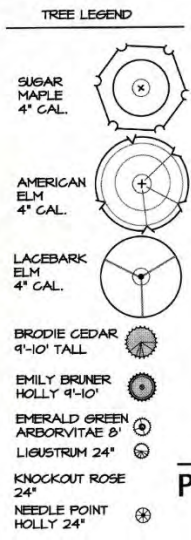
PROJECT DENSITY OF 51.5 CALIPER INCHES HAS BEEN SATISFIED

PLANT LIST

TREES	COMMON NAME	BOTANICAL NAME	REMARKS	CAL. SIZE (INCHES)	QUANT.	INCH TOTALS
	Harvest Moon Sugar Maple	Acer saccharum x barbatum 'Sandersville'	B&B	4	4	16
	*Emily Bruner Holly	Ilex x Emily Bruner	9' to 10' HT Buffer	2	6	0
	*Brodie cedar	Juniperus Virginiana Silicicola	9' to 10' HT Buffer	2	13	0
	Emerald green arbovitae	Thuja occidentalis 'smarged'	8" TALL MIN	1.5	8	12
	American Elm	Ulmus Americana 'Princeton'	B&B	4	4	16
	Lace Bark Elm	Ulmus Parvifolia 'Emer II'	B&B	4	3	12
					Inch Total	56.00

* Buffer trees are not counted towards RDF

SHRUBS	COMMON NAME	BOTANICAL NAME	SIZE	QUANT.
	Needle point Holly	Ilex Cornuta Needlepoint	24" ht	40
	wax Leaf Ligustrum	Ligustrum Japonicum	24" ht	22
	Knock Out Rose 'Red'	Rosa Knockout 'Red'	24" ht	10



Northwest Exterminating

**ALPHARETTA OFFICE
PARKING REMEDIATION
193 N. MAIN STREET**

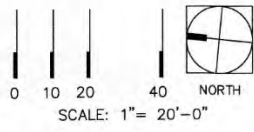
**PRELIMINARY LANDSCAPE PLAN
(FOR REVIEW ONLY - NOT
FOR CONSTRUCTION)**

JUNE 11, 2019

SITE LOCATED IN LAND LOTS 1253 AND 1252
OF THE 2ND DISTRICT, 2ND SECTION, FULTON COUNTY, GA.
PROPERTY DOES NOT LIE WITHIN THE 100 YR FLOOD ZONE
PER FEMA PANEL 13121C0058F DATED: 09/18/2013

**Site Development
Consultants, Inc.**

Land Planning • Site Development • Landscape Architecture
3901 Peachtree Dunwoody Rd., 804g A Suite 310
Sandy Springs GA 30328, Tel 678-205-2026





City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Community Development

Submitted By:

Sponsored By:

Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: V-19-08 HEMBREE CENTER VARIANCE

CONSIDERATION OF VARIANCE REQUESTS TO ELIMINATE THE REQUIREMENT FOR A PROPERTY TO HAVE STREET FRONTAGE, ELIMINATE REQUIREMENT FOR PARKING LOT TREE ISLANDS, ALLOW FEE SIMPLE CLIMATE CONTROLLED SELF-STORAGE CONDOMINIUM UNITS ON LAND UNDER 1 ACRE IN THE LI (LIGHT INDUSTRIAL) DISTRICT AND TO ALLOW AN OFF-SITE MONUMENT SIGN. THE PROPERTY IS LOCATED AT 1815 HEMBREE ROAD IS LEGALLY DESCRIBED AS BEING LOCATED IN LAND LOT 650, 1ST DISTRICT, 2ND SECTION, FULTON COUNTY, GEORGIA.

II. RECOMMENDATION:

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: NO

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST:

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

V. ALTERNATIVES:

VI. ATTACHMENTS:

Hembree Center Variance CC Staff Report, Aerial Map, CZIM Hembree Center, Citi Part B Report, Hembree Center Variance App



CITY COUNCIL MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT

SUBMITTED BY: KATHI COOK

DRAFTED BY: MICHAEL WOODMAN

I. AGENDA ITEM TITLE: V-19-08 HEMBREE CENTER VARIANCE

CITY COUNCIL: JULY 22, 2019

II. RECOMMENDATION:

Approve V-19-08 Hembree Center Variance request to allow a property to be developed without the minimum street frontage and on lots less than one (1) acre in the LI (Light Industrial) zoning district and Deny variance request to eliminate tree islands in the parking lot, subject to the following conditions:

1. Property shall be developed substantially in accordance with submitted plan prepared by AEC, dated 5/1/2019, except for modifications required to comply with the conditions below.
2. A final subdivision plat shall be required depicting proposed lot lines and easements and referencing the final Council conditions and Covenants, Conditions & Restrictions (CC&R's), as approved by Staff.
3. CC&R's shall be recorded and shall limit the use of the subject property to conditioned, self-storage with no lodging or dwelling.
4. Parking lot shall comply with the City's tree island requirements.
5. Self-storage use shall not be used for lodging or dwelling. Kitchens shall be prohibited.
6. Developer shall plant additional shrubs around detention pond wall along Hembree Road and project entrance and paint interior wall of detention pond with a dark color to blend with the surroundings, as approved by Staff.
7. Developer shall provide a 10' undisturbed buffer, replanted where sparse, around the perimeter of the subject property.

III. REPORT IN BRIEF:

The applicant, Atlantic/Hembree, LLC, is requesting variances to eliminate the requirement for a property to have street frontage, eliminate the requirement for parking lot tree islands and to allow conditioned self-storage condominium (fee simple) units on land under one (1) acre in the LI (Light Industrial) zoning district. The subject property is located at the rear of 1815 Hembree Road on the south side of Hembree Road just west of Maxwell Road.

DISCUSSION

The submitted request, if approved, would allow a property to be developed without street frontage and on lots less than one (1) acre in the LI (Light Industrial) zoning district. Access is proposed by way of an access easement through a drive aisle on an existing light industrial site. The subject property is located at the rear of 1815 Hembree Road on the south side of Hembree Road just west of Maxwell Road.

The subject property is located to the rear of the Hembree Center, which is an 80,000 square foot flex warehouse, manufacturing and storage facility and is located at 1815 Hembree Road. The applicant's property is undeveloped, except for a gravel parking lot that was previously permitted by way of variance approval. The property and surrounding properties are zoned LI

(Light Industrial). The Comprehensive Land Use Plan designation of the property is 'Business, Manufacturing, Warehousing, Light Industrial', which allows the proposed 'Self-Storage' use.

The applicant is requesting the following variances from the Unified Development Code (UDC):

- UDC Subsection 1.3.3, Street Frontage. No building shall be erected on a lot which does not have frontage for at least 40 feet on a street.
- UDC Subsection 3.2.8(C), Parking Lot Landscaping. The applicant is requesting to eliminate the required tree islands required to shade a parking lot.
- UDC Subsection 2.2.17(D), Light Industrial District Regulations. The applicant is requesting lots less than one (1) acre in the LI zoning district to allow for the self-storage units to be individually sold, or fee-simple ownership.

SITE PLAN

The applicant's site plan depicts a 3.95-acre landlocked parcel of land with access provided through an easement over an existing drive aisle at the Hembree Center, 1815 Hembree Road. The subject property represents an extension of the existing Hembree Center and is proposed to be developed with seven (7), one-story luxury self-storage buildings totaling 75,000 square feet of building area. According to the applicant, the storage buildings are designed for storage of upscale items, such as cars, boats and recreational vehicles and will be for-sale, condominium units, versus being rented.

Parking proposed to serve the subject property is located off-site on the adjacent property (Hembree Center – 1815 Hembree Road) and at the entrance to Phase 2. A total of 75 parking spaces are depicted on the site plan, which meets the UDC parking requirement of one (1) parking space per 1,000 square feet for wholesale and industrial uses. If approved, the parking lot should meet the UDC-required parking lot design standards, including the provision of planted tree islands to shade the parking lot. According to the applicant, the existing stormwater facility along Hembree Road was designed and has the capacity to serve the proposed Phase 2 development.

VARIANCE REVIEW CRITERIA

The City of Alpharetta Unified Development Code Article IV, Section 4.5.3 outlines the criteria set forth for granting a variance. The ordinance specifically states..."a variance may be granted in whole or in part, or with conditions, in such individual case of unnecessary hardship upon a finding that":

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; or

Response: The requested variances are related to the applicant's desire to sell and subdivide the property for use as fee-simple (condominium) self-storage units. However, the variance request to eliminate the required parking lot tree islands is not supported by a hardship.

- (2) The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or

Response: The requested variances are related to the applicant's desire to sell and subdivide the property for use as fee-simple (condominium) self-storage units. However, the variance request to eliminate the required parking lot tree islands is not supported by a hardship.

(3) There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned; or

Response: The requested variances are related to the applicant's desire to sell and subdivide the property for use as fee-simple (condominium) self-storage units. However, the variance request to eliminate the required parking lot tree islands is not supported by a hardship.

(4) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the City of Alpharetta ordinances.

Response: Approval of the requested variances should not cause substantial detriment to the public good, if conditions are approved requiring parking lot tree islands, a subdivision plat approved by Staff and covenants and restrictions regulating the use of the buildings.

CONCURRENCES

Staff has reviewed the applicant's proposal and finds that it can generally support the requested variances, except the variance request to eliminate parking lot tree islands is not supported. If approved, conditions are recommended requiring parking lot tree islands, a final subdivision plat to be recorded and approved by Staff and Covenants, Conditions & Restrictions regulating the use of the subject property.

CITIZEN PARTICIPATION PLAN

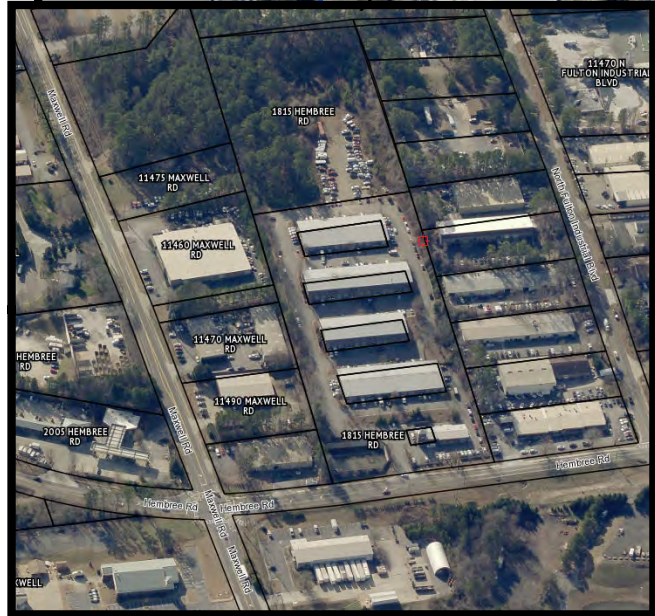
The report submitted by the applicant states that property owners within 500' were contacted regarding the applicant's intent. The report states that no comments were received.

COMMUNITY ZONING INFORMATION MEETING

The CZIM was held on June 12, 2019. There was one (1) public comment on the sign-in sheet with concern over the use being 'Man-Caves', as presented by the property owner.

IV. ATTACHMENTS:

- Site Plan



Aerial Map
 Hembree Center Variance
 1815 Hembree Road

V-19-08
 D/LL: 1/2/650
 CC: 7/22/19

Location Map Provided by:
 Community Development - GIS

Please Sign-In with comments or concerns.

Hembree Center Variance

NAME	ADDRESS	Comments
Clifford Martin	700 Anna Lane Alpharetta, Ga	no objection to splitting the parcel or signage variance I object to the condos being "man caves"
		as described by property representative.

CITIZEN PARTICIPATION FORM - PART B

This form must be completed and submitted to the City of Alpharetta Community Development Department a minimum of twenty (20) working days prior to the scheduled Public Hearing. Failure to do so will result in cancellation of the scheduled hearing.

Public Hearing or Project Name: V-19-08 -- Hembree Center Variance

Contact Name: James G. Stice

Telephone: 404-495-7333

Please describe comments and concerns provided by any and all individuals contacted as part of the the Citizen Participation Program. If any individuals provided written correspondence, please attach copies of same to this report.

All parties on the attached were sent a letter on May 9th. No comments or concerns were received from the Citizen Participation Program.

Method by which these individuals were contacted. Please mark all that apply. *Please provide samples of any and all written communications used to provide notification.*

- | | |
|--|---|
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Personal Visits |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Group Meeting |
| <input type="checkbox"/> Email | <input type="checkbox"/> Other (Please Specify) _____ |

Attach a list of people who have been notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified.

I, the undersigned, as an authorized representative of the applicant and Public Hearing item identified above, do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Citizen Participation Form - Part B and in any and all documents provided in support of this report are true and accurate. I further understand that any false statements provided by representatives of the applicant as part of this report may result in penalties up to and including denial of the subject application.

Signature of Authorized Agent: _____

James G. Stice

Date: _____

7/1/19

Print Form

JB INDUSTRIAL PROPERTIES LLC
11452 NORTH FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009

MAXWELL ROAD PROPERTIES LLC
544 LADY FERN PT
ALPHARETTA GA 30022-1462

POTLAPALLY DIRAJ KUMAR
11280 MUSETTE CIR
ALPHARETTA GA 30009

BEL AIR HOLDINGS LLC
10903 ALPHARETTA HWY
ROSWELL GA 30075

READY MIX USA LLC
1501 BELVEDERE RD
WEST PALM BEACH FL 33401

PARK SEUNG NAM
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NORTH FULTON INDUSTRIAL PARK
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GRID TOWERS L L C
2015 BOUNDARY ST STE 300
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MOSS DANNY R & CHARLOTTE L
407 SIMMONS DR
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11272 MUSETTE CIR
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STORAGE TRUST PROPERTIES L P
P O BOX 25025
GLENDALE CA 91201-5025

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GAINESVILLE GA 30506

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635 CITATION TRL
ALPHARETTA GA 30004

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12 PIEDMONT CTR # 418
ATLANTA GA 30305

PILIP SHAC LLC
11460 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009

HEMBREE NORTH LLC
P O BOX 28953
ATLANTA GA 30358

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

ATCHISON ANTHONY S
11375 N FULTON IND. BLVD
ALPHARETTA GA 30009-4780

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4640 ADMIRALTY WAY SUITE 1030
MARINA DEL REY CA 90292

DETWILER PAUL F & DETWILER KIM A
11282 MUSETTE CIR
ALPHARETTA GA 30009

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

SOLOMON DONALD M
4402 RIVER CHASE DR #3412
PHENIX CITY AL 36867

DNA SELF STORAGE LLC
11500 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009-4703

FULTON COUNTY
141 PRYOR ST SW STE 7000
ATLANTA GA 30303

ALPHARETTA HOLDINGS LLC
11495 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30004

GRID TOWERS L L C
2015 BOUNDARY ST STE 300
BEAUFORT SC 29902

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

OLEVSKY CYRIL TR
2710 TWIN CREEK CT
MARIETTA GA 30062

PAC DIMINISH EXPERT LLC
11515 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009

GRONHOLM ANNE W
11390 BOWEN RD
ROSWELL GA 30075

PERFORMANCE AUTO COLLISION CENTER
INCORPORATED
1775 HEMBREE RD
ALPHARETTA GA 30004

PERFORMANCE AUTO COLLISION CENTER
INCORPORATED
1775 HEMBREE RD
ALPHARETTA GA 30009

GRONHOLM HOLDINGS LLLP
12200 KING CIR
ROSWELL GA 30075

JETS ASSOCIATES LTD
641 LAKE DR
VERO BEACH FL 32963

BPVP HOLDING LLLP
1161 MC NUTT XING
BOGART GA 30622

BELAIR INDUSTRIES INC
43 WOOD PL
ROSWELL GA 30075-3539

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

WHITEHURST PROPERTIES INC
P O BOX 386
ALPHARETTA GA 30009-0386

ALPHARETTA TRANSFER STATION LLC
P O BOX 1450
CHICAGO IL 60690-1450

ROBERT W WOODRUFF ARTS CENTER INC
1280 PEACHTREE ST NE
ATLANTA GA 30309

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

C&J REALTY
11460 MAXWELL RD
ALPHARETTA GA 30004

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

FULTON COUNTY BOARD OF EDUCATION
786 CLEVELAND AVE
ATLANTA GA 30315

ATLANTIC

ATLANTIC / HEMBREE, LLC
1000 Circle 75 Parkway, Suite 620, Atlanta, Georgia 30339

May 3, 2019

RE: City of Alpharetta Variance Application – 1815 Hembree Rd, Alpharetta, GA

To Whom It May Concern:

We wanted to make you aware that we have requested four variances from the City of Alpharetta on a ~4 acre parcel of land behind Hembree Business Center to allow the development of several additional buildings on the landlocked parcel. The landlocked parcel is currently being used as a gravel parking lot. The Case # is V-19-08. This item will be considered by the City Council on Monday July 22, 2019 at 6:30pm in Council Chambers at City Hall at 6:30pm. The Community Zoning Information Meeting for this item will be Wednesday, June 12, 2019 from 6:00pm to 7:00pm in the Rotunda at City Hall.

The requested variances are:

1. Eliminate street frontage requirements for the landlocked parcel.
2. Eliminate the required tree islands and parking lot tree requirements for landlocked parcel.
3. Allow for fee simple “for sale” condominium units under one acre on landlocked parcel.
4. Allow for an Off-Site Monument Sign for landlocked parcel along the frontage of Hembree Business Center on Hembree Rd.

Below is a picture of the landlocked parcel that the variances are being requested for. If you have any questions or concerns about the requested variances or the project, please let us know.



Sincerely,

James G. Stice
Atlantic / Hembree, LLC
sandys@atlanticinvestor.com
404-495-7333

5/1/19

V-19-07

UPS Store/ Hembree Center

CITY OF ALPHARETTA

PUBLIC HEARING APPLICATION

FOR OFFICE USE ONLY

Case #: _____

Fee Paid Initial: _____

COMMUNITY DEVELOPMENT DEPARTMENT • 2 PARK PLAZA • ALPHARETTA, GA 30009

1. This page should be the first page in each of your completed application packets.
2. It is preferred that all responses be typed. Illegible applications will not be accepted.
3. Prior to signing and submitting your application, please check all information supplied on the following pages to ensure that all responses are complete and accurate. Incomplete applications will not be accepted.
4. Payment of all applicable fees must be made at the time of application. Payment may be made via cash, credit card (American Express, Master Card or Visa), or check made payable to "City of Alpharetta."
5. Applications will be accepted only on the designated submittal dates between the hours of 8:30 AM and 3:30 PM.
6. If you have any questions regarding this form, please contact the Community Development Department by calling 678-297-6070.

Contact Information:

Contact Name: James Stice Telephone: 404-495-7333

Address: 1000 Circle 75 Parkway SE Suite: 620

City: Atlanta State: GA Zip: 30339 Fax: 404-495-7334

Mobile Tel: 404-931-9545 Email: sandys@atlanticinvestor.com

Subject Property Information:

Address: 1815 Hembree Rd Current Zoning: LI

District: 90 1st Section: 2nd Land Lot: 650 Parcel ID: 12247006500377

Proposed Zoning: _____ Current Use: Self-storage

This Application For (Check All That Apply):

- | | | |
|---|---|------------------------------------|
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> Master Plan Amendment | <input type="checkbox"/> Exception |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Master Plan Review | |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Public Hearing | |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input type="checkbox"/> Other (Specify): _____ | |

5/1/19

V-19-07
UPS Store/ Hembree Center

ATLANTIC

ATLANTIC / HEMBREE, LLC
1000 Circle 75 Parkway, Suite 620, Atlanta, Georgia 30339

James G. Stice
Manager

April 30, 2019

Letter of Intent

To Whom It May Concern:

We are requesting the four variances attached to facilitate the development of the back, landlocked portion of 1815 Hembree Rd. We purchased the property for the business park in the front and as we are not developers, we have no plans to develop the back parcel. A development group is interested in building a complementary development to our property and needs the requested variances to move forward with their proposed project. Furthermore, our mortgage lender will not allow development of the back parcel under the same ownership as the front parcel that secures their loan. Accordingly, the back parcel must be under separate ownership in order for development to proceed. We appreciate your review of this request. If you have any questions, please let us know.

Sincerely,



James G. Stice
Atlantic / Hembree, LLC

APPLICANT REQUEST AND INTENT

What is the proposed use(s) of the property?

The proposed use is a fee-simple, for sale storage condominium units.

Applicant's Request (Please itemize the proposal):

Variations:

1. Eliminate the required tree islands and parking lot tree requirements.
2. Eliminate street frontage requirements for Phase 2 property.
3. Allow for fee simple "for sale" condominium units under one acre on Phase 2.
4. Allow for an Off-Site Monument Sign for Phase 2 landlocked parcel along the frontage of Phase 1 at Hembree Rd.

Applicant's Intent (Please describe what the proposal would facilitate):

The proposal will facilitate the development of Phase 2 at Hembree Center. The current ownership of Hembree Center has no plans to develop the back portion however we've found a group that is interested in building a complementary development but cannot without the requested variations.

5/1/19

V-19-07

UPS Store/ Hembree Center

PROPERTY OWNER AUTHORIZATION

Property Owner Information:

Contact Name: James Stice Telephone: 404-495-7333
 Address: 1000 Circle 75 Parkway SE Suite: 620
 City: Atlanta State: GA Zip: 30339

Authorization:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Application for Public Hearing before the City of Alpharetta, Georgia.

As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Public Hearing in request of the items indicated below.

- Annexation
- Special Use
- Rezoning
- Conditional Use
- Variance
- Master Plan
- Land Use Application
- Other

Identify Authorized Applicant:

Name of Authorized Applicant: Bradley Riffel Telephone: 678-990-2393
 Address: 50 Warm Springs Circle Suite: _____
 City: Roswell State: GA Zip: 30075

So Sworn and Attested:

Owner Signature:  Date: 5/1/2019

Notary: _____

Notary Signature:  Date: May 1, 2019



Exp 10-20-22

DISCLOSURE FORM

The Official Code of Georgia Annotated requires disclosure of campaign contributions to government officials by an applicant or opponent of a rezoning or public hearing petition (O.C.G.A. 36-67 A-1).

Applicants must file this form with the City of Alpharetta Community Development Department within ten (10) days after filing for rezoning or public hearing. Opponents to a rezoning or public hearing petition must file this form five (5) days prior to the Planning Commission meeting at which the subject rezoning or public hearing petition is scheduled to be heard.

Name of Applicant or Opponent: James Stice

Subject Public Hearing Case: _____

Campaign Contribution Information:

Please provide the requested information for each contribution with a dollar amount or value of \$250 or more made within the past two (2) years to an Alpharetta Official by the individual identified above. Please use a separate form for each Alpharetta Official to whom such a contribution as been made.

If the individual identified above has made no such contributions to an Alpharetta Official within the past two (2) years, please indicate this by entering "N/A" on the appropriate lines below.

Name of Official: N/A Position: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Campaign Contribution Information:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Disclosure Form is true and accurate and that I have disclosed herein any and all campaign contributions made to an Official of the City of Alpharetta, Georgia in accordance with O.C.G.A. 36-67 A-1.

Signature: James Stice

Date: 5/1/2019

BOARD OF ZONING APPEALS REVIEW CRITERIA

Please respond to the following ONLY if you are applying for a zoning variance.

Are there extraordinary and exceptional conditions pertaining to the subject property because of its size, shape, or topography? Please describe them.

The back parcel is landlocked and cannot be sold without a variance for street frontage.

Would the application of the Zoning Code standards as they relate to the subject property create an unnecessary hardship? Please explain.

Yes. Not allowing the requested variances for Phase 2 land to be
The lender for Phase 1 will not allow development of Phase 2 unless it is a separate parcel with separate ownership.

Are there conditions that are peculiar to the subject property? Please describe them in detail.

No.

Would relief, if granted, cause substantial detriment to the public good or impair the purpose and intent of the Zoning Code? Please defend your response.

No. The proposed development would be very similar in construction to the existing buildings and is not visible from public roads. Additionally, the property is surrounded by industrial uses and this development would be of much higher quality.

On a separate sheet or sheets, please provide any information or evidence that supports your request and the statements that you have provided in this application.

CITIZEN PARTICIPATION FORM - PART A

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

1815 Hembree Rd

Public Hearing or Project Name: _____

James Stice

404-495-7333

Contact Name: _____ Telephone: _____

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

See Attached

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- Letter
- Telephone
- Email
- Personal Visits
- Group Meeting
- Other *(Please Specify)*

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

Individuals will be able to send a letter, email, or reach us by phone to respond or contact us with questions or concerns about the proposal.

5/1/19

V-19-07
UPS Store/ Hembree Center

JB INDUSTRIAL PROPERTIES LLC
11452 NORTH FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009

MAXWELL ROAD PROPERTIES LLC
544 LADY FERN PT
ALPHARETTA GA 30022-1462

POTLAPALLY DIRAJ KUMAR
11280 MUSETTE CIR
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10903 ALPHARETTA HWY
ROSWELL GA 30075

READY MIX USA LLC
1501 BELVEDERE RD
WEST PALM BEACH FL 33401

PARK SEUNG NAM
11278 MUSETTE CIR
ALPHARETTA GA 30009

NORTH FULTON INDUSTRIAL PARK
1200 URBAN CENTER DR
BIRMINGHAM AL 35242-2545

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11540 MAXWELL RD
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SUTTON STEPHANIE & JERRY
11276 MUSETTE CIR
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GRID TOWERS L L C
2015 BOUNDARY ST STE 300
BEAUFORT SC 29902

MOSS DANNY R & CHARLOTTE L
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ALPHARETTA GA 30004

KAHN DAVID H & NIX MICHAEL
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11272 MUSETTE CIR
ALPHARETTA GA 30004

K & R LAND LLC
11435 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30004

STORAGE TRUST PROPERTIES L P
P O BOX 25025
GLENDALE CA 91201-5025

WOOLLEY MARTINE F & DELSOIN EDNER
11270 MUSETTE CIR
ALPHARETTA GA 30004

TURNER WILLIAM S
9145 LAKESIDE WAY
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ALPHARETTA GA 30009

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

5/1/19

V-19-07
UPS Store/ Hembree Center

SOLOMON DONALD M
4402 RIVER CHASE DR #3412
PHENIX CITY AL 36867

DNA SELF STORAGE LLC
11500 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009-4703

FULTON COUNTY
141 PRYOR ST SW STE 7000
ATLANTA GA 30303

ALPHARETTA HOLDINGS LLC
11495 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30004

GRID TOWERS L L C
2015 BOUNDARY ST STE 300
BEAUFORT SC 29902

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

OLEVSKY CYRIL TR
2710 TWIN CREEK CT
MARIETTA GA 30062

PAC DIMINISH EXPERT LLC
11515 N FULTON INDUSTRIAL BLVD
ALPHARETTA GA 30009

GRONHOLM ANNE W
11390 BOWEN RD
ROSWELL GA 30075

PERFORMANCE AUTO COLLISION CENTER
INCORPORATED
1775 HEMBREE RD
ALPHARETTA GA 30004

PERFORMANCE AUTO COLLISION CENTER
INCORPORATED
1775 HEMBREE RD
ALPHARETTA GA 30009

GRONHOLM HOLDINGS LLLP
12200 KING CIR
ROSWELL GA 30075

JETS ASSOCIATES LTD
641 LAKE DR
VERO BEACH FL 32963

BPVP HOLDING LLLP
1161 MC NUTT XING
BOGART GA 30622

BELAIR INDUSTRIES INC
43 WOOD PL
ROSWELL GA 30075-3539

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

WHITEHURST PROPERTIES INC
P O BOX 386
ALPHARETTA GA 30009-0386

ALPHARETTA TRANSFER STATION LLC
P O BOX 1450
CHICAGO IL 60690-1450

ROBERT W WOODRUFF ARTS CENTER INC
1280 PEACHTREE ST NE
ATLANTA GA 30309

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

CITY OF ROSWELL
38 HILL ST
ROSWELL GA 30075

C&J REALTY
11460 MAXWELL RD
ALPHARETTA GA 30004

ATLANTIC HEMBREE LLC
12 PIEDMONT CTR # 418
ATLANTA GA 30305

FULTON COUNTY BOARD OF EDUCATION
786 CLEVELAND AVE
ATLANTA GA 30315

N/F PROPERTY OF ALPHARETTA HOLDINGS, LLC DEED BOOK 38980 / PAGE 224 ZONED LI

N/F PROPERTY OF ALPHARETTA HOLDINGS, LLC DEED BOOK 38980 / PAGE 224 ZONED LI

N/F PROPERTY OF DONALD M. SOLOMON DEED BOOK 7365 / PAGE 70 ZONED LI

N/F PROPERTY OF K & R LAND, LLC DEED BOOK 39500 / PAGE 376 ZONED LI

N/F PROPERTY OF K & R LAND, LLC DEED BOOK 39500 / PAGE 378 ZONED LI

N/F PROPERTY OF GRID TOWERS, LLC (PER FULTON COUNTY TAX ASSESSOR) ZONED LI

N/F PROPERTY OF READY MIX USA, LLC DEED BOOK 40636 / PAGE 194 ZONED LI

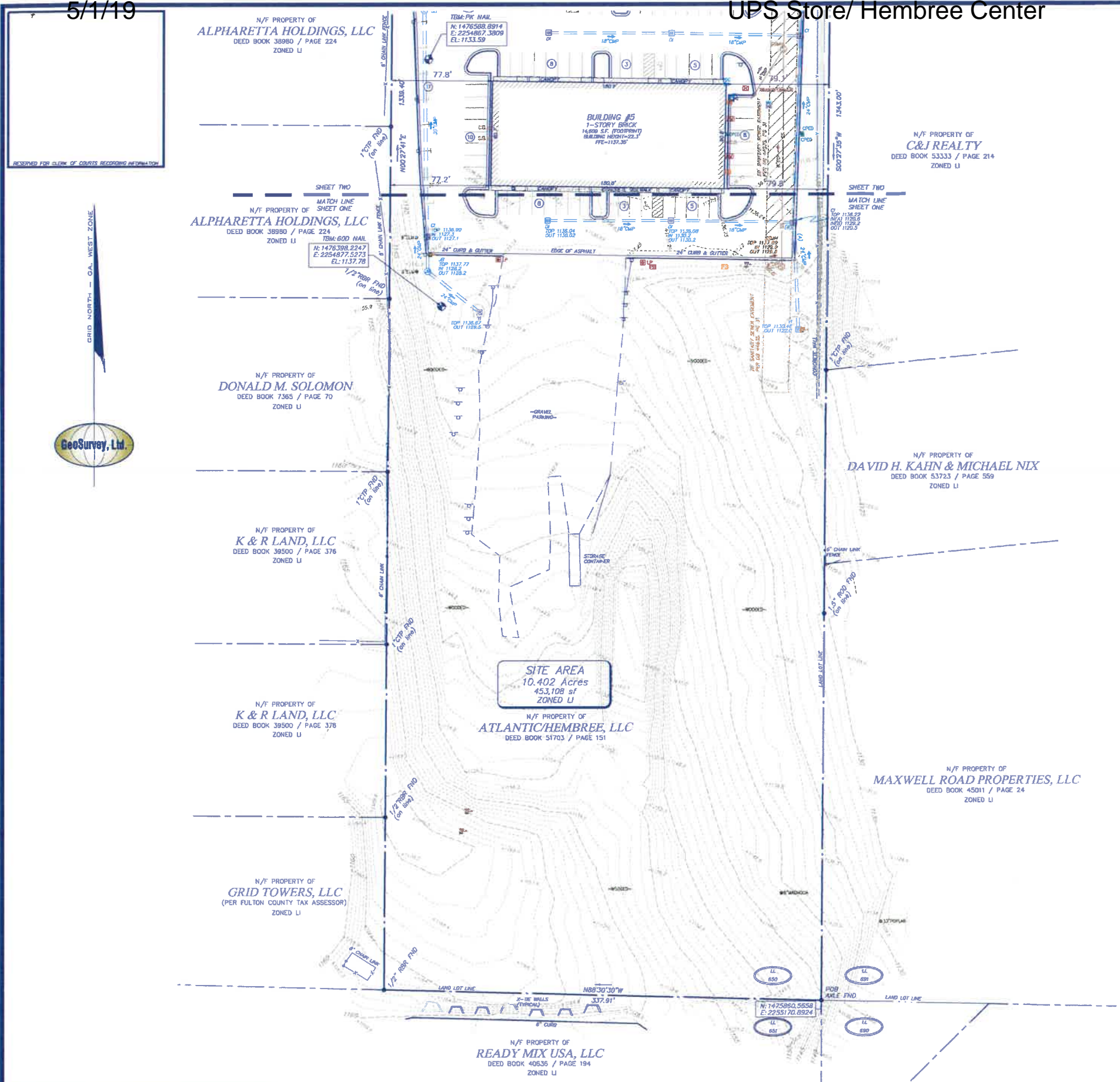
N/F PROPERTY OF C&J REALTY DEED BOOK 53333 / PAGE 214 ZONED LI

N/F PROPERTY OF DAVID H. KAHN & MICHAEL NIX DEED BOOK 53723 / PAGE 559 ZONED LI

N/F PROPERTY OF MAXWELL ROAD PROPERTIES, LLC DEED BOOK 45011 / PAGE 24 ZONED LI

SITE AREA 10.402 Acres 453,108 sf ZONED LI

N/F PROPERTY OF ATLANTIC/HEMBREE, LLC DEED BOOK 51703 / PAGE 151



GENERAL NOTES

THIS SURVEY HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE PERSON OR ENTITIES NAMED HEREON. NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE INFORMATION SHOWN HEREON IS TO BE EXTENDED TO ANY PERSONS OR ENTITIES OTHER THAN THOSE SHOWN HEREON.

PARKING SUMMARY table with 2 columns: Type and Count. Includes 205 Regular and 214 Total.

ALTA SURVEYOR CERTIFICATION

Text block for ALTA Surveyor Certification, including a signature and date (September 14, 2017).



GEORGIA SURVEYOR CERTIFICATION

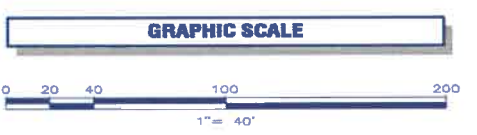
Text block for Georgia Surveyor Certification, including a signature and date (September 14, 2017).



LEGEND

Legend table with 2 columns: STANDARD ABBREVIATIONS and STANDARD SYMBOLS. Lists various symbols for utilities, structures, and markers.

IF YOU DIG Know what's below. Call before you dig. Dial 811 Or Call 800-282-7411

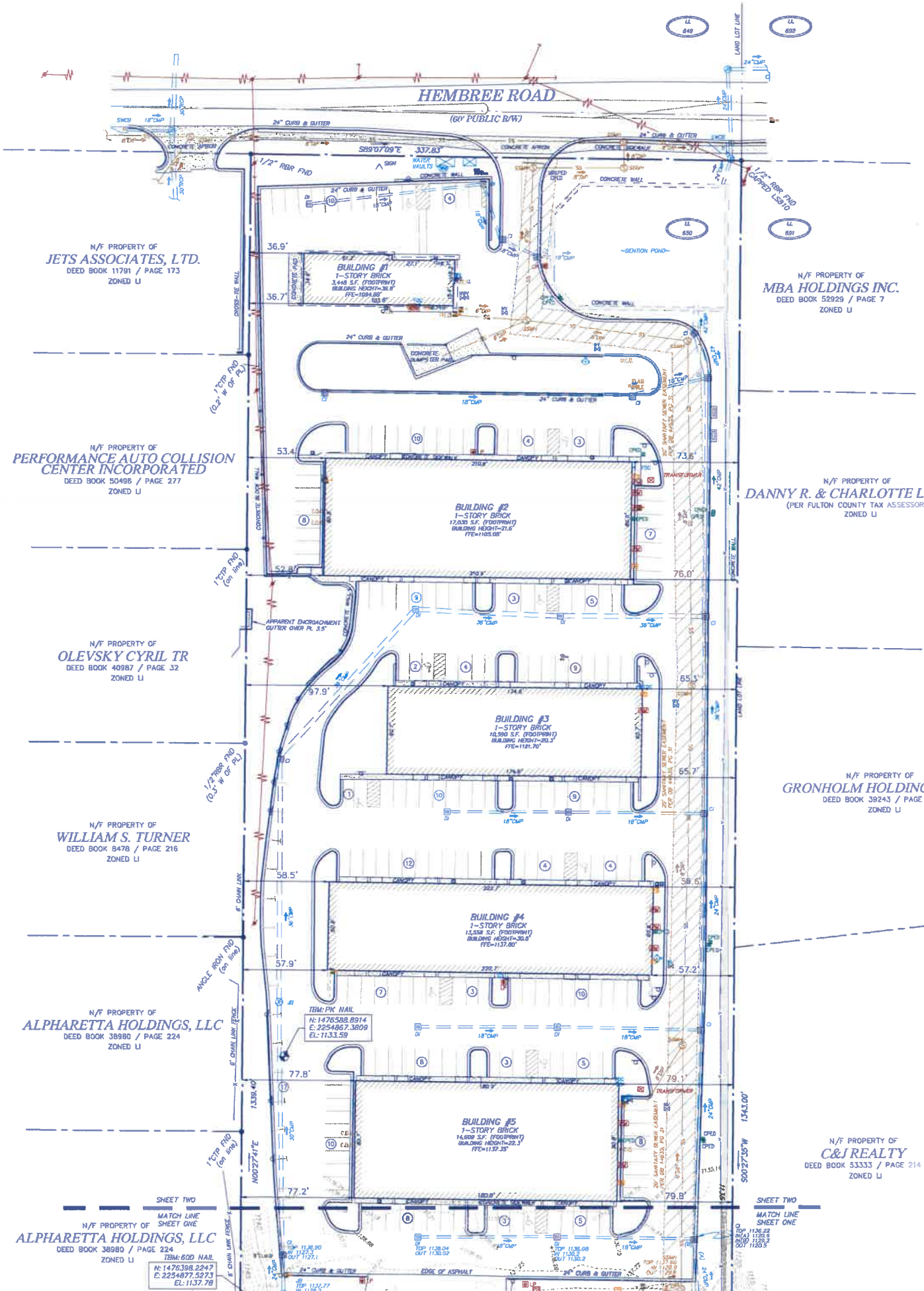


CLOSURE STATEMENT THE FIELD CLOSURE UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 23,346... THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND WAS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 521,910 FEET. DALL INT.

1 SHEET OF 2



ALTA/NSPS LAND TITLE SURVEY HEMBREE CENTER 1815 Hembree Road FOR ATLANTIC/HEMBREE, LLC CHICAGO TITLE INSURANCE COMPANY



SITE PHOTOGRAPHS



TITLE EXCEPTIONS

- THE FOLLOWING EXCEPTIONS ARE LISTED IN SCHEDULE B, SECTION 2, OF A COMMITMENT FOR TITLE INSURANCE, AS PREPARED BY CHICAGO TITLE INSURANCE COMPANY, NEW NO. 2230610-87538141, POLICY DATE SEPTEMBER 26, 2012, EFFECTIVE DATE AUGUST 21, 2017.
- Intentionally omitted.
 - Permit to Cut or Trim Trees dated April 11, 1957, from Mrs. Fannie Johnson to Georgia Power Company, in Deed Book 3220, Page 448, in the Office of the Clerk of Superior Court of Fulton County, Georgia Records. MAY AFFECT SITE, BLANKET IN NATURE.
 - Sewer Easement dated January 2, 2007, from Hembree Warehouse, LLC, a Georgia limited liability corporation, to Fulton County, recorded on March 14, 2007, in Deed Book 44635, Page 31, aforesaid records. AFFECTS SITE AS PLOTTED.
 - Easement dated November 6, 2007, by Hembree Warehouse, LLC, to Georgia Power Company, recorded on April 9, 2008, in Deed Book 46584, Page 682, aforesaid records. AFFECTS SITE, BLANKET IN NATURE.
 - All matters as disclosed by that certain plot recorded in Condominium Plot Book C18, Page 106, aforesaid records. APPLICABLE EASEMENTS AND SETBACKS AFFECT SITE AS PLOTTED.
 - All matters as disclosed by that certain plot recorded in Condominium Plot Book D9, Page 111, aforesaid records. APPLICABLE EASEMENTS AND SETBACKS AFFECT SITE AS PLOTTED.
 - All matters as disclosed by that certain plot recorded in Floor Plan Book F32, Page 113, aforesaid records. APPLICABLE EASEMENTS AND SETBACKS AFFECT SITE AS PLOTTED.
 - All matters as disclosed by that certain plot recorded in Floor Plan Book F47, Page 3, aforesaid records. APPLICABLE EASEMENTS AND SETBACKS AFFECT SITE AS PLOTTED.

VICINITY MAP



PROPERTY DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 650, 1st District, 2nd Section, Fulton County, City of Alpharetta, Georgia, and being more particularly described as follows:

BEGINNING at an oak found at the southeast corner of Land Lot 650 (the Land Lot corner common to Land Lots 650, 651, 690 and 691); thence along the Land Lot Line common to Land Lots 650 and 651, North 88 degrees 30 minutes 30 seconds West a distance of 337.91 feet to a 1/2-inch rebar found; thence leaving said Land Lot Line, North 00 degrees 27 minutes 41 seconds East a distance of 1,339.40 feet to a 1/2-inch rebar found on the southern right-of-way of Hembree Road (60' right-of-way); thence along said right-of-way, South 88 degrees 07 minutes 09 seconds East a distance of 337.83 feet to a 1/2-inch rebar found (capped L5810) at the intersection of the Land Lot Line common to Land Lots 650 and 691 with the southern right-of-way of Hembree Road; thence leaving said right-of-way, along said Land Lot Line, South 00 degrees 27 minutes 35 seconds West a distance of 1,343.00 feet to an oak found at the southeast corner of Land Lot 650 (the Land Lot corner common to Land Lots 650, 651, 690 and 691), said oak found being the TRUE POINT OF BEGINNING.

Said tract of land contains 10,402 Acres.

GENERAL NOTES

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THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA BASED ON THE FLOOD INSURANCE RATE MAP FOR THIS AREA, THE MAP NUMBER FOR THIS AREA IS 13121C 0086 F, AND THE DATE OF SAID MAP IS SEPTEMBER 18, 2013. THIS DETERMINATION WAS MADE BY GRAPHICALLY DETERMINING THE POSITION OF THIS SITE ON SAID FIRM MAPS UNLESS OTHERWISE NOTED.

PLEASE NOTE: ABOVE GROUND UTILITIES ARE SHOWN HEREON. NO UNDERGROUND UTILITIES WERE MARKED OR LOCATED.

PLEASE NOTE: HARDWOOD TREES 24-INCH DBH, PINE TREES 30-INCH DBH AND UNDER-STORY TREES 8-INCH DBH (DIAMETER AT BREAST HEIGHT) AND LARGER WERE LOCATED FOR THIS SURVEY.

THE DATUM FOR THIS SITE WAS ESTABLISHED UTILIZING GLOBAL POSITIONING SYSTEMS, AND BASED ON POSITIONAL VALUES FOR THE VIRTUAL REFERENCE STATION NETWORK DEVELOPED BY eGPS SOLUTIONS. THE HORIZONTAL REFERENCE FRAME IS NORTH AMERICAN DATUM OF 1983 (NAD83)-STATE PLANE COORDINATE SYSTEM OF GEORGIA-WEST ZONE. THE VERTICAL REFERENCE FRAME IS NORTH AMERICAN VERTICAL DATUM OF 1988. ANY DIRECTIONS OR DIMENSIONS SHOWN ARE A RECTANGULAR, GROUND LEVEL PROJECTION OF THE STATE PLANE COORDINATE SYSTEM.

NO ZONING REPORT OR ZONING LETTER WAS PROVIDED TO THE SURVEYOR. THE SITE IS ZONED "LI" (LIGHT INDUSTRIAL DISTRICT) AS SHOWN ON THE ZONING MAP OF CITY OF ALPHARETTA.

THE MINIMUM YARD SETBACKS ARE: FRONT - 50 FEET FROM LOCAL STREETS AND 65 FEET FROM ALL OTHER STREETS; SIDE - 15 FEET; AND REAR - 15 FEET. MAXIMUM BUILDING HEIGHT: 35'

PLEASE NOTE: ZONING AND SETBACKS SHOULD BE CONFIRMED AND VERIFIED BY PLANNING AND ZONING PRIOR TO DESIGN OR CONSTRUCTION ACTIVITIES.

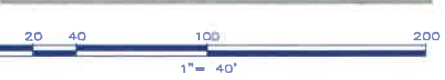
NATIONAL WETLANDS STATEMENT
AS OF THE DATE OF THIS SURVEY - THE U.S. FISH AND WILDLIFE SERVICE NATIONAL WETLANDS INVENTORY GIS WEBPAGE (<http://137.227.242.85/wetland/>) INDICATES NO WETLANDS EXIST ON SITE.

SURVEY REFERENCES
1. FINAL SUBDIVISION PLAN OF NORTH FULTON INDUSTRIAL PARK PREPARED BY BATES-LONG & ASSOCIATES RECORDED IN PLAT BOOK 116, PAGE 44.

LEGEND

STANDARD ABBREVIATIONS	STANDARD SYMBOLS
AC AIR CONDITIONER	○ OVERHEAD TRAFFIC SIGNAL LIGHT
BH BORE HOLE	○ POWER POLE
BSL BUILDING SETBACK LINE	— GUY WIRE
C CURB INLET	— POWER LINE
CMF CORRUGATED METAL PIPE	□ LIGHT POLE
CD CONCRETE MONUMENT FND	□ ELECTRIC TRANSFORMER
CO SANITARY CLEANOUT	□ WATER VAULT
CPED COMMUNICATION PEDESTAL	□ GAS VALVE
CTP CURBED TOP PIPE	□ GAS METER
DI DROP INLET	□ WATER VALVE
DIP DUCTILE IRON PIPE	□ WATER METER
DWCB DOUBLE WING CATCH BASIN	□ FIRE HYDRANT
FNC FENCE	— UNDERGROUND ELECTRIC LINE
FND FOUND	— UNDERGROUND GAS LINE
GM GAS METER	— UNDERGROUND COMMUNICATION LINE
INV INVERT	— UNDERGROUND WATER LINE
JB JUNCTION BOX	○ PHOTO POSITION INDICATOR
MH MANHOLE	○ REGULAR PARKING SPACE COUNT
OMP OVERHEAD POWER	○ HANDICAP PARKING SPACE
OTF OPEN TOP PIPE	○ TREE POSITION INDICATOR
PM POWER METER	○ TRAFFIC SIGN
PKS PK NAIL SET	
POB POINT OF BEGINNING	
POC POINT OF COMMENCEMENT	
RCF REINFORCED CONCRETE PIPE	
RBR IRON REINFORCING BAR	
RBS S/STRIP SET CAPPED LSF 621	
SS SANITARY SEWER	
SWCB SINGLE WING CATCH BASIN	
TRANS ELECTRIC TRANSFORMER	

GRAPHIC SCALE



CLOSURE STATEMENT

THE FIELD CLOSURE UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 23,548, AND WAS ADJUSTED USING THE LEAST SQUARES METHOD. A TRIMBLE S-6 TOTAL STATION AND TRIMBLE TSC-3 DATA COLLECTOR WERE USED TO COLLECT THIS FIELD DATA.

THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND WAS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 62,181.8 FEET (DUAL UNIT).

IF YOU DIG

811 Know what's below.
Call before you dig.
Dial 811
Or Call 800-282-7411



Land Surveying • 3D Laser Scanning
1660 Barnes Mill Road
Marietta, Georgia 30062
Phone: (770) 795-9900
Fax: (770) 795-8880
www.geosurvey.com
EMAIL: info@geosurvey.com
Certificate of Authorization #LSF-000621

2 SHEET
OF
2

ALTA/NSPS LAND TITLE SURVEY
HEMBREE CENTER
1815 Hembree Road
FOR
ATLANTIC/HEMBREE, LLC
CHICAGO TITLE INSURANCE COMPANY

GS JOB NO: 20175598-01	DRAWING SCALE: 1" = 40'	SURVEY DATE: SEPTEMBER 14, 2017
FIELD WORK: JEM	CITY: ALPHARETTA STATE: GA	REVISIONS
PROJ MGR: DLH	COUNTY: FULTON	No. Date Description
REVIEWED: JRC	LAND LOT: 650	
DWG FILE: 20175598-01.dwg	DISTRICT: 1st SECTION: 2nd	



N/F PROPERTY OF
JETS ASSOCIATES, LTD.
DEED BOOK 11791 / PAGE 173
ZONED LI

N/F PROPERTY OF
MBA HOLDINGS INC.
DEED BOOK 52929 / PAGE 7
ZONED LI

N/F PROPERTY OF
PERFORMANCE AUTO COLLISION CENTER INCORPORATED
DEED BOOK 50498 / PAGE 277
ZONED LI

N/F PROPERTY OF
DANNY R. & CHARLOTTE L. MOSS
(PER FULTON COUNTY TAX ASSESSOR)
ZONED LI

N/F PROPERTY OF
OLEVSKY CYRIL TR
DEED BOOK 40987 / PAGE 32
ZONED LI

N/F PROPERTY OF
GRONHOLM HOLDINGS, LLLP
DEED BOOK 38943 / PAGE 76
ZONED LI

N/F PROPERTY OF
WILLIAM S. TURNER
DEED BOOK 8478 / PAGE 216
ZONED LI

N/F PROPERTY OF
ALPHARETTA HOLDINGS, LLC
DEED BOOK 38990 / PAGE 224
ZONED LI

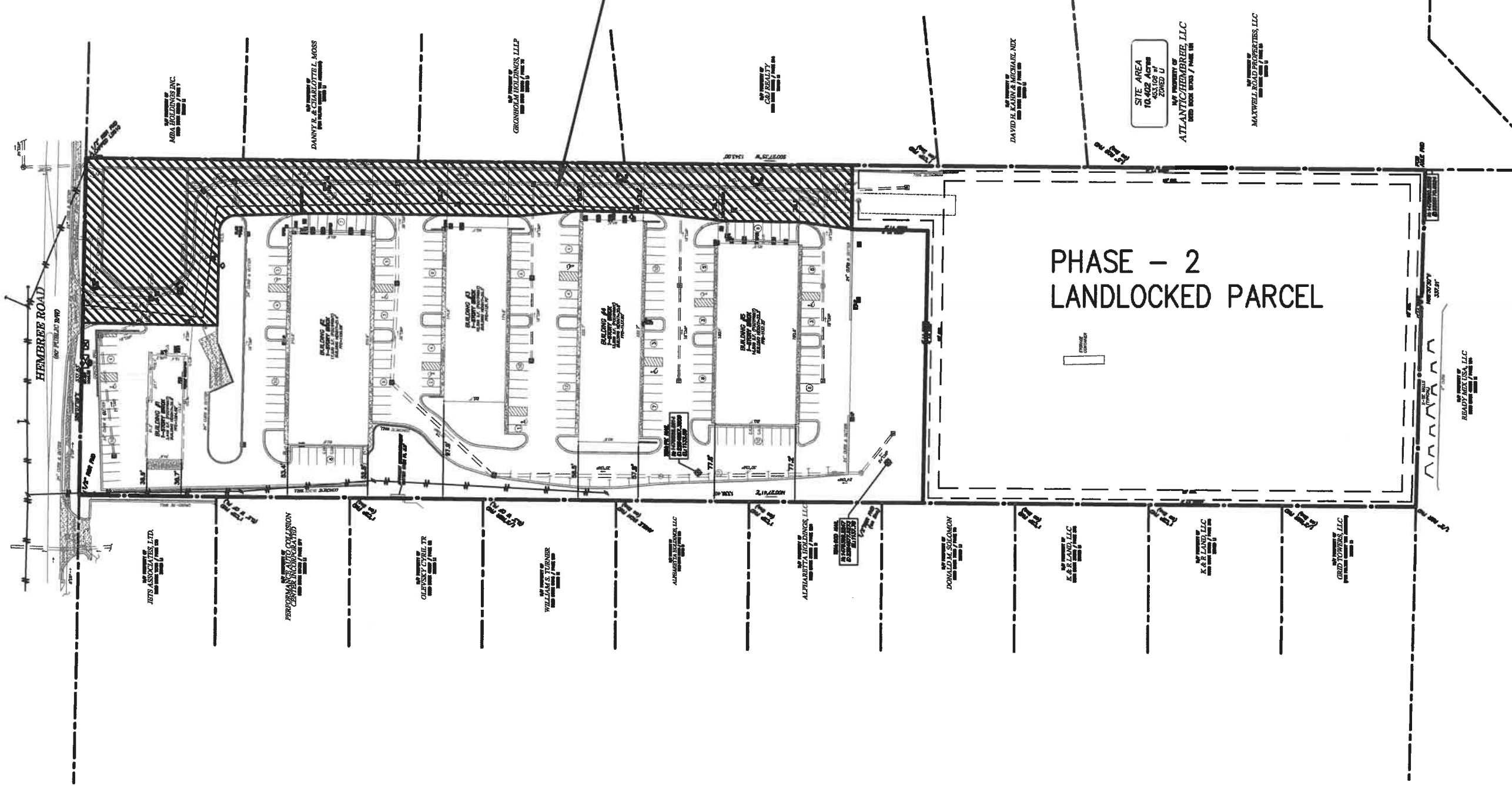
N/F PROPERTY OF
C&J REALTY
DEED BOOK 53333 / PAGE 214
ZONED LI

N/F PROPERTY OF
ALPHARETTA HOLDINGS, LLC
DEED BOOK 38990 / PAGE 224
ZONED LI

N: 1476368.2247
E: 2254877.5273
EL: 1137.78

ACCESS, UTILITY AND
DETENTION POND ESMNT.

PHASE - 2
LANDLOCKED PARCEL



OVERALL SURVEY AND
ESMNT.

**HEMBREE CENTER
SELF STORAGE**
ALPHARETTA, GEORGIA

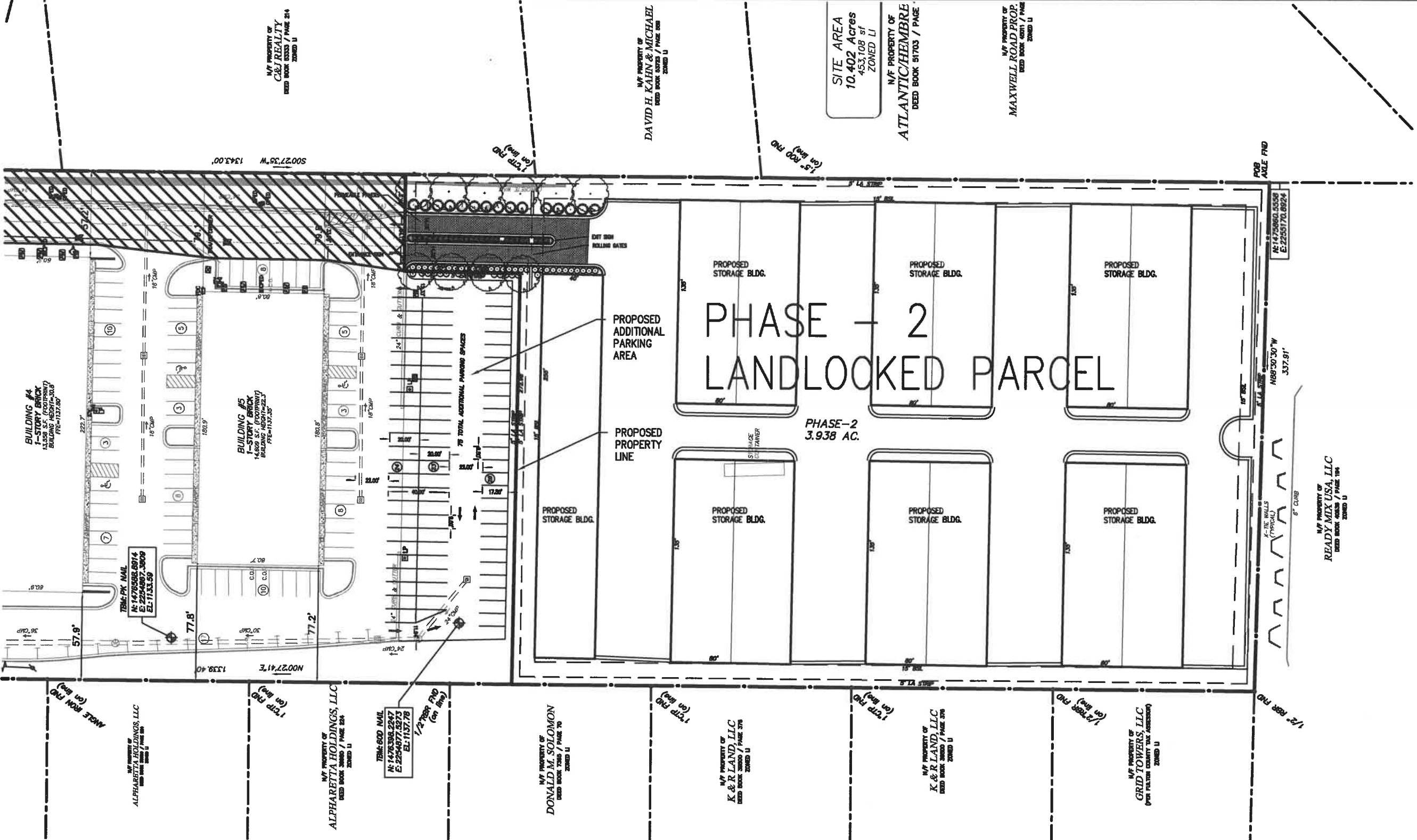
NO.	REVISIONS	DATE

PROJECT NO: 19-000
 CIVIL DRAWN BY:
 LANDSCAPE DRAWN BY:
 CHECKED BY:
 DATE - 5-1-19

SHEET
V-1.0

5/1/19

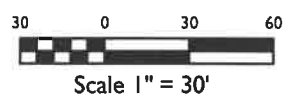
V-19-07 UPS Store/ Hembree Center



OVERALL SITE DATA
 TOTAL AREA - 10.402 ACRES
 PROPOSED PHASE 1 AREA - 280,989 SF OR 6.45 AC.
 PROPOSED PHASE 2 AREA - 172,122 SF OR 3.95 AC.

OVERALL TOTAL BUILDING SQ. FT. - 134,235 SF
 OVERALL TOTAL BUILDING SQ. FT. % - 29.6 %
 ALLOWED % - 35%

OVERALL TOTAL IMPERVIOUS SQ. FT. AREA - 336,773 SF
 OVERALL TOTAL IMPERVIOUS SQ. FT. AREA % - 74.32 %
 ALLOWED % - 80 %



PHASE 2 CONCEPTUAL
 SITE PLAN AND
 ADDITIONAL PARKING
 FOR PHASE 1

HEMBREE CENTER
 SELF STORAGE
 ALPHARETTA, GEORGIA

NO.	REVISIONS	DATE

PROJECT NO: 19-000
 CIVIL DRAWN BY:
 CIVIL DESIGNED BY:
 LANDSCAPE DRAWN BY:
 CHECKED BY:
 DATE: 5-1-19

SHEET
V-2.0



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: City Clerk

Submitted By: Erin Cobb

Sponsored By:

Meeting Date: July 22, 2019

**I. AGENDA ITEM TITLE: ORDINANCE: CALLING THE CITY OF ALPHARETTA GENERAL ELECTION
(2ND READING)**

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF THE CITY OF ALPHARETTA GENERAL CITY ELECTION; TO PROVIDE FOR PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A CANDIDATE QUALIFICATION PERIOD; TO REAFFIRM CANDIDATE QUALIFICATION FEES; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

II. RECOMMENDATION:

Please approve the attached Ordinance calling for the 2019 Alpharetta General Election.

III. REPORT IN BRIEF:

The Georgia Election Code requires that when a municipality authorizes their County to conduct their Election, the municipality shall by Ordinance, authorize such an action. This Ordinance serves to meet that statute requirement and in addition provides the following:

- 1.) Calls the Alpharetta General Election
- 2.) Provides Publication and Notice of the Alpharetta General Election
- 3.) Provides notification of the candidate qualification period and reaffirms the associated fees
- 4.) Provides notice of voter registration deadline for the Alpharetta General Election

IV. ALTERNATIVES:

V. ATTACHMENTS:

ORD REG_PROV FOR CALL OF ELEC (POSTS 456 and Mayor) (1)

**AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF
THE CITY OF ALPHARETTA GENERAL CITY ELECTION; TO PROVIDE FOR
PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A CANDIDATE
QUALIFICATION PERIOD; TO REAFFIRM CANDIDATE QUALIFICATION FEES;
TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE;
AND FOR OTHER PURPOSES**

WHEREAS, pursuant to the Charter of the City of Alpharetta and the laws of the State of Georgia, the City of Alpharetta is required to hold a non-partisan general election on the 5th day of November, 2019, to elect a Mayor and three (3) members of the City Council (Posts 4, 5, and 6) for a full four (4) year term each; and

WHEREAS, by this Ordinance the Council desires to call the election and to provide for a period of candidate qualification and voter registration;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL, AND IT IS HEREBY ORDAINED that a non-partisan general election is hereby called to be held in the City of Alpharetta, Georgia, on the 5th day of November, 2019, to elect a Mayor and three (3) members of the City Council (Posts 4, 5, and 6) for a full four (4) year term each;

BE IT FURTHER ORDAINED that those residents who have not previously registered shall make application for registration no later than the close of business on October 7, 2019; and

BE IT FURTHER ORDAINED that those residents who wish to qualify as a candidate in the election shall file a notice of candidacy in the Office of the City Clerk no earlier than 8:30 A.M. on August 19, 2019 and no later than 5:00 P.M. on August 21, 2019, and that all candidates for election shall designate, at the time of qualifying, the post for which they are seeking election; and

BE IT FURTHER ORDAINED, as previously published by the City as required by law, the qualification fee for Mayor shall be \$900.00 and for City Council shall be \$450.00; and

BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to publish a notice at least two (2) weeks prior to the opening of the qualifying period and once a week for not less than four (4) weeks immediately preceding the date of the election (and for such other dates as the Clerk or City Attorney may deem appropriate), in the Alpharetta-Roswell Herald, which notice shall contain the information required by applicable law; and

BE IT FURTHER ORDAINED that any and all ordinances or resolutions in conflict with this Ordinance are hereby repealed.

ADOPTED AND APPROVED this _____ day of _____, 2019.

CITY OF ALPHARETTA, GEORGIA

By: _____
Jim Gilvin, Mayor

COUNCIL MEMBERS

Mayor Pro Tem Mitchell

Council Member Burnett

Council Member Richard

Council Member Hipes

Council Member Binder

Council Member Merkel

(SEAL)

Attest:

Erin Cobb, City Clerk

1342044



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: City Clerk
Submitted By: Erin Cobb
Sponsored By:
Meeting Date: July 22, 2019

**I. AGENDA ITEM TITLE: ORDINANCE: CALLING OF A REFERENDUM (SPECIAL) ELECTION
(2ND READING)**

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF THE ELIMINATION OF THE INCOME RESTRICTION FOR THE \$10,000.00 HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES FOR RESIDENTS 65 YEARS AND OLDER; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

II. RECOMMENDATION:

Staff recommends that Mayor and City Council approve an ordinance to regulate and provide for the calling of a referendum (special) election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of the elimination of the income restriction for the \$10,000.00 homestead exemption from City of Alpharetta ad valorem taxes for residents 65 years and older; to provide for the publication and notice of the election; and to establish a voter registration cut-off date.

III. REPORT IN BRIEF:

House Bill 430 was passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019. House Bill 430 allows the City of Alpharetta to eliminate the income restriction for the \$10,000.00 homestead exemption from the City's ad valorem taxes for residents 65 years and older.

The additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the City limits. The Act further provides that the City shall conduct an election for purposes of submitting the Act to the electors. This special election will be held in conjunction with the state-wide general election on November 5, 2019.

IV. ALTERNATIVES:

V. ATTACHMENTS:

CALLING FOR SPECIAL ELECTION - ELIMINATION OF INCOME RESTRICTION FOR HOMESTEAD EXEMPTION(3322937.1)

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF THE ELIMINATION OF THE INCOME RESTRICTION FOR THE \$10,000.00 HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES FOR RESIDENTS 65 YEARS AND OLDER; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

WHEREAS, House Bill 430 (the "Act"), a local law passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019, allows the City of Alpharetta to eliminate the income restriction for the \$10,000.00 homestead exemption from City of Alpharetta ad valorem taxes for municipal purposes for residents 65 years and older; and

WHEREAS, in accordance with Art. VII, Section II, Paragraph 2 of the Georgia Constitution, the additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the limits of the City of Alpharetta voting in a referendum thereon; and

WHEREAS, the Act further provides that the City of Alpharetta shall call and conduct an election, which shall be held on November 5, 2019, for the purpose of submitting the Act to the electors of the City of Alpharetta for approval or rejection; and

WHEREAS, the Mayor and Council of the City of Alpharetta desire to call a special election to be held in conjunction with the state-wide general election on November 5, 2019, in order for the qualified electors of the City to determine whether the Act providing for the additional homestead exemption from City of Alpharetta ad valorem taxes for municipal purposes shall be approved or rejected.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALPHARETTA, AND IT IS HEREBY ORDAINED that there be, and there is hereby called to be held in the City of Alpharetta, Georgia, on November 5, 2019, a referendum (special) election for the purpose of submitting the Act to the qualified electors of the City of Alpharetta for approval or rejection as set forth in the following paragraph; and

BE IT FURTHER ORDAINED that the ballots to be used in said election shall have written or printed thereon the following words:

- "() Yes Shall the Act be approved which eliminates the income restriction for the \$10,000.00 homestead exemption from
() No all City of Alpharetta ad valorem taxes for residents age 65 years and older?"; and

BE IT FURTHER ORDAINED that the date of the special election be and it is hereby set for November 5, 2019, and the regular polling places of the City, be opened at 7:00 A.M. and closed at 7:00 P.M., and the election be held in conjunction with the state-wide general election and in accordance with the election laws of the State of Georgia, and that the returns of said election be made to the City, which shall, in the presence of and together with the poll managers, who shall bring up the returns, consolidate said returns and declare the result of said election in the manner required by law; and

BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to publish a notice of the call of said election on or about July 26, 2019, in the Alpharetta-Roswell Herald and to publish notice of the call of said election in such other newspapers of general circulation within the City as the City Clerk or City Attorney deem appropriate, if any, and the notice of said election shall be in substantially the form attached hereto as Exhibit "A" and contain such information as required by applicable law; and

BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to execute all necessary documents and perform such other acts necessary to call said special election; and

BE IT FURTHER ORDAINED that the Fulton County Department of Registration and Elections shall conduct the special election and is hereby appointed as the Elections Superintendent to perform all duties of the Election Superintendent; and

BE IT FURTHER ORDAINED that books for registration of voters in the aforementioned special election shall remain open until the close of business on October 7, 2019, and that any resident of the City who has not previously registered may do so prior to such date and time; and

BE IT FURTHER ORDAINED that the Elections Superintendent is further authorized and requested to publish a notice of the date and purpose of the election in the legal organ of the City of Alpharetta once a week for two weeks immediately preceding the date of the election. The notice of the election shall be in substantially the form attached hereto as Exhibit "B"; and

BE IT FURTHER ORDAINED that the Mayor and such other City officials as are necessary are authorized to enter into and execute on behalf of the City a contract with Fulton County for the conduct of the election; and

BE IT FURTHER ORDAINED that any and all ordinances or resolutions in conflict with this Ordinance are hereby repealed.

ADOPTED AND APPROVED this _____ day of _____, 2019.

CITY OF ALPHARETTA, GEORGIA

By: _____
Jim Gilvin, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

COUNCILMEMBERS

C. Sam Thomas, City Attorney

Jason Binder

Ben Burnett

(SEAL)

John Hipes

Erin Cobb, City Clerk

Dan Merkel

First Reading _____

Donald Mitchell

Second Reading _____

Adopted _____

Karen Richard

Exhibit "A"

**NOTICE AND CALL OF SPECIAL ELECTION
IN THE CITY OF ALPHARETTA, GEORGIA**

TO THE QUALIFIED VOTERS OF THE CITY OF ALPHARETTA, GEORGIA:

YOU ARE HEREBY NOTIFIED that on the 5th day of November, 2019, in conjunction with the state-wide general election, an election will be held in the City of Alpharetta, Georgia, at which election there will be submitted to the qualified voters thereof for their determination the question of whether House Bill 430 (the "Act"), a local law to eliminate the income restriction for the \$10,000.00 homestead exemption from all City of Alpharetta ad valorem taxes for residents age 65 years and older, is approved or rejected.

The election shall be held at the regular polling places of the City of Alpharetta and the polls will be open from 7:00 A.M. to 7:00 P.M. on the date fixed for the election. The dates and hours for advanced voting will be provided by Fulton County at a later date.

Those residents qualified to vote at the election shall be determined in all respects in accordance with the election laws of the State of Georgia and the Charter and Ordinances of the City of Alpharetta. Those residents who have not previously registered shall make application for registration no later than the close of business on October 7, 2019. Residents may make application for registration in person at City Hall or any other Fulton County, Georgia registration location, or in any other location and in any other manner authorized by law.

This notice is given pursuant to an Ordinance of the Council of the City of Alpharetta, Georgia, adopted on the 22nd day of July, 2019.

CITY OF ALPHARETTA, GEORGIA

By: /s/ Erin Cobb
City Clerk

Exhibit "B"

**NOTICE OF SPECIAL ELECTION TO DETERMINE WHETHER A LOCAL LAW
PROVIDING ADDITIONAL HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA
AD VALOREM TAXES IS APPROVED OR REJECTED**

TO THE QUALIFIED VOTERS OF THE CITY OF ALPHARETTA:

NOTICE IS HEREBY GIVEN that on the 5th day of November, 2019, in conjunction with the state-wide general election, an election will be held at the regular polling places in all the election districts of the City of Alpharetta, Georgia, at which time there will be submitted to the qualified voters of the City of Alpharetta, Georgia, for their determination the question of whether House Bill 430 (the "Act"), a local law to provide a new homestead exemption from City of Alpharetta ad valorem taxes for city purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the adjusted base year assessed value of such homestead, is approved or rejected.

The ballots to be used in said election shall have written or printed thereon the following words:

"() Yes Shall the Act be approved which eliminates the income restriction for the \$10,000.00 homestead exemption from
() No all City of Alpharetta ad valorem taxes for residents age 65 years and older?"

Voters desiring to vote for approval of the Act shall vote "Yes," and voters desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, Section 1 of the Act, providing the new homestead exemption from City of Alpharetta property taxes for city purposes, shall become of full force and effect on January 1, 2020. If the Act is not so approved, Section 1 of the Act shall not become effective and the Act shall be automatically repealed on January 1, 2020.

The election shall be held at the regular polling places of the City of Alpharetta and the polls will be open from 7:00 A.M. to 7:00 P.M. on the date fixed for the election.

Those residents of the City of Alpharetta, Georgia, qualified to vote at such election shall be determined in all respects in accordance with the election laws of the State of Georgia.

This notice is given pursuant to an Ordinance of the Council of the City of Alpharetta, Georgia, adopted on the 22nd day of July, 2019.



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: City Clerk
Submitted By: Erin Cobb
Sponsored By:
Meeting Date: July 22, 2019

**I. AGENDA ITEM TITLE: ORDINANCE: CALLING OF A REFERENDUM (SPECIAL) ELECTION
(2ND READING)**

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF AN ADDITIONAL \$5,000.00 REGULAR HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

II. RECOMMENDATION:

Staff recommends the approval of an ordinance to regulate and provide for the calling of a referendum (special) election to be held in conjunction with the state-wide general election on November 5, 2019, to determine the approval or rejection of an additional \$5,000.00 regular homestead exemption for City of Alpharetta ad valorem taxes; to provide for the publication and notice of the election; and to establish a voter registration cut-off date.

III. REPORT IN BRIEF:

House Bill 431 was passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019. House Bill 431 allows the City to provide an additional \$5,000.00 homestead exemption for the City's ad valorem taxes.

The additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the City limits. The Act further provides that the City conduct an election for the purpose of submitting the Act to the electors for approval or rejection. This election will be held in conjunction with the state-wide general election on November 5, 2019.

IV. ALTERNATIVES:

V. ATTACHMENTS:

CALLING FOR SPECIAL ELECTION - INCREASE HOMESTEAD EXEMPTION(3322824.1)

AN ORDINANCE TO REGULATE AND PROVIDE FOR THE CALLING OF A REFERENDUM (SPECIAL) ELECTION TO BE HELD IN CONJUNCTION WITH THE STATE-WIDE GENERAL ELECTION ON NOVEMBER 5, 2019, TO DETERMINE THE APPROVAL OR REJECTION OF AN ADDITIONAL \$5,000.00 REGULAR HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA AD VALOREM TAXES; TO PROVIDE FOR THE PUBLICATION AND NOTICE OF THE ELECTION; TO ESTABLISH A VOTER REGISTRATION CUT-OFF DATE; AND FOR OTHER PURPOSES

WHEREAS, House Bill 431 (the "Act"), a local law passed by the General Assembly of the State of Georgia during the 2018 legislative session and signed into law on April 30, 2019, allows the City of Alpharetta to provide an additional \$5,000.00 homestead exemption from City of Alpharetta ad valorem taxes for municipal purposes; and

WHEREAS, in accordance with Art. VII, Section II, Paragraph 2 of the Georgia Constitution, the additional homestead exemption granted by the Act is conditioned upon approval by a majority of the qualified electors residing within the limits of the City of Alpharetta voting in a referendum thereon; and

WHEREAS, the Act further provides that the City of Alpharetta shall call and conduct an election, which shall be held on November 5, 2019, for the purpose of submitting the Act to the electors of the City of Alpharetta for approval or rejection; and

WHEREAS, the Mayor and Council of the City of Alpharetta desire to call a special election to be held in conjunction with the state-wide general election on November 5, 2019, in order for the qualified electors of the City to determine whether the Act providing for the additional homestead exemption from City of Alpharetta ad valorem taxes for municipal purposes shall be approved or rejected.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALPHARETTA, AND IT IS HEREBY ORDAINED that there be, and there is hereby called to be held in the City of Alpharetta, Georgia, on November 5, 2019, a referendum (special) election for the purpose of submitting the Act to the qualified electors of the City of Alpharetta for approval or rejection as set forth in the following paragraph; and

BE IT FURTHER ORDAINED that the ballots to be used in said election shall have written or printed thereon the following words:

- "() Yes Shall the Act be approved which increases the homestead exemption from all City of Alpharetta ad valorem taxes
() No for residents of the City of Alpharetta from \$40,000.00 to \$45,000.00?"; and

BE IT FURTHER ORDAINED that the date of the special election be and it is hereby set for November 5, 2019, and the regular polling places of the City, be opened at 7:00 A.M. and closed at 7:00 P.M., and the election be held in conjunction with the state-wide general election and in accordance with the election laws of the State of Georgia, and that the returns of said election be made to the City, which shall, in the presence of and together with the poll managers, who shall bring up the returns, consolidate said returns and declare the result of said election in the manner required by law; and

BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to publish a notice of the call of said election on or about July 26, 2019, in the Alpharetta-Roswell Herald and to publish notice of the call of said election in such other newspapers of general circulation within the City as the City Clerk or City Attorney deem appropriate, if any, and the notice of said election shall be in substantially the form attached hereto as Exhibit "A" and contain such information as required by applicable law; and

BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to execute all necessary documents and perform such other acts necessary to call said special election; and

BE IT FURTHER ORDAINED that the Fulton County Department of Registration and Elections shall conduct the special election and is hereby appointed as the Elections Superintendent to perform all duties of the Election Superintendent; and

BE IT FURTHER ORDAINED that books for registration of voters in the aforementioned special election shall remain open until the close of business on October 7, 2019, and that any resident of the City who has not previously registered may do so prior to such date and time; and

BE IT FURTHER ORDAINED that the Elections Superintendent is further authorized and requested to publish a notice of the date and purpose of the election in the legal organ of the City of Alpharetta once a week for two weeks immediately preceding the date of the election. The notice of the election shall be in substantially the form attached hereto as Exhibit "B"; and

BE IT FURTHER ORDAINED that the Mayor and such other City officials as are necessary are authorized to enter into and execute on behalf of the City a contract with Fulton County for the conduct of the election; and

BE IT FURTHER ORDAINED that any and all ordinances or resolutions in conflict with this Ordinance are hereby repealed.

ADOPTED AND APPROVED this _____ day of _____, 2019.

CITY OF ALPHARETTA, GEORGIA

By: _____
Jim Gilvin, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

COUNCILMEMBERS

C. Sam Thomas, City Attorney

Jason Binder

Ben Burnett

(SEAL)

John Hipes

Erin Cobb, City Clerk

Dan Merkel

First Reading _____

Donald Mitchell

Second Reading _____

Adopted _____

Karen Richard

Exhibit "A"

**NOTICE AND CALL OF SPECIAL ELECTION
IN THE CITY OF ALPHARETTA, GEORGIA**

TO THE QUALIFIED VOTERS OF THE CITY OF ALPHARETTA, GEORGIA:

YOU ARE HEREBY NOTIFIED that on the 5th day of November, 2019, in conjunction with the state-wide general election, an election will be held in the City of Alpharetta, Georgia, at which election there will be submitted to the qualified voters thereof for their determination the question of whether House Bill 431 (the "Act"), a local law to provide a new homestead exemption from City of Alpharetta ad valorem taxes for city purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the adjusted base year assessed value of such homestead, is approved or rejected.

The election shall be held at the regular polling places of the City of Alpharetta and the polls will be open from 7:00 A.M. to 7:00 P.M. on the date fixed for the election. The dates and hours for advanced voting will be provided by Fulton County at a later date.

Those residents qualified to vote at the election shall be determined in all respects in accordance with the election laws of the State of Georgia and the Charter and Ordinances of the City of Alpharetta. Those residents who have not previously registered shall make application for registration no later than the close of business on October 7, 2019. Residents may make application for registration in person at City Hall or any other Fulton County, Georgia registration location, or in any other location and in any other manner authorized by law.

This notice is given pursuant to an Ordinance of the Council of the City of Alpharetta, Georgia, adopted on the 22nd day of July, 2019.

CITY OF ALPHARETTA, GEORGIA

By: /s/ Erin Cobb
City Clerk

Exhibit "B"

**NOTICE OF SPECIAL ELECTION TO DETERMINE WHETHER A LOCAL LAW
PROVIDING ADDITIONAL HOMESTEAD EXEMPTION FROM CITY OF ALPHARETTA
AD VALOREM TAXES IS APPROVED OR REJECTED**

TO THE QUALIFIED VOTERS OF THE CITY OF ALPHARETTA:

NOTICE IS HEREBY GIVEN that on the 5th day of November, 2019, in conjunction with the state-wide general election, an election will be held at the regular polling places in all the election districts of the City of Alpharetta, Georgia, at which time there will be submitted to the qualified voters of the City of Alpharetta, Georgia, for their determination the question of whether House Bill 431 (the "Act"), a local law to provide a new homestead exemption from City of Alpharetta ad valorem taxes for city purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the adjusted base year assessed value of such homestead, is approved or rejected.

The ballots to be used in said election shall have written or printed thereon the following words:

"() Yes Shall the Act be approved which increases the homestead exemption from all City of Alpharetta ad valorem taxes
() No for residents of the City of Alpharetta from \$40,000.00 to \$45,000.00?"

Voters desiring to vote for approval of the Act shall vote "Yes," and voters desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, Section 1 of the Act, providing the new homestead exemption from City of Alpharetta property taxes for city purposes, shall become of full force and effect on January 1, 2020. If the Act is not so approved, Section 1 of the Act shall not become effective and the Act shall be automatically repealed on January 1, 2020.

The election shall be held at the regular polling places of the City of Alpharetta and the polls will be open from 7:00 A.M. to 7:00 P.M. on the date fixed for the election.

Those residents of the City of Alpharetta, Georgia, qualified to vote at such election shall be determined in all respects in accordance with the election laws of the State of Georgia.

This notice is given pursuant to an Ordinance of the Council of the City of Alpharetta, Georgia, adopted on the 22nd day of July, 2019.

exposure. Bids were received on June 13, 2019 with the proposals as follows:

- \$876,600 GCKR Realty, LLC
- \$601,138 Steven P. Beecham
- \$600,000 Davis Group Investors, LLC
- \$96,000 One South Main, LLC

The City recommends awarding ITB 19-012 to GCKR Realty LLC as the high-bidder. Earnest funds in the amount of five percent (5%) have been received and deposited. A Purchase and Sale Agreement is attached in a substantially finalized version. The City is obligated to fund broker fees (\$13,000) and transfer taxes (if any) from the sales price. GCKR Realty LLC will fund all other expenses (e.g. third party reports and inspections, escrow or closing fees, deed recording fees, etc.).

Net Proceeds will be deposited into the Non-Allocated Account within the Capital Project Fund for future allocation by the City Council.

V. ALTERNATIVES:

VI. ATTACHMENTS:

ITB 19-012 Preliminary Bid Tab, GCKR Submission to ITB 19-012, ITB 19-012 Sale of Retail Condo Unit, City of Alpharetta - Milton Avenue Parking Deck - Purchase and Sale Agreement_68736101_3, Alpharetta - 92 Milton Avenue - Articles of Incorporation, Alpharetta - 92 Milton Avenue - Bylaws_66814115_2, Alpharetta - 92 Milton Avenue - Consent of Sole Incorporator_66813892_2, Alpharetta - 92 Milton Avenue - Organizing Resolutions_66814136_2, Alpharetta - Condominium Declaration - 92 Milton Avenue



**CITY OF ALPHARETTA
PRELIMINARY INVITATION TO BID (ITB) TABULATION**

This Preliminary Bid Tabulation serves as a record of the bid opening. In no way does the recording and posting of this document assume the information in the bids received and recorded herein to be correct. Nor is it assumed that the bids conform to the specifications of the ITB request. This document does not constitute an award or contract with any bidder.

ITB #: **19-012**

Due Date: **6/13/2019**

ITB NAME: **Sale of City-Owned Real Property, Retail Condominium Unit**

Due Time: **2:00 PM**

	BIDDER NAME (noted on bid package)	DATE RECEIVED	TIME RECEIVED	DISCLOSURE FORM	AGENT/ BROKER NOTED ON DISCLOSURE FORM?	ADDENDA ACKNOWLEDGEMENT: #1, #2Revised, #3	SIGNED BID TO PURCHASE FORM	EARNEST MONEY AMOUNT (5%)	BID TO PURCHASE AMOUNT	AGENT/ BROKER FEES (IF ANY)
1	One South Main, LLC	6/10/2019	4:54 PM	✓	NO	✓	✓	✓	\$ 96,000.00	0
2	Steven P. Beecham	6/12/2019	12:12 PM	✓	NO	✓	✓	✓	\$ 601,138.00	0
3	Raj Gangaram, GCKR Realty, LLC	6/12/2019	2:18 PM	✓	YES	✓	✓	✓	\$ 876,600.00	\$ 13,000.00
4	Davis Group Investors, LLC	6/13/2019	11:23 AM	✓	NO	✓	✓	✓	\$ 600,000.00	0
5										
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Procurement Website:

<https://www.ebidexchange.com/alpharetta>

GCKR Realty LLC, Raj Gangaram

2627 Vintage Dr, Alpharetta GA 30009 | (954) 643 1913 | raj_gangaram@yahoo.com

As a highly successful and active real estate investor I came across the opportunity of sale of city-owned retail condominium unit. I am very much interested in buying the property as my long-term objectives aligns with the opportunity. I have a master's degree in civil engineering. I am currently working in a multi-national manufacturing company. Being an Alpharetta resident, I will take great pride in being part of the business community and making a difference in Alpharetta's growth and wellbeing.

I have a rich experience in leasing and owning multiple residential homes in Florida and Georgia for several years. In addition to my experience and personal qualities I have a solid educational foundation and passion for construction and property management. I am also equipped with well qualified professionals to be a successful investor. I have very solid financial background with outstanding credit history.


My intent for the retail unit is to provide a high quality retail space for a Tenant or Tenants who will occupy and provide a business which is complimentary to the surrounding businesses. I have assembled a team of professionals to help carry out his plan. I have been meeting with Jim Chandlee of Chandlee and Sons Construction on the planning and build out of the space. I also have been working David Avery of True North Real Estate Professionals to market and attract excellent businesses to the retail space. We will be searching for high quality long term clients whom will enhance the City's business portfolio and serve the community well.

My contact information:

Name:	Raj Gangaram
Mailing Address:	2627 Vintage Dr, Alpharetta, GA 30009
Telephone Number:	(954) 643 1913
Email Address:	raj_gangaram@yahoo.com

I am looking forward to the opportunity to work with you.

Thank you for your time and consideration.


(Raj Gangaram) 6/7/2019

BID TO PURCHASE FORM

The undersigned (Bidder) submits for consideration by the City of Alpharetta this offer to purchase the following real property (Property):

The "Retail Unit" to be created within 92 Milton Avenue, A Condominium, generally consisting of an enclosed shell space of approximately 4,779 sq. ft. with street front visibility and access on the ground floor of the City's new public "Parking Unit" located at 92 Milton Avenue, Alpharetta, GA.

The Bidder warrants and agrees that this Bid to Purchase is made in accordance with the terms and conditions contained in this Invitation to Bid package, and without connection with any other person making a Bid, and that this Bid is in all respects fair and lawful and is made in good faith without collusion or fraud. Bidder shall disclose its retention of Agent/Broker for Broker Protection.

Bidder submits this Bid as an offer to purchase the Property, which is hereby given by the Bidder to the City to accept or reject pursuant to the terms of the ITB and if accepted by the City Council within one hundred twenty (120) days of the date of ITB Response Due Date and Bid opening, constitutes a binding contract for the sale and purchase of the real property with the terms and conditions more fully disclosed in the Sale and Purchase Agreement.

Attached hereto as Earnest Money is a certified or cashier's check made payable to the order of the "City of Alpharetta" in the amount five percent (5%) of the amount of this Bid to Purchase. The Successful Bidder agrees, that in case of failure on its part to meet any of the terms or conditions in the ITB package, including the requirement to execute and return the Sale and Purchase Agreement within ten (10) calendar days from the date of service of written notice of the City's acceptance, the Earnest Money shall be retained by the City as liquidated damages and not as a penalty.

Having carefully examined the terms of the ITB package and the Property, Bidder hereby offers to purchase the Property for:

Bid Amount in Numbers: \$876,600⁰⁰/₁₀₀

Bid Amount in Words: EIGHT HUNDRED AND SEVENTY SIX THOUSAND AND SIX HUNDRED DOLLARS

Agent/Broker Fees Amount in Numbers (if any): \$13,000⁰⁰/₁₀₀

Agent/Broker Fees Amount in Words (if any): THIRTEEN THOUSAND DOLLARS

If this Bid to Purchase is accepted, the Sale and Purchase Agreement entered into the Deed shall be conveyed in the name of the Bidder(s) identified below:

Legal Name of Bidder: GCKR REALTY LLC

Bidder is a(n): Individual Partnership LLP LLC Corporation Agent

Bidder Street Address: 2627 VINTAGE DR, ALPHARETTA GA 30009

Bidder Mailing Address: 2627 VINTAGE DR, ALPHARETTA GA 30009

Contact Person: RAJ GANGARAM

Contact Phone & Email: (954) 643 1913, RAJ_GANGARAM@YAHOO.COM

(If this Bid is being submitted by more than one individual or entity, attach additional sheets providing the above listed information for each individual or entity submitting this Bid, and have each individual or entity execute the Purchase Bid Form on the signature lines (next page), attaching additional signature lines as needed.)

BID TO PURCHASE FORM (continued)

Executed this 6th day of June, 2019.

Signed, sealed, and delivered, as to Bidder, in our presence:

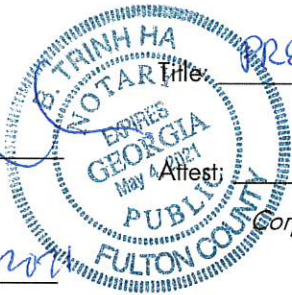
BIDDER

[Signature]
Unofficial Witness

[Signature] (Seal)

Name: RAJ GANGARAM

[Signature]
Official Witness,
Notary Public



Title: PRESIDENT

Attest: _____
Corporations only

My Commission Expires: 05/04/2021

Notary Seal Affixed Here

Corporate Seal Affixed Here

Signed, sealed, and delivered, as to Bidder, in our presence:

BIDDER

Unofficial Witness

(Seal)

Name: _____

Official Witness,
Notary Public

Title: _____

Attest: _____

My Commission Expires: _____

Corporations only

Notary Seal Affixed Here

Corporate Seal Affixed Here

DISCLOSURE FORM AND CERTIFICATE OF NON-COLLUSION



DISCLOSURE FORM and CERTIFICATE OF NON-COLLUSION

Bidder must disclose any possible conflict of interest with any City of Alpharetta (City) elected official and/or employee and if a known relationship exists between any principal or employee of your corporation, firm, team, organization, or person and any City elected official and/or employee. Relationship may consist of financial, personal, or family relations or may be in the form of campaign contributions to elected officials.

If, to your knowledge, no relationship exists, this shall be stated in your response. Failure to disclose such a relationship (or lack thereof) may result in response being declared non-responsive and will not be considered further. If already awarded, may result in cancellation of a purchase and/or contract as a result of your response.

Check one of the following, as it applies to your firm and this request. Use additional forms if needed:

- No known relationship exists.** *If this box checked, skip to signature and firm information at bottom of form.*
- Relationship does exist.** *If this box checked, include the name and position of the City Official to whom a campaign contribution was made or official/employee relationship. Use a separate form for each official to whom a contribution has been made within the past two (2) years or for additional official/employee relationships.*

Elected Official name and position:	
Amount/Value of Contribution:	
Date and description of Contribution:	
List other Relationship Type and name of City Employee/Official:	

By signing this form, I certify that:

- As an officer of this firm, or per the attached letter of authorization, I am duly authorized to certify the information provided herein is accurate and true; and my firm shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.
- That the firm's response is made without prior understanding, agreement, or connection with any corporation, firm, team, organization, or person submitting a response for the same materials, supplies, equipment, opportunity, or services and is in all respects fair and without collusion or fraud. My firm understands and agrees that bid/proposal collusion is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and
- That the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et seq. have not been violated and will not be violated in any respect. O.C.G.A. 45-10-20 through 45-10-28 provide that it is unlawful for a state [City] employee to transact business with the agency by which that person is employed for himself, on behalf of a business in which the employee or his/her spouse or dependents has a substantial interest, or on behalf of anyone as agent, broker, dealer, or representative. Transacting business is defined as selling real property, personal property, or services, or purchasing surplus real or personal property.

Firm's Full Legal Name: *(PLEASE TYPE OR PRINT)* VIRTUAL PROPERTIES REALTY.COM

Authorized Signature: *David Avery*

Printed Name and Title of Person Signing: DAVID AVERY

Date: JUNE 5TH, 2019

Firm's Address: 2750 PREMIERE PKWY STE 200 DULUTH, GA

Contact's Email Address: THEAVERYGROUPSELLS@GMAIL.COM

**This form must be completed in its entirety, signed by the firm's authorized signer and returned with your response in order for the response to be eligible for consideration.*

YES, the above signed Bidder has retained an Agent/Broker for this transaction. *If YES and this box is checked, for Broker Protection, Bidder must provide Agent/Broker name, firm, and contact information on the reverse side of this form and return with ITB Bid to Purchase response.*

★ See Section 1. Authority for more information concerning Broker Protection.

**CITY OF ALPHARETTA
ADDENDUM 1**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE: MAY 17, 2019

ITB TITLE: SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT

ITB #: 19-012

ITB RESPONSE DUE DATE/TIME: JUNE 13, 2019; 2:00 PM

ITB ISSUE DATE: MAY 2, 2019

NUMBER OF PAGES: 2

To ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

GCKR REALTY LLC

Firm Name

2627 VINTAGE DR, ALPHARETTA, GA 30009

Firm Address

R. Gangaram

Signature of Person Authorized to Bind this Firm

6/6/2019

Date

RAJ GANGARAM @ ; President

Typed or Printed Name and Title

(954) 643 1913 ; RAJ_GANGARAM@YATTOO.COM

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

1. Page 1, New Due Date & Time shall now be **Thursday, June 13, 2019; 2:00 PM**
2. Page 11, Section 12, #2(b) Bid Information: Label all bid responses as follows:
 BID FOR PURCHASE OF REAL PROPERTY
 ITB # 19-012
 ATTN: DEBORA WESTBROOK
 NOT TO BE OPENED BEFORE 2:00 PM, JUNE 13, 2019
3. Page 7, Section 8 shall now also include the **Additional Site Visit**. Location and purpose remain the same. However, this site visit will only occur if interested parties register their intent to attend. Contact Debora Westbrook at dwestbrook@alpharetta.ga.us to confirm attendance no later than Friday, May 31, 2019; 2:00 PM
4. Page 5, Section 5, ITB Schedule of Events

ITB Schedule of Events

<u>EVENT</u>	<u>DATE</u>
1. ITB Issue Date.....	Thursday, May 2, 2019
2. Site Visit.....	Wednesday, May 15, 2019; 2:00 PM [COMPLETED]
3. Deadline for RSVP ★ for Additional Site Visit	Friday, May 31, 2019; 2:00 PM
4. Additional Site Visit – Must RSVP ★	Monday, June 3, 2019; 10:00 AM

This additional site-visit and walk-through of the "Retail Unit" will be held upon request and registration of any interested parties. Site Visit will take place at the "Retail Unit", City of Alpharetta, 92 Milton Ave. Parking Garage, Alpharetta, GA 30009.

★All interested in attending this site visit must contact Debora Westbrook at dwestbrook@alpharetta.ga.us to confirm attendance. If no one registers directly with Debora, no site visit will occur.

5. **Deadline for Receipt of Written Questions** Monday, June 4, 2019; 4:00 PM
 - Submit each written question or request for information separately in writing using the question tab and entry field found within the solicitation posting at <https://www.ebidexchange.com/alpharetta>.
6. **Deadline for Posting of City's Written Answers** Friday, June 7, 2019; 4:00 PM
 - Answers to questions for clarification can be found within the question tab found within the procurement posting at <https://www.ebidexchange.com/alpharetta>. All substantial changes to scope, specs, etc. will be posted by written addendum.
7. **ITB Response (Bid) Due Date/Time** Thursday, June 13, 2019; 2:00 PM
 - Regardless of cause, late responses will not be accepted and will automatically be disqualified from further consideration. All times listed are local time for Alpharetta, GA.

END ADDENDUM

**CITY OF ALPHARETTA
ADDENDUM 2-REVISED**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE: REVISED JUNE 5, 2019 [MAY 31, 2019]

ITB TITLE: SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT

ITB #: 19-012

ITB RESPONSE DUE DATE/TIME: JUNE 13, 2019; 2:00 PM

ITB ISSUE DATE: MAY 2, 2019

NUMBER OF PAGES: 3

TO ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

GCKR REALTY LLC

Firm Name

2627 VINTAGE DR, ALPHARETTA GA 30009

Firm Address

R. Gangaram

Signature of Person Authorized to Bind this Firm

6/6/2019

Date

RAJ GANGARAM, President

Typed or Printed Name and Title

(954) 643 1913, RAJGANGARAM@YAHOO.COM

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

The following question were presented to the City and are being supplied along with the City's answers to all that may be interested in this Retail Condominium Unit.

1. CAM Charges: Are there going to be CAM charges billed to the space and if so how much per sf? Will the city be responsible for landscaping and upkeep of the building and if so is this part of the CAM if any?
 - a. The Condominium Declaration, provided as part of the bidding documents, details the Allocation of Common Elements and Common Expenses. Certain details in the Condominium Declaration have yet to be completed.
 - b. The only regularly anticipated CAM expenses are for trash services and landscaping. Trash costs for the individual units will be allocated based on actual use as estimated by the association board, and trash costs for common areas will be allocated based on the TBD percentages to be set forth in Section 3.4 of the declaration. Landscaping expenses are 100% allocable to the retail unit per Exhibit "C" of the declaration. Other CAM expenses will be billed only when needed – primarily for repair and maintenance of the few common elements and shared structural elements of the condominium. Those costs will be billed based on the TBD percentages to be set forth in Section 3.4 of the declaration
2. Sprinklers: Is there going to be a requirement to sprinkler the spaces?
 - a. Sprinklers will be required, unless the space is a Business Use occupancy as determined by the LSC 2012 Edt.
3. If so, is the city going to retrofit it and include the costs as part of the sale?
 - a. During design and construction, the City made no assumptions on the future use of the space. The buildout of the retail condominium unit shall be the responsibility of the purchaser and based on its use and occupancy.
4. Alcohol service: With the high school directly across the street is there a restriction on serving alcohol?

➡ **REVISION June 5, 2019:** While the original information provided in answer to question #4 posted below is correct, for the Site of the Retail Condominium Unit at 92 Milton Ave.:

Under current ordinance, an alcoholic beverage license can't be issued due to proximity to school grounds.

[original response below to question #4 as supplied May 31, 2019]

- a. This location, 92 Milton Ave., will be required to meet the following distance requirements in order to obtain a City of Alpharetta Alcoholic Beverage License.

All applicants are required to submit a legal survey completed within the last 48 months showing that they meet these distance requirements.

Sec. 4-17. - Distance requirements.

- (a) No person may sell or offer to sell alcoholic beverages:
 - (1) Within 200 feet of any private residence, unless such residence is itself in a commercial district;
 - (2) Within 300 feet of any public library or branch thereof;
 - (3) **Within 300 feet of the property line of any church, shrine, chapel of a mortuary or other place used exclusively for religious services, and any school grounds or college campus;**
 - (4) Within 300 feet of that portion of a public park which is habitually used for recreational purposes; or

- (5) Within 200 feet of a regular stop as designated by the county board of education where a school bus for the transportation of school children in the public schools of the county shall take on or discharge school children.

The schools or colleges referred to herein shall include only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state. A school bus stop is defined as a designated place where five or more children board the bus.

The City has a process in place to request a variance from the City Council, with the understanding that there is no guarantee of the outcome.

5. Is there going to be servicing and deliveries allowed on the street on the east side of the building? If so are there any time restrictions?
 - a. The driveway between the parking deck and the veterinarian office (east side of the building) cannot be blocked to prohibit access to the parking deck or to the vet's office.
6. How wide of an alley is going to be required for the delivery hallway and fire exit at the back of the units?
 - a. Delivery hallway and number of exits will be determined by the type of occupancy use and occupant load as determined by the LSC 2012 Edt.
7. How many restrooms per unit will be required?
 - a. The type of occupancy use and occupant load for the space will determine how many restrooms will be required (per the 2012 LSC Edt.).
8. Where will the dumpsters and trash collection site be located at?
 - a. One dumpster pad has been installed at the rear of the parking deck. One dumpster will be available for use per the condominium declaration.
9. Signage: where and what size may the signs for each unit be?
 - a. One sign per tenant that is one square foot per linear foot of frontage. One additional eight square foot sign is also allowed per tenant.
 - b. Address numbers must be clearly posted to be seen from the roadway traveling in both directions.
 - c. Sign placement must be below the parking deck windows.
 - d. All sign placement must be uniform (Design and Review Board requirement). Ex. If one sign is under the awning, the other tenant signage must be under the awning.

END ADDENDUM

**CITY OF ALPHARETTA
ADDENDUM 3**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE: JUNE 4, 2019

ITB TITLE: SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT

ITB #: 19-012

ITB RESPONSE DUE DATE/TIME: JUNE 13, 2019; 2:00 PM

ITB ISSUE DATE: MAY 2, 2019

NUMBER OF PAGES: 2

To ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

GCKR REALTY LLC

Firm Name

2627 VINTAGE DR , ALPHARETTA, GA 30009

Firm Address

RjGangaram

Signature of Person Authorized to Bind this Firm

6/6/2019

Date

RAJ GANGARAM, President

Typed or Printed Name and Title

(954) 643 1913, RAJ_GANGARAM@YAHOO.COM

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

The following questions were presented to the City by the Question Deadline and are being supplied along with the City's answers to all that may be interested in this Retail Condominium Unit.

1. Can I divide the space into three separate units roughly 1600 feet each?
 - a. Yes, the space can be subdivided and leased to multiple tenants (provided individual units comply with code).
2. Can I sell those units separately?
 - a. No, regarding ownership, the "Retail Condominium Unit" remains as one unit.
3. Can I change the facade of the individual retail spaces to make each space different like Teasley place? I know it has to go before DRB.
 - a. Owner may submit change requests to Design Review Board, but outcome cannot be determined at this time.
4. Is the space currently pre-wired for additional water, electric and gas meters?
 - a. See ITB 19-012, Page 7, Section 9 Site Details, #6:
The "Retail Unit" will be ready for build-out and will be stubbed for:
 - Fulton County water, space for 2 meters
 - Fulton County sanitary sewer
 - natural gas
 - electricity, space for 2 meters
 - communications
5. How many bathrooms is the space currently plumbed for?
 - a. Other than noted utility rough-in, the space has not been defined for any use.

END ADDENDUM



Terms and Conditions (Remitter and Payee):

- * Please keep this copy for your record of the transaction
- * The laws of a specific state will consider these funds to be "abandoned" if the Cashier's Check is not cashed by a certain time
 - Please cash/deposit this Cashier's Check as soon as possible to prevent this from occurring
 - In most cases, the funds will be considered "abandoned" before the "Void After" Date
- * Placing a Stop Payment on a Cashier's Check
 - Stop Payment can only be placed if the Cashier's Check is lost, stolen, or destroyed
 - We may not re-issue or refund the funds after the stop payment has been placed until 90 days after the original check was issued
- * Please visit a Chase branch to report a lost, stolen, or destroyed Cashier's Check or for any other information about this item

**FOR YOUR PROTECTION SAVE THIS COPY
CASHIER'S CHECK**

Customer Copy

9618400377

06/12/2019

Void after 7 years

Remitter: RAJ GANGARAM

**** 43,830.00 ****

Pay To The Order Of: CITY OF ALPHARETTA

Drawer: **JPMORGAN CHASE BANK, N.A.**

NON NEGOTIABLE

Memo: _____
Note: For information only. Comment has no effect on bank's payment.

282111107 NEW 01/08 8810004306

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

CASHIER'S CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK



Date 06/12/2019

Void after 7 years

Remitter: RAJ GANGARAM

9618400377

25-3

440

Pay To The Order Of: CITY OF ALPHARETTA

Pay: FORTY THREE THOUSAND EIGHT HUNDRED THIRTY DOLLARS AND 00 CENTS

**** 43,830.00 ****

Drawer: **JPMORGAN CHASE BANK, N.A.**

Sol Gindi, Chief Administrative Officer
JPMorgan Chase Bank, N.A.
Columbus, OH

Memo: _____
Note: For information only. Comment has no effect on bank's payment.



⑈ 9618400377⑈ ⑆044000037⑆ 758661326⑈

CITY OF ALPHARETTA INVITATION TO BID (ITB)

Due Date & Time: Tuesday, June 4, 2019; 2:00 PM

ITB number 19-012

ITB Title: Sale of City-Owned Real Property, Retail Condominium Unit

Number of Pages: 16

ITB DETAIL



1. Authority

This procurement is issued under the authority of the City of Alpharetta Procurement Policy and applicable law. The City has the authority to reject all bids or any bid that is non-responsive or not responsible, and to waive technicalities and informalities to award a contract that is in the best interest of the City. The City may also elect to contingently accept one or more Bids so that in the case of the default of the Successful Bidder, the City will accept the Contingent Bid.

The City represents that it has not retained the services of an agent or broker.

Bidders are not required to retain an agent or broker. However, if the Bidder retains an agent or broker, said agent or broker is protected for the sale and purchase of this City-owned real property, retail condominium unit, provided that the Bidder has disclosed the retention of an agent or broker for this ITB 19-012 in the Disclosure Form and Certificate of Non-Collusion and disclosed any and all agent or broker fees in the Bid to Purchase Proposal form. The period of this protection will end no less than 120 days from the

Bid Opening Time, which is the period allowed to the City to review, negotiate and to accept the Bid. All Bids and any disclosed agent/broker protection shall expire 120 days from the Bid Opening Time. Undisclosed agent/broker relationships shall not be protected.

The City shall have a period of 120 days from the Bid Opening Time to accept the Bid. All Bids shall expire 120 days from the Bid Opening Time.

2. Period of Non-Communication and Single Point of Contact

Interested persons, their employees, representatives, agents, and attorneys shall not make contact with the City's elected officials or with City staff during the bidding process and evaluation phase for this ITB.

Debora Westbrook is the Procurement Agent and Single Point of Contact; the only contact representing the City for this ITB. Debora can be reached at 678-297-6052 or purchasing@alpharetta.ga.us.

City of Alpharetta
2 Park Plaza
Alpharetta, GA 30009
Attn: Debora Westbrook, Procurement Agent

3. What We Want to Do

The City of Alpharetta is offering for sale to the public and seeking bids from interested Bidders for the sale of a prime retail condominium unit (referred to herein as the "Retail Unit") subject to a condominium declaration. The prospective "Retail Unit" is an enclosed shell space of approximately 4,779 sq. ft. The "Retail Unit" is just off Main St. (SR 9), in the heart of Alpharetta's downtown business and governmental district. It is part of a City-owned site improvement located at 92 Milton Avenue, Alpharetta, GA consisting of a new 4-level public parking garage (referred to herein as the "Parking Unit") with another condominium unit (referred to herein as the "Civic Unit") and on-street public parking. The "Retail Unit" has street front access and visibility on the ground floor of the "Parking Unit". Between the public "Parking Unit" and the on-street public parking, there is a total of 272 neighboring public parking spaces. Nearby streetscape and pedestrian improvements are either underway, in progress, or in place, making the location of this "Retail Unit" within the Downtown Alpharetta area very desirable and accessible.

The property offered for sale is the "Retail Unit" as defined in the condominium declaration. The City intends to retain ownership of the "Parking Unit" and the "Civic Unit" within the condominium. It is the intent of the City to sell the "Retail Unit" to one owner. Owner may lease and separately demise the space to multiple tenants.

4. Description of Real Property Offered for Sale, Retail Condominium Unit

The property is the "Retail Unit" as described in the Declaration of Condominium for 92 Milton Avenue, a Condominium, as will be depicted on the condominium plat and condominium plans associated therewith, all will be recorded on or prior to the date upon which the property is conveyed to the Bidder. A copy of the Declaration is attached with this ITB and the condominium plat and condominium plans will be made available for examination once completed. The legal description of the underlying property containing the entire condominium regime is as follows:

All that tract or parcel of land lying and being in Land Lot 1269 of the 2nd District, 2nd Section of City of Alpharetta, Fulton County, Georgia and being more particularly described as follows:

Commencing at the intersection of the west right-of-way of Roswell Street with the south right-of-way of Milton Avenue as it is shown on Fulton County project PR8532-13(121.); thence 149.47 feet along the south right-of-way of Milton Avenue to an iron pin found (pk nail in asphalt) and the True Point of Beginning for the parcel herein described.

Thence leaving the right-of-way of Milton Avenue, South 00 degrees 49 minutes 47 seconds West for a distance of 378.62 feet along the property of Jan C. Hines to an iron pin found (1/2" rebar);

Thence North 85 degrees 55 minutes 03 seconds West for a distance of 46.03 feet along the property of the City of Alpharetta to an iron pin found (1" open top pipe);

Thence North 01 degree 08 minutes 56 seconds West for a distance of 61.53 feet along the property of the Rest Haven Cemetery to an iron pin found (1/2" rebar);

Thence North 25 degrees 48 minutes 12 seconds West for a distance of 159.87 feet along the property of the Rest Haven Cemetery to an iron pin found (3/4" open top pipe);

Thence North 08 degrees 48 minutes 06 seconds West for a distance of 91.09 feet along the property of the Rest Haven Cemetery to an iron pin found (3/8" rebar in a block wall);

Thence North 85 degrees 56 minutes 04 seconds West for a distance of 19.97 feet along the property of the Rest Haven Cemetery to an iron pin found (3/8" rebar in asphalt pavement);

Thence North 04 degrees 05 minutes 52 seconds East for a distance of 87.08 feet along the property of the Rest Haven Cemetery to an iron pin found (1" open top pipe) on the south right-of-way of Milton Avenue;

Thence South 86 degrees 46 minutes 50 seconds East for a distance of 150.08 feet along the south right-of-way of Milton Avenue to an iron pin found (pk nail) and The Point of Beginning.

Said parcel contains 0.903 acres according to a survey for The City of Alpharetta by Moreland Altobelli and Associates dated 8-31-2016 and being job number 12G210. Said survey is incorporated by specific reference for a more complete and accurate description.

[Remainder of this page intentionally left blank.]

5. ITB Schedule of Events

<u>EVENT</u>	<u>DATE</u>
1. ITB Issue Date.....	Thursday, May 2, 2019
2. Site Visit.....	Wednesday, May 15, 2019; 2:00 PM
<p>A site-visit and walk-through of the "Retail Unit" is scheduled for Wednesday, May 15, 2019, beginning at 2:00 PM. Site Visit will take place at the "Retail Unit", City of Alpharetta, 92 Milton Ave. Parking Garage, Alpharetta, GA 30009. No other site-visit will be scheduled prior to the Bid Due Date.</p>	
3. Deadline for Receipt of Written Questions	Monday, May 20, 2019; 4:00 PM
<ul style="list-style-type: none"> • Submit each written question or request for information separately in writing using the question tab and entry field found within the solicitation posting at https://www.ebidexchange.com/alpharetta. 	
4. Deadline for Posting of City's Written Answers	Friday, May 24, 2019; 4:00 PM
<ul style="list-style-type: none"> • Answers to questions for clarification can be found within the question tab found within the procurement posting at https://www.ebidexchange.com/alpharetta. All substantial changes to scope, specs, etc. will be posted by written addendum. 	
5. ITB Response (Bid) Due Date/Time	Tuesday, June 4, 2019; 2:00 PM
<ul style="list-style-type: none"> • Regardless of cause, late responses will not be accepted and will automatically be disqualified from further consideration. All times listed are local time for Alpharetta, GA. 	

6. Documents Issued With and as Part of This ITB

The following documents, along with any addenda that may be issued at a later date, are all collectively combined in the Contract Documents for this project. Each Bidder will have access to these documents and detailed ITB information from within the procurement posting at <https://www.ebidexchange.com/alpharetta> (access by registering and logging in at this site.) By responding to this bid, Bidders confirm that all documents listed below were received, reviewed, and understood.

1. ITB 19-012 Sale of Retail Condo Unit
2. Procurement Process Information

Condominium Declaration and Organizing Documents:

3. Alpharetta – 92 Milton Avenue – Articles of Incorporation
4. Alpharetta – 92 Milton Avenue – Bylaws 66814115_2
5. Alpharetta – 92 Milton Avenue – Consent of Sole Incorporator_66813892_2
6. Alpharetta – 92 Milton Avenue – Organizing Resolutions_66814136_2
7. Alpharetta – Condominium Declaration – 92 Milton Avenue

7. Overview

This "Retail Unit" is situated in Downtown Alpharetta. It is near City Hall and transportation routes. The site is also in the midst of many new and exciting developments downtown including restaurants, shopping, lodging, and much more.



Drawing from its beginnings in 1858 when incorporated as the Milton County seat, The City of Alpharetta boasts a history of enterprise, growth, and prosperity, thus enriching the lives of residents and the many people visiting and working in our city.

Alpharetta is one of fifteen incorporated cities/towns within Fulton County and is one of the fastest growing communities in the South. It is situated in North Fulton County about 25 miles north of the City of Atlanta and about 35 miles from the Hartsfield-Jackson Atlanta International Airport, the world's busiest airport. Our City occupies a land area of about 27 square miles and serves an estimated population of 65,799 (population) and 84,817 (workforce). The City government employs a full-time equivalent of approximately 445 positions (not including seasonal positions).

Alpharetta is a beautiful and vibrant Southern city offering a unique blend of excellent schools, incredible job opportunities, diverse shopping choices, convenience to first-rate healthcare, cultural and recreational events, and abundant green space. It's no wonder Alpharetta is one of the hottest markets in both commercial, retail, and residential real estate. Through all of its progress, the city has kept its down-to-earth character. Which may be why people who live here usually stay here. And why there's always something new and exciting happening.

During the late-90s, the City of Alpharetta started to grow its infrastructure from the ground up—literally. Hundreds of miles of fiber optic cables were buried throughout the city. The state's largest electricity provider, Georgia Power, took it a step further by establishing a series of redundant electric networks throughout the city. The result being that Alpharetta's technological infrastructure is the ideal environment for tech companies and the tech needs of any company. You won't find more fertile ground for your business to grow.

Folks in our city understand the value and benefits of recreation and parks, both in their personal lives and to our community as a whole. Alpharetta has an exceptional park system that truly enhances the quality of

life in our City. Located all around the City, there are over 830 acres devoted to walking trails, playgrounds, sports fields, arboretums, and community parks. At the expansive Wills Park, along with excellent sports and recreational facilities, you'll find one of the finest equestrian facilities in the Southeast. Alpharetta also has a beautiful greenway system along Big Creek that provides a naturally picturesque pathway for bikers and hikers of all ages to enjoy.

8. Site Visit, Inspections, Real Estate Questions:

A site-visit and walk-through of the "Retail Unit" is scheduled for:

- Wednesday, May 15, 2019, beginning at 2:00 PM. Site Visit will take place at the "Retail Unit", City of Alpharetta, 92 Milton Ave. Parking Garage, Alpharetta, GA 30009.
- Bidders may use this time to view the interior space, inspect the site as needed, and ask clarification questions. Bidders should come prepared to review site for response to this ITB.
- No other site-visit will be scheduled prior to the Bid Due Date.

9. Site Details and Allowed Usage:

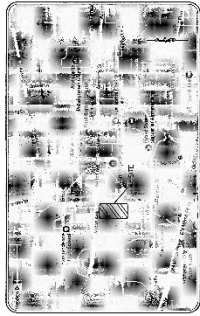
1. Available area is approximately 4,779 sq. ft. The area may be separately leased and demised by purchaser.
 - As seen in the drawing on Page 9 of this ITB, the entire space is comprised of the "Parking Unit" and approximately 5,579 sq. ft. with a "Civic Unit" unit of approximately 800 sq. ft. located at the northwest end of the space that is to be retained by the City. The "Retail Unit", offered for sale for commercial / retail purposes, is approximately 4,779 sq. ft.
2. Location address is 92 Milton Avenue, Alpharetta, GA.
3. The prospective "Retail Unit" is an enclosed shell space with street front visibility and access on the ground floor of the City's new public "Parking Unit". The rear wall of the unit is concrete masonry units (CMU). The front and side façade of the space includes doors with sidelights and windows. No slab installed by the City.
4. Current zoning for this area is C2 and current approved usage for the site is as follows:
 - Art Gallery
 - Athletic Facility
 - Bakery
 - Barber Shop/Beauty Shop
 - Book Store
 - Retail (excluding mixed sales, CBD oil sales)
 - Florist
 - Gourmet food store
 - Office
 - Restaurant
5. Estimated completion of "Parking Unit" and shell is Spring, 2019.
6. The "Retail Unit" will be ready for build-out and will be stubbed for:
 - Fulton County water, space for 2 meters
 - Fulton County sanitary sewer
 - natural gas
 - electricity, space for 2 meters
 - communications
7. The City maintains separate meters for utilities associated with the "Parking Unit" and the "Civic Unit". Purchaser will be responsible for utility meters for the "Retail Unit".
8. The "Retail Unit" will be roughed-in for connection to a 1,500 gallon grease trap provided on site.
9. Venting has not been installed. Venting requires approval by Fulton County Health Department and approval by the City's permitting process.

10. No mechanical systems will be designed or installed by the City. All mechanical systems in the "Retail Unit" shall be designed and installed by the Successful Bidder/Owner/Tenant.
11. A dumpster pad located at the south end of the "Parking Unit" is available for use by this "Retail Unit".
12. The exterior façade is subject to Downtown Design Guidelines and any requests for change, lighting, and signage require approval by the City's Design Review Board.
13. Area public parking includes 263 spaces within the 4-level public "Parking Unit" and 9 on-street public parking spaces in front of this "Retail Unit".

[Remainder of this page intentionally left blank.]



City of
Alpharetta
MILTON AVENUE
PARKING DECK
52 MILTON AVENUE



LOCATION MAP NOTES

1. USE ARCHITECTURAL PLANS FOR BUILDING SLACK
2. ALL DIMENSIONS SHOWN ARE FROM FACE OF CURB UNLESS OTHERWISE NOTED
3. ALL DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED
4. ALL DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED
5. ALL DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED
6. ALL DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED

GENERAL NOTES

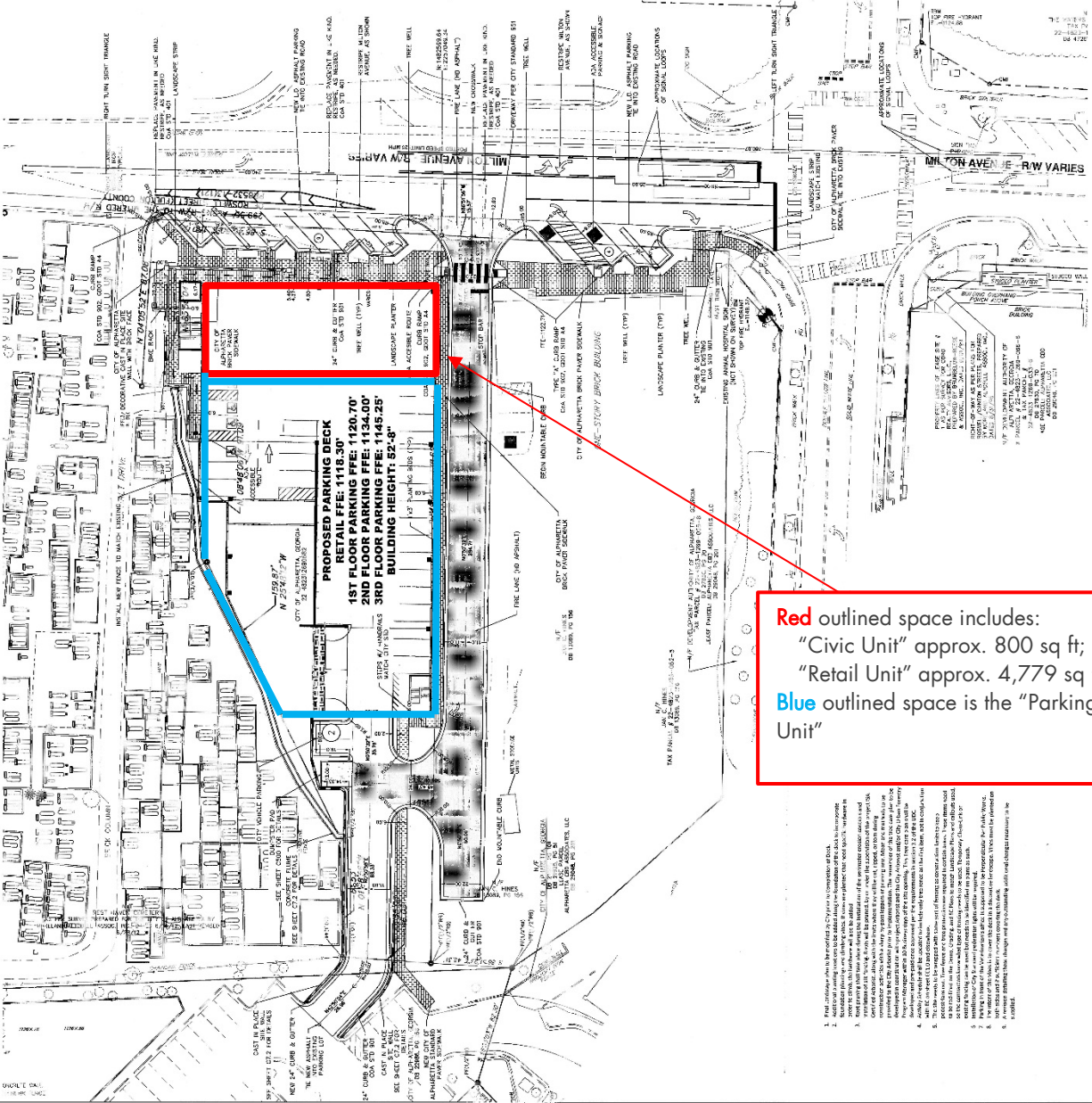
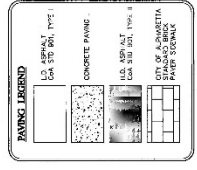
1. ALL DIMENSIONS UNLESS OTHERWISE NOTED ARE IN FEET AND INCHES
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TRAFFIC NOTES

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Red outlined space includes:
 "Civic Unit" approx. 800 sq ft;
 "Retail Unit" approx. 4,779 sq ft
 Blue outlined space is the "Parking Unit"

1. Final construction shall be provided by 270 days to completion of Deck
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20. Final construction shall be provided by 270 days to completion of Deck

C3.0

WHAT ALL BIDDER'S NEED TO DO

10. Bidder's Requirements

- This procurement is issued under the authority of the City of Alpharetta Procurement Policy and applicable law. The City has the authority to reject all bids or any bid that is non-responsive or not responsible, and to waive technicalities and informalities to award a contract that is in the best interest of the City.
- The City may elect to contingently accept one or more Bids so that in the case of the default of the Successful Bidder, the City will accept the Contingent Accepted Bid.
- The City may make such investigations as deemed necessary to determine the ability of the Bidder to perform the contracting and purchase as specified.

A. Cover Letter and Bidder's Information

Provide a Cover Letter including a brief profile. Also include a summary describing your intent for the "Retail Unit" and any history with commercial/retail property. At a minimum, provide the following:

- i. Name and address of Bidder or Bidders if a team or partnership,
- ii. Identify one contact person. This person shall be the single point of contact on behalf of the Bidder, responsible for correspondence between the Bidder and the City. If necessary, the City will send communications to this contact person. Include the following contact information:
 - Name,
 - Mailing address,
 - Telephone number, and
 - E-mail address.
- iii. **Authorized Signer – Electronic Signature** for contract execution: the City uses DocuSign to electronically deliver contracts to the awarded contractor for digital signing. To enable routing of contracts digitally for execution, include the following information for contractor's authorized signer. This official/employee must have the authority to bind the firm in the contract process:
 - Authorized signer's name as it should be listed for signing,
 - Authorized signer's title
 - Authorized signer's email address
 - If the signer is not a registered company official, then also include a letter of authorization allowing the intended signer to bind the company

B. Earnest Money

Each Bid shall be accompanied by a certified or cashier's check drawn and made payable to the order of the "City of Alpharetta" in the amount of five percent (5%) of the amount of the Bid. Earnest Money of the bidder whose bid is accepted by the City (Successful Bidder) shall be deposited by the City upon acceptance of the Bid. Earnest Money of the Successful Bidder shall be applied at closing as partial payment of the purchase price unless otherwise negotiated. The Earnest Money of each rejected bidder shall be returned by the City upon rejection of the Bid(s). The Earnest Money for each Contingent Accepted Bid shall be returned by the City upon the earlier of when the Sale is finalized or expiration of the Bid. The City shall not pay or be responsible for the payment of any interest on the amount of the Earnest Money.

11. Putting your Bid together: Organization of Bidder's ITB Response to the City

Bidders must comply with all aspects of this ITB. Bids must be presented on the form provided herein. The form shall not be altered or changed. Additional information may be given in the space provided on the form. Additional pages may be included if the space provided on the bid form is not adequate. All additional pages must reference the Bidder's name.

All information provided to the City in response to this ITB does become public record and is subject to public review.

We want: ONE complete paper original with all required forms and original signatures,
TWO complete paper copies exactly like the original, and
ONE complete digital copy on CD or flash drive, exactly like the original.

Do not permanently bind the bid responses. Staple or 3-ring binder is OK.

Sort bid response using the following order:

1. Cover Letter and Bidder's Information *(see Section 10 of this ITB)*
2. Required Forms:
 - a. Disclosure Form and Certificate of Non-Collusion *(page 17 of this ITB)*
 - b. Addendum Acknowledgement form(s) *(if any, will be issued as a separate document)*
3. Bid to Purchase Form *(page 15 & 16 of this ITB)*
4. Earnest Money *(see Section 10 of this ITB)*
5. Additional pages, if any

12. How to Submit a Bid

Bidder MUST Seal all copies in an opaque envelope or box prior to delivery to the City.

No faxed or emailed responses will be accepted or reviewed for award.

1. City Hall normal hours for deliveries: Mon-Thurs 8:30 am–5:00 pm; Fri 8:30 am–4:30 pm
2. On the exterior of the sealed envelope or box, legibly and prominently write the following information:
 - (a) Name and Address of the Bidder as noted on the Bid to Purchase Form
 - (b) Bid Information as follows:

BID FOR PURCHASE OF REAL PROPERTY
ITB # 19-012
ATTN: DEBORA WESTBROOK
NOT TO BE OPENED BEFORE 2:00 PM, JUNE 4, 2019
 - (c) Deliver to:

CITY OF ALPHARETTA
FINANCE DEPARTMENT
CITY HALL 1ST FLOOR CASHIER'S OFFICE
2 PARK PLAZA
ALPHARETTA, GA 30009
ATTN: DEBORA WESTBROOK

WHAT ALL BIDDER'S NEED TO KNOW

13. Applicability of Public Works Construction Law

It is the City's intent that any agreement resulting from this ITB shall be for a private development to which none of the laws and regulations applicable to public works construction projects shall apply. The Successful Bidder shall be responsible for the development of the project.

As with all development projects within the City, the City shall have the right to inspect the project after acquisition for the purpose of assuring that the Successful Bidder is in conformance with permitting, health, safety, and zoning powers for any private construction project and commercial / retail use.

14. Submission of Bid Constitutes Offer to Contract

The Bidder understands and agrees that a submitted Bid is a bid to purchase real property known as "Retail Unit" at 92 Milton Ave. The Bid is given to the City to accept or reject. If accepted by the City, constitutes a binding contract for the sale and purchase of the Property. The City shall have a period of 120 days from the Bid Opening Time to accept the Bid. If not accepted, all Bids expire 120 days from the Bid Opening Time.

15. Withdrawal of Bid

A Vendor requesting to withdraw their Bid/Proposal prior to the Response Due Date/Time as noted in Section 5 ITB Schedule of Events may submit a letter to the Procurement Agent for this procurement (noted in Section 2 of this ITB) requesting to withdraw. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. Withdrawal is not permitted after Bids are opened.

16. Opening of Bids

All bids/proposals received will be opened publicly. The public opening will be held shortly after the established due date/time has passed. The public opening will be held at City Hall, 2 Park Plaza, Alpharetta, GA in conference room #240. During the opening of Bids, the Bidder's name, Bid amount and other pertinent information will be read aloud and recorded. No other information will be disclosed at that time. Each Bid and all information received in response to this ITB, including copyrighted material, is deemed "public record" in accordance with O.C.G.A. § 50-18-70, et seq., and will be subject to public inspection and copying shortly after Bid opening with the following four exceptions:

1. bona fide trade secrets that have been specifically identified, properly marked, separated, and documented and to which the Bidder has attached an affidavit declaring that such specific information constitutes a trade secret pursuant to Article 27 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, will not be disclosed; provided however, if the City determines that such specifically identified information does not in fact constitute a trade secret, the City will notify the Bidder of its intent to disclose such information prior to its initial disclosure as required by law;
2. matters involving individual safety, as determined by the City, may be withheld from disclosure;
3. any company financial information in the form of records containing tax matters or tax information that is confidential under state or federal law, which has been requested by the City to determine vendor responsibility, unless prior written consent has been given by the Bidder will not be disclosed;
4. any document or record, or portion thereof, containing information exempt from disclosure pursuant to O.C.G.A. § 50-18-70, et seq., may be withheld from disclosure as determined by the City; and
5. any other document or record, or portion thereof, mandated by law to be kept confidential, as determined by the City.

All open records requests must be presented in writing with specific items requested. The Open Records Request form is available from the City's main website and requested through the City Clerk's office.

17. City's Action to Accept Bids

All Bids received shall be reviewed by City Staff. Recommendation of Successful Bidder shall be transmitted to Mayor and City Council for review and official action. The City, in its sole discretion, shall determine which Bid is the most advantageous and which Bid(s), if any, should be accepted or rejected. The City may elect to contingently accept one or more Bids (Contingent Accepted Bid) so that in the case of default of the Successful Bidder, the City will accept the Contingent Accepted Bid.

18. Notice of Acceptance of Bid

If a Bid is accepted by the City, a "Notice of Acceptance" will be sent to the Successful Bidder along with the Sale and Purchase Agreement for execution. Notice will also be sent to Bidders advising them of the contingent acceptance of their Bids as described in Section 17, City's Action to Accept Bids.

19. Execution of Sale and Purchase Agreement, Failure to Execute

1. The Successful Bidder must execute and return the Sale and Purchase Agreement to the City within ten (10) calendar days from the date of service of the Notice of Acceptance. The Sale and Purchase Agreement shall be executed by the Bidder with the same requisites, formality, attestation, and acknowledgement as is prescribed and required by the laws of the State of Georgia for the execution and recording of deeds or instruments conveying an interest in the real property.
2. In the event the Successful Bidder fails to return the properly executed originals of the Sale and Purchase agreement (or execute in DocuSign) within ten (10) calendar days as set forth above, the City may declare that the Bidder is in default.
3. If the Successful Bidder defaults in its obligation hereunder, including the obligation to return the executed Sale and Purchase Agreement (or execute in DocuSign), the Earnest Money shall be retained by the City as liquidated damages and not as a penalty. The Successful Bidder acknowledges and agrees that the actual damages that would result from the Successful Bidder's default cannot be ascertained and that the Earnest Money represents the best estimate of such damages. If the transaction is not consummated due to the default of the City, then the entirety of the Earnest Money shall be returned to the Successful Bidder within thirty (30) days after such a determination is finalized.
4. In the event the Successful Bidder is declared in default by the City as provided in #2 and #3 of this section, the City may then accept the next Contingent Accepted Bid.
5. DocuSign may be used for execution of the Sale and Purchase Agreement. If DocuSign is used, instructions will be provided for execution. All other information concerning execution remains the same as provided in this section.

20. Notices and Returns

All notices and returns shall be in writing and shall be sent by Certified Mail – Return Receipt Requested, prepaid postage. All returns or notices shall be mailed to the mailing address listed in this ITB Section 12, #2 c, Deliver To address. The day upon which notice is so mailed shall be treated as the date of service.

21. Bid to Purchase Form

1. All responses from Bidders must be submitted using this Bid to Purchase form.
2. Bidder's authorized official shall complete, sign, and return entire Bid to Purchase form with original response and with each copy of the response.
3. See Sections 11 and 12 of this ITB for more information.

BID TO PURCHASE FORM

The undersigned (Bidder) submits for consideration by the City of Alpharetta this offer to purchase the following real property (Property):

The "Retail Unit" to be created within 92 Milton Avenue, A Condominium, generally consisting of an enclosed shell space of approximately 4,779 sq. ft. with street front visibility and access on the ground floor of the City's new public "Parking Unit" located at 92 Milton Avenue, Alpharetta, GA.

The Bidder warrants and agrees that this Bid to Purchase is made in accordance with the terms and conditions contained in this Invitation to Bid package, and without connection with any other person making a Bid, and that this Bid is in all respects fair and lawful and is made in good faith without collusion or fraud. Bidder shall disclose its retention of Agent/Broker for Broker Protection.

Bidder submits this Bid as an offer to purchase the Property, which is hereby given by the Bidder to the City to accept or reject pursuant to the terms of the ITB and if accepted by the City Council within one hundred twenty (120) days of the date of ITB Response Due Date and Bid opening, constitutes a binding contract for the sale and purchase of the real property with the terms and conditions more fully disclosed in the Sale and Purchase Agreement.

Attached hereto as Earnest Money is a certified or cashier's check made payable to the order of the "City of Alpharetta" in the amount five percent (5%) of the amount of this Bid to Purchase. The Successful Bidder agrees, that in case of failure on its part to meet any of the terms or conditions in the ITB package, including the requirement to execute and return the Sale and Purchase Agreement within ten (10) calendar days from the date of service of written notice of the City's acceptance, the Earnest Money shall be retained by the City as liquidated damages and not as a penalty.

Having carefully examined the terms of the ITB package and the Property, Bidder hereby offers to purchase the Property for:

Bid Amount in Numbers: \$ _____

Bid Amount in Words: _____

Agent/Broker Fees Amount in Numbers (if any): \$ _____

Agent/Broker Fees Amount in Words (if any): _____

If this Bid to Purchase is accepted, the Sale and Purchase Agreement entered into the Deed shall be conveyed in the name of the Bidder(s) identified below:

Legal Name of Bidder: _____

Bidder is a(n): Individual Partnership LLP LLC Corporation Agent

Bidder Street Address: _____

Bidder Mailing Address: _____

Contact Person: _____

Contact Phone & Email: _____

(If this Bid is being submitted by more than one individual or entity, attach additional sheets providing the above listed information for each individual or entity submitting this Bid, and have each individual or entity execute the Purchase Bid Form on the signature lines (next page), attaching additional signature lines as needed.)

BID TO PURCHASE FORM (continued)

Executed this _____ day of _____, 2019.

Signed, sealed, and delivered, as to Bidder, in our presence:

BIDDER

_____(Seal)

Unofficial Witness

Name: _____

Title: _____

Official Witness,
Notary Public

Attest: _____

Corporations only

My Commission Expires: _____

Notary Seal Affixed Here

Corporate Seal Affixed Here

Signed, sealed, and delivered, as to Bidder, in our presence:

BIDDER

_____(Seal)

Unofficial Witness

Name: _____

Title: _____

Official Witness,
Notary Public

Attest: _____

Corporations only

My Commission Expires: _____

Notary Seal Affixed Here

Corporate Seal Affixed Here

DISCLOSURE FORM AND CERTIFICATE OF NON-COLLUSION



DISCLOSURE FORM and CERTIFICATE OF NON-COLLUSION

Bidder must disclose any possible conflict of interest with any City of Alpharetta (City) elected official and/or employee and if a known relationship exists between any principal or employee of your corporation, firm, team, organization, or person and any City elected official and/or employee. Relationship may consist of financial, personal, or family relations or may be in the form of campaign contributions to elected officials.

If, to your knowledge, no relationship exists, this shall be stated in your response. Failure to disclose such a relationship (or lack thereof) may result in response being declared non-responsive and will not be considered further. If already awarded, may result in cancellation of a purchase and/or contract as a result of your response.

Check one of the following, as it applies to your firm and this request. Use additional forms if needed:

- No known relationship exists.** *If this box checked, skip to signature and firm information at bottom of form.*
- Relationship does exist.** *If this box checked, include the name and position of the City Official to whom a campaign contribution was made or official/employee relationship. Use a separate form for each official to whom a contribution has been made within the past two (2) years or for additional official/employee relationships.*

Elected Official name and position:	
Amount/Value of Contribution:	
Date and description of Contribution:	
List other Relationship Type and name of City Employee/Official:	

By signing this form, I certify that:

- As an officer of this firm, or per the attached letter of authorization, I am duly authorized to certify the information provided herein is accurate and true; and my firm shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.
- That the firm's response is made without prior understanding, agreement, or connection with any corporation, firm, team, organization, or person submitting a response for the same materials, supplies, equipment, opportunity, or services and is in all respects fair and without collusion or fraud. My firm understands and agrees that bid/proposal collusion is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and
- That the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et seq. have not been violated and will not be violated in any respect. O.C.G.A. 45-10-20 through 45-10-28 provide that it is unlawful for a state [City] employee to transact business with the agency by which that person is employed for himself, on behalf of a business in which the employee or his/her spouse or dependents has a substantial interest, or on behalf of anyone as agent, broker, dealer, or representative. Transacting business in defined as selling real property, personal property, or services, or purchasing surplus real or personal property.

Firm's Full Legal Name:
(PLEASE TYPE OR PRINT)

Authorized Signature:

Printed Name and Title of Person
Signing:

Date:

Firm's Address:

Contact's Email Address:

**This form must be completed in its entirety, signed by the firm's authorized signer and returned with your response in order for the response to be eligible for consideration.*

- YES**, the above signed Bidder has retained an Agent/Broker for this transaction. *If YES and this box is checked, for Broker Protection, Bidder must provide Agent/Broker name, firm, and contact information on the reverse side of this form and return with ITB Bid to Purchase response.*

★ See Section 1. Authority for more information concerning Broker Protection.

**CITY OF ALPHARETTA
ADDENDUM 1**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE: MAY 17, 2019

ITB TITLE: SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT

ITB #: 19-012

ITB RESPONSE DUE DATE/TIME: JUNE 13, 2019; 2:00 PM

ITB ISSUE DATE: MAY 2, 2019

NUMBER OF PAGES: 2

To ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

Firm Name

Firm Address

Signature of Person Authorized to Bind this Firm

Date

Typed or Printed Name and Title

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

1. Page 1, New Due Date & Time shall now be **Thursday, June 13, 2019; 2:00 PM**
2. Page 11, Section 12, #2(b) Bid Information: Label all bid responses as follows:
 BID FOR PURCHASE OF REAL PROPERTY
 ITB # 19-012
 ATTN: DEBORA WESTBROOK
 NOT TO BE OPENED BEFORE 2:00 PM, JUNE 13, 2019
3. Page 7, Section 8 shall now also include the **Additional Site Visit**. Location and purpose remain the same. However, this site visit will only occur if interested parties register their intent to attend. Contact Debora Westbrook at dwestbrook@alpharetta.ga.us to confirm attendance no later than Friday, May 31, 2019; 2:00 PM
4. Page 5, Section 5, ITB Schedule of Events

ITB Schedule of Events

<u>EVENT</u>	<u>DATE</u>
1. ITB Issue Date.....	Thursday, May 2, 2019
2. Site Visit.....	Wednesday, May 15, 2019; 2:00 PM [COMPLETED]
3. Deadline for RSVP ★ for Additional Site Visit	Friday, May 31, 2019; 2:00 PM
4. Additional Site Visit – Must RSVP ★	Monday, June 3, 2019; 10:00 AM
This additional site-visit and walk-through of the “Retail Unit” will be held upon request and registration of any interested parties. Site Visit will take place at the “Retail Unit”, City of Alpharetta, 92 Milton Ave. Parking Garage, Alpharetta, GA 30009. ★All interested in attending this site visit must contact Debora Westbrook at dwestbrook@alpharetta.ga.us to confirm attendance. If no one registers directly with Debora, no site visit will occur.	
5. Deadline for Receipt of Written Questions	Monday, June 4, 2019; 4:00 PM
<ul style="list-style-type: none"> • Submit each written question or request for information separately in writing using the question tab and entry field found within the solicitation posting at https://www.ebidexchange.com/alpharetta. 	
6. Deadline for Posting of City’s Written Answers	Friday, June 7, 2019; 4:00 PM
<ul style="list-style-type: none"> • Answers to questions for clarification can be found within the question tab found within the procurement posting at https://www.ebidexchange.com/alpharetta. All substantial changes to scope, specs, etc. will be posted by written addendum. 	
7. ITB Response (Bid) Due Date/Time	Thursday, June 13, 2019; 2:00 PM
<ul style="list-style-type: none"> • Regardless of cause, late responses will not be accepted and will automatically be disqualified from further consideration. All times listed are local time for Alpharetta, GA. 	

END ADDENDUM

**CITY OF ALPHARETTA
ADDENDUM 2-REVISED**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE: REVISED JUNE 5, 2019 [MAY 31, 2019]

ITB TITLE: SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT

ITB #: 19-012

ITB RESPONSE DUE DATE/TIME: JUNE 13, 2019; 2:00 PM

ITB ISSUE DATE: MAY 2, 2019

NUMBER OF PAGES: 3

To ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

Firm Name

Firm Address

Signature of Person Authorized to Bind this Firm

Date


Typed or Printed Name and Title

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

The following question were presented to the City and are being supplied along with the City's answers to all that may be interested in this Retail Condominium Unit.

1. CAM Charges: Are there going to be CAM charges billed to the space and if so how much per sf? Will the city be responsible for landscaping and upkeep of the building and if so is this part of the CAM if any?
 - a. The Condominium Declaration, provided as part of the bidding documents, details the Allocation of Common Elements and Common Expenses. Certain details in the Condominium Declaration have yet to be completed.
 - b. The only regularly anticipated CAM expenses are for trash services and landscaping. Trash costs for the individual units will be allocated based on actual use as estimated by the association board, and trash costs for common areas will be allocated based on the TBD percentages to be set forth in Section 3.4 of the declaration. Landscaping expenses are 100% allocable to the retail unit per Exhibit "C" of the declaration. Other CAM expenses will be billed only when needed – primarily for repair and maintenance of the few common elements and shared structural elements of the condominium. Those costs will be billed based on the TBD percentages to be set forth in Section 3.4 of the declaration
2. Sprinklers: Is there going to be a requirement to sprinkler the spaces?
 - a. Sprinklers will be required, unless the space is a Business Use occupancy as determined by the LSC 2012 Edt.
3. If so, is the city going to retrofit it and include the costs as part of the sale?
 - a. During design and construction, the City made no assumptions on the future use of the space. The buildout of the retail condominium unit shall be the responsibility of the purchaser and based on its use and occupancy.
4. Alcohol service: With the high school directly across the street is there a restriction on serving alcohol?

 **REVISION June 5, 2019:** While the original information provided in answer to question #4 posted below is correct, for the Site of the Retail Condominium Unit at 92 Milton Ave.:

Under current ordinance, an alcoholic beverage license can't be issued due to proximity to school grounds.

[original response below to question #4 as supplied May 31, 2019]

- a. This location, 92 Milton Ave., will be required to meet the following distance requirements in order to obtain a City of Alpharetta Alcoholic Beverage License.

All applicants are required to submit a legal survey completed within the last 48 months showing that they meet these distance requirements.

Sec. 4-17. - Distance requirements.

- (a) No person may sell or offer to sell alcoholic beverages:
 - (1) Within 200 feet of any private residence, unless such residence is itself in a commercial district;
 - (2) Within 300 feet of any public library or branch thereof;
 - (3) **Within 300 feet of the property line of any church, shrine, chapel of a mortuary or other place used exclusively for religious services, and any school grounds or college campus;**
 - (4) Within 300 feet of that portion of a public park which is habitually used for recreational purposes; or

- (5) Within 200 feet of a regular stop as designated by the county board of education where a school bus for the transportation of school children in the public schools of the county shall take on or discharge school children.

The schools or colleges referred to herein shall include only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state. A school bus stop is defined as a designated place where five or more children board the bus.

The City has a process in place to request a variance from the City Council, with the understanding that there is no guarantee of the outcome.

5. Is there going to be servicing and deliveries allowed on the street on the east side of the building? If so are there any time restrictions?
 - a. The driveway between the parking deck and the veterinarian office (east side of the building) cannot be blocked to prohibit access to the parking deck or to the vet's office.
6. How wide of an alley is going to be required for the delivery hallway and fire exit at the back of the units?
 - a. Delivery hallway and number of exits will be determined by the type of occupancy use and occupant load as determined by the LSC 2012 Edt.
7. How many restrooms per unit will be required?
 - a. The type of occupancy use and occupant load for the space will determine how many restrooms will be required (per the 2012 LSC Edt.).
8. Where will the dumpsters and trash collection site be located at?
 - a. One dumpster pad has been installed at the rear of the parking deck. One dumpster will be available for use per the condominium declaration.
9. Signage: where and what size may the signs for each unit be?
 - a. One sign per tenant that is one square foot per linear foot of frontage. One additional eight square foot sign is also allowed per tenant.
 - b. Address numbers must be clearly posted to be seen from the roadway traveling in both directions.
 - c. Sign placement must be below the parking deck windows.
 - d. All sign placement must be uniform (Design and Review Board requirement). Ex. If one sign is under the awning, the other tenant signage must be under the awning.

END ADDENDUM

**CITY OF ALPHARETTA
ADDENDUM 3**



Finance Department
2 Park Plaza
Alpharetta, GA 30009
P: (678) 297-6052
F: (678) 297-6093
purchasing@alpharetta.ga.us

ADDENDUM POSTING DATE:	JUNE 4, 2019
ITB TITLE:	SALE OF CITY-OWNED REAL PROPERTY, RETAIL CONDOMINIUM UNIT
ITB #:	19-012
ITB RESPONSE DUE DATE/TIME:	JUNE 13, 2019; 2:00 PM
ITB ISSUE DATE:	MAY 2, 2019
NUMBER OF PAGES:	2

To ALL BIDDERS:

1. The attached information is made part of the ITB noted above and part of any contract that may be awarded as a result of response to this ITB.
2. The purpose of this addendum is to provide additional and/or revised information or documents.
3. In the event of a conflict between previously released information and the information contained herein, the information contained herein shall prevail.
4. A signature on this page acknowledges receipt of this addendum.
5. This signed addendum acknowledgment must be included with Bid response.
6. A signature on this addendum does not constitute your signature on the original Bid document.
7. See Addendum information beginning on the next page.

Firm Name

Firm Address

Signature of Person Authorized to Bind this Firm

Date

Typed or Printed Name and Title

Phone Number and E-mail Address

The invitation to bid documents are hereby modified in the following respects:

The following question were presented to the City by the Question Deadline and are being supplied along with the City's answers to all that may be interested in this Retail Condominium Unit.

1. Can I divide the space into three separate units roughly 1600 feet each?
 - a. Yes, the space can be subdivided and leased to multiple tenants (provided individual units comply with code).
2. Can I sell those units separately?
 - a. No, regarding ownership, the "Retail Condominium Unit" remains as one unit.
3. Can I change the facade of the individual retail spaces to make each space different like Teasley place? I know it has to go before DRB.
 - a. Owner may submit change requests to Design Review Board, but outcome cannot be determined at this time.
4. Is the space currently pre-wired for additional water, electric and gas meters?
 - a. See ITB 19-012, Page 7, Section 9 Site Details, #6:
The "Retail Unit" will be ready for build-out and will be stubbed for:
 - Fulton County water, space for 2 meters
 - Fulton County sanitary sewer
 - natural gas
 - electricity, space for 2 meters
 - communications
5. How many bathrooms is the space currently plumbed for?
 - a. Other than noted utility rough-in, the space has not been defined for any use.

END ADDENDUM

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2019 (the “**Effective Date**”) by and between **THE CITY OF ALPHARETTA, GEORGIA**, a municipal corporation of the State of Georgia (the “**Seller**”), and **GCKR REALTY LLC**, a Georgia limited liability company (the “**Purchaser**”).

1. PURCHASE AND SALE

Section 1.1 Property. Subject to the terms and provisions hereof, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, fee simple title in and to all of the property described as the “Retail Unit” pursuant to the Condominium Declaration (hereinafter defined) to be recorded at or prior to Closing (the “**Property**”).

2. PURCHASE PRICE AND EARNEST MONEY

Section 2.1 Payment. The purchase price of the Property is Eight Hundred Seventy-Six Thousand Six Hundred and 00/100 Dollars (\$876,600.00) (the “**Purchase Price**”). Purchaser will pay the Purchase Price in good funds at the Closing (hereinafter defined).

Section 2.2 Earnest Money.

(a) Prior to the Effective Date, Purchaser has delivered to Seller the sum of Forty-Three Thousand Eight Hundred Thirty and No/100 Dollars (\$43,830.00) (the “**Earnest Money**”).

(b) The Earnest Money shall be applied to the Purchase Price at Closing. In the event this Agreement terminates without Closing, then the Seller shall disburse the Earnest Money in the manner provided for elsewhere herein. The Seller shall hold the Earnest Money in a non-interest bearing account.

Section 2.3 Other Consideration. Notwithstanding any provision to the contrary contained in this Agreement, in the event that the Earnest Money is to be returned to Purchaser pursuant to the terms of this Agreement, the sum of One Hundred and No/100 Dollars (\$100.00) (“**Independent Agreement Consideration**”), shall in all cases be paid to Seller, which amount the parties bargained for and agreed to as consideration for the Seller’s grant to Purchaser of Purchaser’s right to purchase the Property pursuant to the terms hereof and for Seller’s execution, delivery and performance of this Agreement. This Independent Agreement Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, including all consideration and payment by Purchaser for the investigation, inquiry and due diligence with regard to the Property.

3. SURVEY AND TITLE MATTERS

Section 3.1 Condominium Declaration. Purchaser and Seller acknowledge and agree that (i) Purchaser received a copy of the draft Declaration of Condominium for 92 Milton Avenue, A Condominium (the “**Condominium Declaration**”) prior to the Effective Date, and (ii)

Purchaser has approved the Condominium Declaration in all respects. The parties will mutually work together in good faith to finalize the Condominium Declaration and to prepare the same for recording at or prior to Closing. Provided the Condominium Declaration is not revised to materially and adversely affect the Property, Seller shall have the right to make any revisions to the Condominium Declaration as Seller deems necessary. Seller shall record the Condominium Declaration in the public records of the Superior Court of Fulton County, Georgia on or before the Closing Date.

Section 3.2 Plat and Plans. Purchaser and Seller acknowledge and agree that in conjunction with the Condominium Declaration, Seller is preparing a condominium plat and condominium plans to be recorded in the public records of the Superior Court of Fulton County, Georgia (the “**Plat and Plans**”). Seller agrees to provide the Plat and Plans to Purchaser for review prior to recording, provided however, Purchaser shall have no right to object to the Plat and Plans unless any matter therein materially and adversely affects the Property or directly conflicts with the Condominium Declaration. Seller shall record the Plat and Plans on or before the Closing Date.

4. INSPECTION

Section 4.1 Scope of Inspection. Until Closing or the earlier termination of this Agreement, Purchaser shall have the right, at Purchaser’s sole cost and expense, to enter upon the Property and to conduct such inspections and audits as Purchaser may desire, including, without limitation, engineering and economic studies, but not invasive environmental testing. Prior to any permitted entry upon the Property, Purchaser shall provide and maintain at its expense, and require its contractors and subcontractors to maintain at their expense, commercial general liability insurance in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit on an occurrence basis. Purchaser shall promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property with Purchaser’s authorization, and shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder. In the event a lien claim is asserted, Purchaser shall have the right to contest in good faith and with due diligence the validity and/or the amount of any such lien or claim by furnishing a bond to indemnify against liens or claims or such other security or indemnity with respect to such claim as may be commercially reasonable. If and to the extent that any inspection or test performed by Purchaser requires or results in any damage to or alteration of the Property, Purchaser shall, at its own expense, restore such portion of the Property so damaged or altered.

Section 4.2 Indemnity. Purchaser indemnifies and holds Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys’ fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity) arising out of or in connection with the acts or omissions of Purchaser and its agents, representatives, contractors and consultants in performing inspections or tests permitted under this Agreement.

5. PRE-CLOSING OCCURRENCES

Section 5.1 Casualty. Seller shall, at its sole cost and expense, keep and maintain in full force and effect through the Closing, Seller’s existing insurance coverage (if any) with respect to the Property. In the event the Property should be materially and adversely damaged by any casualty

prior to Closing, then Purchaser may elect to terminate this Agreement within twenty (20) days of Purchaser's receipt of written notice of such casualty, whereupon Purchaser shall immediately be provided a full refund of the Earnest Money and neither party hereto shall owe any further obligations one to the other hereunder, except with respect to any provision hereof which by its terms shall survive termination of this Agreement. If Purchaser does not elect to so terminate this Agreement, then the Closing shall occur as scheduled, whereupon Seller shall assign all of Seller's interest in and to any insurance proceeds received or to be received by Seller by virtue of such casualty together with a payment to Purchaser of the amount of all deductibles, or in the event that said proceeds are unavailable, the Property is uninsured, underinsured or coverage is denied, the Purchase Price shall be reduced by the amount of said insurance proceeds and deductible or the value of actual uninsured or underinsured loss, as the case may be.

Section 5.2 Condemnation. In the event of a taking by condemnation or similar proceedings or actions of all, or any portion of the Property, then Purchaser shall have the option to terminate this Agreement upon written notice to Seller within twenty (20) days of Purchaser's receipt of written notice of such condemnation, in which event the Earnest Money shall be promptly refunded by the Seller to Purchaser, and neither Purchaser nor Seller shall have any further rights or obligations hereunder except with respect to any provision hereof which by its terms shall survive termination of this Agreement. If Purchaser does not exercise its option to so terminate this Agreement, then the Agreement shall remain in full force and effect and Seller shall assign to Purchaser at Closing Seller's interest in and to any and all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1 Seller's Representations and Warranties. Seller makes the following representations and warranties, as of the Effective Date:

(a) Organization and Authority. Seller is a municipal corporation organized under the laws of the State of Georgia. Seller has the full right, power and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the Closing documents will be, authorized and duly executed and delivered by Seller and constitute, or will constitute, as appropriate, the legal, valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) Conflicts and Pending Actions. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller relating to the Property, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement or against or with respect to the Property. Seller has not committed or obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any other party.

(c) Due Authority. Seller has all requisite power and authority to own and operate the Property in accordance with its current operations, to execute and deliver this Agreement, and to carry out its obligations hereunder and the transactions contemplated hereby. The consummation by Seller of the sale of the Property is not in violation of, or in

conflict with, nor does it constitute a default under, any term or provision of the organizational documents of Seller, or any of the terms of any agreement or instrument to which Seller is or may be bound, or of any applicable law or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(d) OFAC. Seller and its members are currently in compliance with, and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Assets Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

If any of Seller’s representations and warranties set forth in Section 6.1 becomes untrue or misleading in any material respect prior to the Closing Date, then Seller shall give Purchaser prompt written notice thereof. In that event, Purchaser’s sole remedy shall be either to waive such representation or warranty (to the extent of the change) or to terminate this Agreement and recover the Earnest Money by delivering notice to Seller at any time at or before the Closing.

Except as otherwise expressly provided herein, (1) Seller makes no representation or warranty as to the condition of the Property, including without limitation any warranty as to the Property’s fitness for any particular purpose, and (2) the transaction contemplated herein is “as is, where is, and with all faults.”

Section 6.2 Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller that:

(a) Authority. Purchaser has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. There is no agreement to which Purchaser is a party or to Purchaser’s knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser’s knowledge, threatened against Purchaser which challenges or impairs Purchaser’s ability to execute or perform his and her obligations under this Agreement.

(c) Prohibited Persons and Transactions. Purchaser is currently in compliance with, and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with, the regulations of the OFAC of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

Section 6.3 Survival. The representations and warranties set forth in this Agreement are made as of the date of this Agreement, are deemed to be remade as of the Closing Date (unless either party notifies the other party in writing that any representation or warranty is untrue, inaccurate or incorrect and explaining the state of facts giving rise to the change), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for six (6) months after the Closing Date.

7. CLOSING

Section 7.1 Time. The exchange of documents and funds and the transfer of title (the “**Closing**”) hereinafter described shall take place on a date reasonably approved by Purchaser and Seller (the “**Closing Date**”) that is no later than _____ (____) days following the Effective Date. The Closing will be effectuated by an escrowed closing involving delivery of all closing documents and the Purchase Price to [_____] (the “**Title Company**”).

Section 7.2 Seller Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Purchaser, at Seller’s sole cost and expense, each of the following items:

(a) Closing Statement. A closing statement reflecting the Purchase Price and all adjustments, prorations and credits thereto, and such disbursements as the parties wish to reflect thereon in connection with the transaction contemplated hereby (the “**Closing Statement**”).

(b) Deed. A limited warranty deed in the form of Exhibit A hereto (the “**Deed**”) acceptable for recordation under the law of the State of Georgia, executed and acknowledged by Seller, conveying to Purchaser fee simple title to the Property subject to all matters of record.

(c) Title Affidavit. A title affidavit in form reasonably necessary to satisfy those of the Title Company’s requirements to issuing Purchaser’s title policy that can be satisfied by such an affidavit, and sufficient to induce the Title Company to delete those of the standard exceptions to Purchaser’s title policy that can be deleted by the Title Company upon its receipt of such an affidavit.

(d) Conveyancing or Transfer Tax Forms or Returns. Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local law in connection with the conveyance of the Property.

(e) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller.

(f) Affidavit of Residence. An affidavit which establishes the residency of Seller in compliance with O.C.G.A. §§ 48-7-128 and 48-7-129, and related rules and regulations, or, in the alternative, another document satisfying the requirements of such code sections.

(g) Condominium Declaration. If not previously executed and recorded by Seller, the Condominium Declaration executed by Seller.

(h) Plat and Plans. If not previously recorded by Seller, the Plat and Plans.

(i) Miscellaneous. Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of the Seller in connection with the sale of the Property.

Section 7.3 Purchaser Delivery. At the Closing, Purchaser, at Purchaser's sole cost and expense, shall deliver to Seller the following items:

(a) Purchase Price. The balance of the Purchase Price.

(b) Closing Statement. The Closing Statement executed by Purchaser.

(c) Brokerage Materials. A broker's lien waiver from Purchaser's broker and an affidavit addressed to the Title Company stating that Purchaser has not engaged any other brokers in connection with this transaction.

(d) Miscellaneous. Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of the Seller in connection with the sale of the Property.

Section 7.4 Adjustments and Prorations. Any income and operating expenses for the Property (if any) shall be prorated at the Closing effective as of the Closing Date, and appropriate cash adjustments shall be made by Purchaser and Seller. If final bills are not available or cannot be issued prior to Closing for any item being prorated herein, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, and an adjustment shall be made as soon as reasonably possible after the Closing.

Section 7.5 Commissions. Purchaser and Seller represent and warrant to each other that no brokers' or real estate commissions will be due as a result of the sale of the Property for their respective actions, except for a commission in the amount of Thirteen Thousand and No/100 Dollars (\$13,000.00) due to Virtual Properties Realty representing Purchaser ("**Broker**") which shall be paid by Seller at the Closing. Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby, except to Broker. Purchaser agrees to indemnify, defend and hold Seller harmless against the payment of any commission to any other person or entity claiming by, through or under Purchaser. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

Section 7.6 Possession. Exclusive possession of the Property shall be delivered to Purchaser by Seller at the Closing, subject to all matters of record.

Section 7.7 Costs and Expenses. Seller shall pay the transfer tax, if any, due upon the recordation of the Deed. Purchaser shall pay (i) the cost of any survey, title commitment and title searches, the premium for Purchaser's title policy and the cost of all endorsements requested by

Purchaser to the Purchaser's title policy, (ii) the cost of all third party reports and inspections ordered by or for Purchaser, (iii) the escrow or closing fee charged by the Title Company, and (iv) recording costs with respect to the Deed. All costs and expenses in connection with the transaction contemplated by this Agreement shall, except as otherwise expressly provided herein, be borne by Seller and Purchaser in the manner in which such costs and expenses are customarily allocated between the parties at closings of the purchase or sale of real property similar to the Property in the county and state in which the Property is located. The Seller and Purchaser hereby agree that each party shall pay their own legal fees and costs, except as may be specifically provided herein to the contrary.

8. REMEDIES FOR DEFAULT

Section 8.1 Seller Default. If Seller fails to perform in any material respect its obligations pursuant to this Agreement, Purchaser shall provide Seller with written notice of such failure and a period of not less than five (5) business days in which to cure, or to attempt to cure, the same. If Seller fails to timely cure any such failure, then Purchaser shall elect, as its sole remedy, either (a) to terminate this Agreement and recover the Earnest Money, or (b) to waive said failure or breach and proceed to Closing.

Section 8.2 Purchaser Default. If Purchaser fails to purchase the Property pursuant to this Agreement at or prior to Closing by reason of any default by Purchaser herein, Seller shall be entitled, as its sole remedy, to terminate this Agreement by giving Purchaser written notice thereof prior to or at Closing and recover the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder, in which case neither Purchaser nor Seller shall have any further rights or obligations hereunder, except those that expressly survive the termination of this Agreement. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain.

9. MISCELLANEOUS

Section 9.1 Title Company. In performing any of its duties hereunder, the Title Company shall not incur any liability to any party for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (i) to any action taken or omitted in good faith upon advice of its counsel, or (ii) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the Title Company shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement. The Title Company is hereby specifically authorized to refuse to act except upon the written consent of Seller and Purchaser. Title Company shall not have responsibility for any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Title Company or incurred by the Title Company in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof, excluding any losses,

claims, damages, liabilities, and/or expenses incurred, arising from, and/or related to the gross negligence and/or willful misconduct of Title Company and/or its agents, employees, contractors, officers, directors, members and/or managers. In the event of a dispute between Seller and Purchaser sufficient in the reasonable discretion of the Title Company to justify its doing so, the Title Company shall be entitled to tender into the registry or custody of any court of competent jurisdiction in the State of Georgia, County of Fulton or Northern District of Georgia all money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Seller and Purchaser shall bear all costs and expenses of any such legal proceedings.

Section 9.2 Modification. The parties hereby acknowledge and agree that this Agreement may be altered, amended or modified only by a written instrument that is actually executed by the party or parties to be bound thereby.

Section 9.3 Notices. All notices, demands, or other communications of any type (herein collectively referred to as “**Notices**”) given by the Seller to the Purchaser or by the Purchaser to the Seller, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 9.3. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed by the courier delivery service), or by overnight courier (such as United Parcel Service or Federal Express) with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery, notices delivered by overnight courier shall be effective one (1) day following deposit with an overnight courier service, and notices delivered by mail shall be effective two (2) days following deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as provided below. Notice may additionally be provided by email transmission and shall be deemed to have been given at the time of transmission so long as a copy of such notice is simultaneously forwarded by one of the other means described above. The proper email address for each party is listed below. Any party hereto may change the address for notice specified above by giving the other party ten (10) days’ advance written notice of such change of address. Notices given by counsel to the Purchaser shall be deemed given by Purchaser, and notices given by counsel shall be deemed given by Seller.

Seller: The City of Alpharetta, Georgia

Tel: _____

Email: _____

with a copy to:

Bovis, Kyle, Burch & Medlin

200 Ashford Center North, Suite 500

Atlanta, Georgia 30338-2668

Attention: C. Sam Thomas

Tel: (678) 338-3904

Email: cst@boviskyle.com

with another copy to:

Holland & Knight LLP
1180 West Peachtree Street NE, Suite 1800
Atlanta, Georgia 30309
Attention: Matthew T. Joe
Tel: (404) 898-8133
Email: matthew.joe@hklaw.com

Purchaser: GCKR Realty LLC
2627 Vintage Drive
Alpharetta, Georgia 30009
Tel: (954) 643-1913
Email: raj_gangaram@yahoo.com

Title Company: _____

Tel: _____
Email: _____

Section 9.4 No Assumption of Liabilities. Notwithstanding any provision contained in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of assets and none of the provisions hereof shall be deemed to create any obligation or liability of any party to any person or entity that is not a party to this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise.

Section 9.5 Time is of the Essence. Time is of the essence in the performance of this Agreement.

Section 9.6 Successors and Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. This Agreement is for the sole benefit of Seller and Purchaser, and no third party is intended to be a beneficiary of this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise.

Section 9.7 Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of Georgia without giving effect to its choice of law provisions.

Section 9.8 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both the Seller and the Purchaser.

Section 9.9 Negotiation by Counsel. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

Section 9.10 No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Section 9.11 Attorneys' Fees. In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit. As used herein, the term "**reasonable attorneys' fees**" and words of similar import shall mean the actual attorneys' fees and expenses incurred by the party so entitled to collect same, and not, for the avoidance of doubt, attorneys' fees as calculated by reference to any statutory formula, including, without limitation, O.C.G.A. § 13-1-11.

Section 9.12 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 9.13 No Offer. Submission of this form of Agreement for examination shall not bind Seller or Purchaser in any manner nor be construed as an offer to sell and no contract or obligations of Seller or Purchaser shall arise until this Agreement is executed by both Seller and Purchaser and delivery is made to each.

Section 9.14 Total Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

Section 9.15 Partial Invalidity. If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in the event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

Section 9.16 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective

signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. To facilitate execution of this Agreement, the parties may execute and exchange by email counterparts of this Agreement, and any such email counterpart shall be deemed an original and binding on the executing party.

Section 9.17 Business Days. In the event that the date upon which any duties or obligations hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday in the State of Georgia, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding day that is not a Saturday, Sunday or legal holiday in the State of Georgia (a “**Business Day**”).

[Signatures appear on the next page.]

SUBSTANTIALLY FINAL DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

SELLER:

THE CITY OF ALPHARETTA, GEORGIA, a
municipal corporation of the State of Georgia

By: _____(SEAL)

Name: _____

Title: _____

Date Executed: _____

[Signatures continue on the next page.]

SUBSTANTIALLY FINAL DRAFT

PURCHASER:

GCKR REALTY LLC, a Georgia limited liability company

By: _____(SEAL)
Name: Raj Gangaram
Title: President

Date Executed: _____

SUBSTANTIALLY FINAL DRAFT

EXHIBIT A

FORM OF LIMITED WARRANTY DEED

After recording, please return to:

STATE OF GEORGIA

COUNTY OF FULTON

LIMITED WARRANTY DEED

THIS LIMITED WARRANTY DEED is made this ____ day of _____, 2019, between **THE CITY OF ALPHARETTA, GEORGIA**, a municipal corporation of the State of Georgia (“**Grantor**”), and **GCKR REALTY LLC**, a Georgia limited liability company (collectively, “**Grantee**”).

WITNESSETH that Grantor for and in consideration of the sum of Ten Dollars (U.S. Dollars) (\$10.00) and other valuable consideration in hand paid at and before the sealing and delivery of these presents, the receipts whereof are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee, in fee simple, the property described on Exhibit A attached hereto (the “**Property**”).

TO HAVE AND TO HOLD said Property, together with any and all improvements located thereon, and any and all of the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining to the only proper use, benefit and behoof of Grantee and the heirs, legal representatives, successors, successors-in-title and assigns of Grantee, forever, in fee simple.

And Grantor shall warrant and forever defend the right and title to said Property unto Grantee and the heirs, legal representatives, successors-in-title and assigns of Grantee, against the claims of all persons whomsoever claiming by, through or under Grantor, subject to all matters of record.

IN WITNESS WHEREOF, the Grantor has signed and sealed this Deed, the day and year first above written.

Signed, sealed and delivered in
the presence of:

Unofficial Witness

Notary Public

My commission expires:

[NOTARIAL SEAL]

Exhibits:

Exhibit A – Legal Description

GRANTOR:

THE CITY OF ALPHARETTA, GEORGIA, a
municipal corporation of the State of Georgia

By: _____

Name: _____

Title: _____

SUBSTANTIALLY FINAL DRAFT

ARTICLES OF INCORPORATION

92 MILTON AVENUE CONDOMINIUM ASSOCIATION, INC.

I.

The name of the corporation (the “**Association**”) is: **92 Milton Avenue Condominium Association, Inc.**

II.

The initial registered office of the Association shall be at _____, _____, Fulton County, Georgia. The initial registered agent of the Association shall be [*The City of Alpharetta, Georgia, a municipal corporation of the State of Georgia*].

III.

The mailing address of the initial principal office of the Association is:

92 Milton Avenue Condominium Association, Inc.

_____, Georgia _____

IV.

The name and address of the incorporator is:

Matthew T. Joe, Esq.
1180 West Peachtree Street, Suite 1800
Atlanta, Georgia 30309

V.

The Association shall have one class of members as provided in the Declaration of Condominium for 92 Milton Avenue, a Condominium (the “**Declaration**”), and the bylaws of the Association (the “**Bylaws**”). Members shall have the voting rights as provided in the

Declaration and Bylaws. Terms used but not otherwise defined herein shall have the meanings set forth in the Declaration or the Bylaws, as applicable.

VI.

The Association shall have perpetual duration.

VII.

The Association is organized as a nonprofit, nonstock, membership corporation for the purpose of performing certain functions for the common good and general welfare of the Owners of Units in that certain condominium development (the “**Condominium**”) in Fulton County, Georgia, commonly known as “92 Milton Avenue, a Condominium” as provided in the Governing Documents. The Association’s purposes include: providing for the management and operation of the Common Elements; providing for the enforcement of the covenants and restrictions set forth in the Governing Documents; levying Assessments against the members of the Association in accordance with the terms and provisions of the Declaration in order to raise the funds required by the Association to defray expenses which the Association shall incur in carrying out such purposes; and for such other purposes as provided in the Governing Documents.

VIII.

The Association is organized pursuant to the Georgia Nonprofit Corporation Code.

IX.

The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the Owners, Tenants and Permittees of the Condominium as provided in the Governing

Documents. To the extent, and only to the extent, necessary to carry out such purpose, the Association shall have (a) all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, except as otherwise provided in the Governing Documents, and (b) the power to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Governing Documents.

No part of the net earnings, gains or assets of the Association shall inure to the benefit of or be distributable to its directors, officers, other private individuals, or organizations organized and operated for a profit (except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Association as herein stated). No substantial part of the activities of the Association shall be the direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.

X.

Directors of the Association shall be elected by the method of election of directors as set forth in the Association's Bylaws, as amended from time to time.

XI.

To the fullest extent that the Georgia Nonprofit Corporation Code, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Association shall be personally liable to the Association or its members for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

XII.

The Association may be dissolved only upon a resolution duly adopted by the Board of Directors with the affirmative vote of members who hold sixty percent (60%) of the Allocated Interests in the Condominium.

XIII.

These Articles of Incorporation may be amended only upon a resolution duly adopted by the Board of Directors, with the affirmative vote of members who hold at least sixty-six percent (66%) of the Allocated Interests in the Condominium.

XIV.

A request for publication of a notice of the filing of these Articles of Incorporation and payment therefor will be made as required by O.C.G.A. Section 14-3-202.1.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation on the ___ of April, 2019.

Matthew T. Joe, Incorporator

BYLAWS
OF
92 MILTON AVENUE CONDOMINIUM ASSOCIATION, INC.

1. GENERAL

1.1. Applicability. These Bylaws provide for the self-government of 92 Milton Avenue Condominium Association, Inc. (the “**Association**”), in accordance with the Georgia Condominium Act, the Articles of Incorporation filed with the Secretary of State and the “Declaration of Condominium for 92 Milton Avenue, a Condominium”, recorded in the Fulton County, Georgia deed records (the “**Declaration**”).

1.2. Name. The name of the Association is 92 Milton Avenue Condominium Association, Inc.

1.3. Definitions. The terms used but not otherwise defined herein shall have such meanings as are specified in the Declaration or, if not defined therein, their generally accepted meanings.

1.4. Membership. An Owner of a Unit, by virtue of its ownership of a fee or undivided fee interest in any Unit, shall automatically become a member of the Association (a “**Member**”) upon the acquisition of its interest in the Unit and shall remain a Member for the entire period of its ownership. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title to a Unit. Membership within the Association will not be divided into different classes.

1.5. Entity Members. In the event a Member is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person’s relationship with the Association shall terminate automatically upon the termination of such person’s relationship with the entity or entities which are the Member, and termination of the person’s relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

1.6. Voting. The number of votes which each Member shall be entitled to cast with respect to any matter on which Members shall be entitled to vote shall be as set forth in the Declaration. When a vote of the Members is required as more specifically set forth in the Declaration and these Bylaws, no Member shall be eligible to vote, either in person or by proxy, if the Member has had its voting rights suspended in accordance with the applicable provisions of the Declaration or these Bylaws. If the voting rights of a Member have been suspended, that

Member shall not be counted as an eligible vote for purposes of establishing a majority of the Units or a quorum.

1.7. Purpose. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the Assessments, arranging for the management of the Condominium and performing all of the other acts that may be required to be performed pursuant to the Act, the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Act, the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the responsibilities to be performed by the Board of Directors is set forth below and in the Declaration.

2. MEETINGS OF MEMBERS

2.1. Annual Meetings. The regular annual meeting of the Members shall be held during the sixty (60) day period immediately preceding the last day of each fiscal year, with the date, hour, and place to be set by the Board of Directors.

2.2. Special Meetings. Special meetings of the Members may be called for any purpose at any time by the President, Vice President (if any), or Secretary, or by request of any member of the Board of Directors.

2.3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Member a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Member wishes notice to be given at an address other than its Unit, the Member shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

2.4. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or represented by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

2.5. Quorum; Approval of Members. Except as may be provided elsewhere in the Governing Documents, the presence of Members, in person or by proxy, entitled to cast more than one-half (1/2) of the eligible votes of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Members whose voting rights have been

suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement. Except as otherwise provided by applicable law or the Governing Documents, the vote of Members holding, in the aggregate, a majority of the votes entitled to be cast by the Members present or voting by legitimate proxy at a called meeting at which a quorum is present shall be the act of the Members.

2.6. Adjournment. Any meeting of the Members may be adjourned from time to time for periods not exceeding thirty (30) days by vote of the Members holding the majority of the Association votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

2.7. Proxy. Any Member entitled to vote may do so by written proxy duly executed by the Member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or facsimile transmission to the Secretary. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

2.8. Action Taken Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written consent form or ballot to every Member entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter (other than election of Directors); and specify the time by which a ballot must be received by the Association in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years. If an action of the Members is approved by written ballot hereunder, the Board of Directors shall issue written notice of such approval to all Members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration, the effective date shall be no earlier than the date of recording of such amendment.

2.9. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) (“**Roberts Rules**”) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the Members present at a particular meeting vote to suspend Roberts Rules at that meeting.

3. SELECTION AND COMPOSITION OF BOARD OF DIRECTORS

3.1. Composition. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) members (each, a “**Director**”), each of whom shall serve until his or her successor is appointed and qualified. The Owner of the Parking Unit shall appoint three (3) members of the Board of Directors, the Owner of the Civic Unit shall appoint one (1) member of the Board of Directors and the Owner of the Retail Unit shall appoint one (1) member of the Board of Directors. The Director representing each such Owner shall be appointed or elected in the manner provided by the Owner of the applicable Unit. If the office of any Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Owner which appointed such Director for whom the office is now vacant shall appoint a successor. The successor Director shall fill the unexpired term of the directorship being vacated. A Director may be removed, with or without cause, at any time, only by the Owner which elected the Director; and a successor Director shall be appointed by such Owner.

3.2. Decision Making of the Board. At all duly convened meetings of the Board of Directors, at least three (3) Directors must be present to constitute a quorum for the transaction of business. The vote of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board of Directors, except to the extent provided to the contrary in the Governing Documents.

3.3. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by all of the Members. Directors may be reimbursed for the expenses incurred in carrying out their duties as Directors upon approval of such expenses by the Board of Directors.

3.4. Director Conflicts of Interest. Nothing herein shall prohibit a Director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as Director, provided that the Director’s interest is disclosed to the Board of Directors and the contract is approved by all of the Directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the Director with whom the contract is made. The interested Director shall not count for purposes of establishing a quorum of the Board of Directors. The interested Director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract unless requested by any other Director to leave the room during the discussion.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board of Directors, but such meetings shall be held at least once every twelve (12) months. A newly elected Board of Directors shall meet within ten (10) days after each annual meeting of the membership.

4.2. Special Meetings. Special meetings of the Board of Directors may be called by any Director on two (2) days' notice to each Director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting.

4.3. Waiver of Notice. Any Director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all Directors are present at any Board of Directors meeting, no notice shall be required and any business may be transacted at such meeting.

4.4. Conduct of Meeting. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. One or more Directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

4.5. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all Directors consent in writing to such action. Such written consents must describe the action taken and be signed by no fewer than three (3) of the Directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

5. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

5.1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have the powers and duties set forth in these Bylaws, the Declaration, the Articles of Incorporation and the Act.

5.2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice.

5.3. Liability and Indemnification of Officers and Directors. To the fullest extent that the Georgia Nonprofit Corporation Code, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors and officers, no Director or officer of the Association shall be personally liable to the Association or its Members for monetary damages for breach of duty of care or other duties as a Director or officer of the Association. The Association's indemnification obligations to every officer and Director shall include indemnification against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer or Director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then

Board of Directors) to which he or she may be made a party by reason of being or having been an officer or Director, whether or not such person is an officer or Director at the time such expenses are incurred, subject to the Georgia Nonprofit Corporation Code. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director or former officer or Director may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance, to fund this obligation, and the insurance shall be written as provided in the Declaration.

5.4. Committees. The Board of Directors may create and authorize committees having such powers and duties that the Board of Directors shall authorize. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

6. OFFICERS

6.1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board of Directors.

6.2. Election of Officers. The Association officers shall be elected annually by the Board of Directors at the first Board of Directors' meeting following each annual meeting of the Members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

6.3. Removal of Officers. Any officer may be removed by the Board of Directors, either with or without cause, and a successor may be elected.

6.4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

6.5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

6.6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

6.7. Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of

Directors may direct, and shall, in general, perform all duties incident to the office of the Secretary of a corporation organized under Georgia law.

6.8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

6.9. Other Officers. Other offices may be created by the Board of Directors, and the Board members which hold such offices shall have such titles and duties as are defined by the Board of Directors.

7. DECISIONS OF THE BOARD OF DIRECTORS

7.1. Ministerial Actions. In addition to the specific powers of the Board of Directors set forth elsewhere in the Governing Documents, the Board of Directors is permitted to take all actions that are ministerial in nature. These actions may include: (a) entering into and executing any and all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments on behalf of the Association; (b) providing for the operation, care, upkeep, and maintenance of all of the Common Elements as more particularly described in the Declaration; (c) payment of expenses routine and recurring in nature such as to the management company managing the affairs of the Association; (d) designating, hiring, and dismissing the personnel necessary for the operation and upkeep of the Common Elements; (e) opening of bank or other financial accounts on behalf of the Association and designating the signatories required; (f) making Assessments to defray the Common Expenses, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the Annual Assessments; (g) collecting the Assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association; (h) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof; (i) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Members; (j) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; (k) granting of routine utility and right-of-way easements, permits and licenses; and (l) enforcing by legal means the provisions of the Declaration, these Bylaws, and any rules and regulations promulgated by the Association, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association.

7.2. Major Decisions. Any action or decision described in this Section is defined as a “**Major Decision**” and shall not be taken without the approval of all Owners of all of the Units: (a) any act seeking to abandon or terminate the Condominium; (b) changing the Allocated Interests or the allocations of distributions of condemnation awards; (c) partitioning or subdividing any Unit except in accordance with the provisions of the Declaration; (d) any act or omission seeking to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as specifically authorized in the Governing Documents, shall not be deemed a transfer within the meaning of this clause); (e) using Association hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) other than as set forth in the Declaration; or (f) determining whether to repair, rebuild or restore any improvements on the Property, or any substantial part thereof, which has suffered material damage as a result of fire or other casualty or the exercise of the power of eminent domain. The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required by the Act or the Governing Documents for any of the actions contained in this Section.

8. RULE MAKING AND ENFORCEMENT

8.1. Authority and Enforcement. The Board of Directors shall have the authority to make, modify, repeal and enforce non-discriminatory rules and regulations governing the conduct, use and enjoyment of Units and the Common Elements; provided, that any such rules and regulations must be in furtherance of, and not contrary to, the uses and purposes set forth in the Declaration, and provided further that copies of all such rules and regulations shall be furnished to all Owners. Every Owner, Tenant and Permittee shall comply with the Declaration, these Bylaws and any such rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, these Bylaws or such rules and regulations. The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner’s Unit, and to suspend a Member’s right to vote or to use the Common Elements in the circumstances described in the Declaration; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any Tenant or Permittee of a Unit violates the Declaration, these Bylaws, or a rule or regulation promulgated by the Association and a fine is imposed, notice of such violation shall be sent to the Owner and to the Tenant and/or Permittee, as applicable, and the fine shall first be assessed against such Tenant and/or Permittee, as applicable; provided, however, if the fine is not paid by the Tenant and/or Permittee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of Directors, and the fine shall be a Special Assessment and a lien against the Unit until paid. The failure of the Board of Directors to enforce any provision of the Declaration, these Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

8.2. Fining and Suspension Procedure. The Board of Directors shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements, unless and until the

Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine and/or suspension shall be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board of Directors to challenge such fine under subsection (b) below. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(a) Notice. If any provision of the Declaration or these Bylaws, or any rules and regulations of the Association, is violated and a fine and/or suspension is applicable and imposed, the Board of Directors shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board of Directors to contest the violation or fine(s)/suspension or to request reconsideration of the fine(s)/suspension.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board of Directors shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board of Directors may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

8.3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of the Declaration, these Bylaws, or any rules and regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the procedure set forth in Section 8.2. In any such action, to the maximum extent permissible, the Owner, Tenant or Permittee responsible for the violation for which abatement is sought shall be responsible for reasonable attorneys' fees actually incurred. The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, these Bylaws, or any rules and regulations; provided, however, written notice shall be given to the Owner of the Unit at least fifteen (15) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of Assessments.

9. MISCELLANEOUS

9.1. Method of Giving Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid: (a) if to an Owner, at the address which such Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at

the address of the Unit of such Owner; (b) if to a Tenant or Permittee, at the address of the Unit occupied thereby; or (c) if to the Association or the Board of Directors, at the principal office of the Association, if any, or at such other address as shall be designated in writing and filed with the Secretary.

9.2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or of the Declaration.

9.3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

9.4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

9.5. Fiscal Year. The fiscal year of the Association may be set by Board of Directors' resolution and, in the absence thereof, shall be the calendar year.

9.6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board of Directors and a financial statement prepared. The Board may require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any First Mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the end of the Association's fiscal year.

9.7. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Act, the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail.

9.8. Amendment. These Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding a majority of the total vote of the Association, except to the extent constituting a Major Decision under these Bylaws. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

9.9. Books and Records.

(a) All Members of the Association, and any lenders, institutional holders or insurers of a First Mortgage, shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which such person wishes to inspect and copy: (1) the Articles of Incorporation and all amendments to them currently in effect; (2) these Bylaws and all amendments to them currently in effect; (3) the Declaration and all amendments currently in effect; (4) resolutions adopted by either the Members or Board of Directors of the Association increasing or decreasing the number of Directors or the classification of Directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members; (5) resolutions adopted by either the Members or Board of Directors of the Association relating to the characteristics, qualification, rights, limitations, and obligations of Members or any class or category of Members; (6) any rules and regulations promulgated by the Association; (7) any books, records or financial statements of the Association; (8) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years; (9) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years; (10) a list of the names and business and addresses of its current Directors and officers; and (11) its most recent annual report delivered to the Secretary of State of the State of Georgia.

(b) Additionally, a Member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the Member wishes to inspect and copy only if (1) the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member, (2) the Member describes with reasonable particularity the purpose and the records the Member desires to inspect, (3) the records are directly connected with this purpose, and (4) the records are to be used only for the stated purpose: (i) excerpts from minutes of any Board of Directors' meeting, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board of Directors without a meeting, to the extent not subject to inspection under Section 9.9(a) above; (ii) accounting records of the Association; and (iii) the membership list only if for a purpose related to the Member's interest as a Member. Without the consent of the Board of Directors, a membership list or any part thereof may not be: (x) used to solicit money or property, unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association; (y) used for any commercial purpose; or (z) sold to or purchased by any Person.

(c) The Association may impose a reasonable charge covering the cost of labor and material for copies of any documents provided pursuant to this Section 9.9. Notwithstanding anything to the contrary, the Board of Directors may limit or preclude inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of Members. Minutes for any Board of Directors or Association meetings do not become effective and an official Association record until approved by the Board of Directors or Association membership, as applicable, at a subsequent meeting.

**CONSENT OF SOLE INCORPORATOR
OF 92 MILTON AVENUE CONDOMINIUM ASSOCIATION, INC.**

Pursuant to O.C.G.A. § 14-3-205(a)(2)(B), Matthew T. Joe, Esq., the undersigned, being the sole incorporator of 92 Milton Avenue Condominium Association, Inc., a Georgia non-profit corporation (the “**Corporation**”), by this writing, does hereby consent to, take and adopt the following resolutions and actions:

RESOLVED, that the following persons be, and hereby are, appointed to act as the initial Directors of the Corporation, to serve until a successor shall have been appointed or until their earlier resignation or removal:

Executed and acknowledged by the undersigned, being the sole incorporator of the Corporation, as of this ____ day of _____, 2019.

Matthew T. Joe, Esq., Incorporator

SUBSTANTIALLY FINAL DRAFT

**UNANIMOUS CONSENT OF DIRECTORS IN LIEU OF
ORGANIZATIONAL MEETING OF
92 MILTON AVENUE CONDOMINIUM ASSOCIATION, INC.**

The undersigned, being all of the Directors of 92 Milton Avenue Condominium Association, Inc. (the “**Company**”), pursuant to O.C.G.A. § 14-3-205(a)(2)(B) and 14-3-821, hereby consent that the following actions be taken and the following resolutions be adopted without a meeting for the purpose of organizing the Company, and hereby direct that this written consent be filed in the Company’s Minute Book.

RESOLVED, the Bylaws attached hereto as Exhibit A for the regulation and management of the Company are hereby approved and adopted, and ordered to be identified and inserted in the Minute Book.

RESOLVED, the following officers of the Company are appointed to serve in accordance with the Bylaws of the Company:

President	_____
Secretary	_____
Treasurer	_____

RESOLVED, the fiscal year of the Company shall begin on January 1st and end on December 31st.

RESOLVED, that any of the aforesaid officers of the Company are hereby authorized, empowered and directed to open bank accounts on behalf of the Company, and to designate the persons authorized to sign checks or orders for payment of money from funds for the Company on deposit in such accounts, as may be deemed by such officers, or any of them, to be necessary, appropriate or otherwise in the best interests of the Company.

RESOLVED, that any of the aforesaid officers of the Company are hereby authorized and directed to cause to be completed the preparation and filing with the Internal Revenue Service of a Form SS-4 to obtain a federal employer identification number to facilitate the opening of the above-mentioned bank accounts.

RESOLVED, that any of the aforesaid officers of the Company are hereby authorized, empowered and directed, in the name and on the behalf of the Company to execute and deliver any form of required resolution necessary to open any bank accounts, such resolutions being hereby incorporated into this action by reference and duly approved and affirmed hereby.

RESOLVED, that any of the aforesaid officers of the Company are hereby authorized, empowered and directed to take or cause to be taken all such further action and to sign, execute, acknowledge, certify, deliver, accept, record and file all such further documents, certificates and instruments in the name and on behalf of the Company as such officer deems necessary, desirable or advisable to carry out fully the intent of the foregoing resolutions, such determination to be

conclusively evidenced by the taking of such action or the execution and delivery of any such further document;

RESOLVED, that any and all actions heretofore or hereafter taken and any and all documents, certificates or instruments (however characterized or described) heretofore or hereafter executed and delivered or filed and recorded, as the case may be, on behalf of the Company, by the proper officers of the Company and others acting on the Company's behalf pursuant to authority granted to them by the proper officers of the Company, in order to carry into effect the purposes and intent of the foregoing resolutions are hereby ratified, confirmed, adopted and approved in all respects; and

RESOLVED, that this Unanimous Consent of Directors in Lieu of Organizational Meeting may be executed and delivered (including by facsimile transmission or by electronic transmission in Adobe portable document format) in two or more counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

This _____ day of April, 2019

_____, Director

_____, Director

_____, Director

_____, Director

_____, Director

Exhibit A
Bylaws

SUBSTANTIALLY FINAL DRAFT

UPON RECORDING RETURN TO:
BOVIS, KYLE, BURCH & MEDLIN
200 Ashford Center North, Suite 500
Atlanta, Georgia 30338
(770) 391-9100
Attn: C. Sam Thomas, Esq.

DECLARATION OF CONDOMINIUM
FOR
92 MILTON AVENUE, A CONDOMINIUM

THIS INSTRUMENT ESTABLISHES THE CONDOMINIUM FORM OF OWNERSHIP FOR THE PROPERTY DESCRIBED HEREIN PURSUANT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. SECTION 44-3-70, *ET SEQ.*, CONDOMINIUM PLAT RECORDED AT CONDOMINIUM PLAT BOOK _____, PAGE _____, FULTON COUNTY, GEORGIA LAND RECORDS, CONDOMINIUM PLANS FILED IN CONDOMINIUM FLOOR PLAN BOOK _____, PAGE _____, FULTON COUNTY, GEORGIA LAND RECORDS.

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EXHIBIT "A" – Legal Description of the Property

EXHIBIT "B" – Unit Identifying Numbers

EXHIBIT "C" – The 92 Milton Avenue Condominium Allocation Document

EXHIBIT "D" – Easements, Licenses, Leases and Encumbrances of Record

SUBSTANTIALLY FINAL DRAFT

DECLARATION OF CONDOMINIUM
FOR
92 MILTON AVENUE, A CONDOMINIUM

THIS CONDOMINIUM DECLARATION FOR 92 MILTON AVENUE, A CONDOMINIUM (this “**Declaration**”) is made as of _____, 2019 (the “**Effective Date**”), by [THE CITY OF ALPHARETTA, GEORGIA], a municipal corporation of the State of Georgia (the “**City**”), as the Declarant (as defined in Article 2 herein).

WITNESSETH:

A. Declarant is the owner of that certain real property consisting of approximately ____ (____) acres of land located in the City of Alpharetta, Fulton County, Georgia, as described on **Exhibit “A”** attached hereto (the “**Property**”), on which Declarant has constructed a multi-story parking structure and connected retail space (the “**Improvements**”).

B. It is the intention of Declarant that this Declaration shall henceforth govern the Development in accordance with the terms and conditions hereof and the Georgia Condominium Act, O.C.G.A. Section 44-3-70, *et seq.*, as may amended from time to time (the “**Act**”).

C. It is the intention of Declarant to restrict the Property to the uses permitted by this Declaration, and to allow for the use, maintenance, and operation of three (3) separate condominium units as set forth herein and as depicted on the Plat and Plans (each, a “**Unit**” and collectively, the “**Units**”) and their appurtenant Common Elements. The identifying numbers of the Units are set forth on **Exhibit “B”** attached hereto. The maximum number of Units that may be created is three (3) Units.

D. Declarant hereby submits the Property and all Improvements (current and future) to the provisions of the Act and subjects the Development to and imposes on the Development certain limitations, restrictions, easements, conditions, covenants, assessments and liens for the benefit of the Owners, the Units, and Common Elements as set forth in this Declaration.

E. Declarant intends that all Persons (as defined herein) now holding, or subsequently acquiring any interest in the Development shall at all times enjoy the benefits of, and shall hold their respective interests subject to, this Declaration, which is recorded for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development.

ARTICLE 1
DECLARATION

Declarant hereby declares that the Development is, and shall be, held, conveyed, encumbered, leased, rented, used, occupied, renovated and improved subject to the limitations, restrictions, easements, covenants, conditions, liens, charges, and reservations of Declarant, set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan of condominium ownership in accordance with the Act or any successor statutes or laws for the subdivision, improvement, protection, maintenance, and sale of condominiums, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Development. All of the limitations, restrictions, easements, covenants, conditions, liens and charges comprising components of the

Development shall run with the land, shall be binding on and inure to the benefit of all Persons having or acquiring any right, title or interest in the Development, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such Persons.

ARTICLE 2 **DEFINITIONS**

“**Act**” means such term as defined in **Recital B**.

“**Additional Assessments**” means charges established and assessed pursuant to Section 8.1(d).

“**Allocated Interests**” means such term as defined in Section 3.4.

“**Allocation Document**” means the document entitled “The 92 Milton Avenue Condominium Allocation Document” attached hereto as **Exhibit “C”**.

“**Applicable Laws**” means the federal, state, county and city laws, charter, ordinances, rules, regulations, applicable restrictive covenants, including, but not limited to, any “legal requirements”, standards, procedures, and administrative policies in effect from time-to-time, to which the Development, the Association, the Condominium or any Unit, or any portion of the foregoing, is subject and that are in effect at the time a determination of compliance is otherwise necessary or appropriate under this Declaration.

“**Approved Work**” means such term as defined in Section 4.3(c)(ii).

“**Architectural Plans**” means any site plans, architectural plans or drawings, engineering plans or drawings, construction specifications, permits or other approvals issued in accordance with and finally approved pursuant to Applicable Laws, including without limitation, those prepared with respect to the construction of that portion of the Improvements depicted on the Plat and Plans or contemplated in this Declaration.

“**Assessments**” means any Additional Assessments, General Assessments, Services Assessments, and Special Assessments levied and assessed against any Unit pursuant to Article 8 of this Declaration.

“**Assessment Lien**” means such term as defined in Section 8.9(a).

“**Association**” means 92 Milton Avenue Condominium Association, Inc., a Georgia nonprofit corporation.

“**Association Parties**” means the Association and its officers, directors, committee members, manager, agents, employees, licensees and contractors, both in their individual and corporate capacities.

“**Association Work**” means such term as defined in Section 6.3.

“**Board of Directors**” or “**Board**” means the Board of Directors of the Association, its successors and assigns.

“**Building**” means the building comprised of the multi-story parking structure and connected retail space on the Property.

“Bylaws” means the Bylaws of the Association, as amended, modified, supplemented, restated or replaced from time to time.

“Capital Improvement” means any addition, alteration, repair, replacement or restoration or rebuilding work in respect of the Common Elements which meets the applicable requirements for being depreciable or capitalized (rather than being expensed) under Generally Accepted Accounting Principles promulgated by the Financial Accounting Standards Board (“GAAP”) and shall include any addition, alteration, repair, replacement or restoration or rebuilding work which increases the value of or prolongs the useful life of the Common Elements or any portion thereof, provided such addition, alteration, repair, replacement or restoration or rebuilding work is depreciable or otherwise meets applicable capitalization thresholds under GAAP.

“Certificate” means the Articles of Incorporation of the Association, as amended, which are or shall be filed with the Georgia Secretary of State.

“Charges” means any costs, expenses, dues, interest, fees, late fees, fines, collection costs, attorneys’ fees and any other sums arising under the Governing Documents due and payable to the Association or to an Owner from one or more Owners or a Tenant, other than Common Expenses.

“City” means such term as defined in the Introductory paragraph.

“Civic Unit” means that portion of the Development consisting of approximately _____ (_____) of municipal/civic office space, associated amenities and related uses depicted and described as the “Civic Unit” on the Plat and Plans and containing, without limitation, as the boundaries may be modified or as may be expanded as contemplated herein.

“Civic Unit Owner” mean the Owner of the Civic Unit.

“Civic Uses” means uses of the Civic Unit that are consistent with the Class A Standards applicable to the Civic Unit, that do not constitute Prohibited Uses applicable to the Civic Unit and that are not otherwise prohibited by Applicable Law, including, without limitation, use of the Civic Unit by governmental agencies and subdivisions.

“Class A Standards” means, with respect to the operation, maintenance and repair obligations set forth in Article 6, and as applicable to the various Unit types and the Common Elements, the following:

(a) With respect to the Parking Unit, the standards generally applicable to “Class A” parking facilities in the City of Alpharetta, Georgia.

(b) With respect to the Retail Unit, the standards generally applicable to “Class A” retail spaces in mixed-used developments in the City of Alpharetta, Georgia.

(c) With respect to the Civic Unit, the standards generally applicable to “Class A” civic spaces (or retail spaces, as applicable) in mixed-used developments in the City of Alpharetta, Georgia.

(d) With respect to the Common Elements, the standards generally applicable to “Class A” mixed use commercial buildings in the City of Alpharetta, Georgia.

“Common Elements” means all portions of the Condominium other than the Units.

“Common Expenses” means the actual and estimated costs and expenses incurred or to be incurred by the Association, or the Designated Owner as set forth in the Allocation Document, pursuant to this Declaration including, but not limited to, the following:

(a) costs to administer, maintain, manage, operate, repair, restore and replace, as applicable, the Common Elements and any other portion of the Development which the Association or the Designated Owner, as set forth in the Allocation Document, is authorized or required to administer, maintain, operate, repair, restore or replace pursuant to this Declaration, including costs to obtain and provide Services (including Trash Services) and the servicing of and maintaining, operating, repairing, restoring and replacing any Utility Facilities which serve more than one Unit and which are not the obligation of the applicable utility service provider; provided, however, that notwithstanding anything to the contrary in this Declaration, the Retail Unit shall be sub-metered for all utilities and the cost of utility service in connection therewith shall be the sole responsibility of the Retail Unit Owner;

(b) costs to administer, enforce, maintain and manage the Project Easements and to maintain, manage, operate, repair, restore or replace any Improvements located thereon or therein as authorized or required under the terms hereof or thereof and, where applicable, to invoice and collect all or the applicable portion of the cost of any such work from the Person or Persons obligated to pay the same;

(c) costs to administer and manage the Association including, but not limited to, compensation paid to managers, employees, accountants, attorneys and other professional consultants, and contractors and subcontractors;

(d) to the extent the Association is authorized or required to provide the same, costs of any construction, reconstruction, repair, restoration or replacement of Capital Improvements to the Common Elements, including fixtures and personal property related thereto;

(e) costs of property, casualty, liability, directors, worker’s compensation and other insurance maintained by the Association pursuant to this Declaration and the Act;

(f) costs of bonding the members of the Board and any professional managing agent or any other Person handling the funds of the Association;

(g) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof; and

(h) any costs or expenses incurred in connection with the discharge of any duties and obligations of the Association under the Governing Documents.

“Condominium” means all that property described in Exhibit "A", attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration.

“Declarant” means initially the City, and subsequently any such successor or assign who acquires pursuant to a recorded instrument executed by Declarant expressly assigning the rights, powers, privileges, duties, obligations, and prerogatives of the Declarant any or all of the interest of a “Declarant” (as defined in the Act) in the Development.

“Declarant Parties” means collectively, the Declarant and the Declarant’s legal representatives, officers, directors, fiduciaries, employees, contractors, investors, shareholders, insurers, agents, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns, both in their individual and corporate capacities.

“Declarant Signage Rights” means such term as defined in Section 4.2(b).

“Declaration” means as defined in the Introductory paragraph, as amended from time to time.

“Default Rate” means an annual rate of interest equal to the interest rate per annum designated by the Wall Street Journal (or its successor) as the “prime rate”, as that rate is publicly announced, quoted or published by the Wall Street Journal (or in the event the Wall Street Journal no longer exists or designates a “prime rate”, then the rate most nearly comparable to what its “prime rate” would have been, as determined by the Association), from time to time plus four (4) percentage points per annum, but in no event more than the maximum rate of interest permitted by law.

“Designated Owner” means the party responsible for maintaining certain components of the Regime and identified as the “Party Obligated to Undertake Maintenance” in the Allocation Document; provided, however, that except as otherwise provided in this Declaration, the costs associated with such maintenance shall be allocated between the Units pursuant to the percentage Expense Allocation identified in the Allocation Document.

“Development” means the Property and all Improvements now or in the future situated thereon or therein, including the Units, the Common Elements, and all easements, rights and appurtenances thereto.

“Development Period” means the seven (7) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights related to development, construction, expansion, and marketing of the Property. Declarant may terminate the Development Period by the Recording of a notice of termination executed by Declarant. During the Development Period, Declarant hereby reserves the Special Declarant Rights. In addition to the foregoing rights, Declarant has reserved other rights as set forth in this Declaration, some of which may be exercised during and after expiration of the Development Period.

“Development Rights” means the rights to do any or all of the following:

(a) Create Common Elements within the Development. The Declarant shall not be required to obtain consent from the Retail Unit Owner or the Civic Unit Owner prior to creating new Common Elements after the Recordation of this Declaration (the **“New Common Elements”**). Notwithstanding the foregoing, for any New Common Elements that have not been consented to by the Retail Unit Owner and the Civic Unit Owner, the following provisions shall apply: (1) neither the Civic Unit Owner, nor the Retail Unit Owner, shall be responsible for or assessed any costs or expenses related to or associated with the creation, construction, maintenance, operation, repair, or removal of the New Common Elements, and (2) neither the Civic Unit Owner, nor the Retail Unit Owner, shall have the right to enter into, access, or otherwise make use of the New Common Elements;

(b) Subject to the limitations set forth herein, subdivide a Unit, provided any such subdivision shall be further subject to the prior written consent of the Owner and any First Mortgagee of the Unit to be subdivided.

(c) During the Development Period, the Development Rights shall be expressly reserved to Declarant, and upon the termination of the Development Period, the Development Rights reserved to Declarant shall terminate.

“First Mortgage” means a Mortgage which has priority under Applicable Law over all other Mortgages encumbering a specific Condominium or Unit in the Development.

“First Mortgagee” means the Mortgagee of a First Mortgage.

“General Assessments” means such term as defined in Section 8.1(a).

“General Common Elements” means all portions of the Common Elements that are not Limited Common Elements.

“Governing Documents” means, collectively, this Declaration, the Certificate, Bylaws, the Allocation Document, the Plat and Plans, and any other documents or agreements adopted or entered into pursuant to this Declaration.

“Improvements” means all buildings, structures, improvements, facilities, fixtures and appurtenances thereto of every type and kind, above surface, surface and subsurface, currently or in the future situated on or within the Property, and all alterations and additions thereto, whether now existing or hereafter created.

“Level” means each below-grade, at-grade or above-grade floor of the Building and includes, where applicable, the Units and Common Elements located on such Level.

“Limited Common Elements” means those portions of the Common Elements that are allocated by the Act, this Declaration, or the Plats and Plans, for the exclusive use of one or more, but less than all, of the Units.

“Mortgage” means a mortgage, deed to secure debt, deed of trust or other financing encumbrance given in good faith and for value and which constitutes a lien on all or any part of the Development, including, without limitation, mortgages, deed to secure debt, deeds of trust, security interests, or other financing encumbrances on any leasehold interest in a long-term ground lease.

“Mortgagee” means the holder (including as an agent for the benefit of one or more note holders) of any Mortgage.

“New Common Element” means such term as defined in the definition of Development Rights.

“Notice of Violation” means such term as defined in Section 14.14.

“Official Act” means such term as defined in Section 7.11(a).

“Owner(s)” means any Person (including Declarant) owning fee title to a Unit, but excluding any Person having an interest in a Unit solely as security for an obligation. Every Owner is a Member of the Association.

“Parking Unit” means that portion of the Development consisting of approximately _____ (_____) parking spaces, associated amenities and related uses depicted and

described as the “Parking Unit” on the Plat and Plans and containing, without limitation, as the boundaries may be modified or as may be expanded as contemplated herein.

“Parking Unit Owner” mean the Owner of the Parking Unit.

“Parking Uses” means uses of the Parking Unit that are consistent with the Class A Standards applicable to the Parking Unit, that do not constitute Prohibited Uses applicable to the Parking Unit and that are not otherwise prohibited by Applicable Law.

“Permittees” means the employees, agents, contractors, customers, visitors, invitees, licensees, lenders and concessionaires of an Owner or Tenant of any portion of the Development and shall be deemed to include all drivers and occupants of emergency vehicles.

“Person” means a natural person, corporation, professional corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal entity, including any municipality, county or state, and any agency, corporation, division or other political subdivision of any of the same.

“Plans” means any and all floor plans and dimensional drawings that horizontally and vertically identify and describe the Units and the Common Elements for 92 Milton Avenue Condominium that are filed in the Floor Plan Condominium Book of the Fulton County, Georgia records, as may be amended from time to time.

“Plat” means any and all plats of survey or condominium plats for 92 Milton Avenue Condominium filed in the Condominium Plat Book of the Fulton County, Georgia records, as may be amended from time to time.

“Project Easements” means any easements affecting the Property as of the date and time of recordation of this Declaration, as well as the easements established pursuant to this Declaration, provided, immediately following recordation of this Declaration, Declarant will assign to, and each of the initial Owners will assume, an undivided interest in and to any Project Easements in existence prior to the date and time of recordation of this Declaration.

“Prohibited Uses” means (a) with respect to the Retail Unit and the Civic Unit, any use that constitutes a residential, multi-family or other lodging use (whether hourly, daily, weekly, monthly, annually or on any other short term or long term basis, and whether for sale, for lease, for rent or for use on any type of promotional, unpaid or for barter basis, and whether in the nature of an apartment, hotel, hostel, bed and breakfast, temporary lodging or otherwise); a business, foundation or other enterprise that leases, sells, promotes, brokers or is any other manner involved with multi-family real estate or real estate that otherwise contains a residential or lodging component; cinema/movie theater; bowling alley; skating rink; massage parlor (excluding “day spa”) or facility that hosts nude or semi-nude performances; adult book store or adult video store where obscene pornographic or “adult” materials or paraphernalia, including, but not limited to, movies, videotapes, DVDs, devices, books, magazines or other related items are sold or displayed; funeral home or other facilities selling caskets; industrial or manufacturing uses, with the exception of local artists, craftsmen and “makers” and appurtenant studios and space utilized in furtherance of such purposes; automotive supplies and parts; or on-site dry cleaning facilities (excluding “pickup-drop off” facilities that do not perform any on-site cleaning services or utilize any cleaning chemicals); and (b) with respect to all Units, any use which is inconsistent with the Class A Standards or Applicable Laws including, without limitation, all Applicable Laws concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive, or carcinogenic materials,

substances or wastes, zoning, land use or other governmental laws, regulation or ordinances. Further, no Owner shall perform any act or carry on any practice that may cause any offensive odor or vibrations or loud noise (including the use of loudspeakers) or that violates Applicable Laws.

“Property” means such term as defined in **Recital A**.

“Proposed Work Plan” means such term as defined in Section 4.3(c)(i).

“Record”, **“Recorded”** or **“Recordation”** means to record or to be recorded in the Official Public Records of Fulton County, Georgia.

“Regime” means the Property, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established by this Declaration.

“Retail Unit” means that portion of the Development consisting of approximately _____ (_____) square feet of commercial space depicted and described as the “Retail Unit” on the Plat and Plans.

“Retail Unit Owner” means the Owner of the Retail Unit.

“Retail Uses” means uses of the Retail Unit that are consistent with the Class A Standards applicable to the Retail Unit, that do not constitute Prohibited Uses applicable to the Retail Unit and that are not otherwise prohibited by Applicable Law.

“Services” means all Trash Services, and the provision of all maintenance, concierge, or other servicing acts which are performed to assure the operation, maintenance, repair, restoration and replacement of the Common Elements to Class A Standards.

“Services Assessments” means such term as defined in Section 8.1(b).

“Special Assessments” means such term as defined in Section 8.1(c).

“Special Declarant Rights” means rights reserved for the benefit of Declarant to: (a) exercise any Development Rights; and (b) maintain the signage advertising the Units or the Regime as further described in Section 4.2(b).

“Structural Elements” means any part of the Improvements, including the Units, constituting (i) a structural component of the Building including, without limitation, any roof, bearing wall, column, slab, floorplate or foundation (including those components depicted and described as “structural support” on the Plat), and (ii) any Utility Facility which serves more than one Unit, wherever located.

“Telecommunications Easement” means such term as defined in Section **Error! Reference source not found.**

“Tenant” means any Person who occupies property located within the Development under any type of lease, rental or letting arrangement, other than a tenant under a long term ground lease.

“Trash” means such term as defined in Section 5.4.

“Trash Services” means such term as defined in Section 6.1(a).

“Unapproved Work” means such term as defined in Section 4.3(c)(iii).

“Unit” means each Unit as depicted on the Plat and Plans, being further described as the three-dimensional envelope of airspace delineated on the Plans and designated as a Unit, and, except as otherwise provided herein, measured from the interior unfinished surface of the perimeter walls of the Building, including within such three-dimensional envelope, the interior unfinished surface of the top of the floor slab of the lowermost Level of the Building and the interior unfinished surface of the ceiling of the uppermost Level of the Building, in each instance exclusive of Structural Elements and Limited Common Elements, but otherwise inclusive of all Improvements situated within such boundaries including (i) interior walls (except interior bearing walls, but expressly including the interior finished surfaces of bearing walls, such as sheetrock or other surface material covering such interior bearing wall), (ii) any interior door or window, (iii) interior fixtures, (iv) all Utility Facilities, including the points of service and outlets, which exclusively serve the Unit, whether located in or outside the Unit or partially within and partially outside the Unit, and (v) any entryway, lobby, loading area or loading dock, escalator, elevator shaft, outdoor amenity area, exterior doors and windows, or other Improvements designed to serve a single Unit, whether located within or outside the boundaries of the Unit. In addition, any balcony affixed to the exterior of the Building, and appurtenant to the Unit shall be part of the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit or Units initially constructed or reconstructed in substantial conformance with the original Architectural Plans shall be conclusively presumed to be its boundaries, rather than the description expressed on the Plat and Plans or any other recorded document, regardless of minor variances between boundaries shown on the Plat and Plans or in any other recorded document and regardless of settling or lateral movement of the Building. Except as may be otherwise provided for herein, the Unit boundaries will include any and all attachments to, protrusions from and appurtenances attached to and exclusively serving such Unit (including the spaces located within any balconies, porches and terraces intended to serve the Unit), and will exclude any portion of the Common Elements that may be located within such Unit’s boundaries (as shown on the Plat and Plans). The exterior surface of the Building is a General Common Element. Any Structural Elements, Utility Facilities, or Improvements that serve all of the Units are General Common Elements. To the extent that any Structural Elements, Utility Facilities or Improvements exclusively serve or support a Unit, such items will be deemed a part of such Unit whether located within, outside, or below the Unit, and whether or not attached to or contiguous with the Unit.

“Unit Owners’ Signage Rights” means such term as defined in Section 4.2(b).

“Utility Facilities” means all utility facilities, including intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, security systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, water systems, sump pumps, central utility services and all other utility systems and facilities, reasonably necessary to service the Development, which serve more than one Unit.

ARTICLE 3 **OWNERSHIP AND ALLOCATIONS**

3.1. **Ownership of Condominium.** Ownership of each Unit within the Development shall include (i) an undivided interest in the Common Elements including any easements appurtenant to the Property, (ii) a membership in the Association, and (iii) those rights granted an Owner pursuant to this Declaration.

3.2. **No Separate Conveyance.** The undivided interest of each Owner in the Common Elements and their right to the use and benefit of the Common Elements shall be appurtenant to the Unit owned by

the Owner. No Unit may be conveyed by the Owner separately from the Unit's undivided ownership interest in the Common Elements. Any conveyance of a Unit shall automatically transfer the undivided ownership interest in the Common Elements appurtenant to that Unit and the Owner's right to use the Common Elements as provided in this Declaration without the necessity of express reference in the instrument of conveyance.

3.3. Delegation of Use. Any Owner entitled to use and enjoy the Common Elements as provided in this Declaration may delegate all or part of such Owner's rights to its Tenants and Permittees in conformity with the Governing Documents.

3.4. Allocation of Common Elements Interests. Each Unit shall be allocated an undivided percentage interest in the Common Elements (the "**Allocated Interests**"), based on the percentage of the total square footage of the combined square footages comprised by such Unit, as follows:

<u>Unit Description</u>	<u>Percentage Interest</u>
1. Parking Unit	_____ %
2. Retail Unit	_____ %
3. Civic Unit	_____ %

3.5. Allocation of Common Expenses .

(a) Allocation of Common Expenses for Trash Services, Limited Common Element Expenses, and Association Work. The Common Expenses attributable to: (i) Trash Services provided to the Units, pursuant to Section 6.1(a), shall be allocated to the respective Units based on actual use, as reasonably estimated by the Board, provided, for the avoidance of doubt, all costs of Trash Services for the Common Elements shall be Common Expenses allocated to the Units in accordance with the allocation percentages set forth in Section 3.4 hereof; (ii) Limited Common Elements allocated to one Unit shall be allocated solely to such Unit; and (iii) any Association Work performed pursuant to Section 6.3 shall be allocated to the Unit(s) based on the actual cost of such Association Work attributable to such Unit(s). The Association is required to use commercially reasonable efforts to perform Association Work in accordance with Class A Standards and at prevailing market rates for the Association Work being conducted.

(b) Allocation of Other Common Expenses. Except as otherwise provided in this Declaration, the Common Expenses (other than those referenced in subsection (a) above), shall be allocated to the Units in the same percentages as the Allocated Interests as set forth in Section 3.4 hereof.

3.6. Allocation of Votes in the Association. The total votes in the Association shall be 5. The votes in the Association applicable to the Units shall be allocated as follows:

<u>Unit Description</u>	<u>Number of Votes</u>
1. Parking Unit	3
2. Retail Unit	1

3. Civic Unit

1

The votes in the Association applicable to the Units shall not be re-allocated or otherwise modified by the modification of the boundaries of any Unit or by the addition or withdrawal of any Units to the Condominium created by this Declaration.

Unless specifically required otherwise by the Act or this Declaration, all actions of the Association not undertaken by the Board shall be undertaken by officers or committee members, as applicable, of the Association based on a majority vote of the voting interests of the Owners. Further, in any instances (if any) where actions are to be taken by Owners, unless specifically required otherwise by the Act or this Declaration, all such actions shall be taken based on a majority vote of the voting interests of the Owners. In no event and under no circumstances, unless specifically required by the Act or this Declaration, shall voting by the Owners be on any basis other than a majority vote of the voting interests set forth in this Section 3.6.

3.7. Reallocation of Common Elements Interest and Common Expenses. In the event that the boundaries of any Unit shall be modified in accordance with this Declaration, or if any Units may be added or withdrawn to the Condominium created by this Declaration, the Allocated Interests and the allocation of Common Expenses shall be modified so that the allocation to the Units subsequent to the modification of the boundary of the Units and/or the addition or withdrawal of Units in the Condominium created by this Declaration shall be based on the respective percentage of the total square footage of the Building comprised by each Unit or such other means as reasonably determined by the Board.

3.8. Allocation of Limited Common Elements.

(a) Any portion of any Utility Facilities which serves one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(b) any entry, landing, hallway, elevator, stairs, walkway, canopy, grease trap, exhaust vent, HVAC unit, or similar improvement serving one Unit but not the other Units, to the extent not comprising a component of such Unit, is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(c) any signage located outside the boundary of a Unit which exclusively benefits and serves only one (1) Unit is assigned as a Limited Common Element to the Unit to which it serves;

(d) unless otherwise specifically indicated in this Declaration or in the Plans, Limited Common Elements are allocated exclusively to the Unit served; and

(e) a Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration.

3.9. Assignment and Reassignment. The Board, without need for a membership vote, is hereby authorized to assign and reassign Limited Common Elements and to assign General Common Elements, not previously assigned, as Limited Common Elements, provided that any such assignment or reassignment shall be made in accordance with the provisions of O.C.G.A. Sections 44-3-82(b) and (c), as modified and supplemented herein. A General Common Element not previously assigned as a Limited Common Element may be so assigned by the Board, and a Limited Common Element may be reassigned by the Board, without need for a membership vote, upon written application to the Board by the Owner or Owners requesting the exclusive use of such General Common Element, or in the case of a reassignment of a Limited Common

Element, upon written application to the Board by the Owner(s) of the Unit(s) to which the Limited Common Element appertains and the Owner(s) of the Unit(s) to which the Limited Common Element is to be reassigned. The Board has the right and authority to approve or disapprove any such application. Upon Board approval of the application, an amendment to the Declaration assigning the General Common Element as a Limited Common Element or reassigning the Limited Common Element shall be prepared and executed on behalf of the Association, without need for a membership vote, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in O.C.G.A. Section 44-3-82. Assignments and reassignments of Limited Common Elements and assignments of General Common Elements other than as provided in this subsection are prohibited.

3.10. Development Rights. Declarant reserves the right, at any time during the Development Period, subject to the provisions of this Declaration and the Act, to exercise any or all of the Development Rights. Upon the termination of the Development Period, the Development Rights reserved to Declarant shall terminate.

3.11. Relocation of Boundaries. In accordance with the provisions of the Act (Section 44-3-91), the boundaries of Units may be relocated from time to time by the Declarant with the written consent of the Owner of the affected Unit and any Mortgagee having an interest in said Unit. In the event that any Unit boundaries are relocated as provided herein, the Allocated Interests and the allocation of Common Expenses shall be modified as provided in Section 3.7 hereof.

ARTICLE 4 **EASEMENTS**

4.1. Easements. The interest of each Owner, including each Owner's right of ingress and egress over, across and through the Common Elements, are subject to the easements and the rights granted and reserved in this Declaration. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land. Notwithstanding the foregoing or anything to the contrary in this Article 4 or elsewhere in this Declaration, nothing herein shall be, or shall be deemed to be, or constitute a gift or dedication of any portion of the Development to the general public or for any public use or purpose whatsoever.

4.2. Easement Rights of the Parties.

(a) Access Easement. Declarant hereby grants and reserves an assignable and non-exclusive Access Easement over, on, under and across each Unit as may reasonably be necessary for the benefit of Declarant, each Owner, Unit, and the Association, as applicable, for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (ii) the use of a Unit and ingress to and egress from a Unit by its Owner, provided no other reasonable means of ingress to and egress from such Unit exists; (iii) the exercise by Declarant of any rights reserved on behalf of Declarant under this Declaration, or the performance of any obligations of Declarant under the Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (v) the evacuation of all or any part of the Property in the event of an emergency; and (vi) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association or any Owner as described in the Governing Documents.

(b) Signage Easement. Declarant hereby grants and reserves for itself and each of the Declarant Parties an exclusive, assignable and irrevocable easement, license and right to use the portions of the exterior surface of the Building to install signage related to the address of a Unit, the name of the Owner's business carried out in the Owner's Unit, and notices and announcements related to the Owner's business carried out in the Owner's Unit (the "**Declarant Signage Rights**"). In addition, Declarant, for itself and each of the Declarant Parties, reserves a non-exclusive, perpetual and irrevocable easement over the Development for access to and from all signage installed pursuant to the Declarant Signage Rights and to construct, install, use, maintain, repair, replace, improve, remove, operate and license or allow others to do the same, any signage installed pursuant to the Declarant Signage Rights. Each Owner shall also have the right to install signage related to the address of such Owner and its Permittees, the name of the Owner's and its Permittees' business carried out in the Owner's Unit, and notices and announcements related to the Owners' or its Permittees' business (the "**Unit Owners' Signage Rights**"). In addition, Declarant, for itself and each of the Owners, grants a non-exclusive, perpetual and irrevocable easement over the Development for access to and from all signage installed pursuant to the Unit Owners' Signage Rights and to construct, install, use, maintain, repair, replace, improve, remove, operate and license or allow others to do the same, any signage installed pursuant to the Unit Owners' Signage Rights. Any and all signage installed, whether pursuant to the exercise of the Declarant's Signage Rights or the Unit Owners' Signage Rights, shall comply with Applicable Law, shall not contain any lewd, obscene, vulgar or otherwise offensive material, and must be approved by the Board.

(c) Easement to Inspect and Right To Correct. Until expiration of the Development Period, Declarant reserves for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors, the right, but not the duty, to inspect, monitor, test, redesign, repair, correct, and relocate any Utility Facilities, Structural Elements, Improvement, or condition that may exist on any portion of the Development, including the Common Elements and Units (excluding any right to relocate a Unit), as is reasonably necessary to exercise its rights to inspect and/or correct conditions identified in any inspection report, and a nonexclusive easement of access throughout the Development to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section may not be construed to create a duty for Declarant or any third party, and may not be amended without the written and acknowledged consent of Declarant. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Development, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the purposes contained in this Section.

4.3. Easement Rights of the Owners.

(a) Certain Common Elements. There is hereby established and granted to, and for the benefit of each Owner and its Tenants and Permittees, an irrevocable, non-exclusive easement over, across and in those Common Elements consisting of sidewalks, paths, walks, lanes, entrances, driveways, stairways, and other similar Improvements, for purposes of access, ingress and egress, and movement (including for (A) pedestrian traffic on, across and through such sidewalks, paths, walks, and lanes that from time to time may exist as part of the Common Elements, and (B) pedestrian and vehicular traffic on, across and through such entrances, driveways, and parking areas as from time to time may be improved as part of the Common Elements and intended for such purposes) and the use and enjoyment of, such Common Elements. For the avoidance of doubt and notwithstanding the existence of such easement:

(i) Structural Elements. No Owner, Tenant or Permittee shall have the right to access or use any Structural Element for purposes of modifying, repairing, re-constructing, renovating or replacing any such Structural Element whether contemplated in Sections 3.8 or 6.2(b) or otherwise, except in accordance with Section 4.3(b).

(ii) Use Restrictions. The Board may restrict or prohibit the use of any portion of the Common Elements if and to the extent the Board reasonably determines such restriction or prohibition is necessary to safeguard the functionality, structural integrity, and operating systems of the Building and the Units or to preserve or protect the safety or health and welfare of the Owners, Tenants, Permittees, or other Persons authorized to be present on the Development; without limitation of the foregoing, any such restriction or prohibition established in response to an advisory, formal or informal communication or notice from any governmental authority, licensed contractor or engineer performing work in respect of any portion of the Development, or utility provider, of a threat or potential threat to the safety or health and welfare of the Owners, Tenants, Permittees or other Persons authorized to be present on the Development, shall be deemed reasonable for purposes of this subsection.

(iii) Limited Use. The Board may designate any portion of the Common Elements, from time to time, for use by one Owner for specified periods of time, or by only those Persons paying fees or satisfying other reasonable conditions for use as may be established by the Board, provided such designation is implemented in a manner which does not preclude or unduly interfere with the use or operation of, or ingress to and egress from, or the quiet enjoyment of other rights appurtenant to, any Unit or any Improvements constructed within or serving any Unit.

(b) Maintenance of Common Elements. There is hereby established and granted to, and for the benefit of, each Owner, and its respective Permittees, a non-exclusive easement over, across and beneath the Common Elements as may be necessary to install, inspect, service, maintain, modify, restore, replace or remove any portion of any Common Elements which such Owner is authorized or required to install, inspect, service, maintain, modify, restore, replace or remove under this Declaration; provided, however, such easement may not be exercised in a manner which threatens the functionality, structural integrity, or operating systems of the Building or the other Units, or which precludes or unduly interferes with the use or operation of, or ingress to or egress from, the Common Elements or the other Units (including, without limitation, the use, occupancy and business operations of any Tenant in all or any portion of a Unit), or which fails to comply with Applicable Laws.

(c) Temporary Construction. There is hereby established and granted to, for the benefit of each Owner and its respective Permittees, a non-exclusive easement over, across and beneath the Development, including the Common Elements, for purposes of installing, constructing, repairing, restoring, modifying, renovating, removing, and replacing Improvements located within or comprising all or part of its Unit, as well as any signage, antennas or other communications or transmission equipment (each as referenced in Section Error! Reference source not found.), and for all purposes reasonably related to such work, *e.g.*, the location of construction equipment and materials, the erection of protective barricades, scaffolding and fencing, the use of airspace by overhead cranes and other equipment, and access for construction vehicles and personnel; provided, however, such easement may not be exercised in a manner which threatens the functionality, structural integrity, or operating systems of the Building or other Units,

or which would preclude or unduly interfere with the use or operation of, or ingress to or egress from, the Common Elements or any Unit by all authorized Persons or the use or operation of, or ingress to or egress from, or the quiet enjoyment of other rights appurtenant to the other Units (including without limitation the use, occupancy and business operations of any Tenant of all or any portion of a Unit), or which fails to comply with Applicable Laws, and, provided, further, the existence and use of such easement is expressly subject to the initiating Owner's prior compliance with the requirements of this subsection (c).

(i) An Owner who wishes to exercise the easement provided for in this subsection (c) shall provide the Association and the other Owner(s) with prior notice together with a plan to perform any proposed work describing the material events and timeline for the proposed work, identifying, as applicable, all portions of the Development which will be affected by the proposed work including any proposed staging area for such work ("**Proposed Work Plan**"). Objections and comments by the Association and the other Owner shall be limited to matters which the Association and/or the other Owner(s) believe would threaten the compliance of the Building, any Unit or any other portion of the Development with Applicable Laws. If no objections or comments are received within thirty (30) days following receipt of such notice and Proposed Work Plan by the Association and the other Owner(s), the Proposed Work Plan shall be deemed approved. If objections or comments are received within thirty (30) days following receipt of such notice and Proposed Work Plan by the Association and the other Owner(s), then, within five (5) business days of the initiating Owner's receipt of such objections or comments, representatives of the initiating Owner and the Association, shall meet, telephonically or in person, in an effort to resolve such objections or comments. If such objections or comments cannot be resolved to the satisfaction of the initiating Owner and the Association within ten (10) business days of such receipt of the objections or comments, the Board shall make the conclusive determination as to whether or not such Proposed Work Plan complies with the requirements of this subsection (c) and is approved or disapproved, which determination shall be final and binding on all Owners.

(ii) Upon the approval or deemed approval of the Proposed Work Plan (any approved Proposed Work Plan is referred to herein as the "**Approved Work**"), the Owner may proceed with the Approved Work in accordance with therewith, and in compliance with Applicable Laws, provided such Owner shall undertake reasonable efforts and utilize reasonable diligence so that the period of construction or entry on or affecting the burdened easement area is as short as reasonably possible, without incurring any unduly burdensome obligation for payment of overtime or premium, and does not unduly interfere with the use and enjoyment of the burdened easement area by the other Owner and, as applicable, its Tenants and Permittees. Without limitation of the foregoing, such Owner shall, at its expense: (A) provide and keep in force, prior to commencement and at all times through completion of such Approved Work, commercial general liability insurance (including a contractual liability endorsement) with respect to such work in an amount reasonably approved by the Association and the other Owner(s), naming the Association, the other Owner(s) and, at the written request of the other Owner(s) and provided so doing does not result in a material increase in the applicable premium, the other Owners' First Mortgagee(s), as additional insureds, and otherwise conforming to the insurance requirements set forth in Article 9, and (B) before commencing, and as a condition to such Owner's right to commence, such Approved Work, provide the Association and the other Owner(s) with a certificate evidencing such coverage.

(iii) Notwithstanding anything to the contrary in this subsection (c) or this Declaration, in the event an Owner commences any work that is not Approved Work (“Unapproved Work”), the Association and/or the other Owner(s) may proceed to enforce the applicable provisions of this subsection (c) in any venue available under this Declaration or Applicable Laws, including in Superior Court of Fulton County, and all enforcement costs incurred by the Association and/or other Owner, as applicable, shall be included in any judgment.

(iv) Notwithstanding the foregoing, the term Approved Work expressly excludes and the requirements of this subsection (c) do not apply and are not a condition to, or requirement of, the installation, construction, re-construction, restoration, renovation or replacement of any Improvements comprising any portion of an Owner’s Unit if the performance of such work is entirely contained within the boundaries of the Unit and does not require use of the Common Elements, or other portions of the Development except for ingress or egress by such Owner’s Permittees, as applicable.

(v) **SUBJECT TO ANY APPLICABLE SUBROGATION WAIVER, THE OWNER UNDERTAKING ANY APPROVED WORK OR ANY UNAPPROVED WORK SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT PARTIES, THE ASSOCIATION PARTIES, AND THE OTHER OWNER(S) AND THEIR TENANTS AND PERMITTEES FROM AND AGAINST ALL LIABILITIES, CLAIMS (INCLUDING NEGLIGENCE), SUITS, DAMAGES, PENALTIES AND COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES AND EXPENSES) IMPOSED UPON OR ASSERTED AGAINST THE DECLARANT PARTIES, THE ASSOCIATION PARTIES, AND THE OTHER OWNER(S) OR THEIR TENANTS OR PERMITTEES BY REASON OF ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS (INCLUDING WORKMEN) OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING ON OR ABOUT OR WITHIN THE DEVELOPMENT AND ARISING OUT OF SUCH APPROVED WORK OR UNAPPROVED WORK OR THE EXERCISE OF THE EASEMENT GRANTED UNDER THIS SUBSECTION (C) EXCEPT TO THE EXTENT CAUSED BY OR RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE DECLARANT PARTIES, THE ASSOCIATION PARTIES, AND THE OTHER OWNER(S).**

4.4. Encroachments. There are hereby reserved, established and granted for the benefit of the Owners of the Units and the Association, over, under, across and through the Development, reciprocal, non-exclusive easements for encroachment and use of such portions of the Units and the Common Elements, as are encroached upon or used as a result of any original construction design, accretion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other Improvements or any portion thereof, or any cause other than the, gross negligence or willful misconduct of the Owner of the encroaching Improvement, as applicable, which easement shall include the right to inspect, service, operate, maintain, repair, restore and replace the encroaching Improvement for as long as the encroachments exists. In the event any portion of the Development is partially or totally destroyed, the encroachment easement shall exist for any replacement structure or other Improvement that is rebuilt pursuant to the original construction design.

4.5. View Impairment. Notwithstanding anything herein to the contrary, or any other instruments of Record which may impose view or building height restrictions on neighboring real property, this Declaration is not intended to establish any additional easement or other use right for, and pursuant to this Declaration there are no, protected views in the Development and: (a) no Unit is assured of the existence, quality or unobstructed continuation of any particular view and there is no assurance that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit; (b) any view from a Unit is not intended as part of the value of the Unit and is not guaranteed; and (c) future development or the construction or installation of Improvements, within or outside the Development, may impair the view from a Unit.

4.6. Support. Each Unit shall have an easement of support in every portion of the other Unit which contributes to the support of any other Unit and no Owner shall fail to maintain and repair its Unit, or any Limited Common Element or any Structural Element affixed, appurtenant or allocated to such Unit as provided in Article 3, in a manner which adversely affects such easement of support.

4.7. Recorded Easements and Licenses. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of Record, including those described on Exhibit "D", attached hereto and incorporated herewith, and as shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior Recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner's Unit and for which the Association does not have express responsibility.

ARTICLE 5

USE AND OCCUPANCY

5.1. Use of Building and Units.

(a) Parking Unit. The Parking Unit may be used and occupied for Parking Uses and for no other uses.

(b) Civic Unit. The Civic Unit may be used and occupied for Civic Uses or Retail Uses and for no other uses.

(c) Retail Unit. The Retail Unit may be used and occupied for Retail Uses and for no other uses.

5.2. Lease of Units. An Owner who leases all or any portion of its Unit shall (not later than ten (10) business days after entering into a lease) notify the Association in writing of the name of the Tenant, as well as the address and telephone number where the Tenant can be reached. Each Owner shall be liable for any violation of the Governing Documents by such Owner's Tenant or Permittees.

5.3. Mechanic's Liens. No Owner may cause or permit any mechanic's lien to be filed against such Owner's Unit or the Development for labor or materials alleged to have been furnished or delivered to the Development or any Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged or bonded over at such Owner's cost or expense within ten (10) business days after notice to the Owner from the Association. If any Owner fails to remove or bond over such mechanic's lien, the Board may authorize the Association to discharge the lien and the cost of discharge shall be assessed to the Owner's Unit as a Special Assessment.

5.4. Trash Disposal. No garbage, trash, rubbish or other waste material (collectively, “**Trash**”) shall be kept or permitted within a Unit except in garbage cans, trash containers, trash chutes, or other appropriate waste receptacles. No Owner shall dispose of Trash from such Owner’s Unit except in receptacles and containers provided at designated collection points and compactors provided for the general use of the Owners and their Tenants and maintained by the Association. All Trash must be bagged or otherwise sealed before using any Trash receptacle, container or depository. No odor shall emanate from any Trash receptacle, container or depository so as to be unreasonably unsanitary, unsightly, offensive or detrimental to the quiet enjoyment of the use rights appurtenant to the Common Elements or Units by the Owners or their Tenants or Permittees. Under no circumstances may hazardous or toxic materials or explosives, fireworks, or other flammable materials, such as gasoline, kerosene, oil, oil-based paints, or solvents, be disposed of in the Trash chutes, Trash depositories or elsewhere in the Development. Any and all costs incurred by the Association for the removal of hazardous, combustible or toxic materials (but excluding those used in the ordinary course of business and properly stored) from the Development shall be paid by the responsible Owner within ten (10) business days of receipt of the Association’s invoice therefor, together with reasonable supporting documentation; provided, if such amount is not timely paid, then all costs incurred by the Association shall bear interest at the Default Rate until paid in full and, notwithstanding anything to the contrary in this Declaration, the Association may proceed to enforce this Section 5.4 in any venue available to the Association under this Declaration or Applicable Laws, including in the Superior Court of Fulton County, and all enforcement costs incurred by the Association shall be included in any judgment.

5.5. Power Equipment. Irrespective of whether work performed by or on behalf of an Owner occurs within or outside a Unit, the use of any power equipment or other similar apparatus, other than customary “hand-held” power tools (which shall include power washing and other power-operated routine maintenance equipment), is permitted only between the hours of 8 a.m. and 6 p.m. (or, if City ordinances provide for shorter hours, then in accordance with such ordinances). Notwithstanding the foregoing, the requirements of this Section 5.5 shall not apply to capital repairs or improvements to the Common Elements.

5.6. Indemnification. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES AND THE OTHER OWNER(S) FROM AND AGAINST ANY LIABILITY, OBLIGATION, CLAIM, OR COST IMPOSED UPON OR ASSERTED AGAINST THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES AND THE OTHER OWNER(S) FOR ANY DAMAGE TO THE DEVELOPMENT SUSTAINED BY REASON OF THE NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF SUCH OWNER, BUT ONLY TO THE EXTENT THAT ANY SUCH DAMAGE IS NOT COVERED BY INSURANCE PROCEEDS RECEIVED BY THE INDEMNIFIED DECLARANT PARTIES, ASSOCIATION PARTIES, OR OWNERS, AS APPLICABLE. IF ANY SUCH DAMAGE IS COVERED BY INSURANCE PROCEEDS RECEIVED BY THE DECLARANT PARTIES, ASSOCIATION PARTIES, OR OWNERS, AS APPLICABLE, THE INDEMNIFYING OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ANY DEDUCTIBLE AMOUNT UNDER THE INSURANCE POLICY OF THE INDEMNIFIED DECLARANT PARTIES, ASSOCIATION PARTIES, OR OWNERS, AS APPLICABLE, WHICH AMOUNT SHALL BE PAID BY THE INDEMNIFYING OWNER WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THE REQUEST THEREFOR.** If any amount payable by an Owner under this Section 5.6 is not timely paid, then such amount shall bear interest at the Default Rate until paid in full and, notwithstanding anything to the contrary in this Declaration, the Association and/or the other Owner(s) may proceed to enforce the provisions of this Section 5.6 in any venue available to the Association under this Declaration or Applicable

Laws, including in the Superior Court of Fulton County, and all enforcement costs incurred by the Association and/or other Owner, as applicable, shall be included in any judgment.

5.7. Compliance with Laws. Nothing shall be done or kept in, on, or under a Unit, the roof of the Building, or the Common Elements that violates Applicable Law or which might unreasonably increase the rate of, or cause the cancellation of, insurance for the Development or any portion of the Development. No Owner or the Association shall permit anything to be done or kept in such Owner's Unit or the Common Elements that violates Applicable Law pertaining to the use or storage of any hazardous, contaminated or toxic materials.

ARTICLE 6

ADMINISTRATION, OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT

6.1. Duties of the Association and Designated Owners. Except as otherwise provided in the Governing Documents (including without limitation, the Allocation Document), the Association and/or the Designated Owner (as applicable pursuant to the Allocation Document or the terms of this Declaration) shall administer, control, operate, maintain, repair, restore and replace all Common Elements, whether located inside or outside the Units or the Development (including any area subject to Project Easements), provided each Owner shall be responsible for the operation, maintenance, repair, restoration and replacement of any Structural Elements (including any Utility Facilities and Limited Common Elements) which solely serve such Owner's Unit, whether located in or outside the Unit (*e.g.*, telecommunications facilities).

(a) Services. As decided in the reasonable discretion of the Board, the Association shall obtain and provide various Services for the Development from time to time, and in particular, shall obtain and provide Trash disposal and collection services, including obtaining and providing Trash disposal containers and receptacles at designated collection points and compactors for the general use of the Owners and their Tenants ("**Trash Services**"). Trash Services shall also include supplemental Trash disposal containers and Trash disposal. All expenses for Trash Services shall be allocated as set forth in Section 3.5(a). Also as decided in the reasonable discretion of the Board, the Association may obtain and provide recycling services for the Development from time to time. All expenses for recycling services shall be allocated as determined in the reasonable discretion of the Board.

(b) Other Improvements. Except as set forth under the Allocation Document, the Association shall administer the operation, maintenance, repair, restoration, or replacement of Improvements within the Development which are installed or operated by or on behalf of a Person other than the Association or an Owner pursuant to an easement over any portion of the Development and, if applicable, may invoice and collect the costs from such Person of any such work performed by the Association.

(c) Payment of Common Expenses and Performance of Association or Designated Owner Maintenance. The Association shall pay all Common Expenses (unless such Common Expenses are to be paid in accordance with the allocations set forth in the Allocation Document or as otherwise expressly provided in this Declaration). The Association or the Designated Owner(s) shall secure all Services and cause all acts to be done which are necessary to assure the operation, maintenance, repair, restoration and replacement of the Common Elements to Class A Standards together with any other portion of the Development which such party is authorized or obligated to operate, maintain, repair, restore or replace pursuant to this Declaration. Any such Services and other actions may be performed by a third party pursuant to an operating agreement, maintenance

agreement or contract or subcontract entered into by the Association or the Designated Owner; provided, however, all such work shall be performed only by operators, service providers, contractors and subcontractors who are reputable, experienced and, if required by Applicable Law, licensed by the State of Georgia or other controlling governmental authority.

(d) Structural Integrity of Building. Periodically, the Association or the Designated Owner responsible for the maintenance of the Structural Elements pursuant to the Allocation Document may cause the Structural Elements to be inspected for purposes of evaluating the continued functionality and structural integrity of the Building (including the Structural Elements), and whether any Capital Improvements to the Structural Elements are reasonably necessary to cause the Building and/or Structural Elements to remain or be restored to the condition existing as of the time of initial construction thereof or otherwise as is reasonably necessary to maintain the continued functionality and structural integrity of the Building (including the Structural Elements). In such event, a copy of the inspection results shall be provided to each Owner and First Mortgagee within thirty (30) days of the Association's or the Designated Owner's receipt of such inspection report. If such inspection report recommends, and the responsible party concurs, that corrective action is necessary, the Association or the Designated Owner (as applicable) shall provide the Owners with notice thereof together with the proposed plan (to the extent applicable, any work plan should include the Architectural Plans) describing the material events and timeline for the proposed corrective action, including identifying, as applicable, all portions of the Development which will be affected by the proposed work. If no objections or comments are received within ten (10) days following receipt of such notice and plan by the Owners, the plan shall be deemed approved. If objections or comments are received within ten (10) days following receipt of such notice and plan by the Owners, then, within five (5) business days of receipt of such objections or comments, representatives of the objecting Owner(s) and the Association or the Designated Owner (as applicable) shall meet, telephonically or in person, in an effort to resolve such objections or comments. If such objections or comments cannot be resolved to the satisfaction of the objecting Owner(s) and the Association or the Designated Owner (as applicable) within ten (10) business days of such receipt of the objections or comments, the Board shall make the conclusive determination as to whether or not such work complies with the requirements of this subsection (d) and is approved or disapproved, which determination shall be final and binding on all Owners.

(e) Designated Owner Failure to Maintain. If a Designated Owner (a) fails to keep in good condition and repair any portion of its Unit which is visible from outside the Unit or which affects the functionality, structural integrity, or operating systems of the Building, the Common Elements, or any portion thereof, (b) fails to keep in good condition and repair any Common Elements, Limited Common Elements, or Structural Elements for which such Designated Owner is responsible under this Declaration, including any signage, antennas or other communications or transmission equipment belonging to or otherwise installed by the Designated Owner or its Tenant or Permittee as referenced in Section Error! Reference source not found., (c) fails to perform any service, maintenance, repair, restoration or replacement work required by the Association within thirty (30) days after such Designated Owner's receipt of notice of default from the Association (or such shorter, reasonable time period as may be appropriate in the event of an emergency), or (d) if performance cannot be completed within such thirty (30) day period, fails to commence performance within thirty (30) days after receipt of such notice of default from the Association and thereafter diligently prosecute the same to completion, the Association may, without limitation of any other remedy which the Association may be entitled to pursue, and subject to the applicable provisions of Article 11, undertake such performance on behalf of such Designated Owner and assess the cost of the work as more particularly provided in Section 8.1(d) and the Allocation

Document prior to, at any time during, or following the completion of such work. Notwithstanding the foregoing, if a Designated Owner fails to perform (or, if applicable, commence) any service, maintenance, repair, or replacement work required by the Association within the time frames provided hereinabove, and the Association fails to proceed to enforce the obligations of such Designated Owner, as provided hereinabove, then within thirty (30) days (or such shorter, reasonable time period in the event of an emergency) of the Association's receipt of notice from another Owner of such Designated Owner's default, such other Owner or its First Mortgagee may, subject to the applicable provisions of Article 11, elect to undertake such performance on behalf of the Designated Owner upon notice to the Designated Owner and the Association, provided (and so long as) such other Owner (or its First Mortgagee) pursues such action diligently and in good faith. In either event, if the other Owner (or its First Mortgagee) (as applicable) elects to undertake such performance on behalf of the Designated Owner, such performance shall be accepted by the Association, the Designated Owner, and all other Owners, and the cost of such performance shall be assessed as more particularly provided in Section 8.1(d) and the Allocation Document, before, during, or following the completion of such work, subject to the applicable provisions of Article 11.

(f) Allocation Document. Declarant has determined that certain maintenance functions and capital expenditures shall be the responsibility of the Designated Owner and that the expenses associated with such maintenance shall be allocated in the manner set forth in the Allocation Document. An Owner shall be responsible for the percentage expense allocation reflected in the Allocation Document, which shall be levied against any such Owner as an Additional Assessment. Any work performed by a Designated Owner pursuant to the Allocation Document shall be performed in accordance with Class A Standards and at prevailing market rates for the work being conducted. A copy of the Allocation Document shall be maintained in the records of the Association, may be Recorded by the Declarant or the Association, and shall be binding upon all the Owners, Tenants, mortgagees, and any other party at any time having any interest in the Regime. The Allocation Document may be amended or modified only upon the affirmative vote or consent of all Owners sharing the applicable cost, as to the cost sharing provisions set forth therein. Any Owner may request that the allocations specified in the Allocation Document be reviewed for the next succeeding fiscal year of the Association by giving written notice to the other Owners thirty (30) days prior to the beginning of the upcoming fiscal year, and the Association, by unanimous written consent of the Board, shall in good faith determine whether adjustment to the allocations is appropriate.

6.2. Duties of Owners.

(a) Maintenance of Units. Notwithstanding the allocations set forth in the Allocation Document or Article 3, each Owner shall operate, maintain, repair, restore and replace, at its own expense, all portions of its Unit and any Utility Facilities which provide service solely to such Owner's Unit (whether such Utility Facilities are located in or outside the Unit), including any signage, antennas, telecommunications or similar transmission equipment, belonging to or otherwise installed by the Owner, including keeping all such Utility Facilities in first-class operational condition (including, without limitation, the prompt replacement of all expired light bulbs or other lighting elements).

(b) Maintenance of Limited Common Elements. Subject to the allocations set forth in the Allocation Documents or Article 3, each Owner shall operate, maintain, repair, restore and replace, at its own expense, those Limited Common Elements allocated or assigned to its Unit.

(c) Third Party Maintenance. Any operation, maintenance, repair, restoration or replacement of Improvements which an Owner is authorized or required to perform pursuant to this Declaration may be performed by a third party pursuant to an operating agreement, maintenance agreement, lease or contract or subcontract entered into by such Owner with a third party operator, service provider, Tenant, or contractor, provided such operator, service provider, Tenant, or contractor is reputable, experienced and, if required by Applicable Law, licensed by the State of Georgia or other controlling governmental authority. If any permit, such as building permit, is required for such work under Applicable Law, the same shall be obtained and delivered to the Association before any such work is commenced.

(d) Quality of Maintenance. All Owner operation, maintenance, repair, restoration or replacement shall be performed in accordance with the Approved Work and in a manner which will (i) preserve the attractive appearance, quality, and value of the Development, (ii) minimize any threat to the functionality, structural integrity, or operating systems of the Building or the other Units, and (iii) not interfere with the use or operation of, or ingress or egress from, or the quiet enjoyment of other rights appurtenant to the Common Elements or the other Units (including, without limitation, the use, occupancy and business operations of any Tenant of all or any portion of the other Units). Any Approved Work to be performed which is visible from outside the Unit shall be consistent with the existing design and aesthetics of the Development and otherwise in accordance with applicable Class A Standards.

6.3. Owner Failure to Maintain. If an Owner fails to keep in good condition and repair any portion of its Unit which is visible from outside the Unit or which affects the functionality, structural integrity, or operating systems of the Building, or Common Elements, or any portion thereof, or any Common Element or Limited Common Element or Structural Element for which such Owner is responsible under this Declaration, including any signage, antennas or other communications or transmission equipment belonging to or otherwise installed by the Owner or its Tenant as referenced in **Section Error! Reference source not found.**, and fails to perform the service, maintenance, repair, restoration or replacement required by the Association within thirty (30) days after such Owner's receipt of notice of default from the Association (or such shorter, reasonable time period as may be appropriate in the event of an emergency), or, in the event that performance cannot be completed within such period, fails to commence such performance within thirty (30) days after receipt of such notice of default from the Association and thereafter diligently prosecute the same to completion, the Association on its own behalf, without limitation of any other remedy which the Association may be entitled to pursue, may, but shall not be obligated to, enter the Unit, the Limited Common Element, or other area, as applicable, and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement (the "**Association Work**"). The defaulting Owner shall, upon demand, reimburse the Association for all costs and expenses incurred by the Association in performing such maintenance, repair, cleaning or replacement.

6.4. Party Walls and Shared Structures. Each wall, ceiling or similar structure which serves and/or separates the Units shall constitute a party wall, and the general rules of Applicable Laws regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6.5. Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by the Governing Documents, then the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board.

6.6. NON-LIABILITY OF ASSOCIATION PARTIES AND DECLARANT PARTIES FOR SAFETY AND SECURITY. WITHOUT LIMITATION OF ANY OTHER PROVISION OF THIS

DECLARATION, EACH OWNER AND THEIR TENANTS, GUESTS AND INVITEES, COVENANT AND AGREE WITH RESPECT TO ANY AND ALL SAFETY AND SECURITY SERVICES, SYSTEMS, OR FACILITIES PROVIDED DIRECTLY OR INDIRECTLY BY DECLARANT OR THE ASSOCIATION, AS FOLLOWS:

(a) SAFETY AND SECURITY IS THE SOLE RESPONSIBILITY OF LOCAL LAW ENFORCEMENT AGENCIES AND INDIVIDUAL OWNERS, THEIR TENANTS, AND THEIR RESPECTIVE GUESTS AND INVITEES. EACH OWNER, BY ITS ACCEPTANCE OF A DEED TO A UNIT ACKNOWLEDGES THAT THE ASSOCIATION HAS NO OBLIGATION WHATSOEVER TO PROVIDE SECURITY AND THE ASSOCIATION IS NOT RESPONSIBLE FOR THE SAFETY OR SECURITY OF ANY INDIVIDUAL OWNERS, THEIR TENANTS, AND THEIR RESPECTIVE GUESTS AND INVITEES. SAFETY AND SECURITY SERVICES, SYSTEMS, OR FACILITIES SHALL BE PROVIDED AT THE SOLE DISCRETION OF THE BOARD. THE PROVISION OF ANY SAFETY OR SECURITY SERVICES, SYSTEMS, OR FACILITIES AT ANY TIME SHALL IN NO WAY PREVENT THE BOARD FROM THEREAFTER ELECTING TO DISCONTINUE OR TEMPORARILY OR PERMANENTLY REMOVE SUCH SAFETY OR SECURITY SERVICES, SYSTEMS, OR FACILITIES, OR ANY PART THEREOF. EACH OWNER, AT ITS SOLE COST AND EXPENSE, SHALL PROVIDE SECURITY FOR ITS UNIT AND APPURTENANT LIMITED COMMON ELEMENTS FOR THE SAFE AND ORDERLY OPERATION OF ITS UNIT.

(b) ANY THIRD PARTY PROVIDERS OF SECURITY SERVICES (INCLUDING THOSE PROVIDING MAINTENANCE AND REPAIR OF SECURITY SYSTEMS AND FACILITIES) SHALL BE INDEPENDENT CONTRACTORS, THE ACTS OR OMISSIONS OF WHICH SHALL NOT BE IMPUTED TO THE DECLARANT PARTIES OR THE ASSOCIATION PARTIES.

(c) THE PROVISION OF ANY SAFETY OR SECURITY SERVICES, SYSTEMS, OR FACILITIES SHALL NEVER BE CONSTRUED AS AN UNDERTAKING BY THE ASSOCIATION TO PROVIDE PERSONAL SECURITY OR AS A GUARANTEE OR WARRANTY THAT THE PRESENCE OF ANY SAFETY OR SECURITY SERVICE, SYSTEMS, OR FACILITIES WILL IN ANY WAY INCREASE PERSONAL SAFETY OR PREVENT PERSONAL INJURY OR DEATH OR PROPERTY DAMAGE DUE TO THE NEGLIGENCE OF THE DECLARANT PARTIES, THE ASSOCIATION PARTIES, OR THE INDIVIDUAL OWNERS, THEIR TENANTS, OR THEIR RESPECTIVE GUESTS OR INVITEES, CRIMINAL CONDUCT, OR ANY OTHER CAUSE.

(d) EACH OWNER, BY ITS ACCEPTANCE OF A DEED TO A UNIT, SHALL BE DEEMED TO HAVE WAIVED, RELEASED, DISCHARGED AND MADE A COVENANT NOT TO SUE, ON BEHALF OF SUCH OWNER AND SUCH OWNER'S TENANTS, OCCUPANTS AND THEIR RESPECTIVE GUESTS AND INVITEES, THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES, FROM ANY AND ALL LIABILITY FOR ANY COST, LOSS, INJURY, DAMAGES (INCLUDING THOSE CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, DEATH, VANDALISM, PROPERTY DAMAGE OR ANY OTHER CRIME), EXPENSE, LIABILITY, CLAIM (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM ASSERTING NEGLIGENCE) OR CAUSE OF ACTION THAT MAY ARISE, DIRECTLY OR INDIRECTLY, FROM THE PROVISION OR THE FAILURE TO PROVIDE ANY SAFETY OR SECURITY SERVICES, SYSTEMS OR FACILITIES, OR THE DISCONTINUATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT OR USE OF ANY SAFETY OR SECURITY SERVICES, SYSTEMS OR

FACILITIES; OR THAT SUCH PARTY MAY SUFFER OR INCUR AS A RESULT OF SUCH PARTY'S USE OR OCCUPANCY OF ANY OF THE UNITS, THE COMMON ELEMENTS AND THEIR ASSOCIATED IMPROVEMENTS OR FACILITIES OR AS A RESULT OF THE NEGLIGENCE OR BREACH OF CONTRACT ON THE PART OF ANY OF THE DECLARANT PARTIES OR THE ASSOCIATION PARTIES IN THE OPERATION, SUPERVISION, DESIGN, MAINTENANCE OR CONDITION OF ANY OF THE UNITS, THE COMMON ELEMENTS AND THEIR ASSOCIATED IMPROVEMENTS OR FACILITIES. EACH OWNER, BY ITS ACCEPTANCE OF A DEED TO A UNIT, ATTESTS THAT HE OR SHE HAS REVIEWED THE RELEASE PROVISIONS SET FORTH HEREIN WITH HIS OR HER ATTORNEY OR COUNSEL AND THAT HE OR SHE UNDERSTANDS THE MEANING OF SUCH RELEASE PROVISIONS.

6.7. Compliance with Project Easements. The Association and the Owners shall comply, in all respects, with the terms and conditions of the Project Easements, as applicable.

ARTICLE 7 **THE ASSOCIATION**

7.1. Rights, Powers and Duties. The Association is a Georgia nonprofit corporation.

(a) The Association shall have such rights, powers and duties as are set forth herein, including the right to enforce the terms and provisions of the Governing Documents, together with such rights, powers and duties as may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association pursuant to this Declaration and the Act or in order to effectuate the objectives and purposes of the Association as set forth herein and which are otherwise permitted under Applicable Laws including, without limitation, the amendment of this Declaration to comply with the Act or any other Applicable Law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Owner hereunder.

(b) Unless the Governing Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board of Directors acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" means "the Association acting through the majority approval of the members of its Board of Directors." All approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors and such officers as the Board may elect or appoint; provided, however, no action may be taken by the Board without the prior written consent of the applicable Owner which (i) in the case of the Civic Unit, would limit, impair or otherwise threaten or unduly interfere with the use or operation of the Civic Unit for the Civic Uses or Retail Uses or which would conflict or unduly interfere with the use rights, and permitted business operations, of the Civic Unit Owner or its Tenants provided for herein, or (ii) in the case of the Retail Unit, would limit, impair or otherwise threaten or unduly interfere with the use or operation of the Retail Unit for the Retail Uses or which would conflict or unduly interfere with the use rights, and permitted business operations of the Retail Unit Owner or its Tenants provided for herein, and, provided further, in such event, such Owner's consent may be granted or withheld in its sole and absolute discretion.

(c) Each Owner shall be a member of the Association and the membership of the Association at all times shall consist exclusively of the Owners. Membership in the Association shall be mandatory and an Owner shall automatically, upon becoming an Owner, be a member of the Association and shall remain a member of the Association until such time as its ownership

ceases for any reason, at which time its membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

7.2. Directors and Officers.

(a) There shall be five (5) members of the Board of Directors, which shall consist of one (1) member appointed by the Retail Unit Owner, one (1) member appointed by the Civic Unit Owner, and three (3) members appointed by the Parking Unit Owner, none of whom shall be required to be Owners. The number of members of the Board of Directors, and the number of members of the Board of Directors appointed by the Parking Unit Owner, Retail Unit Owner and Civic Unit Owner, respectively, shall not be re-allocated or otherwise modified by the modification of the boundaries of any Unit.

(b) The Board shall elect or appoint the officers of the Association, none of which shall be required to be Owners. Unless specifically required otherwise by the Act or this Declaration, all actions of the Board shall be by majority consent of the Board members, all actions of the Association not undertaken by the Board shall be undertaken by officers or committee members, as applicable, of the Association based on a majority vote of the voting interests of the members in the Association as contemplated in Section 3.6 hereof, and all actions (if any) of the Owners taken other than in their capacities as members of the Association, shall be taken based on a majority vote of the voting interests of the members in the Association as contemplated in Section 3.6 hereof.

7.3. Assessments. The Association, by action of the Board, may establish, fix, and levy Assessments against the Units and enforce payment of such Assessments, in accordance with the provisions of the Act, subject to the provisions of this Declaration.

7.4. Delegation of Powers, Professional Management. The Association, by action of the Board, may delegate its powers, duties, and responsibilities as are delineated in the Bylaws to employees, consultants, operators or contractors, including a professional managing agent, provided any such consultant, operator or contractor shall be reputable, experienced and, if required by Applicable Law, licensed by the State of Georgia or other controlling governmental authority.

7.5. Personal Property. The Association may acquire and hold, as trustee for the benefit of its members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

7.6. Contract for Goods and Services. The Association may contract for goods and services for the benefit of the Development that are necessary for the Association to perform its duties and obligations hereunder.

7.7. Insurance. The Association shall obtain and maintain the insurance required to be maintained by the Association as described in Article 9 hereof.

7.8. Financial Matters. The Association, at its expense, shall prepare annual budgets, reports, balance sheets and operating statements, as required under this Declaration and the Bylaws.

7.9. Warranties. The Association shall comply with the terms of any warranty in favor of the Association for any Improvements comprising any portion of the Common Elements. The Association acknowledges that certain warranties require that certain maintenance contracts be maintained in effect and,

to the extent such maintenance contracts are discontinued, the effectiveness of the warranty may be impaired or eliminated.

7.10. Enforcement Actions. The Association, by action of the Board, in its own name and on its own behalf, may commence and maintain actions for damages, to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, the provisions of this Declaration; provided, however, a Notice of Violation conforming to the requirements of the Act shall first have been provided to any Owner that is the subject of such enforcement action and to such Owner's First Mortgagee (if applicable).

7.11. Indemnification.

(a) For Association Representatives. To the fullest extent authorized by Applicable Laws, the Association has the power and duty to indemnify, defend and hold harmless the Board of Directors, Association officers and, if applicable, Association committee members, for all claims brought, damages and expenses incurred, and any judgment or fine levied as a result of any action or threatened action arising out of the performance of an act or omission that such Person reasonably believed to be within the scope of that Person's Association duties (an "**Official Act**"). Board members, Association officers and Association committee members are deemed to be agents of the Association when they are performing an Official Act for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. Notwithstanding the foregoing, the Association shall not have the duty to indemnify, defend, and hold harmless the Board of Directors, Association officers and, if applicable, Association committee members for any acts or omissions caused by the willful misfeasance, malfeasance, misconduct, or bad faith of any such Persons.

(b) For Other Agents of the Association. To the fullest extent authorized by Applicable Laws, the Association has the power, but not the duty, to indemnify, defend and hold harmless any Person acting as an agent of the Association for all claims brought, damages and expenses incurred, and any judgment or fine levied as a result of an action or threatened action arising out of an Official Act.

(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by Applicable Law on such terms and subject to such conditions as the Association may impose.

7.12. Personal Liability. No member of the Board or any committee of the Association, or any officer or manager of the Association, Declarant or any owner, affiliate, agent or employee or consultant of Declarant shall be personally liable to any Owner, Tenant, Permittee or other Person or party, including the Association, for any error or omission of any such Person if such Person has, on the basis of such information as may be possessed by such Person acted in good faith, without willful or intentional misconduct.

7.13. Architectural Controls. Except as provided herein, no Owner, Permittee, Tenant or any other Person (including, without limitation, the Association) may make any exterior change, alteration or construction in or to a Unit, on any Limited Common Elements or on any other Common Elements without the prior written approval of the Board, granted or withheld in the Board's sole discretion. All necessary permits and approvals secured for any initial improvements or modifications on the exterior of any Unit,

on any Limited Common Elements or on any other Common Elements must also comply with applicable building code requirements.

ARTICLE 8

ASSESSMENTS

8.1. **Purpose of Assessments.** Except as otherwise expressly provided herein, the Assessments levied by the Association shall be used exclusively to pay Common Expenses, and costs incurred by the Association to perform its obligations and duties, including bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any Assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. The Assessments which may be levied by the Association shall include the following:

(a) **General Assessments.** The Association shall levy regular assessments sufficient, in the judgment of the Association, to pay Common Expenses (“**General Assessments**”). General Assessments shall be assessed against each Unit in accordance with the allocation percentages set forth in Section 3.4 except as otherwise expressly provided for in this Declaration.

(b) **Services Assessments.** Except as otherwise expressly provided for in this Declaration, the Association shall levy assessments to pay any Common Expenses made or incurred by the Association resulting from (i) the costs of the Services (including Trash Services), and (ii) the costs of obtaining insurance on behalf of an Owner as required by Article 9 (“**Services Assessments**”). Services Assessments shall be assessed against each Unit based on the actual usage of the Services (including Trash Services) attributable to such Unit, as referenced in Section 3.5(a), and the costs of obtaining insurance as required by Article 9 attributable to such Unit(s), plus, if applicable, the costs of any work in respect of any Limited Common Element or Structural Elements attributable to such Unit, as referenced in Article 3 and Sections 6.1(e) and 6.3, including the costs of any Association Work undertaken by the Association pursuant to Section 6.1(e) or 6.3 attributable to such Unit(s).

(c) **Special Assessments.** In addition to the General Assessments, except as otherwise expressly provided for in this Declaration, the Board may adopt and levy certain special assessments from time to time as may be necessary or required to pay non-recurring Common Expenses relating to the maintenance, care, alteration, improvement, replacement, operation and management of the Common Elements and the administration of the Association or to collect for its discharge of a mechanics lien under Section 5.3 of this Declaration (“**Special Assessments**”). Special Assessments do not require the approval of the Owners of the Units. Special Assessments will be apportioned among the Units in accordance with the Allocated Interests or the Allocation Document, as applicable.

(d) **Additional Assessments.** The Association may levy additional Assessments sufficient in the applicable Owner’s good-faith judgment to pay Charges due to such Owner or the Association for the ensuing year, but only to the extent that such Charges are for items that are otherwise the responsibility and/or obligation of the respective Owners as set forth in this Declaration or the Allocation Document, as the case may be (“**Additional Assessments**”). Additional Assessments so established shall be payable to the Association by the applicable Owners on the first day of each calendar month, which will in turn deliver the same to the Owner which incurred such Charges. Prior to the commencement of each fiscal year of the Association, each Owner shall prepare and deliver to the Association a budget setting forth the anticipated Charges it will incur for the ensuing year. Such budget shall be incorporated into the Association’s budget

and shall be in sufficient detail so as to inform each applicable Owner of the nature and extent of the Charges anticipated to be incurred, and shall be accompanied by a statement setting forth each applicable Owner's monthly share thereof and the date of commencement of payment of such Additional Assessments. If further Additional Assessments are established by the Association as authorized by provisions of this Declaration or the Allocation Document, in addition to those set forth in the Association's budget, the Association shall give the Owners notice thereof and such Additional Assessments shall be immediately due and payable to the Association. No further communication shall be necessary to establish the amount of an Owner's obligation regarding the Additional Assessments payable hereunder, and the failure of any Owner to timely deliver such budget to the Association or the failure of the Association to timely deliver the Association's budget to an Owner shall in no event excuse or relieve an Owner from the payment of the Additional Assessments contemplated hereby, in which case, an Owner shall pay to the Association an amount equal to such Owner's Additional Assessments as established pursuant to the most recent budget delivered to such Owner. In addition to the Additional Assessments established in this Section, each Owner shall possess the right, power and authority to cause the Association to establish an Assessment, from time to time, for one-time or non-recurring Additional Assessments due to such Owner from another Owner.

8.2. Assessments Amounts. The amount of General Assessments and Services Assessments for each fiscal year of the Association shall be in the sole discretion of the Board. If the Board determines, during any fiscal year, that the funds available for such fiscal year are, or will, become inadequate to meet all Common Expenses for any reason including, without limitation, non-payment of General Assessments or any Special Assessments by any Owner, the Board may increase General Assessments and/or Services Assessments, as applicable, owed for that fiscal year, and the modified Assessments amounts for that fiscal year shall commence on the date designated by the Board.

8.3. Budget. Preparation of Budget. At least sixty (60) days prior to the beginning of each fiscal year of the Association, commencing with the fiscal year in which Declarant has conveyed any Unit(s) to any Owners other than Declarant, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the ensuing fiscal year to pay all Common Expenses. The budget will include line items for any Additional Assessments set on budgets prepared by other Owners and received by the Association anticipated to be incurred in the ensuing fiscal year.

(b) Services. The budget shall include separate line items reflecting budgeted Common Expenses attributed to the Services (including Trash Services), as well as separate line items reflecting each Owner's estimated share of such budgeted costs or expenses. The Services Assessment levied against each Unit for such costs or expenses shall be consistent with such line items, and reflect the allocations set forth under Section 3.5(b). Notwithstanding the foregoing, and for the avoidance of doubt, Common Expenses attributed to all Services (including Trash Services) provided to the Common Elements shall be included in the General Assessment and allocated in accordance with the Allocated Interests, except as otherwise expressly provided for in this Declaration.

(c) Authorization. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Owners shall be required.

8.4. Notice of Assessments. Within thirty (30) days after the Board's adoption of a budget, the Association shall deliver the budget to each Owner with a statement separately identifying: (i) the amount of General Assessments to be initially assessed against such Owner's Unit(s) for such fiscal year, (ii) the

amount of Services Assessments to be initially assessed against such Owner's Unit(s) for such fiscal year, if known at the time the budget is prepared, and (iii) if applicable, the amount of any Special Assessments or Additional Assessments to be assessed against such Owner's Unit(s) for such fiscal year, if known at the time the budget is prepared.

(a) Notwithstanding the foregoing, the failure or delay of the Board to prepare or adopt a budget for any fiscal year, or to establish Assessments for such fiscal year, shall not constitute a waiver or release in any manner of an Owner's obligation to pay its allocable share of the Common Expenses as provided in this Declaration, and each Owner shall continue to pay the Assessments assessed against its Unit for the previous fiscal year until the Assessments for the subsequent fiscal year have been established by the Board and notice provided to the Owners in accordance with this Section 8.4. Notwithstanding the foregoing, in the event the Board fails to prepare or adopt a budget prior to commencement of any fiscal year, or to establish Assessments for such fiscal year, an Owner may commence and maintain an action to enforce the Association's obligation to prepare a budget and establish Assessments by mandatory injunction, or otherwise, within thirty (30) days after the Association's receipt of notice from such Owner and failure to cure, provided (and so long as) such other Owner diligently pursues such action.

(b) In the event, during any fiscal year, the Board determines to increase the General Assessment and/or Services Assessment, as applicable, or to levy a Special Assessment, the Board shall cause a revised budget to be prepared in accordance with the applicable requirements of Section 8.3(a) and the Association shall deliver such revised budget to each Owner with a statement separately identifying, as applicable, (i) the increased amount of the General Assessment to be assessed against such Owner's Unit(s), (ii) the amount of the Services Assessment to be assessed against such Owner's Unit(s), and (iii) the amount of any Special Assessment to be assessed against such Owner's Unit(s).

8.5. Commencement of Assessments. Assessments shall commence as to all Units as of the date of the Recordation of this Declaration, provided that the initial payment of Assessments in respect of each Unit shall not be due until the first day of the first month following the date on which the Board has adopted the initial Association budget pursuant to Section 8.3 and delivered such budget, with the required statement, pursuant to Section 8.4; provided further, Assessments for the fiscal year of the Association in which the Recordation of this Declaration occurs shall be adjusted according to the number of months remaining in such fiscal year. Any increased General Assessment or Services Assessment shall commence on the date designated by the Board in the notice provided pursuant to Section 8.4.

8.6. Payment of Assessments.

(a) General Assessments. General Assessments shall be payable in monthly installments, in cash or other immediately available funds, with each such monthly installment due on the first day of each calendar month during the term of this Declaration.

(b) Services Assessments. Services Assessments shall be payable in monthly installments, in cash or other immediately available funds, with each such monthly installment due on the first day of each calendar month during the term of this Declaration.

(c) Special Assessments. Unless otherwise provided in the budget prepared and adopted by the Board pursuant to Sections 8.3 and 8.4, a Special Assessment shall be due and payable, in cash or other immediately available funds, thirty (30) days after the Special Assessment

is levied by the Association and notice of the Special Assessment is provided to the Owner or Owners, as applicable.

(d) Additional Assessments. Additional Assessments shall be payable to the Association by the applicable Owners on the first day of each calendar month.

8.7. Owner Negligence, Gross Negligence, or Intentional Misconduct. If any Common Expense is caused by the negligence, gross negligence or intentional misconduct of any Owner or its Tenants or Permittees, the Association shall assess that Common Expense exclusively against such Owner's Unit(s).

8.8. Judgments. Assessments to pay a judgment against the Association may be made only against the Units in accordance with, and in proportion to, the Common Expense allocation provided for in Section 3.5(b).

8.9. Effect of Non-payment of Assessments; Remedies. Each Owner, by acceptance of a deed or assignment of such Owner's interest in a Unit, covenants and agrees to pay to the Association all Assessments established and levied pursuant to the provisions of this Declaration in respect of such Owner's Unit. Any Assessment, or any installment of an Assessment, which is not paid within ten (10) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency until paid in full at the Default Rate and shall also be subject to an administrative charge of 15% of the Assessment amount.

(a) Declarant hereby reserves and assigns to the Association a lien (an "**Assessment Lien**"), pursuant to the provisions of the Act, against each Unit, the rents, if any, payable to any Owner and in any insurance proceeds related to a casualty in connection with such Owner's Unit to which an Owner may be entitled, to secure the payment of all Assessments, which Assessment Lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Unit, the rents, and any such insurance proceeds. The Assessment Liens and any other liens established in this Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, rents and insurance proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of a First Mortgage loan and liens for unpaid taxes and assessments. The Assessment Liens, and any other liens and encumbrances created in this Declaration, may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Section 44-3-109(c) of the Act (as now written or as hereafter amended). Each Owner, by acquisition of a Unit, grants to the Association a power of sale in connection with the Assessment Liens and any other liens held by the Association. By written resolution, the Association may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Unit at any such foreclosure sale, and the purchase price in excess of outstanding Assessments shall be a Common Expense. Payment of proceeds resulting from such foreclosure sale shall be first applied to Assessments owing to the Association including all costs, expenses and attorneys' fees relating to the foreclosure. The foreclosure of a lien encumbering a Unit in order to satisfy the First Mortgage loan will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from liability incurred for past Assessments.

(b) All Assessments, together with interest and other fees and charges imposed or levied in respect of any Unit, shall also be the personal obligation of the Owner of such Unit at the

time the Assessment is due and shall bind such Owner's successors and assigns, provided, however, that while the Assessment Lien shall nevertheless encumber the Unit, the personal obligation for delinquent Assessments shall not pass to any successor or assign unless expressly assumed by such successor or assignee.

8.10. No Exemption of Owner. No Owner shall be exempt from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Governing Documents by claiming waiver or non-use of any of the Common Elements and facilities or by the abandonment of its Unit(s).

8.11. Certificate of Payment; Estoppels. The Association on written request shall furnish to a lienholder, Owner or Person designated by an Owner, a recordable statement setting forth the amount of unpaid Assessments against its Unit(s). The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, and every Owner. The Association may charge a reasonable fee in an amount established by the Board for each such statement.

8.12. No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets, recoupment or claim against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or the Act.

8.13. Surplus Funds. Surplus funds of the Association consisting of unutilized Assessments remaining after payment of or provisions for Common Expenses and any reserves may, in the discretion of the Board of Directors, either be returned to the Owners pro rata in accordance with each Unit's Common Expense allocation pursuant to Section 3.5 or be credited on the same pro rata basis to the Owners to reduce each Unit's future Assessments. Surplus Funds of the Association resulting from sources other than Assessments, and remaining after payment of or provisions for Common Expenses and any reserves may, in the discretion of the Board of Directors either be returned to the Owners pro rata in accordance with each Unit's Common Expense allocation pursuant to Section 3.5, be credited on the same pro rata basis to the Owners to reduce each Unit's future Assessments, or be held in a reserve fund and used for the repair and replacement of Common Elements constituting Capital Improvements.

8.14. Monetary Penalties. In accordance with the procedures set forth in the Bylaws, the Association shall have the right to levy reasonable monetary penalties against an Owner for violations of this Declaration.

ARTICLE 9

INSURANCE

9.1. All Risk Insurance. The Association shall cause (i) the Common Elements to be insured against all risks of direct physical loss by fire and extended coverage perils commonly covered by a "Standard All-Risk of Loss or Perils" insurance policy in an amount equal to one hundred percent (100%) of the full replacement value thereof, and (ii) all personal property owned by the Association in a coverage amount not less than the full replacement value of such personal property as determined annually by the Board, with commercially reasonable deductible amounts, and otherwise underwritten by an insurance carrier selected by the Board. Such insurance shall name the Association as the first named insured, and the Owners as additional insureds, as their respective interests may appear. In the event of any loss, damage or destruction to the Common Elements or such personal property, the Association shall use the proceeds of such insurance to cause the same to be replaced, repaired or rebuilt in accordance with the provisions of

this Declaration, provided any deductible or deficiency shall be the obligation of the Owners to fund as part of the Common Expenses.

(a) Description of Policy Coverages. The policies to be carried pursuant to this Article 9 shall cover the Common Elements and any other improvements for which coverage is required by Section 44-3-101 of the Act, regardless of who is responsible for maintaining such improvements under the Governing Documents.

(b) Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

(c) Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount waiving all co-insurance provisions, boiler and machinery (to the extent applicable), replacement costs, and such other endorsements as the Board in its discretion shall elect.

(d) Waiver of Subrogation. All rights of subrogation among the first named insured, the named insured, and the additional insureds are waived by insurer and the coverage obtained by the Association pursuant to this Declaration shall include, without limitation, a waiver of subrogation by the Association's insurer which conforms to the provisions of this Section.

9.2. Units Not Insured by Association. In no event will the Association maintain property insurance on the Units or any personal property of any Owner or Tenant.

9.3. Liability Insurance. The Association shall obtain and maintain commercial general liability insurance, including a contractual liability endorsement, insuring the Association, as the first named insured, and the Declarant, the Owners, and any First Mortgagee in respect of a Unit as additional insureds, against all occurrences commonly insured against for death, bodily injury, and property damage incident to or arising out of the ownership or use of the Units and the ownership, use, operation, maintenance, repair, restoration and replacement of the Common Elements. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The minimum requirements for such insurance shall afford coverage for bodily injury and property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) for a single occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate, or such higher minimum requirements otherwise determined by the Board from time to time in consultation with the Owners.

9.4. Owner Insurance. Each Owner shall cause such Owner's Unit to be insured against all risks of direct physical loss by fire and extended coverage perils commonly covered by a "Standard All-Risk of Loss or Perils" insurance policy in an amount equal to one hundred percent (100%) of the full replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in all risk insurance policies), specifically including all Improvements, and systems and any personal property located within such Owner's Unit. Each Owner shall also maintain (a) all-risk insurance against losses to any personal property, signage, antennas or other equipment or facilities belonging to or otherwise installed by the Owner or its Tenant, whether located within or outside its Unit, and (b) commercial general liability insurance against any liability resulting from any injury or damage occurring within such Owner's Unit, in each case with limits and deductibles approved by the Board and subject to minimum requirements as determined by the Board from time to time in consultation with the Owners, but in no event less than the minimum insurance requirements pursuant to the term of any Mortgage in respect of any such Owner's Unit. The Association and the Owner's First Mortgagee on such Owner's Unit shall be named as additional insureds under the property and commercial general liability insurance and each

Owner shall furnish the Association with original certificates of insurance and amendatory endorsements, signed by a person authorized by the insurer, for all policies required by this Declaration. All certificates of insurance and any required endorsements are to be received by the Association before the scheduled expiration of each insurance policy. An Owner may carry such additional insurance, with respect to such Owner's Unit or other property or interests, as such Owner determines, provided, if an Owner separately insures any property covered by the Association's insurance, and as a result there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution, and the Association may levy a Special Assessment against such Owner's Unit to collect the amount of the diminution. All Owners hereby waive all rights of subrogation against the Association, and any insurance maintained by an Owner must contain such a waiver of subrogation rights by the insurer; provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights set forth herein.

9.5. Insurance Deductibles. Notwithstanding anything in Section 9.1 to the contrary, In the event of an insured loss, any required deductible shall be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Person's portion of the total cost of repair or otherwise as the Board determines to be equitable. Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying any deductible pertaining to such Owner's Unit. If any Owner fails to pay the deductible when required hereunder, then the Association may pay the deductible and assess the cost to the Owner and such Owner's Unit as an Additional Assessment pursuant to Section 8.1(d) hereof; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than Five Thousand and No/100 Dollars (\$5,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

9.6. Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's "Standard All-Risk of Loss or Perils" policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in any payment owed to the Association, including, without limitation, any assessment under Article 9 hereof, the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

9.7. Risk Management. Without limitation of any provision herein, the Association and each Owner shall cooperate with each other to implement a risk management strategy in the procurement of property damage and liability insurance to avoid unnecessary or duplicative coverage, and to achieve mutual cost savings, however, neither the Association nor any Owner shall be required to accept a level or type of insurance coverage which is less than such party requires.

9.8. Fidelity Bond or Crime Insurance. The Association shall maintain a fidelity bond or crime insurance policy in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association at any given time during the term of the fidelity bond or crime insurance policy; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Assessments on all Units plus reserve funds of the annual Assessments naming the Association as obligee and insuring against dishonest acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such Persons are compensated for their services.

9.9. Workers' Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with all Applicable Laws of the State of Georgia or the regulations of any governmental body or authority having jurisdiction over the Development.

9.10. Directors and Officers. The Association shall maintain directors' and officers' liability insurance in an amount not less than One Million Dollars (\$1,000,000) to cover the officers and directors of the Association.

9.11. Other Insurance. The Association may obtain and maintain other or additional types of insurance as the Board determines to be necessary to fully protect the interests of the Owners and the Development.

9.12. Copies of Policies. Copies of all insurance policies of the Association (and certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by the Owners and their Tenants at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by Applicable Law or under the Bylaws.

9.13. Review of Insurance. The Board shall review the adequacy of all insurance at least once every fiscal year.

9.14. Board's Authority to Revise Insurance Coverage. Subject to the provisions of Sections 9.1 and 9.3, the requirements regarding insurance set forth in the Bylaws, and the requirements of the Act, the Board, shall have the power and right to deviate from the insurance requirements contained in this Article 9 in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association, provided that the minimum insurance requirements contained in the Act are at all times satisfied. If the Board elects to materially reduce the coverage from the coverage required in this Article 9, the Board shall make all reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Declarant, Association, and its directors and officers, shall have no liability to any Owner or Mortgagee for failing to obtain the required insurance or for any loss or damage resulting from such failure, if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Board fails to approve any Assessment increase needed to fund the insurance premiums.

9.15. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Sections 9.1 and 9.3. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

9.16. Distribution to Mortgagees. Any Mortgagee has the option to apply any comprehensive all risk insurance proceeds payable directly to an Owner on account of a Unit as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee that constitute excess proceeds following the completion of the applicable repair, replacement or renovation.

ARTICLE 10
PARTITION AND SEVERABILITY OF INTERESTS

10.1. No Partition; Development or Common Elements. Except for leases of portions of the Retail Unit and/or the Civic Unit to commercial Tenants, each Unit shall be acquired, owned, conveyed, transferred and encumbered only in its entirety. In no event shall a Unit held by more than one Owner be subject to physical partition and no Owner or Owners shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided ownership percentage interest in the Common Elements without the Unit to which such Common Elements is allocated is void.

10.2. Prohibition Against Severance. An Owner shall not be entitled to sever such Owner's Unit from such Owner's membership in the Association or sever such Owner's Unit and such Owner's membership from such Owner's undivided interest in the Common Elements for any purpose. None of the component interests in a Unit can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner may sever any exclusive easement appurtenant to such Owner's Unit or the Common Elements from such Owner's Unit, and any attempt to do so shall be void.

10.3. Severability Upon Termination. Upon a termination of the plan of condominium established by this Declaration, title to the Units, the Limited Common Elements, the respective undivided interests in the Common Elements and all other components of the Development shall be vested in the Owners as tenants-in-common pursuant to Section 44-3-98 of the Act.

ARTICLE 11
TERMINATION, CONDEMNATION, LOSS AND OBSOLESCENCE

11.1. Association as Trustee. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Common Elements in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Common Elements. As trustee, the Association will have full and complete authority, right, and power to: (i) do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; (ii) effect the sale of the Common Elements as permitted by the Act or under the imminent threat of eminent domain; and (iii) make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner as authorized under the Act (except as expressly prohibited under this Declaration) and in connection with a transaction made under the imminent threat of eminent domain.

11.2. Termination. Pursuant to this Declaration and Section 44-3-97 of the Act, the terms of this Declaration and the condominium status of the Property shall terminate upon the taking of all of the Units by condemnation. Otherwise, the termination of the terms of this Declaration and the condominium status of the Property will be governed by Section 44-3-97 of the Act, subject to the following provisions:

(a) In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees.

(b) Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the unanimous consent of the Owners and their Mortgagees, and Declarant during the Development Period.

11.3. Condemnation. The Association's response to condemnation of any part of the Property will be governed by Section 44-3-97 of the Act.

11.4. Loss or Damage. The following provisions shall govern if the Common Elements, or any part thereof, are damaged or destroyed by fire or other casualty: (i) prompt written notice of any substantial damage or destruction shall be given by (a) the affected Owner or Owners to the Association, and (b) the Association to all of the First Mortgagees; (ii) the Association, or the party responsible for maintenance pursuant to the Allocation Document, shall promptly proceed with the full restoration and repair of such damage or destruction, unless (x) the Regime is terminated, (y) repair or replacement would be illegal under any Applicable Law, or (z) the Owners holding at least sixty percent (60%) of the votes in the Association, including each Owner of a Unit to which a Limited Common Element that will not be rebuilt or repaired is assigned, vote not to rebuild; (iii) subject to the limitations set forth in the Act regarding special assessments, the amount by which such restoration and repair costs exceed collectible insurance proceeds shall be collected as a Special Assessment payable by the Owners within sixty (60) days of the date notice of such Special Assessment is delivered to each Owner; and (iv) any excess insurance proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Association in separate accounts for each Owner, as their interests may appear (with any proceeds attributable to Limited Common Elements allocated among the Owners of the Units to which such Limited Common Elements were assigned in this Declaration and any other proceeds allocated in accordance with the Allocated Interests of the Owners), and distributed as follows: first, to the payment of any governmental impositions in favor of any assessing entity having authority with respect to the Common Elements or such Unit; second, to the payment of the balance of the priority lien indebtedness of such Owner; third, to the payment of any delinquent Assessment with respect to such Unit; and the balance, if any, to each Owner entitled thereto.

ARTICLE 12

RIGHTS OF MORTGAGEES

12.1. Conflict. Notwithstanding any contrary provision contained elsewhere in this Declaration or the Bylaws, the provisions of this Article 12 shall control with respect to the rights and obligations of Mortgagees.

12.2. Liability for Unpaid Assessments. Any First Mortgagee who obtains fee simple title to a Unit pursuant to the remedies provided in a First Mortgage or by foreclosure of the First Mortgage, including pursuant to any sale or deed in lieu of foreclosure, shall take the property free of any claims for unpaid Assessments or Charges against the Unit which accrue prior to the date fee simple title to the Unit is acquired by the First Mortgagee, in accordance with Section 8.9.

12.3. Payment of Taxes and Charges. It is intended that all taxes and other Charges that may become a lien prior to the lien of any First Mortgagee, pursuant to Applicable Laws, shall be levied against the Units only and not the Development as a whole and, subject to Applicable Laws, the Association shall take such commercially reasonable actions as may facilitate that result. Without limitation of the foregoing, Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a Charge against the Common Elements or Improvements situated thereon, provided, until it becomes an Owner or acquires possession of a portion of the Development covered by its Mortgage, any First Mortgagee making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of any such First Mortgagee reflecting entitlement to reimbursement.

12.4. Notice to First Mortgagee. A First Mortgagee is entitled to timely written notice, at the time as notice is first provided (regardless of any notice and cure periods specified below) to the applicable Owner whose Unit is subject to a First Mortgage in favor of such First Mortgagee, of the following events:

(a) Any condemnation loss or casualty loss that affects either a material portion of the Development or the Unit on which the Mortgagee holds a First Mortgage;

(b) Any delinquency in the payment of Assessments or Charges owed by an Owner that is subject to a First Mortgage held by the First Mortgagee if the delinquency is not cured within sixty (60) days after such Assessment's due date;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any default by an Owner that is subject to a First Mortgage held by the First Mortgagee in the performance of its obligations under this Declaration or the Bylaws which is not cured within sixty (60) days;

(e) Any failure by an Owner that is subject to a First Mortgage to maintain its Unit in accordance with the requirements of Section 6.2 hereof.

(f) Any enforcement action against an Owner that is subject to a First Mortgage, as contemplated in Section 7.10 hereof; or

(g) Any proposed action that requires the consent of the Owners and the approval of the First Mortgagees pursuant to Section 12.7.

12.5. Inspection of Books and Records. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records, and financial statements of the Association during normal business hours or under other reasonable circumstances.

12.6. Financial Statements. The Association shall furnish its financial statements for the immediately preceding fiscal year within one hundred twenty (120) days after written request from any First Mortgagee.

12.7. Actions Requiring First Mortgagee Approval and Requiring the Approval of One Hundred Percent (100%) of the Voting Interests in the Association. Unless the First Mortgagees and Owners having one hundred percent (100%) of the voting interests of the members of the Association have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the plan of condominium established pursuant to this Declaration, other than in the event of damage or destruction of all or any portion of the Development as referenced in Section 11.4 or in the event of condemnation as set forth in Section 11.2.

(b) By act or omission abandon, partition or sell any of the Common Elements (the granting of easements for Utility Facilities or for purposes consistent with the intended use of the Development by the Association and the Owners shall not be governed by this Section);

(c) Partition or subdivide a Unit, or create one or more sub-unit condominiums, other than as specifically permitted as a component of the Development Rights created hereunder (the mere lease of portions of the Units to Tenants shall not constitute a partition or subdivision of such Unit or the creation of one or more sub-unit condominiums);

(d) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Elements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost in accordance with and as provided in Article 9; and

(e) Use hazard insurance proceeds for losses to any property or Improvements for which the Association is responsible pursuant to this Declaration other than for the repair, replacement or reconstruction of such property and Improvements in accordance with and as provided in Article 9.

12.8. Mortgagee Protection. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Unit in the Development; provided, however, the conditions contained in this Declaration shall continue to be binding upon and effective against any Unit acquired by foreclosure, trustee's sale or otherwise.

12.9. Distribution of Insurance and Condemnation Proceeds. No Owner shall have priority over any right of a First Mortgagee pursuant to the applicable First Mortgage in the case of a distribution to Owners of insurance proceeds or an award received in connection with a condemnation or taking. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the First Mortgagees, as their interests may appear.

12.10. Voting Rights on Default. In case of default by an Owner under the terms of a First Mortgage encumbering such Owner's Unit, the First Mortgagee or its representative, on giving written notice to such defaulting Owner and the Association and placing of record a notice of default, is hereby granted a proxy and may exercise the voting rights of such defaulting Owner attributable to such Unit, including at any regular or special meeting of the Owners held during such time as such default may continue.

12.11. Foreclosure. If any Unit is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration shall not affect or impair the lien of the First Mortgage. Upon foreclosure of the First Mortgage, or pursuant to any sale or deed in lieu of foreclosure, the Assessment Liens, if any, that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with such purchaser taking fee simple title to the Unit free of the Assessment Liens, if any, that have accrued up to the time of the foreclosure sale or sale or deed in lieu of foreclosure. Upon taking fee simple title to the Unit, such purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association on or after the date the foreclosure-purchaser acquired title to the Unit.

12.12. Non-Curable Breach. Any First Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any non-monetary breach of this Declaration that is non-curable.

12.13. Loan to Facilitate. Any First Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of

foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article 12.

12.14. Appearance at Meetings. Because of its financial interest in the Development, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Owners and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

12.15. Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

ARTICLE 13

SPECIAL PROVISIONS APPLICABLE TO CITY

13.1. Role of the City. All Owners agree that the City has entered into this Declaration in its role as the Declarant and owner of some or all of the Units, and not as a governing authority. Accordingly, the City's execution of this Declaration shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including without limitation, for the construction or occupancy of the Units, or for any other governmental approval or consent required to be obtained by any Owner. Whenever in this Declaration the City is required to join in, consent, give its approval, or otherwise act under this Declaration, it is understood that such obligations are meant to apply to the City acting in its capacity as the Declarant and/or Owner of the Units that it owns, and not in its capacity as a governing authority. Further, all Owners hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by the City pursuant to this Declaration, whether or not specifically contemplated hereunder, may be taken by the any official or body of the City of Alpharetta, or by any consultants or representatives designated by the City, pursuant to any means, mechanism or process as determined by the City in its sole discretion, and no Owner shall have no right to question or challenge the propriety, authority or legality of any such official, body, designee or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by the City. Nothing in this Declaration shall be construed to waive any of the City's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Property, including, but not limited to its sovereign immunity, police power, right to grant or deny permits, approvals or licenses, right to collect taxes or other fees, or any other power, right or obligation whatsoever. Any approval granted by the City hereunder is for the purposes of this Declaration only and does not affect or constitute any approval required by any other department of the City of Alpharetta or pursuant to any legal requirement or any other governmental approval, nor does any approval by the City pursuant to this Declaration constitute endorsement of the quality, structural soundness, safety of the Property, or the compliance of the Property with applicable laws. Neither the City nor any director, elected official, council member, officer, employee or agent of the City will be personally responsible for any liability of the City arising under or related to this Declaration.

13.2. No Indemnification. Notwithstanding any other term or provision of this Declaration to the contrary, the City shall have no obligation to explicitly or implicitly indemnify or hold harmless any Owner or any third party or parties from any liability whatsoever.

ARTICLE 14
GENERAL PROVISIONS

14.1. Exhibits and Schedules. All exhibits and schedules attached hereto are hereby incorporated into this Declaration.

14.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Development.

14.4. Amendment. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent, of the members of the Association holding a majority of the total votes in the Association. For such purpose, it is acknowledged and agreed that each of the Units is not "restricted exclusively to residential use" within the meaning of Section 44-3-93(b) of the Act. Notwithstanding the foregoing, no amendment to this Declaration shall create or increase the Development Rights, increase the number of Units or change the use as to which any Unit is restricted, in the absence of the prior written consent of the Owners having one hundred percent (100%) of the voting interests of the Owners in the Association. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Certificate and Georgia law were given. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the land records of the county in which the Condominium is located. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with this Declaration. Owners whose voting rights have been suspended pursuant to this Declaration or the Bylaws shall not be counted toward the amendment requirement.

14.5. Enforcement. The Declarant, Board of Directors or any Owner shall have the right to enforce, by any proceedings at law or in equity, all terms and provisions of the Governing Documents. Failure by the Declarant, Board of Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

14.6. Notices. Any notice provided for by this Declaration and any other notice or communication which any interested Person may wish to send to another interested Person pursuant to this Declaration, including any Notice of Violation, may be given by such Person or its counsel, and shall be in writing and shall be deemed delivered upon actual receipt: (i) if transmitted by facsimile (facsimile transmission must include verification of transmission) or email on a business day between 8:30 a.m. and 5:00 p.m. Alpharetta, Georgia time, provided that a copy of such notice is also delivered by one of the methods identified in the following provisions (ii) through (iv); (ii) personal delivery; (iii) deposit in the United States mail, registered or certified, return receipt requested (but no signature required); or (iv) delivery by Federal Express or other similar express delivery service in a properly sealed envelope, in each event addressed to the Person for whom such notice of communication is intended, at the address which

such Person shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of the affected Owner and the most recently known published address of any other interested Person. An Owner or other interested Person may change its address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association in accordance with the requirements of this Section. Each Owner shall file the correct mailing address of such Owner, its Tenants and First Mortgagees with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

14.7. Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Development, each Person, for itself, its heirs, personal representatives, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences its interest that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. The Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

14.8. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

14.9. Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

14.10. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Owner or member of the Association from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

14.11. Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, the Governing Documents shall be joint and several.

14.12. Attorneys' Fees. In the event the Declarant, the Association, the Board or any Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from an Owner or to enforce compliance with or recover damages for any violation or non-compliance with the Governing Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees, costs, expert witness fees, and litigation expenses incurred in the action and any appeal. Notwithstanding anything contained herein to the contrary, the terms "attorneys' fees," "reasonable

attorneys' fees," "legal fees," and words of similar import shall refer to reasonable attorneys' fees actually incurred, and not, for the avoidance of doubt, attorneys' fees calculated by reference to any statutory formula, including, without limitation, O.C.G.A. § 13-1-11.

14.13. Number of Days. In computing the number of days for purposes of any provision of the Governing Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

14.14. Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner of any restriction or provision of the Governing Documents (a "**Notice of Violation**"). The Notice of Violation shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. If, after the Recordation of such Notice of Violation, it is determined by the Association that the violation referred to therein does not exist or that the actual violation referred to therein has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was Recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

14.15. Conflicts. In the event any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act, the provisions of such statutes shall control. In the event that a conflict exists between the provisions of this Declaration and the Bylaws, the provisions of this Declaration shall control over the Bylaws.

ARTICLE 15
EXPANSION

The Condominium is not expandable without the unanimous consent of all Owners.

ARTICLE 16
PREPARER

This Declaration was prepared by Matthew T. Joe, Holland & Knight LLP, 1180 West Peachtree Street NE, Suite 1800, Atlanta, Georgia 30309.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed under seal,
this _____ day of _____, 20____.

DECLARANT: [THE CITY OF ALPHARETTA, GEORGIA], a
municipal corporation of the State of Georgia

By: _____(SEAL)
Name: _____
Title: _____

Signed, sealed, and delivered
in the presence of:

WITNESS

NOTARY PUBLIC

My Commission Expires: _____

[NOTARY SEAL]

SUBSTANTIALLY FINAL DRAFT

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

SUBSTANTIALLY FINAL DRAFT

EXHIBIT "B"

UNIT IDENTIFYING NUMBERS

<u>Unit</u>	<u>Identifying Number</u>
Parking	1
Retail	2
Civic	3

SUBSTANTIALLY FINAL DRAFT

EXHIBIT “C”

THE 92 MILTON AVENUE CONDOMINIUM ALLOCATION DOCUMENT

This Allocation Document is made and established by [THE CITY OF ALPHARETTA, GEORGIA], a municipal corporation of the State of Georgia (the “**Declarant**”) pursuant to Section 6.1(f) of the Declaration. As provided in the Declaration, this Allocation Document sets forth the party responsible for maintaining certain components of the Regime and the allocation of costs associated with the maintenance of such components. The costs associated with maintenance of components not listed on this Allocation Document, if such maintenance constitutes a Common Expense under the Declaration, are allocated in accordance with the Common Expense allocation provided for in Section 3.5 of the Declaration. This Allocation Document may be amended in accordance with Section 6.1(f) of the Declaration. All terms which are capitalized herein but not defined herein shall have those meanings subscribed to them in the Declaration.

MAINTENANCE AND EXPENSE ALLOCATIONS

Item	Party Obligated to Undertake Maintenance	Civic Unit Expense Allocation	Retail Unit Expense Allocation	Parking Unit Expense Allocation
Exterior Landscaping	Retail Unit Owner	0%	100%	0%

EXHIBIT "D"

EASEMENTS, LICENSES, LEASES AND ENCUMBRANCES OF RECORD

1. Fees, taxes and assessments by any taxing authority for the year 20__ and subsequent years, a lien for which is not yet due and payable.
2. The following matters and all terms of the documents creating or offering evidence of the matters:
 - a. [NOTE: Complete as applicable]

SUBSTANTIALLY FINAL DRAFT



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Public Safety
Submitted By: John Robison
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: CONTRACT: LICENSE PLATE READER PROGRAM

II. RECOMMENDATION:

Approve as presented an agreement with Georgia Power in an amount not to exceed \$67,320 to provide for equipment and services necessary to establish a SiteView license plate reader program, and authorize the Mayor to execute all necessary documents.

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: YES

FISCAL IMPACT: YES

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: YES

TOTAL PROJECT COST: \$67,320

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

Included in the approved FY2020 Budget was a Public Safety Department operating initiative to establish a license plate recognition (LPR) camera program. The program will allow for the detection and apprehension of wanted vehicles and persons, traffic violators, and suspects involved in serious crimes including burglaries, entering autos, and other serious crimes. Statistical data will be collected indicating the number of identified wanted persons and vehicles, the number of apprehensions that result, and the number of crimes that are solved based upon data captured from LPR cameras.

Under this initiative, an agreement is being created between the City and Georgia Power that will allow for the placement of LPR cameras at strategic locations around Alpharetta. Three locations are planned for FY2020. The agreement includes LPR cameras, mounting hardware, power connections, communication hardware and service, maintenance and repair, and access to the Vigilant LPR database which we currently subscribe. The agreement can be terminated at any time with a 30-day notice.

V. ALTERNATIVES:

VI. ATTACHMENTS:

LPR GA Power Contract

Lighting Services Agreement – Surveillance



Customer Legal Name ALPHARETTA CITY OF DBA N/A
 Service Address 2565 OLD MILTON PKWY, NEW ALPHARETTA GA 30009 County FULTON
 Mailing Address P O BOX 366 ALPHARETTA GA 30009
 Email smechler@alpharetta.ga.us Tel # (678) 297-6300 Alt Tel # N/A
 Tax ID # SAME Business Description POLICE DEPARTMENT
 Existing Customer? Yes No If Yes, which Account Number: _____

Selected Components			
Action	Qty	kWh	Description
INS	1	155	SiteView Surveillance Service

Service Cost (\$)	Regulated Cost (\$)**	Monthly Cost (\$) *	Term (Months)	1
\$5,542.99	\$67.01	\$5,610.00		

* Excludes any applicable sales tax
 ** This is an estimate of the regulated energy costs. The actual costs will be calculated using the current tariffs approved by the Georgia Public Service Commission.

Project Notes:
 11 Vigilant Reaper LPR's

Customer agrees to this Lighting Services Agreement with Georgia Power Company under the attached terms and conditions and authorizes all actions noted on this agreement. Customer also agrees to allow removal and modification of existing GPC assets, and/or Customer Owned assets as needed to provide the Service.

Type	Customer	Tariff	Content	Pre-Payment (\$)*
NESC	Gov	UD	Cloud Storage	\$0

Customer represents that the individual signing this Agreement on its behalf has authority to do so.

Customer Authorization	Georgia Power Authorization
Signature:	Signature:
Print Name:	Print Name: RICHARD GRESHAM
Print Title:	Print Title: TECHNICAL SALES ACCOUNT EXECUTIVE
Date:	Date:

1. **Lighting Services Agreement.** This Lighting Services Agreement (the "Agreement") establishes the terms and conditions under which Georgia Power Company ("GPC") will provide surveillance service (collectively "Service") to the Customer identified on Page 1 of this Agreement ("Customer"). Service will be provided to Customer at the Service Address set forth on page 1 of this Agreement (the "Premises"). GPC may update, modify or replace any components as necessary or convenient in order to address regulatory requirements or for other reasons related to the provision of Service. The Service may allow Customer to retrieve, process, and/or access information including audio and video recording, photographs, or other content ("Content"). The Service does not include any Content monitoring services by GPC.
2. **Content.** See Page 1 to identify which option has been chosen for Content access.
 - a. **Cloud Storage:** The Service does not include any device necessary for receipt of the digital feed. Customer acknowledges that its use of the Service requires Customer to have access to the Internet to use an internet-connected device capable of receiving the digital feed of Content provided by GPC. Customer agrees to keep access to Content stored in such a way that it is protected by password. Customer is solely responsible for the security of the password Customer uses to access its Content and the activities of all persons whom access the Content.
 - b. **Local Storage:** The Service includes a Local Storage device to be used by the Customer for receipt of the digital feed.
3. **Intent and Title.** This Agreement concerns the provision of Service to Customer by GPC and is not a sale, lease, or licensing of goods, equipment, or property of GPC of any kind. GPC retains the sole and exclusive right, title, and interest in and to all of its goods, equipment, and property utilized in connection with the Service, including, without limitation, all poles, bases, wiring, conduit, fixtures, cameras, controls, and related items (collectively, the "GPC Assets"). Moreover, GPC may remove the GPC Assets upon termination of this Agreement. GPC makes no representation or warranty regarding treatment of this transaction by the Internal Revenue Service or the status of this Agreement under any federal or state tax law. Customer enters into this Agreement in sole reliance upon Customer's own advisors.
4. **Term and Termination.** The Initial Agreement term is stated on Page 1, calculated from the date of the first monthly bill. After the initial term, this Agreement automatically renews on a month-to-month basis until terminated by either party by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. GPC's address for notice is 1790 Montreal Circle, Tucker, GA 30084-8801; Customer's mailing address is noted on Page 1. GPC may suspend or terminate the Service without advance notice if GPC has reasonable cause to believe the Service is being used for unlawful or unethical purposes. Once Customer receives notice from GPC that the Service has been suspended or terminated for any reason, GPC can be in no way liable for any real or personal property damage or loss or negative impact to Customer that occurs at the Premises.
5. **Legal Compliance.** Customer expressly agrees that Customer is subject to and will comply with all applicable laws and regulations related to Customer's use of the Service and Content, including, without limitation, wiretapping, eavesdropping, privacy, voyeurism, child pornography, or similar laws, and that Customer's use of the Service and Content is at Customer's own risk. Customer is solely responsible for any and all pictures, sounds, audio, video, or other data that Customer, or anyone Customer should reasonably expect to use the Content and Service, uploads, downloads, monitors, records, stores, posts, emails, transmits, discloses, or otherwise makes available using the Equipment or Services.

To the extent required by applicable laws, rules, or regulations (whether public or private), Customer agrees to inform any third party that enters the Premises (except individuals who trespass) that the Premises may be monitored and recorded. Customer is solely responsible, and GPC has no liability whatsoever, for all decisions and actions regarding such notifications including the content, mode or means, and placement of the notice, whether through conspicuous visual placement, audible announcement, or otherwise.

Customer is the owner of Customer's Content and is solely responsible for Customer's conduct and the content of the Content and any consequences of accessing, retrieving, or making available such Content. In connection with Content, Customer affirms, represents, and warrants that (1) Customer owns or has the necessary licenses, rights, consents, and permissions to enable use of the Content in the manner contemplated by the Service and this Agreement; and (2) Customer's use or making available of the Content does not and will not (A) infringe, violate, or misappropriate any third-party right, including any legal, copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right, (B) slander, defame, libel, or invade the right of privacy, publicity, or other property rights of any other person, or (C) violate any applicable law or regulation.

Customer acknowledges and agrees that video content may be received and stored on computer servers maintained by GPC or third parties. Customer consents and agrees, and grants a perpetual license, that GPC may store, or cause to be stored, video content from Customer's premises for such time as is determined at GPC's sole and exclusive discretion. Content may be stored in a location that is shared with one or more third parties. Customer expressly agrees that GPC may disclose such video content to third parties with or without notice to Customer: (a) in connection with any law enforcement investigation or proceeding; and/or (b) pursuant to a court order or subpoena. Customer further acknowledges that GPC may be required by applicable law to disclose communications and records related to Customer's use of the Services and the Equipment to government agencies, law enforcement, or other third parties pursuant to court orders or other legal process. Customer consents to all such disclosures.

GPC is not responsible for maintaining the confidentiality, integrity or security (both physical and electronic) of Content, nor is GPC responsible for protecting Content against unauthorized access, disclosure or use.
6. **Payment.** GPC will invoice Customer per the terms stated on Page 1. Customer agrees to pay the amount billed by the due date. If a balance is outstanding past the due date, Customer acknowledges that GPC may require Customer to pay a deposit of up to two times the Estimated Monthly Charge in order to continue the Service. If applicable, Customer must provide a copy of its Georgia sales tax exemption certificate. Customer acknowledges they will be required to pay any and all costs associated with Customer initiated contract changes to the signed contract during the initial contract term. Customer will be required to pay any and all costs associated with Customer initiated changes after the date the Agreement has been signed.
7. **Premises Activity.** Customer grants GPC and its contractors and representatives the right and license to enter the Premises and perform all manner of activities related to the provision of Service, including the right to: (i) access the Premises with vehicles, the GPC Assets and other tools or equipment in order to install and connect the GPC Assets and provide Service; (ii) remove and disconnect pre-existing equipment where it is necessary or convenient to do so for the provision of Service; (iii) inspect, maintain, test, replace, repair, and remove GPC Assets; (iv) conduct any other activities reasonably related to the provision of Service, including surveying, digging and excavation with tools, mechanized equipment and other machinery (activity items (i) – (iv) collectively, the "GPC Activity"). Customer represents that it has the right to permit GPC to provide the Service and perform the GPC Activity upon the Premises and, where applicable, has obtained the express authority and any required permissions from all Premises owners (and any other party with rights in the Premises) to enter into the Agreement and to authorize the GPC Activity and Service.
8. **Installation.** Customer recognizes GPC may be required to install the GPC Assets in order to provide this service. Customer represents that: (i) the Premises' final grade will vary by more than 6 inches from the grade existing at the time of installation; and (ii) if applicable and required for proper installation, Premises property lines will be clearly marked before installation.
 - a. **Customer Provided Equipment.** GPC may, at its discretion, use Customer Provided Equipment ("CPE") at the Premises including wiring, etc. to provide the Service. GPC is not responsible for the repair or replacement of any CPE. GPC is not responsible for repairing CPE or for any damage CPE may cause to the Service or Equipment. Customer shall bear the exclusive risk of any consequential damages resulting from any impaired functionality of the Service caused by CPE.
 - b. **Underground Facility/Obstruction Not Subject to Dig Law.** Because GPC Activity may require excavation not subject to the Georgia Utility Facility Protection Act (O.C.G. §§25-9-1 – 25-9-13) ("Dig Law"), Customer must mark any private utility or facility (e.g., gas/water/sewer line; irrigation facility; low voltage data/communication line) or other underground obstruction at the Premises that is not subject to the Dig Law. If GPC causes or incurs damage due to Customer's failure to mark a private facility or obstruction before GPC commences the GPC Activity, Customer is responsible for all damages and any resulting delay.
 - c. **Unforeseen Condition.** The estimated charges shown on Page 1 include no allowance for any subsurface rock, wetland, underground stream, buried waste, unsuitable soil, or other underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. encountered during the GPC Activity ("Unforeseen Condition"). If GPC encounters an Unforeseen Condition, GPC, in its sole discretion, may stop all GPC Activity until Customer either remedies the condition or agrees to reimburse all GPC costs arising from the condition. Customer is responsible for all costs of modification or change to the GPC Assets requested by Customer or dictated by the Unforeseen Condition or circumstance outside GPC's control.
9. **Service Functionality.** The GPC Assets access and use certain hardware, application services, components, and embedded software in connection with the Service. The GPC Assets may contain software or firmware, and any such software and firmware shall remain the sole property of the software owner. GPC grants Customer a license solely to access and use the application services and software of GPC, its vendors, or the applicable software owner as specified in, and permitted by, this Agreement in connection with the Service during the Term of this Agreement and any renewals hereof (collectively, the "Solution"). Customer shall not (i) decompile or reverse engineer the Solution or take any other action

discover the source code or underlying ideas or algorithm of any components thereof; (ii) copy any products or software of the Solution, (iii) post, publish, or create derivative work based on the Solution, or (iv) remove any copyright notice, trade or service marks, brand names and the like from the Solution.

10. **GPC Asset Protection and Damage.** During the term of this Agreement, in the event of any work or digging near the GPC Assets, Customer (or any person or entity working on Customer's behalf) must: (i) provide notices and locate requests to the Georgia Utilities Protection Center ("UPC") and other utility owners or operators as required by the then current Dig Law; (ii) coordinate with the UPC and all utility facility owners or operators as required by the Dig Law; and (iii) comply with the High-voltage Safety Act (O.C.G.A. §§46-3-30-46 to 40). As between Customer and GPC, Customer is responsible for all damages arising from failure to comply with applicable law or for damage to the GPC Assets caused by anyone other than GPC (or a GPC contractor or representative).
11. **Interruption of Service.** Customer understands Service is provided on an "as is" and "as available" basis and may be interrupted. Customer is responsible for notifying GPC if the Service is a Service Interruption. Customer can provide such notice by either calling 1-888-655-5888 during normal business hours to report the issue or by emailing SiteView@southernmco.co.
12. **Access to GPC Assets.** Nothing in this Agreement shall convey to Customer the right to attach or affix anything to the GPC Assets. Customer agrees that Customer will not, and Customer will not permit others to, rearrange, disconnect, remove, relocate, repair, alter, tamper or otherwise interfere with any of the GPC Assets. If Customer desires to attach or affix anything to the GPC Assets, Customer must first call GPC Lighting Services at 1-888-655-5888 and obtain GPC's written consent.
13. **Internet/Broadband Connectivity.** As part of the Service, GPC will provide an Internet broadband connection to the camera unless otherwise noted. The Internet connection is not available for any use other than to connect the camera. Customer must have an Internet broadband connection to access the Service. The Service uses Internet bandwidth, the amount of which may vary based upon Customer's use of the Services. GPC is not responsible for any degradation of performance or function of other Internet-connected devices due to Internet bandwidth used by Customer's access of the Services. **Customer acknowledges the Service may not function when the Internet connection is not operating or is otherwise unavailable for any reason, including network outages, cable cuts, network maintenance, network congestion, equipment failures, force majeure events, and transmission of wireless signals can be further affected by radio signal strength and availability at Customer's premises. Customer is responsible for immediately notifying GPC of any system failure or malfunction, including a broadband or signal transmission failure.** Video and other Internet-dependent components of the Services and transmission of surveillance content to a remote storage site will not function without a functioning Internet connection. Customer must have a separate Internet broadband connection to access the Content.
14. **Disclaimer: Limitation of Liability; Damages.** GPC makes no covenant, warranty, or representation of any kind (including warranty of fitness for a particular purpose, merchantability and noninfringement) regarding the Services or any GPC Activity. Customer waives any right to consequential, special, indirect, treble, exemplary, incidental, punitive, loss of business reputation, or loss of use (including loss of revenue, profits, or capital costs) damages in connection with the Services or this Agreement, or arising from damage, hindrance, or delay involving the Services or this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable. To the extent GPC is liable under this Agreement, the liability of GPC is hereby limited to (i) with respect to Service purchased by Customer to the annual amount paid by Customer for the Service, or (ii) with respect to any other liability, to proven direct damages in an amount not to exceed \$100. Customer understands the Services are not intended to prevent any loss by burglary, holdup, fire, or otherwise, and that no Equipment or Service is error-free or without interruption, which interruption could occur from faulty equipment, faulty transmission power outages, or the tampering or destruction of the Equipment. GPC is not required to supply the Service to Customer while any such interruption continues. GPC does not guarantee the security of its systems or Equipment and is not responsible if any software code enters Equipment that disrupts, disables or self-limits the software or Equipment. GPC disclaims any liability with respect to the unauthorized use of Content to the extent permitted by law. **Customer is solely responsible for safety of the Premises and agrees that GPC has no obligation to ensure the safety of the Premises.**
15. **Risk Allocation Liability.** Each Party will be responsible for its own acts and the results of its acts.
16. **Agreement Not Insurance Policy.** It is understood and agreed by and between the Parties that:
 - a. GPC is not an insurer, nor is this Agreement intended to be an insurance policy or substitute for an insurance policy.
 - b. Insurance, if any, will be obtained by the Customer and/or its customers or tenants.
 - c. Charges by GPC under this Agreement are based solely upon the limited value of the limited Service and are unrelated to the value of the Premises or the property located on the Premises.
 - d. The amounts payable by the Customer are not sufficient to warrant GPC assuming any risk of consequential, collateral, incidental, or other damages to the Customer and/or its customers or tenants due to the Service, or any deficiency, defect, or inadequacy of the Service or due to GPC or its contractors' negligence or failure to perform.
 - e. Customer does not intend this Agreement to impose liability on GPC except within the limitations of this Agreement.
 - f. Customer agrees that GPC shall not be liable for loss or damage due directly or indirectly to any occurrences or consequences from occurrences which the Service may be designed to detect.
17. **Default.** Customer is in default if Customer does not pay the entire amount owed within 45 days of billing or terminates this Agreement without proper notice and prior to the end of the then current term. GPC's waiver of any past default will not waive any other default. If default occurs, GPC may elect to immediately terminate this Agreement and remove any or all GPC Assets from the Premises, and shall be entitled to seek any and all available remedies provided by law, including, without limitation, the right to collect all past due amounts (including late fees if applicable) and all amounts due for the Service during the remaining term of the Agreement.
18. **Georgia Security, Immigration, and Compliance Act.** Customer is a "public employer" as defined by O.C.G.A. § 13-10-91 and this is a contract for physical performance of service within the state of Georgia. Compliance with requirements of O.C.G.A. § 13-10-91 is a condition of this Agreement and is mandatory. GPC will provide to Customer a contractor affidavit as required by O.C.G.A. § 13-10-91. GPC also agrees that, if it employs or contracts with any subcontractor(s) in connection with this Agreement, GPC will secure from each subcontractor an affidavit attesting to the subcontractor's compliance with O.C.G.A. § 13-10-91.
19. **Miscellaneous.** This Agreement contains the parties' entire agreement relating to the Service and GPC Activity and replaces any prior agreement, written or oral. Subject to applicable law, GPC may modify the terms of this Agreement by providing 30 days' prior written notice to Customer of such modification. If Customer uses the Service or makes any payment to use the Service on or after the effective date of the modification, Customer accepts the modification. Either party may update administrative or contact information (e.g., address, phone number, website) at any time by written notice to the other party. Customer will not assign, in whole or in part, this Agreement or its Agreement rights or obligations. Any such assignment without GPC's prior written consent will be void and of no effect in this Agreement, "including" means "including, but not limited to." Georgia law governs this Agreement. If a court rule or an Agreement provision unenforceable to any extent, the rest of that provision and all other provisions remain effective.

19)(3335728.1)

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF ALPHARETTA RELATING TO TRAFFIC BY ADDING A NEW ARTICLE ENTITLED "AUTOMATED TRAFFIC ENFORCEMENT SAFETY SYSTEM" FOR THE PURPOSE OF AUTHORIZING THE USE OF AUTOMATED TRAFFIC ENFORCEMENT SAFETY DEVICE IN SCHOOL ZONES WITHIN THE CITY; TO PROVIDE FOR RULES OF OPERATION, ADMINISTRATION AND ENFORCEMENT; TO PROVIDE DEFINITIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES

WHEREAS, The City of Alpharetta, Georgia ("the City") is a municipal corporation of the State of Georgia; and

WHEREAS, the City desires to promote the health, safety, and general welfare of the public by preventing motor vehicle-related fatalities, injuries, and property damage within the City limits; and

WHEREAS, Article IX, Section 2 of the Georgia Constitution, Official Code of Georgia Annotated, §36-35-3 and corresponding sections of the City Charter authorize the City to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government and to pass ordinances for the protection and promotion of the public safety, health, and welfare of its residents; and

WHEREAS, in 2018, the Georgia General Assembly enacted laws relating to the duties of a driver operating a vehicle in excess of the posted limit within a designated School Zone, including reporting of violations and enforcement, as necessary; and

WHEREAS, pursuant to the Official Code of Georgia Annotated, Article 8 of Chapter 14 of Title 40, the City is authorized to establish and enact an automated traffic enforcement safety device program in School Zones, which are defined by Article 1 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated at Section 40-14-1.1(5) to mean the area within 1,000 feet of the boundary of any public or private elementary or secondary school; and Code Section 40-14-8(b) relating to when case may be made and civil penalty assessed if the violation occurs in properly marked School Zones one hour before, during, and one hour after the normal hours of school operation or programs for care and supervision of students before school, after school or during

vacation periods as provided for under Article 3 of Chapter 2 of Title 20 Code Section 20-2-65, in properly marked School Zones and when such violations are in excess of ten miles per hour over the speed limit; and

WHEREAS, this ordinance does not conflict with the Georgia Uniform Rules of the Road regarding the operation of a motor vehicle in excess of the posted limit within a designated School Zone; and

WHEREAS, studies show that Automated Traffic Enforcement Safety Devices significantly reduce the number of speeding violations and crashes, and provides for traffic calming; and

WHEREAS, traditional enforcement requires police officers to follow and stop a violator in order to cite the violator; and

WHEREAS, Automated Traffic Enforcement Safety Devices provide safe and consistent enforcement at a reasonable cost, while allowing police officers to focus on other enforcement efforts; and

WHEREAS, at their meetings on May 20, 2019 and July 8, 2019, the Council did consider and acknowledge the necessity of installing an Automated Traffic Enforcement Safety Device within the above-referenced School Zone(s) due to the volume of traffic within the School Zone(s); and

WHEREAS, the use of a local administrative hearing officer allows Citizens to have a process for contesting notices of violation issued pursuant to an existing automated traffic enforcement program in the magistrate court or other court of competent jurisdiction for traffic violations of this nature; and

WHEREAS, the City wishes to utilize its existing code enforcement system to implement and administer the local administrative hearing process; and

WHEREAS, the Council deems it to be in the best interest of the public safety, health, and welfare of the residents of the City to amend Chapter 46 of the Code of the City of Alpharetta by adding a new Article VI entitled "Automated Traffic Enforcement Safety Systems" for the purpose of authorizing the use of Automated Traffic Enforcement Safety Devices in School Zones within the City.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Mayor and City Council of the City of Alpharetta, Georgia as follows:

Section 1. Recitals Adopted: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. The Code of Ordinances of the City of Alpharetta, Georgia is hereby amended by adding Article VI of Chapter 46 of the Code as follows:

"ARTICLE VI

Speed Monitoring Systems

Sec. 46-126. Definitions.

For the purposes of this article, the following terms, phrases and their derivatives shall have the meanings given herein:

"Agent" means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained here and (i) provides services to such law enforcement agency or governing body; (ii) operates, maintains, leases, or licenses a video recording device; or (iii) is authorized by such law enforcement agency or governing body to review and assemble the recorded images captured by the automated traffic enforcement safety device for review by a peace officer.

"Automated Traffic Enforcement Safety Device" means a speed detection device that: (A) Is capable of producing photographically recorded still or video images, or both, of the rear of a motor vehicle or of the rear of a motor vehicle being towed by another vehicle, including an image of such vehicle's rear license plate; (B) Is capable of monitoring the speed of a vehicle as photographically recorded pursuant to subparagraph (A) of this paragraph; and (C) Indicates on each photographically recorded still or video image produced the date, time, location, and speed of a photographically recorded vehicle traveling at a speed above the posted speed limit within a marked School Zone.

"Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company;

"School zone" means the area within 1,000 feet of the boundary of any public or private elementary or secondary school.

"Recorded Images" means still or video images recorded by an automated traffic enforcement safety device.

Sec. 46-127. Authorized.

Speed camera enforcement, using Automated Traffic Enforcement Safety Devices are hereby authorized within School Zones in the City between the hours of 6:50 a.m. and 4:50 p.m., Monday through Friday.

Sec. 46-128. Administration.

(a) The law enforcement agency, or Agent on behalf of the law enforcement agency, operating an Automated Traffic Enforcement Safety Device provided for under Code Section 40-14-18 shall maintain a log for the automated traffic enforcement safety device attesting to the performance of such device's self-test at least once every 30 days and the results of such self-test pertaining to the accuracy of the Automated Traffic Enforcement Safety Device. Such log shall be admissible in any civil enforcement proceeding for a violation issued pursuant to Code Section 40-14-18. The law enforcement agency, or Agent on behalf of the law enforcement agency, operating an Automated Traffic Enforcement Safety Device shall perform an independent calibration test on the automated traffic enforcement safety device at least once every 12 months. The results of such calibration test shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18.

(b) Prior to the placement of a device within a School Zone, each school within whose School Zone such Automated Traffic Enforcement Safety Device is to be placed shall first apply for and secure a permit from the Department of Transportation for the use of such Automated Traffic Enforcement Safety Device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.

(c) If an Automated Traffic Enforcement Safety Device is moved to or placed in a location where an Automated Traffic Enforcement Safety Device had not previously been moved to or placed in, no citation shall be issued for a violation recorded by that Automated Traffic Enforcement Safety Device until:

(1) The City shall erect signs warning of the use of a stationary speed detection device within the approaching School Zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. Such signs shall be placed within 500 feet prior to the warning sign announcing the reduction of the speed limit for the school speed zone. There shall be a rebuttable presumption that such signs are properly installed pursuant to this subsection at the time of any alleged violation under this article; and

(2) That no citation shall be issued for the first 30 days after the first Automated Traffic Enforcement Safety Device is introduced by a law enforcement agency within a School Zone, but rather, a civil warning shall be issued for disregard or disobedience of the speed limit within the School Zone.

(d) A law enforcement agency authorized to enforce the speed limit of a School Zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by first class mail addressed to the owner of the motor vehicle within thirty (30) days after obtaining the name and address of the owner of the motor vehicle but no later than sixty (60) days after the date of the alleged violation:

(1) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling in photographically recorded images, the maximum speed applicable within such School Zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;

(2) An image taken from the photographically recorded images showing the vehicle involved in the infraction;

(3) A website address where photographically recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(4) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the School Zone and stating that, based upon inspection of photographically recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked School Zone and that such disregard or disobedience was not otherwise authorized by law;

(5) A statement of the inference provided by Georgia law and of the means specified therein by which such inference may be rebutted for such violations;

(6) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested through an administrative hearing; and

(7) A warning that the failure to pay the civil monetary penalty or to contest liability in a timely manner as provided for in subsection (d) of this Code section shall waive any right to contest liability.

(e) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked School Zone shall be evidenced by photographically recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of photographically recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked School Zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein.

(f) Liability shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in violation of the speed limit of the School Zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(1) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the

operator of the vehicle at the time of the alleged violation;
or

(2) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(g) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Ordinance shall not be considered a moving traffic violation for the purpose of points assessment under Official Code of Georgia Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Ordinance shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(h) Any court having jurisdiction over violations of subsection (a) of Official Code of Georgia Annotated, Section 40-14-18 shall have jurisdiction over cases arising under this Ordinance and shall be authorized to impose the civil monetary penalty provided for by this subsection. Except as otherwise provided pursuant to Georgia Law, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations under this Ordinance shall apply to enforcement under this Ordinance; provided however, that any appeal from superior or state court shall be by application in the same manner as that provided by Official Code of Georgia Annotated, Section 5-6-35.

Sec. 46-129. Designation of Administrative Hearing Officer.

In accordance with the provisions of Official Code of Georgia Annotated, Section 40-14-18, and as of the effective date of this ordinance, the City shall utilize its Code Enforcement Officer [or designee] to conduct an administrative hearing when timely requested by recipients of notice of violations pursuant to this Section.

Sec. 46-130. Violations and penalties.

(a) Any person who shall violate any provision of this article shall be subject to the civil penalties set forth in Official Code of Georgia Annotated, Section 40-14-18(b)(1), as amended, including a fine in the amount of \$75 for a first violation and \$125.00 for a second or any subsequent violation,

in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed \$25.00.

(b) The City is hereby authorized to notify the Georgia Department of Revenue for all outstanding notice of violations which are eligible for reporting pursuant to Official Code of Georgia Annotated, Section 40-14-18."

Section 3. Severability: If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Council that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

Section 4. Conflict Provisions: All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5. Effective Date and Summary: This Ordinance shall become effective upon the signature of the Mayor. The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SO ORDAINED this _____ day of _____, 2019 by
the Mayor and Council of The City of Alpharetta, Georgia.

THE CITY OF ALPHARETTA, GEORGIA

By: _____
Jim Gilvin, Mayor

COUNCILMEMBERS

Jason Binder

Ben Burnett

John Hipes

Dan Merkel

Donald Mitchell

Karen Richard

(SEAL)

Attest:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Erin Cobb, City Clerk

C. Sam Thomas, City Attorney

First Reading: _____

Second Reading: _____

Adopted: _____

3313973



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Economic Development
Submitted By: Matthew Thomas
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: LOCAL JOBS CREATION GRANT RENEWAL

II. RECOMMENDATION:

Adoption of the second amendment to the Intergovernmental Contract between the City of Alpharetta and the Alpharetta Development Authority to extend the sunset date of the Local Jobs Creation Grant program to June 30, 2021.

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: YES

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT.
BUDGET: YES

TOTAL PROJECT COST: REMAINING PROJECT FUNDS AS
OF JUNE 30, 2019: \$32,500

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>
Local Jobs Creation Grant Program (Development Authority; 99575100-571000-C1403)	\$32,500.00

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>
-	\$0.00

IV. REPORT IN BRIEF:

The Local Jobs Creation Grant was established as an intergovernmental agreement with the City of Alpharetta and the Development Authority of Alpharetta on October 21, 2013 with a five year sunset date.

The grant's purpose is to encourage and support Alpharetta companies hiring Alpharetta residents.

The program was created to support the State of Georgia's Quality Jobs Tax Credit and Opportunity Zone Tax Credit at the local level.

The first amendment to the program was approved in November 2018 and has now reached beyond its' extended sunset date of June 2019. As of June 30, 2019, the Development Authority of Alpharetta has unspent Local Jobs Creation Grant funds totaling \$32,500.

The second amendment (attached hereto) extends the IGA term to June 30, 2021. A revised Incentive Description is also included.

V. ALTERNATIVES:

VI. ATTACHMENTS:

SECOND AMENDMENT TO INTERGOVERNMENTAL CONTRACT - LOCAL JOBS CREATION GRANT PROGRAM(3259928.1), LOCAL JOBS CREATION GRANT 2019 Development Authority Approved

SECOND AMENDMENT TO INTERGOVERNMENTAL CONTRACT

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL CONTRACT (the "Second Amendment") is entered into as of _____, 2019, by and between the City of Alpharetta, Georgia, a municipal corporation of the State of Georgia (the "City"), and the Development Authority of Alpharetta, Georgia, a public body corporate and instrumentality of the State of Georgia organized and existing pursuant to the Development Authorities law (O.C.G.A. §36-62-1, et seq., as amended) (the "Authority").

WHEREAS, on or about October 21, 2013, the City and the Authority entered into an Intergovernmental Contract to administer the local jobs creation grant program to promote employment opportunities in and for the City (the "Intergovernmental Contract"); and

WHEREAS, the Intergovernmental Contract will expire as of June 30, 2019; and

WHEREAS, by this Second Amendment the parties desire to extend the Intergovernmental Contract;

NOW, THEREFORE, in consideration of the premises and undertakings as hereinafter set forth, it is agreed by and between the City and the Authority, each acting by and through its duly authorized officers pursuant to resolutions or ordinances duly adopted and properly passed, as follows:

1. The term of the Intergovernmental Contract is extended through June 30, 2021. Either party may terminate the Intergovernmental Contract, as amended, upon thirty (30) days prior written notice. Upon the termination, uncommitted funds shall be returned to the City. Committed funds shall continue to be administered by the Authority in accordance with the terms of the program.

2. Except as provided herein, the other terms of the Intergovernmental Contract, as amended, shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have caused this Second Amendment to be executed and their seals to be affixed and attested all as of the day and year first above written.

CITY OF ALPHARETTA, GEORGIA

By: _____ (SEAL)
Jim Gilvin, Mayor

DEVELOPMENT AUTHORITY OF ALPHARETTA, GEORGIA

By: _____ (SEAL)
Robert P. Hunter, Jr., Chairman

APPROVED AS TO FORM:

C. Sam Thomas, City Attorney



2 PARK PLAZA
ALPHARETTA, GA 30009
PHONE: 678.297.6000
WWW.ALPHARETTA.GA.US

LOCAL JOBS CREATION GRANT INCENTIVE

INCENTIVE DESCRIPTION

First Approved: October 2013
Re- Approved: November 2018
Re- Approved: July 2019

The Local Jobs Creation Incentive was created by the Alpharetta Development Authority to enhance the Georgia State Tax Credit Programs such as the Quality Jobs Tax Credit and Opportunity Zone Credit program and create jobs for City of Alpharetta residents. In special cases, this incentive can be used by itself as a recruitment incentive for projects that are deemed significant to the City.

Please check with the City of Alpharetta Economic Development Department to confirm availability of Grant funding. The City of Alpharetta reserves the right to terminate the Grant program at any time.

Under the Local Jobs Creation Grant, the Alpharetta Development Authority will award an additional \$500 per new job created in tandem with the State incentive. The award will only be granted for new jobs where the newly hired employee is an Alpharetta resident. The new job must meet the same criteria as defined in the State incentive program to be eligible. In addition, the Alpharetta resident must remain employed for a minimum of one year with the employer before the incentive is paid out. Only those new employees hired within the term of the State incentive are eligible for this incentive and those employees must have been employed for a minimum of one year before this incentive is released.

A standalone award of \$250 per new created job is also available for Tech Alpharetta graduate companies that, upon outgrowing the Innovation Center, locate their business in Alpharetta city limits and

MAYOR
JIM GILVIN

MAYOR PRO TEM
DONALD F. MITCHELL

COUNCIL MEMBERS
JASON BINDER
BEN BURNETT
JOHN HIPES
DAN MERKEL
KAREN RICHARD

CITY ADMINISTRATOR
ROBERT J. REGUS

occupy a commercial office space for at least 12 months. Employees must be Alpharetta residents.

INCENTIVE TERMS & CONDITIONS

1. The new job created must meet the same criteria as the State incentive from a targeted industry wage threshold OR be approved by the Alpharetta Development Authority for a standalone award.
2. The new employee must be a current or new Alpharetta resident.
3. The Alpharetta resident must remain employed for a minimum of one year before the incentive is paid.
4. The business must submit a Local Job Incentive Report for EACH employee within 30 days of their one-year anniversary to the Alpharetta Development Authority to receive grant payment.
5. The term of this incentive is one year from the end of the Job Creation Schedule provided by the applicant. Payment is made one year after the Job Creation Schedule term.
6. Employer can only claim new positions one time for a grant.



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Recreation and Parks
Submitted By: Amanda Musilli
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: ON-CALL EQUIPMENT RENTAL FOR EVENTS (RFP 19-116)

II. RECOMMENDATION:

Award contracts for a period of up to 5-years each for the on-call provision of equipment and associated services to support the City's special events to Atlanta Tent Rentals and to It's My Party Rentals; and authorize the Mayor to execute all necessary documents.

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: YES

FISCAL
IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN
CURRENT FY
OPRT.
BUDGET: YES

TOTAL PROJECT COST: THE PROJECTED EQUIPMENT COSTS (WITHOUT DELIVERY CHARGES AND DOME/IGLOO TENT) AS PROPOSED TOTAL \$83,682.50. FINAL COST ESTIMATES WOULD BE SECURED PRIOR TO EACH EVENT ENGAGEMENT, AND ALL COSTS WOULD BE DRAWN FROM THE APPROVED FISCAL YEAR OPERATING BUDGET FOR THE DEPARTMENT OF RECREATION, PARKS, AND CULTURAL SERVICES.

APPROPRIATIONS:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

EXTERNAL FUNDING SOURCES:

<u>ACCOUNT TITLE/NUMBER</u>	<u>DOLLAR AMOUNT</u>

IV. REPORT IN BRIEF:

The Department of Recreation, Parks, and Cultural Services (DRPCS) maintains on-call contracts for the rental of tents, tables, and chairs to support a wide variety of special events held throughout the year. The inventory and services required varies considerably in order to support small events to large-scale productions such as the Taste of Alpharetta.

With the current contract ending, Staff prepared an RFP that was released on April 11, 2019, with proposals due on May 09, 2019. A total of three proposals were received and reviewed by a committee comprised of DRPCS staff. The committee evaluated the responses based upon equipment needs, equipment condition, delivery charges, and existing inventory of each proposed vendor.

Based upon the evaluation, Staff recommends the award of 5-year on-call contracts to two vendors. The first contract would be with Atlanta Tent Rental and would be primarily for our larger-scale events. The second contract would be exclusively for smaller-scale events and would be with It's My Party Rentals. Each vendor has demonstrated experience with providing the materials and services needed for the size and scope of events for which the respective contracts are being recommended and have provided such services to the City of Alpharetta.

V. ALTERNATIVES:

VI. ATTACHMENTS:

RFP 19-116 Scoring Matrix

RFP Evaluation / Scoring Sheet (Detail)
On-Call Equipment Rental for Events
RFP # 19-116

OFFERORS	Tailgate Guys/PRE Event Resources	it's My Party Rentals	Atlanta Tent Rental
Scoring Instructions: <ol style="list-style-type: none"> Score each criteria for each proposal using a scale of 1 - 5; 5 = highest score available for any criteria. Scores should be noted for each criteria as this will be the basis for evaluation. Weights will be applied to combined scores. Cost will be evaluated separately. 			
CRITERIA			
Method of Providing Services (29%)	1.16	0.36	1.23
Staffing Capability (24%)	0.84	0.9	0.84
Qualifications & Past Experience (27%)	0.74	1.08	1.15
Local Vendor Preference (3%)	0.00	0.15	0.00
Total Proposal Score % (Cost not Opened-Scored)	2.74	2.49	3.22
Cost (17%)	0.55	0.85	0.74
Total Proposal Score % (Cost Opened-Scored)	3.30	3.34	3.96



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Public Works
Submitted By: Geoffrey Sarra
Sponsored By:
Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: WILLS PARK EQUESTRIAN CENTER SURVEY

II. RECOMMENDATION:

Approve Tetra Tech, Inc.'s proposal for survey of the Wills Park Equestrian Center in an amount not to exceed \$94,930.00 and authorize the Mayor to execute all necessary documents.

III. BUDGET IMPLICATIONS:

BUDGETED ITEM: YES

FISCAL IMPACT: YES

INCLUDED IN CURRENT FY CPTL BUDGET: YES INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST: \$94,930.00

APPROPRIATIONS:

ACCOUNT TITLE/NUMBER	DOLLAR AMOUNT
Wills Park Master Plan Improvements (27590150-541500-C2011)	\$94,930.00

EXTERNAL FUNDING SOURCES:

ACCOUNT TITLE/NUMBER	DOLLAR AMOUNT
N/A	\$0.00

IV. REPORT IN BRIEF:

Earlier this year, Tetra Tech prepared a survey of the wooded portion of Wills Park Equestrian Center south of the creek and to the east of the existing stables. Tetra Tech was selected from the City's on-call engineering firms based on their familiarity with Wills Park and the existing stormwater and environmental conditions. To date, they have worked on the Foe Killer Creek Watershed Study, design of a regenerative stormwater conveyance within the park, and design of drainage improvements at the Equestrian Center.

This request is for the expansion of Tetra Tech's survey to be utilized by the Recreation, Parks, and Cultural Services Department in the planning and development of construction plans for the Equestrian Center Concepts identified in the Wills Park Master Plan. The new survey area will extend west of the existing surveyed area to Wills Road. The northern limit of the survey will remain the creek centerline and the southern limit will be the park property line. The scope of work will include, but is not limited to, wetland delineation and mapping, topographic survey, tree survey, and underground utility location. The survey is anticipated to be completed within six weeks of a notice to proceed.

Tetra Tech is currently under contract (Contract #16-1009C) with the City to provide on-call engineering services.

V. ALTERNATIVES:

VI. ATTACHMENTS:

Tetra Tech Proposal, Tetra Tech Proposal - Hourly Breakdown

Scope of Work Submitted to City of Alpharetta Public Works Department for Survey for Wills Park Equestrian Center

July 11, 2019

PREPARED FOR

Geoffrey Sarra, PE

Senior Engineer
City of Alpharetta Public Works Department
1790 Hembree Road
Alpharetta, Georgia 30039
Tel 678.297.6200
gsarra@alpharetta.ga.us

PREPARED BY

Tetra Tech, Inc.

1899 Powers Ferry Rd SE, Suite 400
Atlanta, Georgia 30339
Tel 770.738.6030
Brian.Watson@tetrattech.com
tetrattech.com

A. INTRODUCTION AND PROJECT GOALS

The City of Alpharetta (City) has requested professional services for the Equestrian Center at Wills Park. The requested services include a topographic and boundary survey, tree survey, subsurface utility engineering (SUE) survey, and wetland delineation.

This project is being performed in accordance with the City of Alpharetta/Tetra Tech On-Call Engineering Contract (16-1009C) executed August 19, 2016.

B. PROJECT TEAM AND ORGANIZATION

Our selected staff includes:

- Project Manager – Eric Byrne, PE
- Survey QA/QC – Frederic Shmurak, PE
- Wetland Delineation QA/QC – Julie Kaplan
- Environmental Scientist – Emily Johnson
- Geomorphologist – Nick Jokay, PG
- Landscape Architect – Elise Cormier, PLA, CPSI
- Surveyors – David Yaple PSM, Brandon Register, and David Watson

C. SCOPE OF SERVICES

TASK 1 WETLAND DELINEATION & MAPPING

Tetra Tech will conduct a field assessment that focuses on identification of wetlands and water courses in the survey area (Figure A). Potential wetlands will be evaluated for wetland characteristics comprised of hydric soils, hydrophytic vegetation, and wetland hydrology. If wetlands are observed, they will be delineated based on the 1987 Wetland Delineation Manual and the Eastern Mountains and Piedmont regional supplement. Wetland and stream boundaries will be flagged in the field and waypoints defining the boundaries will be surveyed using a handheld GPS unit. Wetland determination data forms will be completed for assessed areas. A wetland investigation report will be prepared describing site conditions, and will include a wetland delineation figure, depicting wetland and stream boundaries and data points on an aerial photograph.

Assumptions:

- A request for preliminary Jurisdictional Determination (JD) with the U.S. Army Corps of Engineers (USACE) is not needed.
- The assessment will only focus on wetlands and water courses. It will not assess other potential impacts such as vegetation communities and animal habitats.

Deliverables:

1. One wetland investigation report.

TASK 2 SURVEY AND TREE SURVEY

Tetra Tech's teaming partner, Rochester & Associates, will conduct a survey of the equestrian center area (Figure A). The survey will include setting one benchmark and two control points. The survey will include property boundaries for the survey area. Items to be surveyed include but are not limited to:

- 2-foot contours

- Trees 6" in diameter or greater, including diameter and type in the forested areas
- All trees in the non-forested areas and along Wills Road
- Exterior dimensions in square feet for all buildings at ground level
- Sidewalk / concrete pads / structures
- All above ground utility structures (i.e. power, communication, storm, sewer, water, FO, etc.)
- Inverts of pipes at structure ends or in manholes
- Pipe /culvert sizes
- All marked / flagged utilities
- Swale and channel centerlines
- Headwall/Retaining wall structures- displayed as closed polygons
- Top and toe of embankments/berms
- Top of bank and bottom of bank
- Flat and open areas using 25' grid for ground shots
- Storm outfalls into stream, invert elevations of pipes
- Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses in close proximity to the corner.
- Address(es) of the surveyed property if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork.
- Gross land area (and other areas if specified by the client).
- If the zoning setback requirements are set forth in a zoning report or letter provided to the surveyor by the client, and if those requirements do not require an interpretation by the surveyor, graphically depict the building setback requirements. Identify the date and source of the report or letter.
- Names of adjoining owners according to current tax records. If more than one owner, identify the first owner's name listed in the tax records followed by "et al."
- Evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.
- Proposed changes in street right of way lines, if such information is made available to the surveyor by the controlling jurisdiction. Evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.
- Surveyor shall locate any wetland delineation markers observed in the process of conducting the fieldwork and show them on the face of the plat or map.

Tetra Tech will review the survey and direct Rochester & Associates to collect additional survey data in support of project considerations at the site if needed. In addition, Tetra Tech's landscape architect will field verify the tree survey for quality control.

Assumptions:

- The City will assist in coordination between City of Alpharetta Parks & Recreation, Tetra Tech and Rochester & Associates to perform the field survey work.

Deliverables:

1. Existing Conditions Survey.
2. Tree Survey.

TASK 3 UNDERGROUND UTILITY LOCATES

Tetra Tech's teaming partner, Rochester and Associates, will provide underground power, water, gas, and communications utility locations within the project limits. Underground utilities shall be researched and marked by a third-party consultant utilizing Radio Frequency technique with field location and measurement of the markings provided by Rochester and Associates personnel. The marked locations provided by said third-party consultant

shall be field located and measured within reasonable survey tolerances under Task 2. A description of work performed under this task is listed below.

- Physical Markings - Paint and/or flags will be placed on the ground directly above all traceable underground utilities within the specified area. Each utility will be marked with a specific color. Underground utilities will be located utilizing radio frequency techniques. This technique is capable of locating metallic utilities and other utilities with tracer wires. Non-metallic utilities and utilities without tracer wires will not be physically marked on the ground. Utilities not located utilizing this technique may exist, but not be marked, and may be disturbed upon excavation. Also, we will not locate underground storage tanks, irrigation systems, traffic control wires and cables as well as sewer and storm drain lines.
- Site Sketch - A detailed sketch of the subject site will be provided in electronic format. Said sketch will detail the approximate locations of all underground utilities. This sketch may be added to an existing drawing of the site, or to an aerial photograph of the site. Notes will be placed on the sketch indicating possible existence of underground utilities and improvements that were not marked on the ground. This sketch will be used in conjunction with the field surveyed locations from Task 2 to prepare an accurate database.
- Utility Owner Information -The owner of each respective utility affecting the subject site will be determined and documented, including names, addresses and phone numbers. The sources of this information will be from a "one call" Ticket and other sources as may be required.

Assumptions:

- Rochester and Associates third-party consultant will expend reasonable efforts to determine the actual location of all existing underground utilities within the project area. It is expressly understood by both parties that utilities may exist within the subject area, but not be marked or located, especially if no above ground evidence of the utility exists. We locate underground utilities solely as an accommodation and our markings/locates shall not be used for excavation. We accept no liability for ANY underground utilities that are not located or marked by us.

Deliverables:

1. SUE (Quality Level B) survey of the project area.



Figure A

D. COST

An estimate of project costs are provided in the table below. The costs are based on our current understanding of the project requirements and best estimates of level of effort required to perform the basic services and may be subject to change upon agreement between the City and Tetra Tech. This project will be billed at a Firm Fixed Price of **\$94,930**.

Task #	Description	Cost
Task 1	Wetland Delineation and Mapping	\$5,270
Task 2	Survey and Tree Survey	\$82,160
Task 3	Underground Utility Locates	\$7,500
Total =		\$94,930

E. SCHEDULE

The approximate duration noted for each task is based on our current understanding and best estimates of time required to perform the basic services. The duration shown is not indicative of project duration since some tasks may overlap and there may be project delays due to weather or other unforeseen factors. An updated schedule will be provided following Notice to Proceed (NTP) that clearly conveys start and completion dates as well as task overlaps. The following estimates may be subject to change upon agreement between the City and Tetra Tech.

Task #	Description	Number of Weeks
Task 1	Wetland Delineation and Mapping	4
Task 2	Survey and Tree Survey	6
Task 3	Underground Utility Locates	3

Wills Park Equestrian Center Expansion Survey

Classification	Hourly Rate	a				b		Subtotal Hours	Subtotal
		Task 1. Wetland Delineation		Task 2. Survey		Task 3. Utility Locate			
		Hrs	Cost	Hrs	Cost	Hrs	Cost		
Principal/Senior Project Manager	\$200.00	1	\$ 200.00	1	\$ 200.00		\$ -	2	\$ 400.00
Senior Engineer	\$180.00		\$ -	4	\$ 720.00		\$ -	4	\$ 720.00
Senior Designer	\$130.00	4	\$ 520.00	12	\$ 1,560.00		\$ -	16	\$ 2,080.00
Mid-Level Scientist	\$100.00	32	\$ 3,200.00		\$ -		\$ -	32	\$ 3,200.00
Project Scientist 3	\$120.00	8	\$ 960.00		\$ -		\$ -	8	\$ 960.00
Senior Administrative Asst.	\$80.00	1	\$ 80.00	1	\$ 80.00		\$ -	2	\$ 160.00
Senior Architect	\$180.00		\$ -	40	\$ 7,200.00		\$ -	40	\$ 7,200.00
Survey Director	\$150.00		\$ -	92	\$ 13,800.00		\$ -	92	\$ 13,800.00
Staff Surveyor	\$130.00		\$ -	110	\$ 14,300.00		\$ -	110	\$ 14,300.00
Two Person Survey Crew	\$160.00		\$ -	130	\$ 20,800.00		\$ -	130	\$ 20,800.00
Three Person Survey Crew	\$180.00		\$ -	130	\$ 23,400.00		\$ -	130	\$ 23,400.00
Sub-Consultant			\$ -		\$ -		\$ 7,500.00		\$ 7,500.00
Trimble GPS Rental			\$ 250.00		\$ -		\$ -		\$ 250.00
Travel			\$ 60.00		\$ 100.00		\$ -		\$ 160.00
Total		46	\$ 5,270.00	390	\$ 82,160.00	0	\$ 7,500.00	566	\$ 94,930.00



City Council Meeting & Public Hearing STAFF REPORT

Submitting Department: Community Development

Submitted By:

Sponsored By: Council Member Merkel

Meeting Date: July 22, 2019

I. AGENDA ITEM TITLE: CHANGES TO THE CITY CODE OF ALPHARETTA ALCOHOL ORDINANCE
COUNCIL SPONSOR: DAN MERKEL

CONSIDERATION OF CHANGES TO CHAPTER 4 ALCOHOLIC BEVERAGES PERTAINING TO CITY DEPARTMENT ENFORCEMENT AND THE DEFINITION OF MIXED USE DEVELOPMENT DISTRICT.

II. RECOMMENDATION:

This item is presented for discussion purposes only.

III. REPORT IN BRIEF:

Presented for discussion by City Council are proposed changes to Chapter 4 Alcoholic Beverages pertaining to City department enforcement and the definition of mixed use development district.

IV. ALTERNATIVES:

V. ATTACHMENTS:

ARTICLE_I.___IN_GENERAL (2) highlighted, Mixed Use Properties in Alpharetta

ARTICLE I. - IN GENERAL

Sec. 4-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage means all alcohol, distilled spirits, beer, malt beverages, wine and fortified wine as defined in this section.

Alcoholic beverage caterer means any retail dealer licensed to sell alcohol and who provides alcohol at special events or special events facilities.

Art gallery means a retail establishment primarily engaged in, and which derives at least 70 percent of its total annual gross sales from, the sale or display of art books, paintings, sculptures, or other works of art; but specifically excluding libraries, book stores, theaters, and establishments where the display of works of art is incidental to its primary use.

Art studio means a retail establishment primarily engaged in providing instruction in painting, sculpture, drawing, photography, craft work, fiber art, or other visual or graphic art techniques, and which derives at least 70 percent of its total annual gross sales from the sale of such services and art products related to such services; but specifically excluding body art studios and tattoo parlors.

Beer and malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than six percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term "malt beverage" does not include sake, also known as Japanese rice wine.

Brew pub means any eating establishment in which malt beverages are manufactured, subject to the barrel production limitation prescribed in section 4-188. In calculating the total annual gross food and beverage sales for any such establishment for the purpose of determining whether the establishment constitutes an eating establishment as defined herein, barrels of malt beverages sold to licensed wholesale dealers, as authorized pursuant to section 4-188(2)d, or to the public for consumption off the premises in accordance with section 4-188(2)a and (2)d, (3) and (4), shall not be used.

Distilled spirits means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wine.

Eating establishment means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Fixed salary means the amount of compensation paid to any member, officer, agent or employee of a bona fide private club as may be fixed for such person by its members at a prior annual meeting or by the governing body of the club out of the general revenue of the club, and shall not include a commission on any profits from the sale of alcoholic beverages. For the purpose of this definition, tips or gratuities which are added to the bills under club regulation shall not be considered as profits from the sale of alcoholic beverages.

Fortified wine means any alcoholic beverage containing more than 24 percent alcohol by volume made from fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added. The term "fortified wine" includes, but is not limited to, brandy.

Licensee means the individual to whom a license is issued or, in the case of partnership or corporation, all partners, officers and directors of the partnership or corporation.

Liter means a metric measurement currently used by the United States.

Manufacturer means any maker, producer or bottler of an alcoholic beverage. The term "manufacturer" also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying or blending any distilled spirits; provided, however, that a vintner who blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits; and
- (2) In the case of malt beverages, any brewer; and in the case of wine, any vintner.

Package means a bottle, can, keg, barrel or other original consumer container.

Premises means the definite closed or partitioned-in locality, whether a room, shop, building, restaurant or club, wherein activities permitted by this chapter are conducted.

Private club means any nonprofit association organized under the laws of this state which:

- (1) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter;
- (2) Has at least 75 regular dues-paying members; and
- (3) Owns, hires or leases a building space within a building for the reasonable use of its members with:
 - a. A suitable kitchen and dining room space and equipment;
 - b. A sufficient number of employees for cooking, preparing and serving meals for its members and guests; and
 - c. No member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

Retailer or retail dealer, except as to distilled spirits, means any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term "retailer" or "retail dealer" means any person who sells distilled spirits in unbroken packages at retail only to consumers and not for resale.

Supermarket means a retail market which:

- (1) Does not sell or offer for sale any of the following: distilled spirits, tobacco products, lottery tickets or related games of chance;
- (2) Maintains at all times that it is open an inventory of saleable food products including meats, dairy, vegetables, fruits, dry goods and beverages;
- (3) Has an interior floor space and storage areas of at least 15,000 square feet, of which more than 50 percent of such interior floor area is devoted to the display for sale of food products;
- (4) Sells prepared food;
- (5) Has a full service kitchen consisting of at least a four-compartment pot sink, a stove or grill permanently installed, and a refrigerator; and
- (6) Employs not less than 15 employees who work at least 35 hours per week on the premises.

Wholesaler or wholesale dealer means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers or to retail consumption dealers.

Wine means any alcoholic beverage containing not more than 24 percent alcohol by volume made from fruits, berries or grapes, either by fermentation or by natural fermentation with brandy added. The term "wine" includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines and like products. The term "wine" does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of the term "wine" contained in this section.

Wine bar means a type of eating establishment with a floor area not exceeding 2,000 gross square feet, which serves food and only beer, wine and non-alcoholic beverages, and where the sale of food consumed on the premises constitutes at least 40 percent of gross sales of the establishment.

(Code 1989, § 3-1; Ord. No. 218-A, §§ 1.002, 1.031, 9-22-1986; Ord. No. 679, § 2, 7-15-2013; Ord. No. 722, § 1, 3-21-2016; Ord. No. 740, § 1, 5-16-2017)

State Law reference— Definitions, O.C.G.A. §§ 3-1-2, 3-4-1.

Sec. 4-2. - Sale subject to conditions; license constitutes privilege.

- (a) Alcoholic beverages may be sold in the city under a license granted by the city council upon the terms and conditions hereafter provided.
- (b) All licenses shall be a mere grant or privilege to carry on the business during the terms of the license subject to all terms and conditions imposed by the city ordinances and state law.
- (c) All licenses hereunder shall have printed on the front these words: "LICENSE NON-TRANSFERABLE, SUBJECT TO BE REVOKED IF ABUSED."

(Code 1989, § 3-2; Ord. No. 218-A, § 1.001, 9-22-1986; Ord. No. 573, 9-6-2005)

State Law reference— Dealing in alcoholic beverages declared a privilege, O.C.G.A. § 3-3-1; discretion and due process; authority of city as to licensing, O.C.G.A. § 3-3-2.

Sec. 4-3. - Sale or possession for purpose of sale without license or beyond boundaries of premises covered by license.

No person shall sell or possess for the purpose of sale any alcoholic beverage unless such person has a license from the city to sell or possess for sale alcoholic beverages, or sell or make deliveries beyond the boundaries of the premises covered by the license.

(Code 1989, § 3-3; Ord. No. 218-A, § 1.003, 9-22-1986)

Sec. 4-4. - Display of license at place of business.

The city license shall at all times be kept plainly exposed to view at the place of business of the licensee.

(Code 1989, § 3-4; Ord. No. 218-A, § 1.004, 9-22-1986)

State Law reference— Display of license, O.C.G.A. § 3-3-3.

Sec. 4-5. - Separate application and separate license for each location of sale.

A separate application shall be made for each location and a separate license shall be obtained.

(Code 1989, § 3-5; Ord. No. 218-A, § 1.005, 9-22-1986)

Sec. 4-6. - License applications.

- (a) All persons, as owners, desiring to engage in activities permitted by this chapter, shall make written application to the council for the appropriate license on forms prescribed by the director of ~~public safety~~ Community Development, and filed with the director of ~~public safety~~ Community Development. All applications shall be accompanied by a certified check for the full amount of the license fee, together with a separate check or cash in the amount of \$350.00 to defray investigative and administrative costs. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee (without interest) shall be refunded, but the \$350.00 investigative fee shall be retained.
- (b) The application shall include, but shall not be limited to: the name and address of the applicant; the proposed business to be carried on; if a partnership, the names and residence addresses of the partners; if a corporation, the names and addresses of the officers, the name and address of the agent for service of process, the name and address of the manager, and the names and addresses of all shareholders holding more than ten percent of any class of corporate stock, or any other entity having a financial interest in each entity which is to own or operate the establishment. If the manager changes, the applicant must furnish the city clerk with the name and address of the new manager and other information as requested within ten days of such change. The applicant shall also disclose whether the applicant (its partners, if a partnership; its officers, manager, and shareholders having more than ten percent of any class of corporate stock, if a corporation) has been convicted of any felony, misdemeanor, or a violation of any municipal ordinance.
- (c) All applications shall be sworn to by the applicants before a notary public or other officer authorized to administer oaths.
- (d) The department of ~~public safety~~ Community Development or its designee shall review the application to determine compliance with city regulations and laws and to investigate the character and reputation of the applicant. If the director of ~~public safety~~ Community Development or his designee determines that the application appears to meet the requirements of applicable law, the director of ~~public safety~~ Community Development shall forward the application to the city clerk, who shall schedule and conduct a public hearing as provided in subsection (f) of this section.
- (e) As a prerequisite to the issuance of any license, the applicant shall furnish a complete set of fingerprints to be forwarded to the state bureau of investigation and to the Federal Bureau of Investigation, as specified in O.C.G.A. § 3-3-2(c).
- (f) The city clerk shall prepare and cause to be published a notice of each pending application, which notice shall include the date the application will be considered by the city clerk, the location or street number of the premises where the applicant proposes to conduct activities permitted by this chapter, and the name of the applicant, and if a partnership, the name of the partners, and if a corporation, the names of the president, secretary and treasurer of such corporation. The applicant shall pay the publication costs. The notice shall be published in a newspaper of general circulation within the city, and shall appear once a week for two weeks immediately preceding consideration of the application by the city clerk. Each applicant for a license for consumption on the premises of alcoholic beverages shall, at such applicant's expense, post on the premises where the activities permitted by such license are to be conducted, continuously for a period of not less than ten days prior to consideration of the application by the city clerk, a notice of the pending application, meeting the following minimum specifications: this notice shall be painted or printed in black letters three inches or more in height, against a white background, on a wooden or metal sign, and having a surface of not less than 12 square feet, and shall be placed with the base of the sign not more than three feet from the ground on the most conspicuous part of the premises, facing the most frequently traveled road, street or highway abutting same, and not more than ten feet therefrom. The sign shall state clearly the nature and purpose of the application, the date and hour and place of the city clerk hearing, and the name of the person making the application. If, after conducting the public hearing, the city clerk determines that the application meets the requirements of this chapter, the city clerk shall place the application on the consent agenda of the next available city council meeting. The license shall be issued following approval of the consent agenda.
- (g) The city shall have the authority to prescribe forms for new or renewal applications. All applicants shall furnish data, information and records as required by the city and shall ensure compliance with

the provisions of this chapter. Failure to furnish such data shall automatically serve to dismiss the application with prejudice.

- (h) Any untrue or misleading information contained in, or material statement omitted from, an original, renewal or transfer application for a license shall be cause for the denial or revocation thereof.
- (i) In all instances in which an application is denied under the provisions of this chapter, the applicant may not re-apply for a license for at least one year from the final date of such denial.
- (j) Each applicant shall certify that the applicant has read this chapter, and if a license is granted, each licensee shall maintain a copy of this chapter on the premises and shall require each of the licensee's employees to be familiar with this chapter.

(Code 1989, § 3-6; Ord. No. 218-A, § 1.006, 9-22-1986; Ord. No. 513, § 1, 12-2-2002; Ord. No. 566, 4-18-2005; Ord. No. 573, 9-6-2005; Ord. No. 679, §§ 1, 3, 7-15-2013)

Sec. 4-7. - Inspection of licensed establishments by the department of **public safety** Community Development.

Sworn officers of the city department of **public safety** Community Development shall have the authority to inspect establishments licensed under the alcoholic beverage ordinances of the city during the hours in which the premises are open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other city officer to conduct inspections authorized by other provisions of law.

(Code 1989, § 3-7; Ord. No. 218-A, § 1.007, 9-22-1986; Ord. No. 679, § 1, 7-15-2013)

Editor's note— Ord. No. 679, § 1, adopted July 15, 2013, changed the title of section 3-7 from "Inspection of licensed establishments by the police department" to "Inspection of licensed establishments by the department of **public safety** Community Development." The historical notation has been preserved for reference purposes.

Sec. 4-8. - Audits.

The city shall have the authority to conduct an audit of the books and records of any licensee to ensure the licensee's compliance with the provisions of this chapter. In such event, the city shall notify the licensee of the date, time and place of the audit.

(Code 1989, § 3-8; Ord. No. 218-A, § 1.008, 9-22-1986; Ord. No. 573, 9-6-2005)

Sec. 4-9. - Licensing qualifications.

- (a) No license for the sale of alcoholic beverages shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
- (b) No retailer or consumption on premises license will be granted to any person who is not a resident of a county or municipality within the state where the sale of distilled spirits is authorized.
- (c) (1) If the applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. Notwithstanding the foregoing, the provisions of subsections (a) and (b) of this section shall be waived for a corporation, if the following shall be established:
 - a. All majority stockholders of the corporation shall meet all the provisions of this section other than those provided in subsections (a) and (b) of this section; and

- b. The corporation:
 - 1. Is qualified and registered to do business within the state;
 - 2. Has and continuously maintains in the county a registered agent who is a resident of the county, and upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee may be served;
 - 3. Consents to being subject to the jurisdiction and venue of the courts in this county. The licensee shall file written proof of compliance with the foregoing, as well as its agent's written consent to serve as agent and its consent to be subject to the jurisdiction and venue of the courts in this county with the director of **public safety** **Community Development** in such form as the director of **public safety** **Community Development** may prescribe; and
- c. The corporation must meet one of the following criteria:
 - 1. The corporation must have a net worth of not less than \$5,000,000.00 as determined on the basis of the corporation's most recent audited financial statement, prepared within 12 months of the date upon which the applicant applies for a license hereunder;
 - 2. The corporation owns real property within the city in which it holds an equity value of not less than \$1,000,000.00 and the city shall be the sole determinant of such equity value; or
 - 3. The corporation must have obtained a surety bond issued by a surety company authorized to do business in this state or have established a joint trust account with a licensed and insured bank or savings institution located in this state for the purpose of indemnifying the city from damages it may suffer as a result of a violation of this chapter or any obligation arising therefrom. The amount of the bond or trust account shall be an amount not less than \$75,000.00. Should the corporation obtain a surety bond, it shall be in favor of the city and the city may bring an action under the bond to recover damages suffered. Should the corporation choose to set up a trust account, it shall be set up jointly in the name of the corporation and the city, and shall require the authorization of both the corporation and the city before any funds may be withdrawn therefrom.
- (2) If the licensee shall be a corporation, the license shall be issued jointly to the corporation and to the majority stockholders, if such stockholders are individuals; provided, however, that if stock in the corporation is traded on any of the national stock exchanges, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. Where the majority stockholder is not an individual, then the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to one of the partners.
- (d) No license for the sale of alcoholic beverages shall be granted to any person who, within five years prior to the filing of the application for such license, has been convicted under any federal, state or local law, of any misdemeanor involving moral turpitude, or of any felony. For the purposes of this section, a plea of nolo contendere shall constitute a conviction.
- (e) No license for the sale of alcoholic beverages shall be granted to any person who is a city employee or an elected or appointed city official, or who is a spouse or minor child of a city employee or an elected or appointed city official. It shall be unlawful for such person to have a financial interest in any such city license, or in any establishment licensed under the provisions of this chapter.
- (f) No license for the sale of alcoholic beverages shall be granted to any person who has had any city license revoked within two years prior to the filing of the application.
- (g) The director of **public safety** **Community Development** may decline to issue a license when any person having any interest in the operation or control of such establishment does not meet the same character requirements as herein set forth for the licensee.

- (h) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee may be served. This person must be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent, with the director of **public safety** Community Development in such form as the director may prescribe.
- (i) In determining whether or not any license shall be granted, in addition to the other provisions of this chapter, the following shall be considered in the public interest and welfare:
 - (1) If the applicant holds or has previously held a license to sell alcoholic beverages, whether or not such applicant has violated any law, regulation or ordinance relating to such license or the business conducted pursuant to such license; and
 - (2) Whether the applicant has previously had a license to sell alcoholic beverages suspended or revoked.

(Code 1989, § 3-9; Ord. No. 218-A, § 1.009, 9-22-1986; Ord. No. 515, § 1, 1-21-2003; Ord. No. 679, § 4, 7-15-2013)

Sec. 4-10. - Compliance and fee payment prior to license issuance; term of license; proration of fees; no refund.

- (a) Before a license shall be granted, the applicant shall comply with all city rules and regulations pertaining to the sale of alcoholic beverages, and each applicant shall pay a license fee in accordance with the scale fixed, from time to time, by the city council and kept on file in the office of the city clerk.
- (b) All licenses shall be granted for the full calendar year or for the number of months remaining in the calendar year. Any applicant granted a license before July 1 shall pay the full license fee without proration. License fees for licenses granted on or after July 1 shall be prorated based on the number of months remaining in the calendar year. A partial month shall be counted as a full month.
- (c) License fees are not refundable.

(Code 1989, § 3-10; Ord. No. 218-A, § 1.010, 9-22-1986)

Sec. 4-11. - Nonprofit civic organization's temporary permit.

Any bona fide nonprofit civic organization may be issued a temporary permit authorizing the organization to sell alcoholic beverages for consumption on the premises or to sell wine at retail for off-premises consumption, or both, for a period not to exceed three days, subject to all laws and ordinances regulating the time for selling such beverages. The temporary permit shall be valid for only the place specified in the permit and no more than two permits may be issued to the applicant organization in any one calendar year. The organization must make application to the director of **public safety** Community Development and pay the fee that may be established from time to time by the city council. As used in this section, the term "bona fide nonprofit civic organization" means an entity which is exempt from federal income tax pursuant to the provisions of 26 USC § 501(c), 501(d) or 501(e).

(Code 1989, § 3-11; Ord. No. 218-A, § 1.036, 9-22-1986; Ord. No. 679, § 5, 7-15-2013)

Sec. 4-12. - Excise tax—Malt beverages.

- (a) There is hereby levied and imposed upon the sale of malt beverages within the city, a specific excise tax as follows:

- (1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of \$6.00 on each container sold containing not more than 15½ gallons, and a proportionate tax at the same rate on all fractional parts of 15½ gallons.
 - (2) Where malt beverages are sold in bottles, cans, or other containers except barrel or bulk containers, a tax of \$0.05 per 12 ounces, and a proportionate tax at the same rate on all fractional parts of 12 ounces.
- (b) The excise taxes provided for in this section shall be imposed upon and shall be paid by the licensed wholesale dealer in malt beverages. Each wholesale dealer selling malt beverages within the city shall file a report with the city by the tenth day of each month showing for the preceding calendar month the exact quantities of malt beverages, by size and type of container, sold during the month within the city. Each such wholesale dealer shall remit to the city by the tenth day of the month next succeeding the calendar month in which such sales were made, the amount of excise tax due in accordance with this section.
- (c) Wholesale dealers failing to remit excises taxes due and payable to the city as outlined in subsection (b) of this section shall be charged a ten percent penalty, and interest shall accrue at the rate of one percent per month (12 percent per annum) until all fees are collected by the city.

(Code 1989, § 3-12; Ord. No. 141, § 1, 4-28-1975; Ord. No. 573, 9-6-2005)

State Law reference— Local excise tax on malt beverages required, O.C.G.A. § 3-5-80.

Sec. 4-13. - Same—Wine.

- (a) There is hereby levied and imposed upon the sale of wine within the city a specific excise tax in the amount of \$0.22 per liter, and a proportionate tax at the same rate on all fractional parts of a liter.
- (b) The taxes imposed by this section shall not be levied with respect to:
 - (1) Wine sold to and used by established and recognized churches and synagogues for use in sacramental services only;
 - (2) Any sale of wine which is exempt from taxation by the state under the Constitution of the United States;
 - (3) Wine sold to persons outside the state for resale or consumption outside the state; or
 - (4) Wine which contains less than one-half of one percent alcohol.
- (c) The excise taxes provided for in this section shall be imposed upon and shall be paid by the licensed wholesale dealer of wine. Each wholesale dealer selling wine within the city shall file a report with the city by the tenth day of each month showing for the preceding calendar month the exact quantities of wine, by size and type of container, sold during the month within the city. Each such wholesale dealer shall remit to the city by the tenth day of the month next succeeding the calendar month in which such sales were made the amount of excise tax due in accordance with this section.
- (d) Wholesale dealers failing to remit excise taxes due and payable to the city as outlined in subsection (c) of this section shall be charged a ten percent penalty, and interest shall accrue at the rate of one percent per month (12 percent per annum) until all fees are collected by the city.

(Code 1989, § 3-13; Ord. No. 104, § 35, 2-14-1967; Ord. No. 573, 9-6-2005)

State Law reference— Local excise tax on wine, O.C.G.A. § 3-6-60.

Sec. 4-14. - Same—Distilled spirits sold by the package.

- (a) There is hereby levied and imposed a specific excise tax on the sale of distilled spirits by the package within the city in the amount of \$0.22 per liter of distilled spirits, excluding fortified wine, and a proportionate tax at the same rate on all fractional parts of a liter.
- (b) The excise taxes provided for in this section shall be imposed upon and shall be paid by the licensed wholesale dealer of distilled spirits. Each wholesale dealer selling distilled spirits within the city shall file a report with the city by the tenth day of each month showing for the preceding calendar month the exact quantities of distilled spirits, by size and type of container, sold during the month within the city. Each such wholesale dealer shall remit to the city by the tenth day of the month next succeeding the calendar month in which such sales were made the amount of excise tax due in accordance with this section.
- (c) Wholesale dealers failing to remit excise taxes due and payable to the city as outlined in subsection (b) of this section shall be charged a ten percent penalty, and interest shall accrue at the rate of one percent per month (12 percent per annum) until all fees are collected by the city.

(Code 1989, § 3-14; Ord. No. 573, 9-6-2005)

State Law reference— Local excise tax on the sale of distilled spirits by the package, O.C.G.A. § 3-4-80.

Sec. 4-15. - Same—Distilled spirits sold by the drink.

- (a) There is hereby levied and imposed a specific excise tax on the sale of distilled spirits in the amount of three percent of the charge to the public for the beverages.
- (b) The excise tax imposed in subsection (a) of this section shall not apply to the sale of fermented beverages made in whole or in part from malt or any similar fermented beverage.
- (c) The excise taxes provided for in this section shall be imposed upon and shall be paid by the retailer or retail dealer of distilled spirits sold by the drink. Each retailer or retail dealer selling distilled spirits by the drink within the city shall file a report with the city by the tenth day of each month showing for the preceding calendar month the exact quantities of distilled spirits sold, by the drink, during the month. Each such retail dealer shall remit to the city by the tenth day of the month next succeeding the calendar month in which such sales were made the amount of excise tax due in accordance with this section.
- (d) Retailers or retail dealers collecting the tax authorized by this section shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be three percent of the amount due, only if the amount due was not delinquent at the time of payment.
- (e) Retail dealers failing to remit excise taxes due and payable to the city as outlined in subsections (c) and (d) of this section shall be charged a ten percent penalty, and interest shall accrue at the rate of one percent per month (12 percent per annum) until all fees are collected by the city.

(Code 1989, § 3-15; Ord. No. 573, 9-6-2005)

State Law reference— Local excise tax on distilled spirits sold in private clubs, O.C.G.A. § 3-4-130.

Sec. 4-16. - Same—Distilled spirits in private clubs.

- (a) The excise taxes imposed in sections 4-12, 4-13 and 4-14 are applicable to sales of malt beverages, wine, and distilled spirits to private clubs located within the corporate limits of the city.

Those taxes are imposed upon and shall be paid by the licensed wholesale dealers in malt beverages, wine and distilled spirits, respectively.

- (b) The three percent excise tax imposed in section 4-15 on the sale of distilled spirits by the drink is applicable to private clubs located within the corporate limits of the city. Those taxes shall be paid by the licensed private club selling mixed drinks.
- (c) Each private club selling distilled spirits by the drink within the city shall file a report with the city by the tenth day of each month showing for the preceding calendar month the exact quantities of distilled spirits, sold by the drink, during the month. Each such private club shall remit to the city by the tenth day of the month next succeeding the calendar month in which such sales were made the amount of excise tax due in accordance with this section.
- (d) Private clubs collecting the tax authorized by this section shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be three percent of the amount due, only if the amount due was not delinquent at the time of payment.
- (e) Private clubs failing to remit excise taxes due and payable to the city as outlined in subsections (b), (c) and (d) of this section shall be charged a ten percent penalty, and interest shall accrue at the rate of one percent per month (12 percent per annum) until all fees are collected by the city.

(Code 1989, § 3-16; Ord. No. 573, 9-6-2005)

State Law reference— Local excise tax on private club distilled spirits sales required, O.C.G.A. § 3-7-60.

Sec. 4-17. - Distance requirements.

- (a) No person may sell or offer to sell alcoholic beverages:
 - (1) Within 200 feet of any private residence, unless such residence is itself in a commercial district;
 - (2) Within 300 feet of any public library or branch thereof;
 - (3) Within 300 feet of the property line of any church, shrine, chapel of a mortuary or other place used exclusively for religious services, and any school grounds or college campus;
 - (4) Within 300 feet of that portion of a public park which is habitually used for recreational purposes; or
 - (5) Within 200 feet of a regular stop as designated by the county board of education where a school bus for the transportation of school children in the public schools of the county shall take on or discharge school children.

The schools or colleges referred to herein shall include only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools and colleges of this state. A school bus stop is defined as a designated place where five or more children board the bus.

- (b) For premises that are located or proposed to be located in the central business district (as defined in section 1.4.2 of the Unified Development Code), distance shall be measured from such residence, library, property line, park or school bus stop by the straight line distance to the nearest public sidewalk, street or highway, then along such sidewalk, street or highway by the nearest route to the front door of the premises from which alcoholic beverages are to be sold. For premises that are located or proposed to be located in all other areas of the city, distance shall be measured from such residence, library, property line, park or school bus stop by the straight line distance to the point of the premises nearest to such residence, library, property line, park or school bus stop. Every license application shall include a scale drawing of the location of the proposed premises, showing the

distance of the uses described in this section and a certificate of a registered land surveyor or professional engineer that the location complies with these distance requirements.

- (c) The distance requirements of this section pertaining to colleges are intended to apply to the main or primary campus or grounds of a college. For various reasons, a college may occasionally lease subordinate space away from its main campus or grounds to conduct its activities (a subordinate facility). For the purposes of determining compliance with the distance requirements of this section, a subordinate facility shall not be considered a college if all of the following conditions are met:
- (1) The college is occupying the subordinate facility as a tenant under a lease agreement;
 - (2) The amount of square footage leased to the college at the subordinate facility is less than 20 percent of the cumulative square footage of the buildings occupied by the college at its primary facility;
 - (3) The subordinate facility is located in a commercially-zoned district; and
 - (4) The subordinate facility is not adjacent or contiguous to the primary facility of the college.

Notwithstanding the foregoing, no license for the sale of alcoholic beverages shall be granted with respect to an establishment that is located in the same building as a subordinate facility or within 50 feet of a subordinate facility.

- (d) The city council, after notice and a public hearing, may grant a variance to the minimum distance requirements between a private residence and an establishment seeking an on-premises consumption license if there exists one or more of the conditions set forth in subsection (d)(1) of this section, and all of the conditions set forth in subsection (d)(2) of this section:
- (1)
 - a. The establishment is designed to be an integral part of planned mixed use development;
 - b. The establishment is located within a shopping center with an aggregate leasable area of 50,000 square feet or more;
 - c. The primary entrance of the establishment is not directly visible along the line of measurement and is physically separated from the residence;
 - d. There are other licensed establishments of a similar nature in the immediate vicinity;
 - e. The residence is not a single-family detached residence.
 - (2)
 - a. There are practical or economic difficulties in carrying out the strict letter of the distance requirements;
 - b. The request is not based primarily on the desire to reduce the cost of developing the site;
 - c. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site, and will not substantially interfere with or injure the rights of others whose property would be affected by the variance;
 - d. The proposed variance will not be detrimental to the public health, safety or welfare, result in additional expense, or the creation of nuisances, or conflict with other applicable law.
- (e) The city council, after notice and a public hearing, may grant a variance to the minimum distance requirements between a school grounds or college campus and an eating establishment (as the term "eating establishment" is used in section 4-47) seeking an on-premises consumption license, provided that all of the conditions set forth below exist:
- (1) The location for which a license to sell alcoholic beverages for on-premises consumption is being sought has previously been operated as an eating establishment licensed by both the city and the state for the sale of alcoholic beverages for on-premises consumption within the five years immediately preceding the application for the new license;
 - (2) The primary entrance to the eating establishment is physically separated, either by a street, a fence, shrubbery, a parking lot, another building, or some other form of physical barrier, from the school grounds or college campus which is in close proximity to the eating establishment;

- (3) There are practical or economic difficulties in carrying out the strict letter of the distance requirements, including the fact that the proposed premises from which alcoholic beverages for on-premises consumption would be sold already contains a commercial kitchen;
- (4) The request is not based primarily on the desire to reduce the cost of developing the site;
- (5) The proposed variance will not substantially diminish the property value in, nor alter the essential character of, the area surrounding the site, and will not substantially interfere with or injure the rights of others whose property would be affected by the variance;
- (6) The proposed variance will not be detrimental to the public health, safety or welfare, result in additional expense, or the creation of nuisances, or conflict with other applicable law;
- (7) The proposed variance will have no material effect on the use of the property on which the school grounds or college campus is located as either a school grounds or college campus.

(Code 1989, § 3-17; Ord. No. 218-A, § 1.011, 9-22-1986; Ord. No. 512, § 1, 12-2-2002; Ord. No. 524, § 1, 3-3-2003; Ord. No. 532, § 1, 12-15-2003; Ord. No. 643, § 1, 7-19-2010)

State Law reference— Sales near churches, etc., O.C.G.A. § 3-3-21.

Sec. 4-18. - Condition of premises.

- (a) All licensed premises shall be kept clean and shall be in full compliance with all ordinances and regulations of the city, county and state.
- (b) The county health department shall have the authority to inspect regularly the licensed premises to determine whether the licensed premises is in compliance with all city, county and state health rules and regulations, and report any violation to the city clerk.
- (c) The city department of ~~public safety~~ Community Development shall have the authority to inspect regularly the licensed premises to determine whether the licensed premises is in compliance with all city, county and state fire regulations, and report any violations to the city clerk.
- (d) The director of ~~public safety~~ Community Development or his designee shall have the authority to inspect regularly the licensed premises to determine whether the licensed premises is in compliance with all technical codes of the city.
- (e) The city department of ~~public safety~~ Community Development shall have the authority to inspect periodically the licensed premises to determine if the licensed premises is in compliance with all provisions of this chapter, and report any violation to the city clerk.

(Code 1989, § 3-18; Ord. No. 218-A, § 1.012, 9-22-1986; Ord. No. 679, §§ 1, 6, 7-15-2013)

Sec. 4-19. - Renewal of license.

All licenses granted hereunder shall expire on December 31 of each year. A licensee who desires to renew his license shall file a renewal application accompanied by the requisite license fee with the city upon forms prescribed by the city on or before November 15 of each year without penalty, and not later than December 15. Applications for renewal filed after November 15 and on or before December 15 shall be subject to a penalty of ten percent of the license fee. No renewal license shall be granted on applications filed after December 15, but such applications shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been issued. Failure of a licensee to comply with any section of this Code shall subject the licensee to non-renewal of the license.

(Code 1989, § 3-20; Ord. No. 218-A, § 1.014, 9-22-1986; Ord. No. 573, 9-6-2005)

Sec. 4-20. - Transfer of license.

- (a) No license for the sale of alcoholic beverages shall be transferable, except as otherwise provided herein.
- (b) In case of the death of a licensee, the establishment shall be allowed to continue to sell alcoholic beverages for a period of 45 days from the date of death, or until expiration of the license, or until approval of a new licensee, whichever shall first occur, provided that no sale of alcoholic beverages shall be allowed until such time as a personal representative of the estate, appointed by a probate court of competent jurisdiction, shall make application for authorization with the city clerk.
- (c) In the event that a license is surrendered, or a licensee severs such person's association with a licensed establishment, the establishment may continue to sell alcoholic beverages for a period of 45 days from the date of surrender, or from the date determined to be the date of severance, provided that no such sale shall be authorized until such time as a new application for a license is made, such application indicating that no change of ownership has occurred, except as excepted herein. Upon issuance of a new license, the authorization to sell under the previous license shall be revoked by operation of law. No additional license fees shall be required during the period for which the original license was issued.
- (d) Nothing in this section, however, shall prohibit one or more of the partners in a partnership holding a license to withdraw from the partnership in favor of one or more of the partners who were partners at the time of the issuance of the license. This section shall not prohibit transfer of stock between persons who held stock in the corporate owner at the time of issuance of the license, nor shall it prohibit transfers of stock which do not result in any person increasing such person's stock holdings to a total of ten percent or more of any class of stock.
- (e) Should a transfer of location be approved, with no change of ownership of the business, the license fee paid for the old location shall be applied to the new location.
- (f) Except as provided above, any change in the ownership of any entity owning a licensed establishment shall cancel and revoke any license issued hereunder automatically, without the necessity of any hearing.
- (g) Violation of this section shall result in revocation of the license being used and a fine as provided in section 1-8. No license will be issued to the old or the new owner in the city for one year from the date of the violation.

(Code 1989, § 3-21; Ord. No. 218-A, § 1.015, 9-22-1986)

Sec. 4-21. - Prohibited sales.

- (a) Except as otherwise authorized by law, no licensee shall sell or permit to be sold alcoholic beverages to any person under 21 years of age.
- (b) No licensee shall permit on the licensed premises the sale, barter, exchange, giving, providing or furnishing of alcoholic beverages to any person who is in a state of noticeable intoxication.
- (c) No licensee shall permit the sale of alcoholic beverages on Sunday, except as otherwise provided in this chapter.
- (d) No licensee authorized to sell alcoholic beverages by the package shall sell or permit to be sold any single beer, wine cooler or similar alcoholic beverage that is customarily packaged for sale as part of a four-pack, six-pack, 12-pack, or similar package, unless such single beer, wine cooler or similar alcoholic beverage is displayed for sale in an enclosed case, cabinet or other structure located not closer than 20 feet from the front door of the premises and not closer than 20 feet from any cash register in the premises. The intent of this subsection is to prohibit sales of single beers, wine coolers or similar alcoholic beverages from open, cooled containers such as ice-filled buckets, tubs, or

barrels and to prohibit such sales from other containers located within 20 feet of the front door and cash registers of the premises.

(Code 1989, § 3-22; Ord. No. 218-A, § 1.016, 9-22-1986)

State Law reference— Local authorization as to Sunday sales, O.C.G.A. § 3-3-7.

Sec. 4-22. - Under-age persons on licensed premises.

- (a) No licensee shall permit any person under 21 years of age to be in, frequent or loiter about the licensed premises unless such person is accompanied by a parent, legal guardian or custodian; provided, however, that such person shall be permitted in eating establishments or private clubs as defined herein without being accompanied by a parent, legal guardian or custodian, and provided further, that this section shall not apply to persons who are employees under the terms of this chapter.
- (b) No licensee shall allow or require a person in such person's employment under 18 years of age to dispense, serve, sell or take orders for any alcoholic beverages.
- (c) No licensee shall employ any person under the age of 21 years to work as an entertainer in any licensed establishment, unless such person has obtained written, notarized permission from such person's parents or legal guardian, nor shall any licensee allow any such person to work without such proof of permission.
- (d) In the event a supermarket, convenience store, brewery or drugstore employs persons under 21 years of age who will or may sell or handle alcoholic beverages which are sold for consumption off the premises, the following regulation is hereby imposed: All employees under 21 years of age shall request proper age identification from any person attempting to purchase alcoholic beverages and appearing to be 25 years of age or less.
- (e) In addition to the above, the following regulations shall be imposed and shall apply to all persons becoming employed by such a supermarket, convenience store, brewery or drugstore:
 - (1) For the first six months of employment, an employee under 21 years of age shall be on probationary status. During probationary status, the employee shall be trained and supervised periodically with respect to the procedure for requesting proper age identification and declining to sell alcoholic beverages to those under 21 years of age failing to produce proper identification.
 - (2) During an employee's probationary status period, the employee's supervisor shall periodically monitor and review the employee's request of proper age identification and decision to sell or not to sell alcoholic beverages to various customers. Should an employee, during his probationary status period, be found to sell or attempt to sell alcoholic beverages to any person under 21 years of age, the supermarket, convenience store, brewery or drugstore employing such employee shall be required to terminate the employee.
- (f) In addition to the above requirements, all supermarkets, convenience stores, breweries and drugstores selling alcoholic beverages of any kind shall post a notice no smaller in size than eight inches by ten inches in a conspicuous place on the premises, which provides as follows: "Pursuant to local ordinance, employees are required to request proper age identification before selling alcoholic beverages."

(Code 1989, § 3-23; Ord. No. 218-A, § 1.017, 9-22-1986; Ord. No. 260, § 1, 7-10-1989; Ord. No. 359, § 1, 4-10-1995)

State Law reference— Furnishing, etc., to minors, O.C.G.A. § 3-3-23; persons under 18 years of age not allowed or required to serve, sell, or take orders for alcoholic beverages, O.C.G.A. § 3-3-24.

Sec. 4-23. - Advertising.

- (a) Except as otherwise authorized in this section, no outdoor advertising or signs promoting the sale of alcoholic beverages, or the prices of such beverages, shall be permitted on the exterior of any licensed premises, or on the windows or elsewhere in the premises that may be viewed from the outside. The posting of signage identifying the name of the licensed premises, which may include "beer," "wine," or similar terms, shall not constitute a violation of this section.
- (b) Lighted signs advertising beer and wine may be placed on the furthest back wall of a licensed premises.

(Code 1989, § 3-24; Ord. No. 218-A, § 1.018, 9-22-1986; Ord. No. 679, § 7, 7-15-2013)

State Law reference— Advertisement of prices, O.C.G.A. § 3-4-26.

Sec. 4-24. - Required signs; posted information.

- (a) In addition to other postings required herein or by law, all licensees shall post in a prominent location on licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of the city and the state in regard to the sale of alcoholic beverages to underage, intoxicated or pregnant persons. Each such sign shall be of a size and configuration approved by the director of ~~public safety~~ Community Development, and shall include either the language of the applicable Code sections or summaries approved by the director of ~~public safety~~ Community Development. The department of ~~public safety~~ Community Development is authorized to design and have printed approved signs, which shall be made available to licensees at a price to be established by the director of ~~public safety~~ Community Development.
- (b) All licensees shall display in prominent places or on their menus, their current prices of alcoholic beverages, by the drink. Any price change must remain valid for seven consecutive calendar days. The licensee shall furnish to any customer who so desires an itemized bill of charges, which shall not exceed the established price list.
- (c) All licensees shall indicate plainly the price of all alcoholic beverages exposed for sale by tags or labels on the bottles or containers or on the shelf immediately below the space in which the containers are placed.

(Code 1989, § 3-25; Ord. No. 218-A, § 1.019, 9-22-1986; Ord. No. 679, § 1, 7-15-2013)

Sec. 4-25. - Contents of bottles.

Except during the initial bottling by the manufacturer, it shall be unlawful for any licensee to add to the contents of a bottle or to refill empty bottles or in any other manner to misrepresent the quantity, quality or brand name of any alcoholic beverage.

(Code 1989, § 3-26; Ord. No. 218-A, § 1.020, 9-22-1986)

Sec. 4-26. - Furnishing to, purchase of, or possession by person under 21 years of age of alcoholic beverages.

The provisions of O.C.G.A. § 3-30-23, as amended from time to time, shall govern with respect to underage sales and possession of alcoholic beverages.

(Code 1989, § 3-27; Ord. No. 679, § 8, 7-15-2013)

Sec. 4-27. - Retailer to purchase from licensed wholesaler only.

No retailer shall purchase alcoholic beverages from any person not a wholesaler licensed by both the state and city under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed by both the state and city under this chapter. Retail and wholesale dealers licensed under the provisions of this chapter shall be required to demonstrate compliance with this section to the city upon written receipt of a request for information.

(Code 1989, § 3-28; Ord. No. 218-A, § 1.022, 9-22-1986; Ord. No. 573, 9-6-2005)

Sec. 4-28. - Revocation, suspension or other penalty.

- (a) The city clerk shall be authorized to suspend or revoke an alcoholic beverage license or impose other penalties upon the licensee under the conditions set forth in this section. However, no revocation, suspension or other penalty shall be imposed without first providing a licensee the notice, hearing and appeal rights as more specifically provided in section 4-29.
- (b) Sufficient grounds for the suspension or revocation of a license or the imposition of other penalties include, but are not limited to, the following:
 - (1) A licensee has failed to open for business within six months after approval of the license; provided, however, prior to the expiration of such period, the city clerk may extend the time in which a licensee is required to open for business by up to six months, upon the timely receipt of a written request from a licensee for such an extension.
 - (2) After opening for business, a licensee has ceased to operate the business for a period of three consecutive months.
 - (3) A licensee's state license or permit for the sale of alcoholic beverages has been revoked.
 - (4) A licensee, or such licensee's employee or agent, has sold alcoholic beverages during a period of suspension.
 - (5) A licensee gave false or misleading information in the original application or renewal process.
 - (6) A licensee has failed to pay any fee, license fee, fine or other amount of money due to the city under this chapter or any other licensing ordinance of the city.
 - (7) A licensee, or such licensee's employee or agent, has served or sold any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be under the age of 21 years.
 - (8) A licensee, or such licensee's employee or agent, has served or sold any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be in a state of intoxication.
 - (9) A licensee has failed to maintain any and all of the general qualifications applicable to the initial issuance of a license as set forth in section 4-9.
 - (10) A licensee has violated any other law, ordinance or regulation governing the operation of establishment license to sell alcoholic beverages or which is reasonably related to the operation of such establishments.
 - (11) A licensee, or such licensee's employee or agent, has violated any other provision of this alcoholic beverage chapter.

- (c) Subject to the notice, hearing and appeal rights of a licensee as provided in section 4-29, the city clerk is authorized, but not required, to revoke the license of any licensee found to be in violation of this chapter. In lieu of revocation, the clerk is also authorized to suspend the license of a licensee violating any provision of this chapter. In the event that the clerk elects to suspend a license, such license shall be suspended for three days for the first violation and 30 days for a second violation occurring within any consecutive 12-month period. For a third violation occurring within any consecutive 12-month period, the license shall be revoked. In lieu of revocation or suspension, the city clerk is also authorized, but not required, to accept a voluntary offer of a civil monetary penalty from the licensee, not to exceed \$1,000.00 per violation. No licensee or any other applicant may apply for a license for the same premises during any period of suspension or revocation. In determining the severity of any sanction imposed under this section, the city clerk may take into consideration any documented evidence that the licensee has, on prior occasions, undertaken proactive efforts to promote compliance with the provisions of this chapter, including the provisions of this chapter prohibiting the sale or serving of alcohol to minors. Documented evidence of such activities shall include, but shall not be limited to, written evidence that the licensee has promptly reported violations or attempted violations of this chapter.

(Code 1989, § 3-29; Ord. No. 218-A, § 1.023, 9-22-1986; Ord. No. 359, § 2, 4-10-1995; Ord. No. 373, 3-25-1996; Ord. No. 722, § 2, 3-21-2016)

Sec. 4-29. - Hearing procedures; appeal.

- (a) Prior to imposing any sanction authorized by section 4-28, the city clerk shall provide written notice to the licensee specifying the licensee's alleged violations of this chapter and the date, time and place of the hearing to be held before the city clerk to determine if the violations have occurred. The date of the hearing shall be not less than five nor more than 30 days after the date of the written notice. At the request of the city clerk, the city council may appoint a hearing examiner to perform the duties of the city clerk under section 4-28 and this section. Hearings shall be conducted under rules issued by the city clerk, which shall be consistent with rules applied in administrative proceedings, and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel. All testimony shall be sworn. The city shall have the responsibility to present evidence sufficient to carry the burden of proof by a preponderance of the evidence. Following the hearing, the city clerk shall prepare a written order to include findings, conclusions and sanctions (if any). A copy of the order shall be forwarded by certified mail to the licensee the same date it is filed in the office of the city clerk, with additional copies furnished to the city administrator and the director of **public safety** Community Development.
- (b) The order issued by the clerk in accordance with the procedures outlined above shall be stayed for a period of ten days after the issuance of the order. During this ten-day period, the licensee shall have the right to file an appeal to the city council. If the licensee files a timely appeal, the city clerk's order shall be stayed until the appeal is heard or withdrawn. If the licensee does not file a timely appeal, the city clerk's order shall be final.
- (c) The notice of appeal to the city council shall be in writing and accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The grounds for the appeal shall be limited to issues that were addressed in the hearing. Upon receipt of a notice of appeal, the city clerk shall submit the entire record of the case to the city council and may also submit a memorandum in response to the memorandum filed by the licensee. The clerk shall place the appeal on the agenda of the next regular city council meeting occurring not less than ten nor more than 30 days after receipt of the appeal, unless the appellant stipulates to another date. The appellant shall have the right to be represented by legal counsel. At the hearing, the city council will receive oral arguments on the written memoranda and the evidence in the record. The right to offer oral argument may be waived. No additional evidence or arguments shall be permitted at the council meeting, and the council shall base its decision on the memoranda, oral arguments (if any) and other evidence in the record. Following the appeal hearing, the council may sustain, overrule or modify the order of the city clerk. In lieu of suspension or revocation, the city council may impose a

fine upon any licensee, not to exceed \$1,000.00 for each violation occurring on the licensed premises. The city council shall also have the option to refer the matter to the clerk for a de novo hearing, or for the taking of additional evidence on specific points, and in either of such cases, the city clerk shall proceed as provided in this chapter. If the city council does not refer the matter back to the clerk, the decision of the mayor and council shall be final, and the appellant shall have the right to seek a writ of certiorari to the superior court of the county within 30 days of the final action of the mayor and city council. The final action of the city council shall be reduced to a written order signed by the mayor. The original of the mayor's order shall be filed in the record of the case, and a copy of the order shall be included in the minutes of the city council meeting. It shall be the responsibility of the clerk to provide a copy of the order to the appellant.

(Code 1989, § 3-30; Ord. No. 218-A, § 1.024, 9-22-1986; Ord. No. 373, 3-25-1996; Ord. No. 679, § 1, 7-15-2013)

Secs. 4-30—4-46. - Reserved.

ARTICLE II. - ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES

Sec. 4-47. - Locations where prohibited.

- (a) No alcoholic beverages may be sold by the drink for consumption on the premises where sold except in:
- (1) Eating establishments regularly serving prepared food, with a full-service kitchen consisting of a four-compartment pot sink, a stove or grill permanently installed, and a refrigerator, all of which must be approved by the county health department and the city fire marshal, prepared to serve food every hour they are open;
 - (2) Supermarkets or wine bars, where these establishments are permitted to seat 45 or more persons pursuant to applicable building, fire and safety codes in effect for the city;
 - (3) Cigar shops;
 - (4) Art galleries or art studios; or
 - (5) Hotels, motels or high-rise office and apartment buildings.

When located in hotels, motels and high-rise office and apartment buildings, every entrance to the establishment shall be from a public lobby, hallway, mall or other publicly-used interior portion of the primary use structure. Unless otherwise expressly exempted in this chapter from this requirement, establishments not located in hotels or motels shall derive a minimum of 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food (except that wine bars shall derive a minimum of 40 percent). Hotels or motels containing such establishments shall derive a minimum of 50 percent of their total annual gross income from the sales of prepared meals or food and from the rental of rooms for overnight lodging. For the purposes of this chapter, the term "hotel" or the term "motel" means an establishment that contains not less than 35 separate rooms for overnight lodging.

- (b) On or before the 20th day of each calendar month, each such establishment shall file a report of the previous calendar month's operation with the office of the director of finance verifying compliance with the above provisions. Such reports shall be filed on forms designated by the city. These forms are also used to report excise taxes on the sale of distilled spirits by the drink, which are also due by the tenth day of each calendar month. Any licensed establishment that fails to meet the appropriate percentage requirements for two consecutive months shall be subject to immediate revocation. An audit may be required at any time to ensure compliance with these provisions. Nothing in this section shall be deemed to prohibit hotel room service of alcoholic beverages.

(Code 1989, § 3-40; Ord. No. 218-A, § 1.025, 9-22-1986; Ord. No. 573, 9-6-2005; Ord. No. 659, § 1, 12-19-2011; Ord. No. 679, §§ 1, 9, 7-15-2013; Ord. No. 740, § 2, 5-16-2017)

Sec. 4-48. - Hours of sale.

Alcoholic beverages shall not be sold for consumption on the premises except:

- (1) Monday through Saturday, between the hours of 9:00 a.m. and 2:00 a.m. of the following day; and
- (2) On Sunday from 12:30 p.m. until 2:00 a.m. on Monday in any licensed establishment which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food, or which derives a minimum of 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

(Code 1989, § 3-41; Ord. No. 218-A, § 1.026, 9-22-1986; Ord. No. 740, § 3, 5-16-2017)

Sec. 4-49. - Consumption sales only.

- (a) Except as may be otherwise expressly provided in this chapter, establishments holding a license to sell alcoholic beverages for consumption on the premises shall not hold a license for the sale of alcoholic beverages by the package.
- (b) The foregoing prohibition, however, shall not apply with respect to the following:
 - (1) Supermarkets and brew pubs, as defined in section 4-1; provided, however, no such license shall include or authorize the sale of distilled spirits by the package; and
 - (2) Eating establishments, as defined in section 4-1, may sell wine by the package for off-premises consumption, provided that no more than ten percent of the interior floor area of the establishment is devoted to the display of package wine and no more than ten percent of the establishment's revenues derived from the sale of alcoholic beverages is derived from package wine sales. Notwithstanding the foregoing, the sales of wine by the package for off-premises consumption shall not be used in calculating the total annual gross food and beverage sales for the establishment for the purpose of determining whether the establishment constitutes an eating establishment as set forth in section 4-1.
- (c) For the purposes of this chapter, where a person holds a license to sell alcoholic beverages by the package, including distilled spirits, at one establishment, and a license to sell alcoholic beverages for consumption on the premises at a contiguous establishment, and the licensed premises of each establishment are physically separate from the other, with the only interconnectivity between the establishments (if any) being an inside connecting service door or passageway, such establishments shall be considered separate and distinct establishments, provided that:
 - (1) Each establishment operates under a trade name different from the other;
 - (2) All business transactions are kept separate;
 - (3) Each establishment must operate in compliance with all other provisions of this chapter and all other laws and regulations applicable to such business;
 - (4) Each establishment has a separate entrance for the public and the establishments share no common entrance;
 - (5) The inside connecting service door or passageway (if any) must be located behind the bar or service counter of each establishment or otherwise so situated or maintained as to be reasonably accessible only to the licensee or employees of the establishments, and only the licensee and employees of the establishments may use such door or passageway; and

- (6) All other conditions required by state regulations applicable to such contiguous operations are met.

(Code 1989, § 3-42; Ord. No. 218-A, § 1.027, 9-22-1986; Ord. No. 679, § 10, 7-15-2013; Ord. No. 694, § 1, 9-15-2014; Ord. No. 701, § 1, 2-23-2015; Ord. No. 722, § 3, 3-21-2016; Ord. No. 740, § 4, 5-16-2017)

Sec. 4-50. - Regulations as to employees; permit.

The following regulations regarding employees shall apply to all establishments holding a license for consumption of alcoholic beverages on the premises:

- (1) An employee shall meet the same character requirements as set forth in the general requirements for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until such person has been fingerprinted or cleared by the department of ~~public safety~~ Community Development and a permit issued indicating that such person is eligible for this employment. The permit issued to a person under this section shall be either of the following:
 - a. Alcoholic beverage permit, which shall be issued only to a person who must be 21 years of age or older, and who sells, serves or dispenses alcoholic beverages;
 - b. Non-alcoholic beverage permit, which shall be issued to a person whose employment includes, but is not limited to, host, hostess, doorman and bouncer.
- (3) No permit shall be issued until such time as a signed application has been filed with the director of ~~public safety~~ Community Development and a search of the criminal record of the applicant completed. Such application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The director of ~~public safety~~ Community Development shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. In the event there is no record of a violation of this article, the director of ~~public safety~~ Community Development shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the director of ~~public safety~~ Community Development shall notify the employer that this person is not eligible for employment.
- (5) It shall be the duty of all persons holding any license to sell alcoholic beverages to file with the director of ~~public safety~~ Community Development the name of the establishment, the license number and a list of all employees, with their home addresses and home telephone numbers.
- (6) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the director of ~~public safety~~ Community Development or the city clerk.
- (7) This section shall not be construed to include employees whose duties are limited solely to those of busboy, cook or dishwasher.
- (8) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (9) In the event that any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the city department of ~~public safety~~ Community Development.

- (10) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of any officer of the city department ~~of public safety~~ Community Development.
- (11) Unless waived or modified by the director of ~~public safety~~ Community Development, the provisions of this section relative to employees shall also apply to any of the licensee's volunteers or contractors engaged in the service of alcohol.

(Code 1989, § 3-43; Ord. No. 218-A, § 1.028, 9-22-1986; Ord. No. 622, § 1, 5-19-2008; Ord. No. 679, § 1, 7-15-2013)

State Law reference— Age of employees, O.C.G.A. § 3-3-23; persons under 18 years of age not allowed or required to serve, sell, or take orders for alcoholic beverages, O.C.G.A. § 3-3-24.

Sec. 4-51. - Open area, sidewalk, deck and patio sales.

The consumption and/or sale of alcoholic beverages may be allowed in open areas, sidewalks, decks, patios or similar unenclosed spaces on or about the premises of an establishment licensed to sell alcohol for consumption on the premises if written application is made to and approved by the director of ~~public safety~~ Community Development, or his designee, under such conditions as the director may deem appropriate for the protection of public health, safety and welfare, including, but not limited to, maximum capacity, ingress and egress.

(Code 1989, § 3-44; Ord. No. 218-A, § 1.029, 9-22-1986; Ord. No. 679, § 11, 7-15-2013)

Sec. 4-52. - Happy hour promotions prohibited.

- (a) No licensee, or employee or agent of a licensee, shall engage in any of the following practices in connection with the sale or other disposition of alcoholic beverages for consumption on the premises:
 - (1) The giving away of any alcoholic beverage in conjunction with the sale of any other alcoholic beverage;
 - (2) The sale of two or more alcoholic beverages for a single price, including the sale of all such beverages a customer can or desires to drink at a single price;
 - (3) Selling, offering to sell or delivering to any person any alcoholic beverage at a price less than one-half the price customarily charged for such alcoholic beverage, provided, nothing contained herein shall be construed to prohibit reducing the price of a drink by up to one-half the price customarily charged;
 - (4) Requiring or allowing the purchase of a second or subsequent alcoholic beverage at the same time another alcoholic beverage is purchased or before the first such beverage has been consumed, by any one person;
 - (5) Increasing the volume of alcoholic beverage contained in a drink without proportionately increasing the price customarily charged for such beverage.

It is the intent of this section to prohibit activities typically associated with promotions referred to as "happy hour."

- (b) As used in this section, the phrase "customarily charged" means the price regularly charged for such alcoholic beverage during the same calendar week.

(Code 1989, § 3-45; Ord. No. 218-A, § 1.030, 9-22-1986)

Sec. 4-53. - Brown-bagging or BYOB prohibited; exceptions.

- (a) It is prohibited for any person to bring his own alcoholic beverage (brown-bagging) into any retail establishment, without regard to whether such establishment is licensed to sell alcoholic beverages, for consumption on such premises.
- (b) Exceptions. The foregoing prohibition in subsection (a) of this section is subject to the following specific exceptions:
 - (1) *Furnishing of wine by a patron of a restaurant.* Any restaurant which is licensed to sell wine for consumption on the premises may permit a patron to bring into the restaurant one unopened bottle of wine for consumption on the premises. In order for this provision to apply, the restaurant must establish a policy for permitting same and must charge a minimum corkage fee of \$10.00 per bottle. Nothing in this section shall be deemed to require a restaurant to establish such a policy. Any wine not consumed at a restaurant shall be disposed of at the premises and not carried out in an open container, unless the restaurant is able to reseal and repackage the opened bottle of wine in accordance with section 4-54.
 - (2) *Patrons participating in cooking classes.* This section shall not prohibit any person who is participating in a cooking class offered by a retail establishment from bringing one unopened bottle of wine into the retail establishment to consume with the meal prepared as part of such class, provided:
 - a. The retail establishment has a policy permitting a patron participating in a cooking class to bring an unopened bottle of wine into the retail establishment for consumption on the premises by the patron;
 - b. The retail establishment does not charge a corking or other fee for same;
 - c. The price of a cooking class offered by the retail establishment does not vary based on whether class participants will be permitted to bring wine into the retail establishment for consumption on the premises;
 - d. No employee of the retail establishment under the age of 18 years shall be working in the establishment during the times such classes are offered; and
 - e. The retail establishment has an established closing time of no later than 10:00 p.m. Any opened bottle of wine not consumed at the retail establishment during the cooking class shall be disposed of at the premises and not carried out in an open container. All other applicable state and city laws, regulations and ordinances which address the use and serving of alcoholic beverages shall apply to this subsection.
- (c) For the purposes of this section, the term "retail establishment" shall not include a private hotel room or similar guest room or a private club.

(Code 1989, § 3-46; Ord. No. 649, § 1, 5-16-2011; Ord. No. 679, § 12, 7-15-2013; Ord. No. 740, § 5, 5-16-2017)

Sec. 4-54. - Removal of wine from restaurant by patron.

Notwithstanding any other contrary provision of the ordinance from which this section derives, any restaurant which is licensed to sell wine for consumption on the premises may permit a patron to remove one unsealed bottle of wine per patron for consumption off the premises, if the patron has purchased a meal and consumed a portion of the bottle of wine with such meal on the restaurant's premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine or corkage fee and meal shall be provided by the licensee and attached to the container. If transported in a

motor vehicle, the container with the resealed bottle of wine shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(Code 1989, § 3-47; Ord. No. 649, § 1, 5-16-2011; Ord. No. 679, § 13, 7-15-2013)

State Law reference— Removal of wine from restaurant by patron, O.C.G.A. § 3-6-4.

Secs. 4-55—4-81. - Reserved.

ARTICLE III. - PRIVATE CLUBS^[2]

Footnotes:

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State Law reference— Sale of distilled spirits by private clubs, O.C.G.A. § 3-7-1 et seq.

Sec. 4-82. - Exception for art galleries and art studios.

An art gallery or art studio may obtain a license for the sale of alcoholic beverages for consumption on the premises without meeting the requirement that the establishment provides a full-service kitchen serving prepared foods or derives a minimum of 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food, provided that no more than ten percent of the establishment's total annual gross sales are derived from the sale of alcoholic beverages.

(Ord. No. 740, § 6, 5-16-2017)

Sec. 4-83. - Conditions to selling.

- (a) Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the city governing the sale of such beverages (except as expressly exempted therein) and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations of the city.
- (b) Community service organizations which are chartered by Congress as patriotic, mutual-help, or war-time veterans' organizations shall be specifically exempted from section 4-16. Compliance with all other regulations of this chapter is required for such organizations.

(Code 1989, § 3-50; Ord. No. 218-A, § 1.032, 9-22-1986; Ord. No. 573, 9-6-2005)

Sec. 4-84. - Private clubs exempt from percentage sales of food requirements.

Private clubs shall not be required to derive a certain percentage of annual gross receipts from the sale of prepared food.

(Code 1989, § 3-51; Ord. No. 218-A, § 1.033, 9-22-1986)

Sec. 4-85. - Hours of sale.

Alcoholic beverages shall not be sold for consumption on the premises except between the hours of 9:00 a.m. and 2:00 a.m., Monday through Saturday, and on Sunday from 12:30 p.m. to 2:00 a.m.

(Code 1989, § 3-52; Ord. No. 218-A, § 1.034, 9-22-1986)

Sec. 4-86. - Regulations as to employees.

The employee regulations set forth in section 4-50 pertaining to establishments holding a license for consumption on the premises shall also apply to private clubs licensed for consumption on the premises.

(Code 1989, § 3-53; Ord. No. 218-A, § 1.035, 9-22-1986)

Secs. 4-87—4-115. - Reserved.

ARTICLE IV. - PACKAGE LIQUOR^[3]

Footnotes:

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State Law reference— Distilled spirits, O.C.G.A. § 3-4-40 et seq.

Sec. 4-116. - Types of establishments where retail sale permitted.

- (a) No distilled spirits by the package shall be sold at retail except in:
- (1) Retail establishments devoted exclusively to the retail sale of alcoholic beverages by the package;
 - (2) Retail establishments in which space has been set aside devoted exclusively to the retail sale of distilled spirits by the package, with ingress and egress provided directly to and only to the exterior of the building in which the facility is located and not to any other enclosed part of the building in which the facility is located, except as provided in subsection (a)(3) of this section; or
 - (3) In hotels, motels and high-rise office buildings where every public entrance to this use shall be from a lobby, hallway or other interior portion of the primary use structure.
- (b) Nothing in this section shall prohibit the retail sale within these establishments of liquid commodities and mixes normally used in the preparation and serving of distilled spirits.

(Code 1989, § 3-60; Ord. No. 218-A, § 1.037, 9-22-1986; Ord. No. 740, § 7, 5-16-2017)

Sec. 4-117. - Coin-operated or amusement machines prohibited; exception.

No retail dealer in liquors shall permit on such person's premises any slot machines of any kind or character or any coin-operated machines or any machine operated for amusement purposes. However, cigarette vending machines may be permitted.

(Code 1989, § 3-61; Ord. No. 218-A, § 1.038, 9-22-1986)

Sec. 4-118. - Hours of sale.

Retail package licensees licensed to sell packaged distilled spirits may engage in the package sale of distilled spirits only between the hours of 9:00 a.m. and 11:45 p.m., Monday through Saturday, and only between the hours of 12:30 p.m. and 11:30 p.m. on Sunday. These hours are to be determined by the standard of time in effect at the time of the sale.

(Code 1989, § 3-62; Ord. No. 218-A, § 1.039, 9-22-1986; Ord. No. 650, § 1, 6-13-2011)

Sec. 4-119. - Regulations as to employees.

The following regulations as to employees shall apply to all establishments holding a license for package liquor:

- (1) An employee shall meet the same character requirements as set forth in the general requirements for the licensee, except for the residency requirements.
- (2) No person shall be employed by an establishment holding a license hereunder until this person has been fingerprinted or cleared by the department of ~~public safety~~ Community Development and has been issued a permit by the department of ~~public safety~~ Community Development indicating that the person is eligible for this employment.
- (3) No permit shall be issued until such time as a signed application has been filed with the director of ~~public safety~~ Community Development, and a search of the criminal record of the applicant completed. Such application shall include, but shall not be limited to, the name, date of birth and prior arrest record of the applicant, though the fact of an arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.
- (4) The director of ~~public safety~~ Community Development shall have a complete and exhaustive search made relative to any police record of the person fingerprinted or cleared. In the event there is no record of a violation of this chapter or other applicable law, the director of ~~public safety~~ Community Development shall issue a permit to the employee, stating that the person is eligible for employment. If it is found that the person fingerprinted or cleared is not eligible for employment, the director of ~~public safety~~ Community Development shall notify the employer that this person is not eligible for employment.
- (5) It shall be the duty of all persons holding any license to sell alcoholic beverages to file with the director of ~~public safety~~ Community Development the name of the establishment and the license number and a list of all employees, with their home addresses and home telephone numbers.
- (6) All permits issued through administrative error or through an error in completion of a background investigation can be terminated by the director of ~~public safety~~ Community Development or the city clerk.
- (7) No licensee shall allow any employee required to hold a permit to work on the licensed premises unless the licensee has on file, on the premises, the current, valid permit of each such employee.
- (8) In the event that any permit holder leaves the employ of a licensed establishment, the licensee shall immediately surrender the permit to the director of ~~public safety~~ Community Development.
- (9) All permits issued hereunder remain the property of the city, and shall be produced for inspection upon the demand of any officer of the department of ~~public safety~~ Community Development.

(Code 1989, § 3-63; Ord. No. 218-A, § 1.040, 9-22-1986; Ord. No. 679, § 1, 7-15-2013)

Secs. 4-120—4-136. - Reserved.

ARTICLE V. - PACKAGE BEER, MALT BEVERAGES AND WINE

Sec. 4-137. - Type of retail establishment.

No package beer, malt beverage or wine shall be sold at retail except in the following types of retail establishments, subject to such establishments holding a license to sell beer, malt beverages or wine (as applicable) by the package:

- (1) Establishments which meet the same requirements applicable to establishments where distilled spirits may be sold (section 4-116);
- (2) Establishments maintaining 80 percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other products and located in zoning districts in which these establishments are permitted as a conforming use or in districts where existing establishments exist as a nonconforming use;
- (3) Supermarkets, as defined in section 4-1;
- (4) Establishments which are duly licensed by the city to operate as a brew pub; or
- (5) Eating establishments licensed to sell alcoholic beverages for consumption on the premises which sell wine by the package in accordance with the provisions set forth in section 4-49(b); provided, however, package sales shall be limited to wine only.

(Code 1989, § 3-70; Ord. No. 664, § 1, 4-16-2012; Ord. No. 722, § 4, 3-21-2016)

Sec. 4-138. - Hours of sale.

Retail package licensees licensed to sell packaged malt beverages, beer and wine may engage in the packaged sale of malt beverages, beer and wine only between the hours of 9:00 a.m. and 11:45 p.m., Monday through Saturday, and only between the hours of 12:30 p.m. and 11:30 p.m. on Sunday. These hours are to be determined by the standard of time in effect at the time of the sale.

(Code 1989, § 3-71; Ord. No. 664, § 1, 4-16-2012)

Sec. 4-139. - Use of tags or labels to indicate prices.

Retailers shall indicate plainly, by tags or labels on the bottle or containers or on the shelf immediately below where the containers are placed, the prices of all beer, malt beverages and wine exposed or offered for sale.

(Code 1989, § 3-72; Ord. No. 664, § 1, 4-16-2012)

Sec. 4-140. - Regulations as to coin-operated or amusement machines, and regulations as to employees.

The provisions applicable to coin-operated or amusement machines applicable to retail establishments devoted to the retail sale of distilled spirits (section 4-117) and regulations as to employees applicable to retail package licenses licensed to sell packaged distilled spirits (section 4-119) are also applicable to retail establishments licensed to sell beer, malt beverages and wine.

(Code 1989, § 3-73; Ord. No. 664, § 1, 4-16-2012)

Sec. 4-141. - Growlers.

- (a) The sale of growlers in compliance with this article is authorized for those certain types of establishments designated in section 4-137(1), (3) and (4), which are licensed to sell malt beverages, but not distilled spirits, by the package. The filling of growlers with malt beverage drawn from a tap on a barrel, cask, tank, or keg on the premises shall not constitute the breaking of a package as contemplated by O.C.G.A. § 3-3-26 or other provisions of this chapter. The term "growler" means a container made of a material customary to the industry provided that the container is capable of being sealed with a tamper-proof cap, top or other seal for the purpose of complying with open container laws, and further provided that the container does not exceed 68 ounces and is filled by a licensee or employee of the licensed establishment with malt beverage drawn from a barrel, cask, tank, or keg. Growlers may only be filled from barrels, casks, tanks, or kegs procured by the licensee from a person who is licensed or authorized to do business as a wholesaler under this chapter. Notwithstanding any other provision of this chapter to the contrary, in the case of a brew pub holding a license to sell malt beverages by the package, growlers may be filled from barrels, casks, tanks, or kegs of malt beverages manufactured on the licensed premises, subject to the barrel production limitation prescribed in section 4-188. Only professionally sanitized and sealed growlers may be filled and made available for retail sale. Each growler must be securely sealed and removed from the premises in its original sealed condition. Except as authorized in accordance with an ancillary tasting permit as hereinafter provided, consumption on the premises is strictly prohibited; however, this prohibition shall not apply with respect to sales pursuant to a license for consumption on the premises, provided that no filled growlers may be consumed on the premises.
- (b) The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirits license, shall be eligible for an ancillary growler malt beverage tasting license to provide samples of growler malt beverages offered for sale to customers under the conditions set forth in this section. Growler malt beverage sampling shall be on limited occasions when a customer requests a sample of a growler malt beverage offered for sale within the premises, or in conjunction with growler malt beverage education classes and sampling designed to promote growler and malt beverage appreciation and education. Growler malt beverage tasting for customers shall only be conducted at a counter area constituting no more than ten percent of the entire floor area of the premises. Growler malt beverage sampling for customers shall be limited to no more than one time per day per customer for a period not to exceed two consecutive hours. Samples shall not exceed four ounces, and no customer shall consume more than 16 ounces in any two-hour period. Only the licensee or an employee shall open and handle unpackaged malt beverages, and samples shall only be poured by the licensee and/or an employee. No open growler container shall be removed from the licensed premises. Not more than two times per week for a period not to exceed two consecutive hours, the holder of an ancillary growler malt beverage tasting license may conduct educational classes and sampling for class participants. All conditions of sampling set forth in this section shall apply to such classes, except for the limitation on floor areas where the classes can be conducted. Growler malt beverage sampling and tasting is only permitted within the designated interior portion of the premises. The annual fee for an annual growler malt beverage tasting license shall be \$50.00, and may be revised, by resolution of the mayor and council, from time to time.
- (c) The holder of a package malt beverage license, with or without a package wine license, but in no event with a package distilled spirit license, who is authorized to sell growlers and whose premises are located in the downtown district shall, in conjunction with city-sponsored special events within the downtown district, be authorized to sell malt beverages in 16-ounce plastic containers in the same manner as consumption on the premises licensees in the downtown district, except that such sales shall only take place outside the premises in a tent directly adjacent to the premises. The exact location and set-up of the tent shall be subject to the review of the director of **public safety** **Community Development**, or his designee, for **public safety** **Community Development** compliance.

(Code 1989, § 3-74; Ord. No. 664, § 1, 4-16-2012; Ord. No. 679, § 14, 7-15-2013; Ord. No. 722, § 5, 3-21-2016)

Secs. 4-142—4-165. - Reserved.

ARTICLE VI. - WHOLESALER

Sec. 4-166. - Special provisions applicable to wholesale license.

- (a) No person who has any direct financial interest in a license for the retail sale of distilled spirits shall be allowed to have any interest or ownership in any wholesale distilled spirit license.
- (b) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this article. No wholesaler shall sell any distilled spirits to any person other than a retailer licensed under this chapter.
- (c) No alcoholic beverage shall be delivered to any retail sales outlet in the city except by a duly licensed wholesaler. The name of the wholesaler distributor shall be clearly marked on the delivery vehicle.

(Code 1989, § 3-80; Ord. No. 218-A, § 1.044, 9-22-1986)

Sec. 4-167. - Hours of sale.

Wholesalers shall not engage in the sale of alcoholic beverages except between 8:00 a.m. and 11:45 p.m., Monday through Saturday.

(Code 1989, § 3-81; Ord. No. 218-A, § 1.045, 9-22-1986)

Secs. 4-168—4-187. - Reserved.

ARTICLE VII. - BREW PUBS

Sec. 4-188. - Exception for brew pubs.

A limited exception to the provisions of this chapter which implement and enforce the three-tier system for the manufacture, distribution and sale of malt beverages established under state law shall exist for owners and operators of brew pubs, subject to the following terms and conditions:

- (1) No individual or person shall be permitted to own or operate a brew pub without first obtaining a proper brew pub license from the city council pursuant to the procedures set forth in article I of this chapter, and each brew pub licensee shall comply with all other applicable state and local license requirements;
- (2) A brew pub license authorizes the holder of such license to:
 - a. Manufacture on the licensed premises not more than 10,000 barrels of malt beverage in a calendar year solely for retail sale;
 - b. Operate an eating establishment that shall be the sole retail outlet for such malt beverages;
 - c. Operate an eating establishment that may offer for sale for consumption on the premises any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, including wine, distilled spirits, and malt beverages, provided that such alcoholic beverages are purchased from a licensed wholesaler; and, provided further, that in addition to draft beer manufactured on the premises, each brew pub licensee shall offer for sale commercially available canned or bottled malt beverages from licensed wholesalers; and
 - d. Notwithstanding any other provision of this section, sell up to a maximum of 5,000 barrels annually of such malt beverage to licensed wholesale dealers. Under no circumstances

shall such malt beverages be sold by a brew pub licensee to any person holding a retail consumption dealer's license or a retailer's license for the purpose of resale;

- (3) Possession of a brew pub license shall not prevent the holder of such license from obtaining a license for the sale of alcoholic beverages by the package, excluding distilled spirits, for the same premises;
- (4) A brew pub license does not authorize the holder of such license to sell alcoholic beverages by the package for consumption off the premises; and
- (5) A brew pub licensee shall:
 - a. Pay all state and local license fees and excise taxes applicable to individuals or persons licensed as manufacturers, retailers, and, where applicable, wholesalers under this title; and
 - b. Measure malt beverages manufactured on the premises and otherwise comply with applicable rules and regulations respecting excise and enforcement tax determination of such malt beverages as required by state and local law.

(Code 1989, § 3-90; Ord. No. 373, 3-25-1996; Ord. No. 722, § 6, 3-21-2016)

Secs. 4-189—4-214. - Reserved.

ARTICLE VIII. - SPECIALTY GIFT SHOPS

Sec. 4-215. - Exception for specialty gift shops.

- (a) For all purposes of this section, the term "specialty gift shop" shall be defined as any retail gift shop that derives not more than 15 percent of its gross sales from the sale of packaged gift baskets or similar items containing unbroken containers of wine or beer.
- (b) Notwithstanding any other provision of this chapter to the contrary, a limited exception to the provisions of sections 4-6 and 4-137 shall exist for the owners of specialty gift shops, provided that the owner shall first obtain a specialty gift shop alcohol permit as hereinafter provided, and the only sale of alcohol by the owner is through the sale of gift items as specified in subsection (a) of this section and not for consumption on the premises.
- (c) All persons desiring to engage in activities permitted by this section shall make written application to the director of **public safety Community Development** for a specialty gift shop alcohol permit on forms prescribed by the director of **public safety Community Development**, and filed with the director of **public safety Community Development**. All applications shall be accompanied by a certified check for \$150.00. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee (without interest) shall be refunded. The application shall include the name and address of the applicant, the address of the business location, and the name and address of the manager. If the manager changes, the applicant must furnish the director of **public safety Community Development** with the name and address of the new manager and the information as requested within ten days of such change. The applicant must meet the character requirements of this chapter. All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (d) The director of **public safety Community Development** shall prepare and cause to be published a notice of each pending application, which notice shall include the date the application will be considered by the clerk, the location or street number of the premises where the applicant proposes to conduct activities permitted by this section and the name of the applicant. The applicant shall pay the publication costs. The notice shall be published in a newspaper of general circulation within the city, and shall appear once a week for two weeks immediately preceding consideration of the application by the clerk.

- (e) If the clerk grants the applicant a specialty gift shop alcohol permit, it shall be valid for one year from the date of issuance. The director of ~~public safety~~ Community Development shall have authority to prescribe forms for new or renewal applications. All applicants shall furnish data, information or records as required by the director of ~~public safety~~ Community Development to ensure compliance with the provisions of this chapter. Failure to furnish such data shall automatically serve to dismiss the application with prejudice.
- (f) Any untrue or misleading information contained in, or material statement omitted from, an original or renewal application for a specialty gift shop alcohol permit shall be cause for the denial or revocation thereof.
- (g) In all instances in which an application is denied under the provisions of this section, the applicant may not re-apply for a new license for at least one year from any final date of such denial.
- (h) Each applicant shall certify that the applicant has read this section, and if a specialty gift shop alcohol permit is granted, each licensee shall maintain a copy of this section on the premises and shall require each of the licensee's employees to be familiar with this section. Notwithstanding any other provision of this chapter, all of the applicant's employees must be at least 18 years of age to sell any gift item containing alcohol.
- (i) Except as set forth in this section, a holder of a specialty gift shop alcohol permit must comply with all other provisions set forth in this chapter.

(Code 1989, § 3-100; Ord. No. 373, 3-25-1996; Ord. No. 679, § 15, 7-15-2013)

Secs. 4-216—4-238. - Reserved.

ARTICLE IX. - LICENSED ALCOHOLIC BEVERAGE CATERERS⁴¹

Footnotes:

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State Law reference— Sales off premises for catered functions, O.C.G.A. § 3-11-1 et seq.

Sec. 4-239. - Licensed alcoholic beverage caterers.

- (a) License requirements; resident caterers.
 - (1) Any caterer who possesses a valid city license to sell or otherwise dispense malt beverages, wine or distilled spirits by the drink for consumption on the premises within the city may apply for an off-premises license that permits sales of the same off premises at authorized catered events or functions.
 - (2) Any caterer who possesses a valid city license to sell malt beverages, wine or distilled spirits by the package for consumption off the premises within the city may apply for an off-premises license that permits sales of the same class of alcoholic beverages by the drink off premises at authorized catered events or functions.
 - (3) Each off-premises catering license authorized herein shall be valid through December 31 of the year for which it is issued. The fee for each license shall be set by resolution of the city council, and this fee shall remain in effect until modified or amended by subsequent resolution.
 - (4) In order to distribute or sell malt beverages, wine or distilled spirits at an authorized catered function, a licensed alcoholic beverage caterer shall file an application for an off-premises event permit with the director of ~~public safety~~ Community Development at no additional fee. The

application shall include the name of the caterer, the date, address and time of the event, the caterer's license number and any other information the city deems necessary to review a request for such permit.

- (5) It shall be unlawful for any person to engage in, carry on or conduct the sale or distribution of alcoholic beverages off premises and in connection with the catered event or function without first having obtained a license and event permit as provided herein.
- (b) Permit requirements; nonresident caterers.
- (1) A nonresident alcoholic beverage caterer shall submit an application for an off-premises event permit to the director of **public safety** [Community Development](#) or his designee. The fee for each such permit shall be \$50.00, as authorized by O.C.G.A. § 3-11-3 (or such fee as may be authorized by any future amendment or revision thereto).
 - (2) An application for an off-premises event permit shall include the name of the caterer, the licensed alcoholic beverage caterer's state and local license number and expiration date, the date, address, time, and name of the event and the quantity and type of alcoholic beverages to be transported from the licensee's primary location to the location of the authorized catered event or function.
 - (3) The original off-premises permit shall be kept in the vehicle transporting the alcoholic beverages to the catered event or function.
 - (4) It shall be unlawful for a licensed alcoholic beverage caterer to distribute, sell, or otherwise dispense alcoholic beverages off premises except as authorized by the off-premises event permit.
- (c) A licensed alcoholic beverage caterer may sell or otherwise dispense only that which is authorized by his alcoholic beverage license. For example, if the alcoholic beverage caterer possesses a valid license to sell malt beverages, he may sell or otherwise dispense only malt beverages at the authorized catered event or function.
- (d) Sunday sales. An alcoholic beverage caterer wishing to cater an event or function on a Sunday must possess a valid Sunday sales license and comply with the requirements of state law with respect to the service of alcoholic beverages on Sunday.
- (e) Excise taxes are imposed upon the sale of alcoholic beverages by resident caterers as provided in this chapter. Excise taxes are imposed upon the total of individual alcoholic beverages served by a nonresident caterer in the amount set forth in this chapter, and shall be paid within 30 days after the conclusion of the catered event or function.

(Code 1989, § 3-110; Ord. No. 679, § 16, 7-15-2013)

Secs. 4-240—4-256. - Reserved.

ARTICLE X. - PUBLICLY-OWNED FACILITIES⁵¹

Footnotes:

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State Law reference— Sale of alcoholic beverages at publically-owned facilities, O.C.G.A. § 3-8-1 et seq.

Sec. 4-257. - Exception for publicly-owned facilities.

- (a) Notwithstanding any other provision of this chapter to the contrary, a limited exception to sections 4-6 and 4-47, shall exist for that person or entity possessing a public facilities permit, as hereinafter defined.
- (b) For all purposes of this section, the term "public facilities" means:
 - (1) An historic structure owned by the city and operated as a welcome center by a local historical society or similar nonprofit organization; or
 - (2) Property and/or facilities owned by the city and operated by the city as an equestrian center.
- (c) Any person or entity desiring to engage in activities permitted by this section shall make written application to the director of ~~public safety~~ Community Development for the appropriate public facilities permit on forms prescribed by the director of ~~public safety~~ Community Development, and filed with the director of ~~public safety~~ Community Development. All applications shall be accompanied by a public facilities permit fee of \$50.00. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee, without interest, shall be refunded. The application shall include, but shall not be limited to: the name and address of the applicant, the date, address and times of the proposed event and the location of the public facility. All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (d) If such public facilities permit is granted by the director of ~~public safety~~ Community Development, it shall be good only for the specified event at the specified address and times set forth in the application, not to exceed five days for an equestrian center and one day for a welcome center.
- (e) A public facilities permit for an equestrian center shall only permit the permit holder to serve (not sell) alcoholic beverages in a hospitality tent or similar structure previously approved by the director of ~~public safety~~ Community Development, and the alcoholic beverages may only be consumed on the premises of such hospitality tent or similar structure.
- (f) A public facilities permit for a welcome center shall only permit the holder to serve (not sell) alcoholic beverages within the premises of the welcome center, and the alcoholic beverages may only be consumed on the premises of the welcome center.
- (g) A public facilities permit shall only be issued to a caterer licensed under the provisions of this chapter, or to an individual who meets the character requirements of this chapter; provided, however, that no more than two permits per calendar year shall be issued to an individual who is not a licensed caterer.
- (h) The director of ~~public safety~~ Community Development shall have authority to prescribe forms for applications. Failure to furnish any requested data shall automatically serve to dismiss the application with prejudice.
- (i) Any untrue or misleading information contained in, or material statement omitted from, an original or renewal application for a public facilities permit shall be cause for the denial or revocation thereof.
- (j) Except as set forth above in this section, a public facilities permit holder must comply with all of the provisions set forth in this chapter.

(Code 1989, § 3-120; Ord. No. 373, 3-25-1996; Ord. No. 679, § 17, 7-15-2013)

Secs. 4-258—4-277. - Reserved.

ARTICLE XI. - ANNEXED AREAS

Sec. 4-278. - Annexed areas.

Any person, establishment, partnership, corporation or other entity which holds a license from the county for the sale, manufacture, package or distribution of alcoholic beverages and which is located in

an area annexed by the city, shall have 30 days from the effective date of the annexation to apply for the appropriate licenses and permits under this chapter. The applicant shall pay all applicable fees and costs for the equivalent license to the city. The applicant, however, shall be entitled to a credit for the amount of any license fee paid to the county in the year of annexation.

(Code 1989, § 3-130; Ord. No. 373, 3-25-1996)

Secs. 4-279—4-304. - Reserved.

ARTICLE XII. - SPECIAL EVENTS^[6]

Footnotes:

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State Law reference— Special events use permit, O.C.G.A. § 3-14-1 et seq.

Sec. 4-305. - Special temporary outside events.

- (a) Establishments duly licensed by the city to sell alcoholic beverages for consumption on the premises must submit an application and site plan to the director of **public safety** Community Development or his designee to engage in outside special events. A special event temporary permit shall authorize the retail consumption licensee to sell alcoholic beverages for consumption on the premises for a period not to exceed the hours otherwise specified in this chapter. The applicant must meet the following requirements:
- (1) The licensed establishment must have an existing license for the sale of alcoholic beverages for consumption on the premises. The entrances and exits to the event must be through controlled entry points which allow for easy monitoring of patrons entering and leaving the event.
 - (2) A site plan must be submitted to and approved by the director of **public safety** Community Development as well as the city fire marshal for approval. If the site plan provides for an area to accommodate more than 25 persons, a crowd control and security plan must be submitted to the director of **public safety** Community Development for approval. The community development department and city fire marshal must approve any temporary structures.
 - (3) A signed and notarized letter from the property owner must be submitted to the director of **public safety** Community Development authorizing the use of the property for the event.
 - (4) The outside event shall not exceed two days.
 - (5) All outside events for an individual licensed establishment will be restricted to two events per year.
 - (6) A non-refundable fee of \$150.00 per event must be paid at the time of filing of the application.
 - (7) The completed application must be submitted to the director of **public safety** Community Development no less than 20 days prior to the scheduled event.
- (b) Nothing in this section shall be construed to waive or appeal any other requirements ordained under this Code.
- (c) The licensee or the licensee's employee shall supervise all aspects of the special event pertaining to the handling and storage of alcoholic beverages and the distribution of alcoholic beverages to consumers. The licensee shall be responsible for compliance with all aspects of this article and state law, and liable for infractions thereof.

(Code 1989, § 3-140; Ord. No. 679, § 18, 7-15-2013)

Secs. 4-306—4-328. - Reserved.

ARTICLE XIII. - PUBLIC ENTERTAINMENT FACILITY

Sec. 4-329. - Consumption on premises license for public entertainment facilities.

A license to sell alcoholic beverages for consumption on the premises may be issued to the owner and/or operator of a public entertainment facility with a seating capacity in excess of 5,000 persons, including stadiums, arenas, coliseums, amphitheatres and auditoriums ("public entertainment facility"). Except as provided in this section, all applicants and license holders for public entertainment facilities shall meet all licensing qualifications established pursuant to this article, and must comply with all state statutes governing the sale of alcoholic beverages and all sections of this article and other city ordinances governing sales. Public entertainment facilities shall be required to comply with the percentage sales requirements applicable to consumption on the premises licensees under this article, but in determining such compliance, the revenue from the sale of tickets shall be combined with the revenue derived from the sale of prepared meals or food. In addition, food must be served during any period of time that alcoholic beverages are served. Alcoholic beverages may be sold during the hours authorized for other consumption on the premises licensees holding licenses pursuant to this article, except that Sunday sales shall be limited to the hours of 12:30 p.m. to 11:30 p.m.

(Code 1989, § 3-150; Ord. No. 575, § 1, 10-3-2005)

Secs. 4-330—4-346. - Reserved.

ARTICLE XIV. - ANCILLARY WINE TASTING LICENSE

Sec. 4-347. - Conditions of license issuance.

The holder of a package wine license, with or without a package malt beverage license, but in no event with a package distilled spirits license, with licensed premises having a minimum of 200 square feet of floor space dedicated to the display of wine offered for sale, shall be eligible for an ancillary wine tasting license to sell or provide samples or tastings of wine offered for sale by the package to customers for consumption on the premises under the following conditions:

- (1) The licensee shall maintain on the premises and offer for sale by the package at least 25 different brands of wine.
- (2) Wine sampling and tasting for customers shall only be conducted at a wine counter area constituting no more than 20 percent of the entire floor area of the premises.
- (3) Wine samples shall not exceed two ounces, and no customer shall consume more than eight ounces in any calendar day.
- (4) Wine bottles shall be opened only by the licensee or an employee, and samples shall only be poured by the licensee and/or an employee.
- (5) No open containers of wine shall be removed from the licensed premises.
- (6) Wine sampling and tasting is only permitted within the enclosed portion of the premises.
- (7) Wine sampling and tasting is only permitted during the hours the licensed premises are authorized to provide package sales of alcoholic beverages; provided, however, no wine sampling and tasting shall be permitted on Sunday.

- (8) Wine sampling and tasting shall not be permitted prior to the city's approval of a package license holder's application for an ancillary wine tasting license and the package license holder's payment of the subject license fee. The annual fee for an ancillary wine tasting license shall be \$250.00, which fee may be revised from time to time by resolution of the mayor and council.

(Code 1989, § 3-160; Ord. No. 598, § 1, 7-10-2006; Ord. No. 740, § 8, 5-16-2017)

Secs. 4-348—4-367. - Reserved.

ARTICLE XV. - MISCELLANEOUS OFFENSES

Sec. 4-368. - Alcohol consumption near package stores.

- (a) *Generally.* It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance.
- (b) *Enforcement.* The police department shall be responsible for the enforcement of this section.

(Code 1989, § 3-170; Ord. No. 622, § 2, 5-19-2008)

Sec. 4-369. - Drinking in public places.

No person shall drink or consume all or any part of an alcoholic beverage in or on a street, sidewalk, alley, mall, parking lot or structure, motor vehicle, public grounds or other public place unless the place has been licensed or permitted for that purpose under this article.

(Code 1989, § 3-171; Ord. No. 622, § 2, 5-19-2008)

Secs. 4-370—4-396. - Reserved.

ARTICLE XVI. - SPECIAL PROVISIONS AND EXCEPTIONS WITHIN DOWNTOWN DISTRICT

Sec. 4-397. - General.

The provisions of this article are intended to set forth certain exceptions and provisions applicable only to licensees whose establishments are located within the downtown district (as hereinafter defined) holding licenses to sell alcoholic beverages for consumption on the premises. Except as specifically set forth in this article, all such licensees remain subject to all other provisions of the city's alcoholic beverage chapter.

(Code 1989, § 3-180; Ord. No. 658, § 1, 8-22-2011)

Sec. 4-398. - Minimum distance requirements within downtown district.

The minimum distance requirements for on-premises consumption establishments in the downtown district shall be 50 feet from all of the establishments and locations designated in section 4-17(a), and measured in accordance with the provisions set forth in section 4-17(b). For the purpose of distance requirements, the downtown district shall not be deemed to include establishments not physically located within the district.

(Code 1989, § 3-180.1; Ord. No. 668, § 1, 8-6-2012)

Sec. 4-399. - Waiver procedure and standards.

An establishment that desires to locate within the downtown district and cannot meet the distance requirements specified above may file an application for a waiver or reduction of the minimum distance requirements with the city council. The city council, after notice and a public hearing, may grant a waiver or reduction to the minimum distance requirements if it determines that the proposed variance will not substantially diminish the property value, nor alter the essential character of the area surrounding the site, and will not substantially interfere with or injure the rights of others whose property would be affected by the variance. The city council may also impose any conditions which it finds to be necessary to protect the best interest of the surrounding property of the city. Conditions may include, but not be limited to, the hours of operation, parking and landscaping requirements and, with respect to residentially zoned areas, whether the establishment is physically separated or well buffered from adjacent residentially zoned areas. A location that has been granted a waiver or reduction of distance by the city council shall not be required to obtain a new waiver or reduction of distance as a result in change of tenancy, ownership or management, unless a change in use occurs for a time period of 12 months or more.

(Code 1989, § 3-180.2; Ord. No. 668, § 1, 8-6-2012)

Sec. 4-400. - Definition of downtown district.

For the purpose of this article only, the downtown district is defined as follows: the area of the city bounded on the north by the northern right-of-way of Church Street, then traveling southward along the western right-of-way of Canton/Roswell Street to the intersection with Old Milton Parkway, then traveling along the northern right-of-way of Old Milton Parkway eastward to the intersection with State Route 9/Main Street, then traveling northward along the eastern boundary of State Route 9/Main Street to the southern right-of-way of Marietta Street, then by a line drawn to the east to the intersection of Haynes Bridge Road and Thompson Street, then northward along the western right-of-way of Haynes Bridge Road to the intersection of Academy Street, then proceeding westward along the southern right-of-way of Academy Street to the intersection of State Route 9/Main Street, there to travel northward along the western right-of-way of State Route 9/Main Street to the intersection with Church Street. For the purposes of this definition, any licensed establishment, the property of which abuts the described boundaries, shall be considered to be located within the district.

(Code 1989, § 3-181; Ord. No. 658, § 1, 8-22-2011; Ord. No. 694, § 2, 9-15-2014)

Sec. 4-401. - Outside consumption of alcoholic beverages permitted.

- (a) *One drink on-street limit.* Any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a paper or plastic cup, or other container other than a can, bottle, or glass, for removal from the premises; provided, however, that no establishment shall dispense to any person more than one such alcoholic beverage at a time for removal from the premises, and no person shall remove at one time more than one such alcoholic beverage from the licensed premises.
- (b) *Size limited to a maximum of 16 ounces.* No container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed 16 fluid ounces in size. No person shall hold in possession on the streets and sidewalks, in parks and squares, or in other public places within the defined area any open alcoholic beverage container which exceeds 16 fluid ounces in size. Nothing set forth in this subsection shall be construed to permit the possession of open alcoholic beverages in any public place within the downtown district except as otherwise expressly authorized under this section.

- (c) *Drinking from can, bottle, or glass prohibited.* It shall be unlawful for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass, or to possess in an open can, bottle, or glass any alcoholic beverage on the streets, sidewalks, rights-of-way, and parking lots, whether public or private.
- (d) *Purchase from licensed premises within downtown district.* Alcoholic beverages consumed pursuant to this provision must be purchased from a licensed premises within the downtown district.
- (e) *Consumption limited to certain areas in downtown district.* No alcoholic beverage purchased pursuant to this provision may be consumed outside of the downtown district, upon any sidewalk adjacent to a church, school or park (unless specifically authorized by the city in conjunction with a city event or other event authorized by the city) or upon any private property without the express written consent of the property owners.
- (f) *Consumption limited to lawful hours of operation.* No alcoholic beverage purchased pursuant to this provision shall be consumed except within the authorized hours of sale of the establishment where purchased.
- (g) *Festivals; special events.* Unless otherwise specified by this article or the terms of a special event permit issued by the city, the provisions of this article shall also apply to special events and festivals.
- (h) *Public parks and squares in the downtown district.* Beer and wine, but not distilled spirits, may be consumed in public parks and squares located in the downtown district, including on the sidewalks adjacent thereto, but only when same is specifically authorized by the city in conjunction with a city event or under a special event permit issued by the city. Further, beer or wine consumed pursuant to the foregoing provision must be purchased from an alcoholic beverage licensee holding a permit to sell beer or wine at the subject city or special event. Except as otherwise expressly authorized pursuant to the foregoing provisions of this subsection, no person shall possess any open alcoholic beverage container in a public park or square located within the downtown district.

(Code 1989, § 3-182; Ord. No. 658, § 1, 8-22-2011; Ord. No. 742, § 1, 6-19-2017)

Sec. 4-402. - Alcohol/food sales ratio.

A licensed establishment located within the downtown district shall derive a minimum of 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(Code 1989, § 3-183; Ord. No. 658, § 1, 8-22-2011)

Sec. 4-403. - No abrogation of other laws.

The provisions of this article shall not be deemed to abrogate or otherwise impact any state law or local ordinance pertaining to public drunkenness, disorderly conduct, driving with an open container or under the influence of alcohol, or similar laws.

(Code 1989, § 3-184; Ord. No. 658, § 1, 8-22-2011)

Sec. 4-404. - Licensed establishments with food trucks/mobile food vendors.

A licensed establishment within the downtown district may utilize one or more food trucks/mobile vendor trucks to satisfy the requirement of a full-service kitchen (article II, section 4-47) and alcohol/food sales ratio (article II, section 4-47 and article XVI, section 4-402) under the terms of this section. The food trucks/mobile food vendors must be:

- (1) Licensed under chapter 10, article X;
- (2) Located on the same private property premises as the licensed establishment;

- (3) Generally incorporated into the operation of the licensed establishment; and
- (4) Available, open and prepared to serve food every hour that alcoholic beverages are offered for sale from any portion of the premises.

(Ord. No. 728, § 1, 9-19-2016)

Secs. 4-405—4-421. - Reserved.

ARTICLE XVII. - BREWERIES^[7]

Footnotes:

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State Law reference— Dealing in malt beverages at wholesale and retail prohibited without a license from local governing authority, O.C.G.A. § 3-5-40.

Sec. 4-422. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Brewer means a manufacturer of malt beverages.

Brewery means a place where malt beverages are manufactured or brewed.

(Code 1989, § 3-190; Ord. No. 673, § 1, 3-25-2013)

State Law reference— Definitions, O.C.G.A. § 3-5-1.

Sec. 4-423. - Brewer license authorized.

Brewers' licenses are authorized in the city; provided, however, that no individual shall be permitted to own or operate a brewery without first obtaining a proper brewer's license from the city in the manner provided in this chapter, and each holder of a brewer's license shall comply with the provisions of this chapter and all applicable state statutes, including rules and regulations promulgated by the department of revenue.

(Code 1989, § 3-191; Ord. No. 673, § 1, 3-25-2013)

Sec. 4-424. - License fee.

The license fee for a brewer shall be \$500.00 annually. The license fee may be amended from time to time by resolution adopted by the mayor and city council.

(Code 1989, § 3-192; Ord. No. 673, § 1, 3-25-2013)

Sec. 4-425. - Exceptions for breweries.

- (a) As a limited exception to the provisions of this chapter which implement and enforce the three-tier system for the manufacture, distribution and sale of malt beverages established under state law, a brewer's license authorizes the holder of such license to sell directly to the public on its licensed premises up to 3,000 barrels of malt beverage manufactured on such licensed premises per year for:
- (1) Consumption on the premises; and
 - (2) Consumption off the premises (sales by the package), provided that such sales by the package shall not exceed a maximum of 288 ounces per consumer, per day.
- (b) Such retail sales are permitted on the days and at the times that the retail sale of malt beverages for consumption on the premises or by the package, as applicable, is authorized for other retailer licensees under this chapter. Under no circumstances shall such malt beverages be sold by a licensed brewer to a licensed retailer or retail consumption dealer for the purpose of resale. Any brewer engaging in the retail sales of malt beverages pursuant to this section shall remit all state and local excise taxes to the proper tax collecting authority. For the purposes of this article, the term "barrel" means 31 gallons of malt beverage.

(Code 1989, § 3-193; Ord. No. 673, § 1, 3-25-2013; Ord. No. 740, § 9, 5-16-2017)

Editor's note— The effective date of this provision is September 1, 2017.

Secs. 4-426—4-448. - Reserved.

ARTICLE XVIII. - SPECIAL PROVISIONS AND EXCEPTIONS WITHIN CERTAIN MIXED USE DEVELOPMENTS

Sec. 4-449. - General.

The provisions of this article are intended to set forth certain exceptions and provisions applicable only to licensees whose establishments are located within certain large mixed use development districts, as hereinafter defined, holding licenses to sell alcoholic beverages for consumption on the premises. Except as specifically set forth in this article, all such licensees remain subject to all other provisions of the city's alcoholic beverage chapter.

(Code 1989, § 3-200; Ord. No. 679, § 19, 7-15-2013)

Sec. 4-450. - Definition of mixed use development district.

For the purposes of this article only, the term "mixed use development district" is defined as follows:

- (1) A ~~The development property contains a minimum of 50 acres which is zoned MU or DT-MU.~~
- (2) ~~—The development is zoned to include not less than 350,000 square feet of retail and restaurants, 500,000 square feet of office space, 200 rental or single family homes, and 300 hotel rooms.~~

(Code 1989, § 3-201; Ord. No. 679, § 19, 7-15-2013)

Sec. 4-451. - Minimum distance requirements within mixed use districts.

The minimum distance requirements for on-premises consumption establishments in a mixed use district are waived.

(Code 1989, § 3-202; Ord. No. 679, § 19, 7-15-2013)

Sec. 4-452. - Outside consumption of alcoholic beverages permitted.

- (a) The provisions of section 4-401 regarding outside consumption of alcoholic beverages are authorized within mixed use development districts and the provisions of section 4-401 are incorporated herein by reference.
- (b) In the event that a mixed use development is managed by an on-site management company, such management company may conduct outside special events within common/open areas of the development, provided that the company utilizes a licensed caterer for such events and meets the requirements of section 4-305, except for the limitation on the number of events.

(Code 1989, § 3-203; Ord. No. 679, § 19, 7-15-2013)

Alpharetta Properties Zoned MU (Mixed-Use) or DT-MU (Downtown Mixed-Use)

6.24.19

