

**CHANGE IN CONDITIONS APPLICATION**

AN APPLICATION TO AMEND THE OFFICIAL ZONING MAP OF GWINNETT COUNTY, GEORGIA

| APPLICANT INFORMATION   | OWNER INFORMATION*  |
|---|---|
| NAME: <u>Scenic Capital, LLC</u><br><u>c/o Andersen, Tate &amp; Carr</u><br>ADDRESS: <u>1960 Satellite Blvd.</u><br><u>Suite 4000</u><br>CITY: <u>Duluth</u><br>STATE: <u>Georgia</u> ZIP: <u>30097</u><br>PHONE: <u>(770) 822-0900</u> | NAME: <u>Scenic Capital, LLC</u><br><u>c/o Andersen, Tate &amp; Carr</u><br>ADDRESS: <u>1960 Satellite Blvd.</u><br><u>Suite 4000</u><br>CITY: <u>Duluth</u><br>STATE: <u>Georgia</u> ZIP: <u>30097</u><br>PHONE: <u>(770) 822-0900</u> |
| CONTACT PERSON: <u>Marian C. Adeimy, Esq.</u> PHONE: <u>(770) 822-0900</u><br>CONTACT'S E-MAIL: <u>madeimy@atclawfirm.com</u>   |   |

| APPLICANT IS THE:  |   |
|--|---|
| <input type="checkbox"/> OWNER'S AGENT   | <input checked="" type="checkbox"/> PROPERTY OWNER            |
| <input type="checkbox"/> CONTRACT PURCHASER  |   |
| ZONING DISTRICTS(S): <u>C-2</u>  | PRIOR ZONING CASE: <u>RZC2012-00014 and<br/>CIC2012-00013</u> |
| LAND DISTRICT(S): <u>5th</u>   | LAND LOT(S): <u>86 &amp; 87</u> ACREAGE: <u>43.28 acres</u>   |
| ADDRESS OF PROPERTY: <u>1100 Block of Scenic Highway, Snellville, GA ("Scenic Exchange")</u> |   |
| PROPOSED CHANGE IN CONDITIONS: <u>Please See Exhibit "D" Attached Hereto</u>                 |   |

| RESIDENTIAL DEVELOPMENT:            | NON-RESIDENTIAL DEVELOPMENT:                |
|-------------------------------------|---|
| NO. OF LOTS/DWELLING UNITS: _____   | NO. OF BUILDINGS/LOTS: <u>9</u>             |
| DWELLING UNIT SIZE (Sq. Ft.): _____ | TOTAL GROSS SQUARE FEET: <u>266,450 s.f</u> |
| GROSS DENSITY: _____                | DENSITY: <u>approx. 249,950 s.f.</u>        |
| NET DENSITY: _____                  |   |

**PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED**

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**REQUEST FOR CHANGE IN CONDITIONS**  
**SEPTEMBER 5, 2013**

**LEGAL DESCRIPTION – OVERALL TRACT (43.28 acres)**

A tract of land situated in Land Lots 86 & 87, 5th District, Gwinnett County, Georgia, the bearings of which are based on State Plate Grid (Georgia West Zone) and being more particularly described as follows:

Commence at the southeasterly corner of said Land Lot 86 thence S83°11'04"W for a distance of 878.65 feet to the Point of Beginning of the tract herein described; thence along the westerly line of lands now or formerly owned by JLC Holdings, LLP (DB 25598 PG 170) for the following courses and distances: S22°43'11"E for a distance of 191.23 feet; S20°12'04"E for a distance of 354.34 feet; thence along the northwesterly line of lands now or formerly owned by Sola Fide Evangelical Lutheran Church (DB 14073 PG 55) for the following courses and distances: S69°47'56"W for a distance of 55.16 feet; S04°46'37"W for a distance of 176.21 feet; S10°15'39"W for a distance of 626.12 feet; S63°32'36"W for a distance of 177.71 feet; thence along the northerly line of lands now or formerly owned by Sunrise Webb Gin GA Senior Living, LLC (DB 45014 PG 104) for the following courses and distances: N26°27'24"W for a distance of 24.76 feet; S69°23'38"W for a distance of 233.92 feet; S32°24'09"E for a distance of 56.83 feet; S65°11'53"W for a distance of 51.99 feet; thence along the northerly lines of lands now or formerly owned by Avenue Webb Gin, LLC (DB 44014 PG 39) for the following courses and distances: S64°50'58"W for a distance of 522.89 feet; N69°37'51"W for a distance of 489.38 feet to intersection of said line with the easterly line of Georgia Highway No. 124 (variable right-of-way); thence along said easterly right-of-way line for the following courses and distances: N14°54'09"E for a distance of 27.55 feet; N75°05'51"W for a distance of 25.00 feet; N14°54'09"E for a distance of 73.00 feet; N53°45'23"E for a distance of 47.47 feet; N15°24'36"E for a distance of 50.00 feet; N24°18'33"W for a distance of 47.80 feet; N14°44'21"E for a distance of 990.94 feet; N14°50'05"E for a distance of 447.05 feet; thence leaving said line and along the southerly line of lands now or formerly owned by Knollwood Lakes Homeowners Associated (DB 41127 PG 117) and The Villas of Knollwood (PB 105 PG 34) for the following courses and distances: S75°46'33"E for a distance of 484.35 feet; N79°14'13"E for a distance of 345.47 feet; N79°06'42"E for a distance of 112.65 feet to the Point of Beginning of said tract.

Containing 43.28 acres as depicted on Combination Boundary and Topographic Survey prepared by Paulson Mitchell Incorporated dated 8/28/08 (Project No. 2006207.40). This description is prepared for rezoning purposes only.

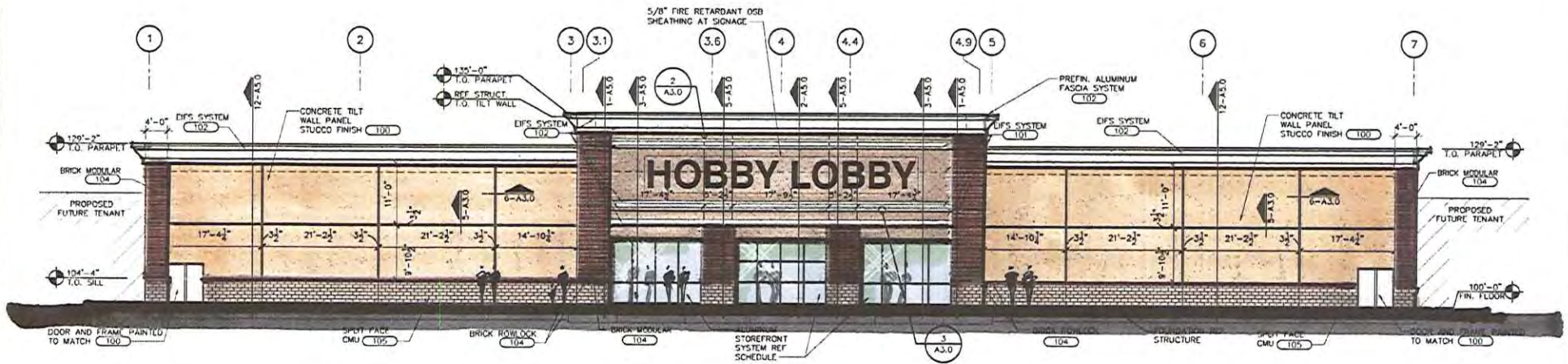
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1 NORTHWEST ELEVATION



*Snellville Exchange*

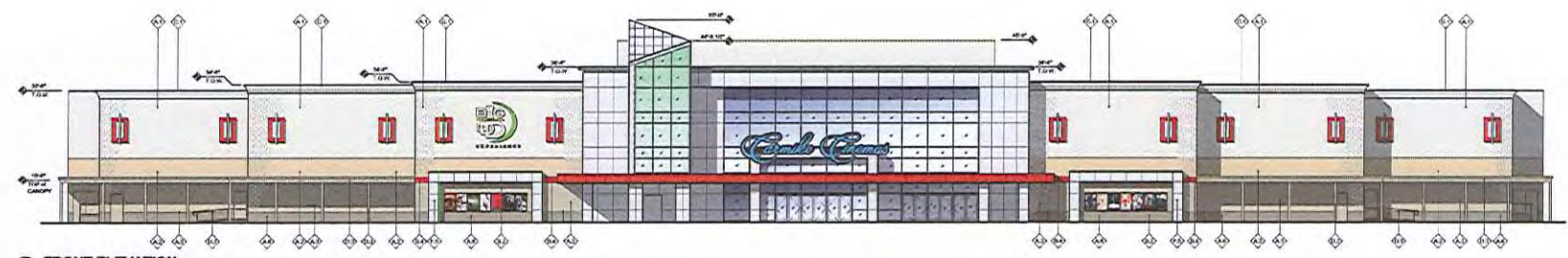
For: Scenic Capital, L.L.C.

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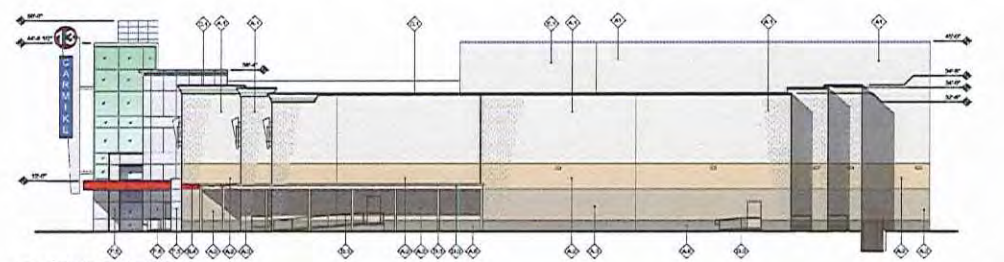
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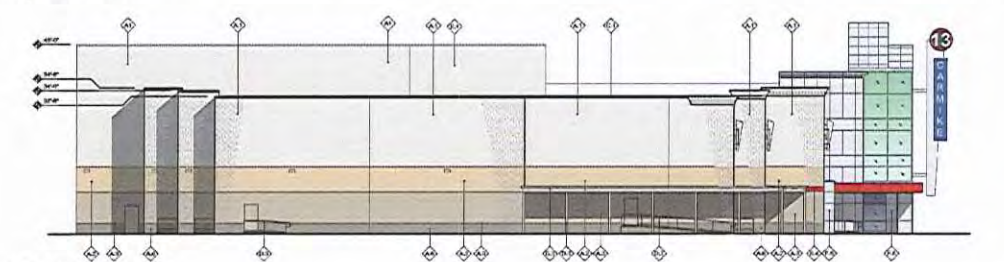
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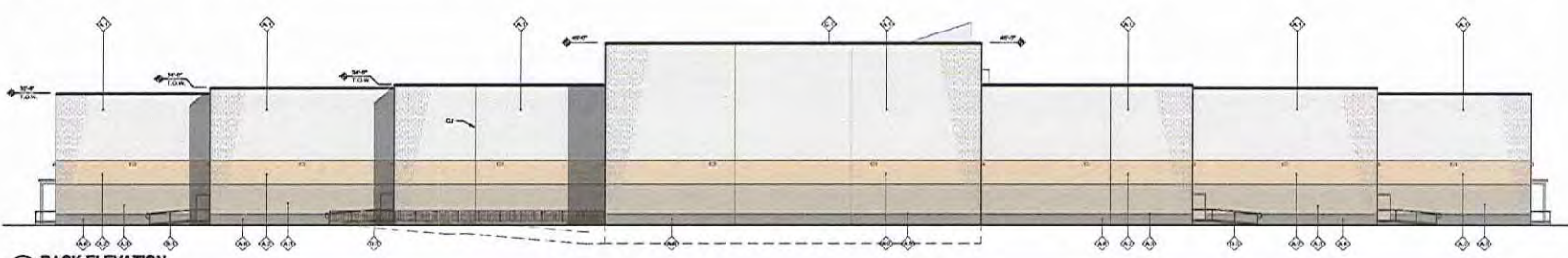
1 FRONT ELEVATION  
SCALE: 3/32" = 1'-0"



5 SIDE ELEVATION  
SCALE: 3/32" = 1'-0"



9 SIDE ELEVATION  
SCALE: 3/32" = 1'-0"



13 BACK ELEVATION  
SCALE: 3/32" = 1'-0"

INDICATES TYPE OF MATERIAL  
ALL FINAL EXTERIOR MATERIAL COLORS  
SHALL BE APPROVED BY ARCHITECT  
PRIOR TO ORDERING MATERIALS

| COLOR LEGEND |                             |
|--------------|-----------------------------|
| 1            | WOODGRAIN PANELS - 201040   |
| 2            | BLUISH - 201040             |
| 3            | BRASSY BROWN - 201040       |
| 4            | POSITIVE RED - 201040       |
| 5            | ALUMINUM - BRUSHED ALUMINUM |
| 6            | DAKOTA TAN - 201040         |

- OVERFLOW SCUPPERS & EXPOSED STEEL UNITS  
PAINT TO MATCH ADJACENT FRONT
- ROOF SCUPPERS - PAINT TO MATCH COLOR # 2
- HANDRAILS & EXPOSED STEEL AT RAMP - PRIME AND  
PAINT TO MATCH COLOR # 3
- IDENTIFY COLOR SAMPLES OF ALL FINISHES  
PRIOR TO INSTALLATION.

| MATERIAL LEGEND |                     |                         |
|-----------------|---------------------|-------------------------|
| MATERIAL        | FINISH              |                         |
| A               | EXTERIOR GIP        | PRIME W/ SEALER         |
| B               | EXTERIOR GIP        | PRIME W/ SEALER         |
| C               | EXTERIOR GIP        | PRIME W/ SEALER         |
| D               | METAL               | PAINTED                 |
| E               | EPS                 | SEE SPEC                |
| F               | EPS                 | SEE SPEC                |
| G               | STORMWATER SYSTEM   | PAINT ANODIZED ALUMINUM |
| H               | CURTAIN WALL SYSTEM | PAINT ANODIZED ALUMINUM |

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**CHANGE IN CONDITIONS APPLICANT'S RESPONSE**  
**STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER**

PURSUANT TO SECTION 1702 OF THE 1985 ZONING RESOLUTION, THE BOARD OF COMMISSIONERS FINDS THAT THE FOLLOWING STANDARDS ARE RELEVANT IN BALANCING THE INTEREST IN PROMOTING THE PUBLIC HEALTH, SAFETY, MORALITY OR GENERAL WELFARE AGAINST THE RIGHT TO THE UNRESTRICTED USE OF PROPERTY AND SHALL GOVERN THE EXERCISE OF THE ZONING POWER.

PLEASE RESPOND TO THE FOLLOWING STANDARDS IN THE SPACE PROVIDED OR USE AN ATTACHMENT AS NECESSARY:

- (A) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO
- (B) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO
- (C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED CHANGE IN CONDITIONS HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO
- (D) WHETHER THE PROPOSED CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO
- (E) WHETHER THE PROPOSED CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO
- (F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER APPROVAL OR DISAPPROVAL OF THE PROPOSED CHANGE IN CONDITIONS:  
PLEASE SEE EXHIBIT "B" ATTACHED HERETO

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**EXHIBIT "B"**  
**APPLICANT'S RESPONSE**

- A) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:

Yes. The proposed change in conditions will complement and remain consistent with the existing conditions for the existing, previously approved commercial and retail center.

- B) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USEABILITY OF ADJACENT OR NEARBY PROPERTY:

No, the proposed conditions are entirely compatible with the adjoining and nearby commercial and residential property, as well as the approved retail development, and will not adversely affect these properties.

- C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED CHANGE IN CONDITIONS HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

No. The subject property does not have any reasonable economic use with the current conditions.

- D) WHETHER THE PROPOSED CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:

No, this property is located in an area with public water and sewer availability, and convenient access to major thoroughfares and state highways. The requested changes in conditions will have no impact on existing streets, transportation facilities, or utilities, and no impact whatsoever on schools.

- E) WHETHER THE PROPOSED CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:

Yes. The Gwinnett 2030 Unified Plan identifies the Scenic Highway area as a major commercial corridor. The approved retail development, adjacent Webb Gin retail development, and proposed changes in conditions are in conformity with the intent of the Land Use Plan.

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- F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE PROPOSED CHANGE IN CONDITIONS.

Yes. The Board of Commissioners' prior approval of a rezoning and change in conditions for this retail development supports the requested change and conditions that are consistent with that prior approval and the existing commercial uses.

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**JUSTIFICATION FOR CHANGE IN CONDITIONS/CONSTITUTIONAL OBJECTIONS**

The portions of the Gwinnett County Zoning Resolution which classify or may classify the property which is the subject of this Application (the "Property") based on any conditions other than as requested by the Applicant, are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Gwinnett County Zoning Resolution as applied to the subject Property, which restricts its use to the present zoning conditions is unconstitutional, illegal, null and void, constituting a taking of the Applicant's and the Owner's property in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States denying the Owner and/or Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

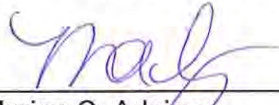
The Property is presently suitable for development under the conditions requested by the Applicant, and is not economically suitable for development under its present zoning conditions. A denial of this Application would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to grant the requested change in conditions, with only such conditions as agreed to by the Applicant, so as to permit the only feasible economic use of the Property, would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any application of conditions which are different from the conditions by which the Applicant may amend its application, to the extent such different conditions would have the effect of further restricting the Applicant's and the Owner's utilization of the subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

Accordingly, the Applicant respectfully requests that the Change in Conditions Application submitted by the Applicant relative to the Property, as amended, be granted and that the Property be rezoned to the zoning classification shown above and the respective zoning conditions changes requested be likewise granted.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.

By:   
Marian C. Adeimy  
Attorneys for Applicant

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# ANDERSEN | TATE | CARR

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MARIAN C. ADEIMY

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**LETTER OF INTENT**  
**FOR CHANGE IN CONDITIONS APPLICATION**  
**Scenic Capital, LLC / Scenic Highway (SR 124) near Webb Gin House Road**

The Applicant, Scenic Capital, LLC (hereafter, "Applicant"), submits this Change in Conditions Application for the purpose of changing the existing conditions of zoning contained in RZC2012-00014 and CIC2012-00013, zoning the property C-2 and conditioning the 43.28 acres (Tax Parcels No. 5-087-115 and 5-086-013) in 2012 (hereinafter "Scenic Exchange").

The requested changes to the zoning conditions contained in RZC2012-00014 and CIC2012-00013, specifically, Section 1, Paragraph D of the approved conditions, with the revised attached elevations attached and filed herewith as Exhibit "D".

The subject Property is located on what can only be characterized as one of Gwinnett County's most significant commercial corridors at one of its largest commercial nodes. The current regional commercial character of this area is reflected in the Gwinnett 2030 Unified Plan as well as the clearly established Board of Commissioners precedent in approving the prior rezoning and changes in conditions for the subject property, as well as the prior approval of The Avenues at Webb Gin project and all of the other commercial developments at this major commercial node. The changes in conditions and proposed elevations are entirely consistent with the planned retail and commercial development, well established development patterns and character of the immediately surrounding area and is entirely appropriate under any reasonable land use analysis.

## **CONCLUSION**

This proposed change in conditions would result in a high-quality shopping and dining development, consistent with prior conditions and approvals, which will complement the high standard of development already established in the area. Applicant and its representatives welcome the opportunity to meet with the staff of the Gwinnett County Department of Planning and Development to answer any questions or to address any concerns. Applicant respectfully requests your approval of these Applications.

This 5 day of September, 2013.

Respectfully submitted,  
ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy  
Attorneys for Applicant

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**CHANGE IN CONDITIONS APPLICANT'S CERTIFICATION**

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

Mari 9-5-13  
Signature of Applicant Date

Marian C. Adeimy, Attorney for Owner/Applicant  
Type or Print Name and Title

[Signature] 9-5-13  
Signature of Notary Public Date

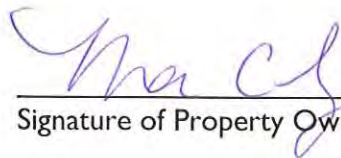


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**CHANGE IN CONDITIONS PROPERTY OWNER'S CERTIFICATION**

THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

  
\_\_\_\_\_  
Signature of Property Owner

9-5-13  
\_\_\_\_\_  
Date

Marian C. Adeimy, Attorney for Owner/Applicant  
\_\_\_\_\_  
Type or Print Name and Title

  
\_\_\_\_\_  
Signature of Notary Public

9-5-13  
\_\_\_\_\_  
Date



Notary Seal

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**CONFLICT OF INTEREST CERTIFICATION FOR CHANGE IN CONDITIONS**

The undersigned below, making application for a change in conditions, has complied with the Official Code of Georgia Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.

Marian C. Adeimy      9-5-13      Marian C. Adeimy, Attorney for Owner/Applicant  
 Signature of Applicant      Date      Type of Print Name and Title

Marian C. Adeimy      9-5-13      Marian C. Adeimy, Attorney for Owner/Applicant  
 Signature of Applicant's Attorney or Representative      Date      Type or Print Name and Title

[Signature]      9-5-13      Notary Seal  
 Signature of Notary Public      Date



**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the Board of Commissioners or a member of the Gwinnett County Planning Commission?

YES       NO      Andersen, Tate & Carr, P.C.  
 Your Name

If the answer is yes, please complete the following section:

| NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL | CONTRIBUTIONS (List all which aggregate to \$250 or More) | DATE CONTRIBUTION WAS MADE (Within last two years) |
|---|---|--|
|   | Please see Exhibit C                                      |  |
|   |   |  |
|   |   |  |

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Attach additional sheets if necessary to disclose or describe all contributions.

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**EXHIBIT "C"**  
**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS BY ANDERSEN, TATE & CARR, P.C.**

| NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL | CONTRIBUTIONS               | DATE CONTRIBUTION WAS MADE                                  |
|---|-----------------------------|---|
| Charlotte Nash, Chairman                          | \$1,000<br>\$1,000<br>\$500 | February 22, 2011<br>November 16, 2011<br>February 20, 2013 |
| Jace Brooks, District 1 Commissioner              | \$500<br>\$500              | March 15, 2012<br>December 20, 2012                         |
| Lynette Howard, District 2 Commissioner           | \$1,000<br>\$1,000          | May 25, 2010<br>October 27, 2011                            |
| Tommy Hunter, District 3 Commissioner             | \$1,500<br>\$500<br>\$1,500 | October 1, 2012<br>December 28, 2012<br>August 22, 2013     |
| John Heard, District 4 Commissioner               | \$1,000<br>\$1,000          | February 16, 2010<br>August 25, 2011                        |

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