

REZONING APPLICATION

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

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

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): RA-200 REQUESTED ZONING DISTRICT: M-1

LAND DISTRICT(S): 3 LAND LOT(S): 004 ACREAGE: 2.22

ADDRESS OF PROPERTY: 5303 Braselton Highway

PROPOSED DEVELOPMENT: Outdoor Storage (for GP's Enterprises, Inc. loc. in Barrow Co.)

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>1</u> (former residence and _____ and accessory storage to outdoor storage yard)
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. <u>Approx. 1,500 square feet</u>
Gross Density: _____	Density: <u>1,500 / 96,703 sq. ft.</u>
Net Density: _____	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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Legal Description

5303 Braselton Hwy

All that tract or parcel of land lying and being in G.M.D. 1744, Barrow County, Georgia, and G.M. D. 1749, Gwinnett County, Georgia, Parcel ID No. R3004 007A, and more particularly described as follows:

BEGINNING at an iron pin on the south right-of-way line of Georgia Highway 124 (an 80 foot right-of-way) located 199.317 feet east as measured along the south right-of-way of Georgia Highway 124 from the right-of-way of Dee Kennedy Road; Thence N 79 DEGREES 15 MINUTES 48 SECONDS E A Distance Of 367.60 Feet to a point; Thence N 78 DEGREES 35 MINUTES 59 SECONDS E A Distance Of 233.32 Feet to a point; Thence leaving said right-of-way S 26 DEGREES 21 MINUTES 24 SECONDS E A Distance Of 316.20 Feet to a point; Thence S 53 DEGREES 50 MINUTES 18 SECONDS W A Distance Of 633.49 Feet to a point; Thence N 21 DEGREES 57 MINUTES 54 SECONDS W A Distance Of 584.99 Feet to a point along the right-of-way of Georgia Highway 124, Which Is The Point Of Beginning.

Having An Area Of 6.22 Acres

Less and except all that portion of the above described tract lying and being in Barrow County.

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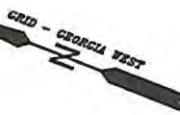
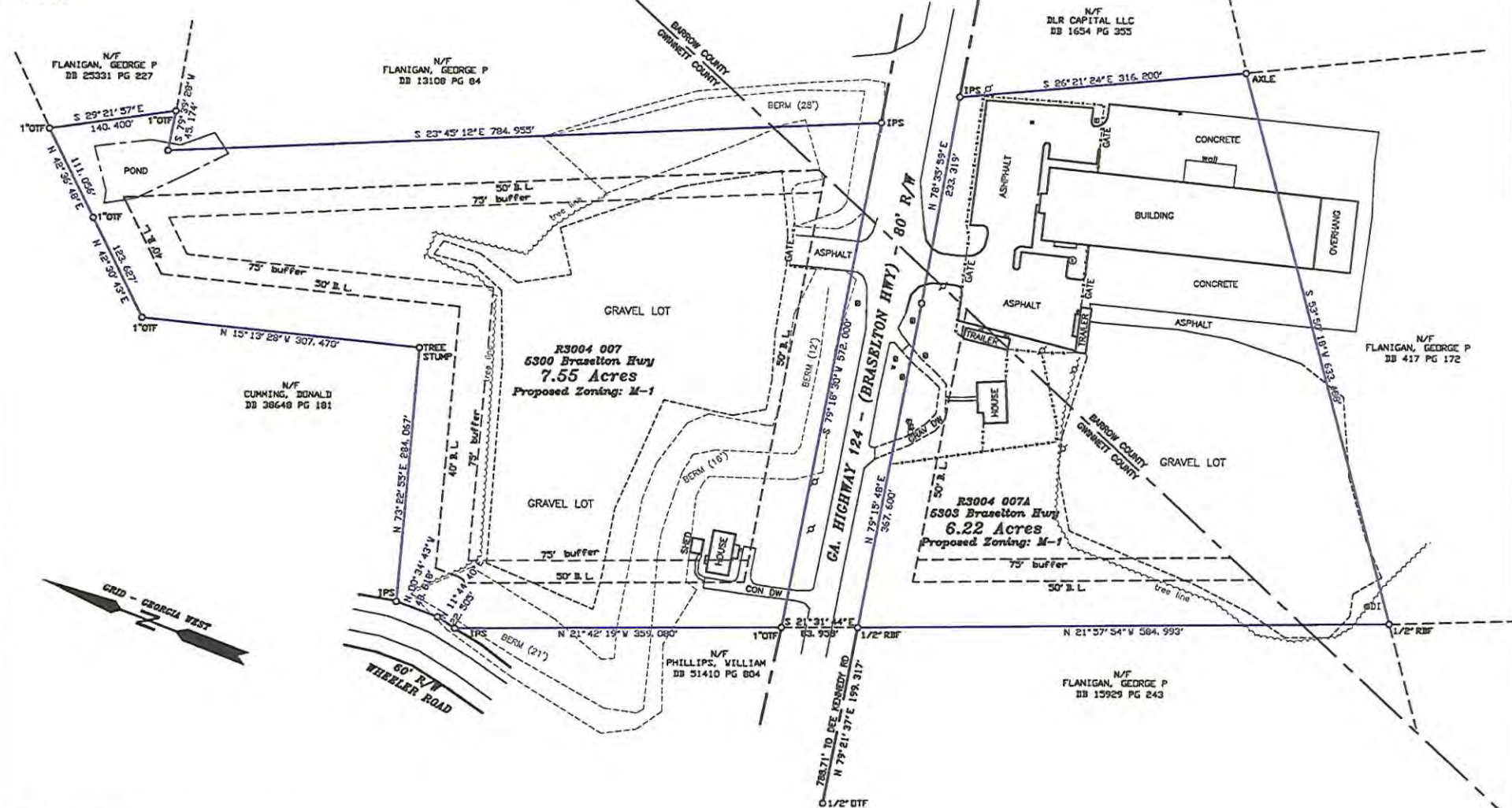
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LEGEND

- IPS=IRON PIN SET
- IPF=IRON PIN FOUND
- C=CENTER LINE
- BL=BUILDING LINE
- N/F=NOW OR FORMERLY
- RBF=REBAR FOUND
- OTF=OPEN TOP FOUND
- P.O.B.=POINT OF BEGINNING
- X- FENCE
- LL=LAND LOT



Surveyor's Acknowledgment

I hereby certify that this survey was prepared in conformity with The Technical Standards for Property Surveys in Georgia as set forth in Chapter 180-7 of the Rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in the Georgia Plat Act, O.C.G.A., 44-5-57.

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NOTES:

1. ALL IRON PINS SET ARE 1/2" REBAR UNLESS STATED OTHERWISE.
2. SURVEY AND BEARING BASIS ESTABLISHED WITH GPS USING A NETWORK ADJUSTED REAL TIME KINEMATIC ROVER.
3. THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS RELATIVE POSITIONAL ACCURACY OF ±0.03 FEET.
4. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 517,835 FEET.
5. EQUIPMENT USED IN THIS SURVEY WAS A CARLSON SURVEYOR + GPS DATA COLLECTOR AND A TOPCON 3005W TOTAL STATION.
6. FIELD WORK COMPLETED ON SEPTEMBER 13, 2013.

SURVEY FOR:

GEORGE P FLANIGAN

C.M.D. 1744&1749	DATE 9/25/2013
DISTRICT:	SCALE 1"=80'
SECTION:	JOB NO. 2013-123
COUNTY: BARROW	DRAWING NAME: 6300 BRASELTON HWY-DWG

GARMON
 Land Surveying
 1920 Railroad Street Statham, Ga 30666
 678-776-3544 - tony@garmonlandsurveying.com

REZONING 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 REZONING 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 REZONING 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 REZONING HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

- (D) WHETHER THE PROPOSED REZONING 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 REZONING 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 REZONING:

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

REZONING 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.

Marij

Signature of Applicant

10-4-13

Date

Marian C. Adeimy, Attorney for Owner/Applicant

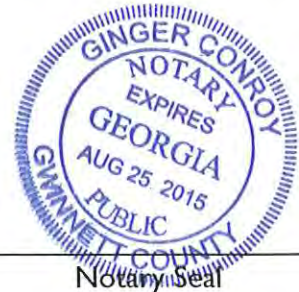
Type or Print Name and Title

ginger Conroy

Signature of Notary Public

10-4-13

Date



Notary Seal

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EXHIBIT "B"
REZONING APPLICANT'S RESPONSE
GEORGE FLANIGAN (THE "APPLICANT")
5300 AND 5303 BRASELTON HIGHWAY (THE "PROPERTY")

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

Yes. The subject Property has been established and used as storage related to the adjacent Barrow County business, and is consistent with the varied uses along this portion of Braselton Highway, including a number of industrial and commercial uses in nearby Gwinnett and Barrow counties. In addition to being located on large, buffered acreage on a major highway, allowing outdoor storage uses that are permitted to other similarly situated properties in the immediate vicinity and throughout Gwinnett County would be entirely consistent with the use and development of adjacent and surrounding property.

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

No. The subject property fronts on Braselton Highway (Highway 124), a significant state highway and commercial corridor, connecting contractors and industrial uses located near and between Braselton, Barrow County, and Hamilton Mill. Adjacent and nearby property is a mix of large, wooded, residential acreage, contractors business, a nursery, maintenance shops, and commercial uses and the proposed rezoning would be entirely consistent with the well established types of uses in the immediate vicinity of this portion of Braselton Highway, on the Barrow County line.

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

No. The subject property is used for storage related to the Barrow County business, GP's Enterprises, Inc., located directly adjacent to and across the street from the Property, whose property is owned by a common owner, and would have almost no chance of any reasonable or likely economic use, as long as it remains restricted to its current use an zoning district. If it is no longer accessible by the business, the topography and the internal makeup of the Property, located on a major highway, leaves no other viable economic use for this Property.

- D) WHETHER THE PROPOSED REZONING 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 serves only as storage related to the adjacent business, and is located on a significant commercial corridor. Any use under this rezoning would have access to the existing utilities and highway, with no impact, excessive, or burdensome use on transportation facilities, streets, or utilities, and will have absolutely no impact on the school system.

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

Yes. The proposed change in conditions would be entirely consistent with the letter and intent of the Gwinnett 2030 Unified Plan.

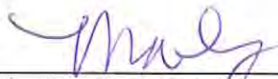
F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE PROPOSED REZONING.

This request is necessary as the Property is an accessory use for the existing business. To restrict the subject property to the current zoning district leaves the Applicant with zero economic use for what would be an otherwise viable parcel, and is also a result that cannot be supported by any rational review of Gwinnett's zoning and development related ordinances, including the Gwinnett 2030 Unified Plan. Allowing for storage as used, a permitted use under the M-1 zoning classification and within the guidelines of Gwinnett County, is appropriate to the subject tract, and is consistent with the mixed uses along this portion of Braselton Highway and the Gwinnett County 2030 Unified Plan.

This 4th day of October, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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ANDERSEN | TATE | CARR

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FACSIMILE: (770) 236-9754
www.atclawfirm.com

MARIAN C. ADEIMY
Attorney at Law

E-mail: madeimy@atclawfirm.com

LETTER OF INTENT **FOR REZONING APPLICATION FOR GEORGE FLANIGAN**

The Owner and Applicant, George Flanigan (hereinafter, "Applicant"), submit this Rezoning Applications to allow Applicant to utilize the subject property, located at 5300 and 5303 Braselton Highway, Hoschton, Georgia, for outdoor storage as an accessory use to his business, GP's Enterprises, Inc. located in Barrow County.

The subject property is located at the Gwinnett County – Barrow County line, with the county line intersecting the center of the southern-most property, being 2.22 acres in Gwinnett County (5303 Braselton Hwy.) and the eastern corner of the northern-most property, being 7.41 acres in Gwinnett County (5300 Braselton Hwy.), (5300 and 5303 Braselton Highway are collectively the "Property" and/or "Properties"). The remaining acreage, not part of this rezoning, is located in Barrow County.

The Property has been used for storage of equipment and materials for GP's Enterprises, Inc., a road and construction contracting business. The Property is located adjacent to and across from the GP's Enterprises office and maintenance building. The Applicant was only recently made known of the potential zoning issue after receiving a notice from Gwinnett County. In response, to ensure compliance with all County ordinances, the Applicant files these rezoning applications.

The existing, approximately 1,500 square foot homes located on both Properties would be used for accessory storage and potentially demolished in the future. No residential tenants would reside in the homes, except for the potential limited purpose for sleeping quarters for a watchman over the storage yards, or as otherwise permitted by the Gwinnett County Zoning Resolution. In addition to the required buffers, the majority of the subject property would continue to remain undeveloped and wooded, allowing for the existing, significant natural berms approximately 12 feet high. The berms are in addition to the existing, natural wooded buffer being well over 75 feet inside a majority of the subject Property. As reflected on the survey and site plan submitted, the existing and natural buffers greatly exceed the required fence and buffers, making it virtually impossible to see any storage from the road or adjacent property. As part of these applications, the Applicant requests that the Board of Commissioners condition the Property so as to waive any fence requirement due to the existing berms and natural buffer which greatly exceeds any potential fence height.

The area is composed of a mix of large residential acreage, commercial and industrial buildings, on a major state highway, within which the requested rezoning and special use would be entirely consistent. As you enter Barrow County, similar industrial and contractor's uses can be found interspersed adjacent to and across the street from the Property, and less than a mile down Braselton Highway. The proposed outdoor storage is periodically accessed, generally serving almost solely as long-term storage, and the use of the same can neither be seen nor heard from the road or adjacent properties. In fact, in recent years, the presence of the business and storage Property has assisted Gwinnett County in catching and arresting persons dealing in illegal activities unrelated to the subject Property and business. However, those individuals were apprehended as a direct result of the high-level security and constant presence that the subject business provides. The Applicant and business are known to be a good neighbor in the area and the Applicant works hard to maintain and monitor the Property.

Moreover, the Applicant intends to use the Property in its current configuration and is not seeking to expand the current use. The use of the Property for storage, under the guidelines of Gwinnett County is an appropriate use on the subject Property, being large, well-buffered acreage, and is consistent with the varied uses and development on surrounding properties.

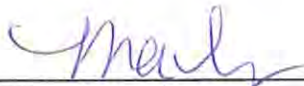
CONCLUSION

This proposed rezoning is consistent with the use and quality of the subject property, with extensive natural buffers, making it virtually invisible from the roadway. The current use has not been shown to hinder or impact the properties around it. 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 this Rezoning Application.

This 4th day of October, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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MARIAN C. ADEIMY
Attorney at Law

E-mail: madeimy@atclawfirm.com

JUSTIFICATION FOR REZONING GEORGE FLANIGAN – 5300 and 5303 Braselton Highway, Hoschton, Georgia

The Applicant, George Flanigan (hereinafter the "Applicant") hereby states that the portions of the Gwinnett County Zoning Resolution and/or zoning conditions which presently restrict the property which is the subject of this Application, being 5300 and 5303 Braselton Highway, Hoschton, Georgia (hereinafter the "Property") 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 and/or zoning conditions which presently restrict the property 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 Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

The Property is presently suitable for use under the requested M-1 zoning classification as property for outdoor storage for the adjacent Barrow County business, GP's Enterprises, Inc. and as requested by the Applicant, and is not economically suitable for development under the present zoning classification and 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 and contrary to other recent Board of Commissioners actions, 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 change the requested zoning, 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 rezoning of the subject Property to the requested zoning classification or some other classification, subject

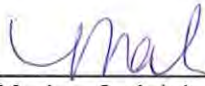
to conditions which are different from the conditions by which the Applicant may amend its application, to the extent such different conditions would have the effect of further restricting the Applicant's and the Owner's utilization of the subject Property, would also constitute an arbitrary, capricious 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 and conditions requested therein.

This 4th day of October, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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REZONING 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.

Mari C. Adeimy

Signature of Property Owner

10-4-13

Date

Marian C. Adeimy, Attorney for Owner/Applicant

Type or Print Name and Title

Ginger Conroy

Signature of Notary Public

10-4-13

Date



Notary Seal

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CONFLICT OF INTEREST CERTIFICATION FOR REZONING

The undersigned below, making application for a Rezoning, 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.

George P. Flanigan 10-4-2013 George P. Flanigan
 SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE

Marian C. Adeimy 10-4-2013 Marian C. Adeimy, Attorney for Applicant
 SIGNATURE OF APPLICANT'S DATE TYPE OR PRINT NAME AND TITLE
 ATTORNEY OR REPRESENTATIVE

Ginger Conroy 10-4-13
 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 OFFICAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)
See Exhibit "C"		

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 \$1,000 \$500	February 22, 2011 November 16, 2011 February 20, 2013
Jace Brooks, District 1 Commissioner	\$500 \$500	March 15, 2012 December 20, 2012
Lynette Howard, District 2 Commissioner	\$1,000 \$1,000	May 25, 2010 October 27, 2011
Tommy Hunter, District 3 Commissioner	\$1,500 \$500 \$1,500	October 1, 2012 December 28, 2012 August 22, 2013
John Heard, District 4 Commissioner	\$1,000 \$1,000	February 16, 2010 August 25, 2011

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VERIFICATION OF CURRENT PAID PROPERTY TAXES FOR REZONING

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED CERTIFIES THAT ALL GWINNETT COUNTY PROPERTY TAXES BILLED TO DATE FOR THE PARCEL LISTED BELOW HAVE BEEN PAID IN FULL TO THE TAX COMMISSIONER OF GWINNETT COUNTY, GEORGIA. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION FOR REZONING BE PROCESSED WITHOUT SUCH PROPERTY VERIFICATION.

***Note: A SEPARATE VERIFICATION FORM MUST BE COMPLETED FOR EACH TAX PARCEL INCLUDED IN THE REZONING REQUEST.**

PARCEL I.D. NUMBER: 3 - 004 - 007A
(Map Reference Number) District Land Lot Parcel

Mary 10-2-13
Signature of Applicant Date
Marian C. Adeimy, Attorney for Applicant
Type or Print Name and Title

TAX COMMISSIONERS USE ONLY

(PAYMENT OF ALL PROPERTY TAXES BILLED TO DATE FOR THE ABOVE REFERENCED PARCEL HAVE BEEN VERIFIED AS PAID CURRENT AND CONFIRMED BY THE SIGNATURE BELOW)

Debra Smith tax services associate
NAME TITLE
10-2-2013
DATE

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