

REZONING APPLICATION

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

| APPLICANT INFORMATION | OWNER INFORMATION* |
|--|--|
| NAME: <u>EH Holdings, LLLP</u> | NAME: <u>EH Holdings, LLLP</u> |
| ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u> | ADDRESS: <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 DISTRICT(S): R-75 REQUESTED ZONING DISTRICT: M-1

LAND DISTRICT(S): 6th LAND LOT(S): 246 ACREAGE: 3.928

ADDRESS OF PROPERTY: 2645 (flca 6517) and 2661 (flca 6569) Pleasantdale Road

PROPOSED DEVELOPMENT: Existing landscape company, parking, and future industrial uses.

| RESIDENTIAL DEVELOPMENT | NON-RESIDENTIAL DEVELOPMENT |
|-------------------------------------|---|
| No. of Lots/Dwelling Units _____ | No. of Buildings/Lots: <u>1</u> |
| Dwelling Unit Size (Sq. Ft.): _____ | Total Building Sq. Ft. <u>Approx. 1,500</u> |
| Gross Density: _____ | Density: <u>1500/ approx. 17,1103 square feet</u> |
| Net Density: _____ | |

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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LEGAL DESCRIPTION
(TRACTS ONE AND TWO)

TRACT ONE

ALL THAT TRACT or parcel of land lying and being in Land Lot 246 of the 6th District, Gwinnett County, Georgia, designated as Tract One, containing 2.472 acres, according to a Survey for 6884 Buford Hwy, LLC and E.H. Holdings, LLC, dated November 1, 2013, prepared by Gresham Planning & Development, Inc. and bearing the seal of William P. Gresham, Georgia Registered Land Surveyor No. 2880, said tract being more particularly described according to said survey as follows:

To locate the TRUE POINT OF BEGINNING, commence at a point marked by an iron pin set located at the southwesternmost point of the mitred intersection of the northeasterly right-of-way line of Pleasantdale Road (50 foot right-of-way) and the southeasterly right-of-way line of U.S. Highway No. 23 (a.k.a. Buford Highway), and run thence along said right-of-way line of Pleasantdale Road South 33 degrees 48 minutes 44 seconds East a distance of 216.55 feet to a point; continuing along said right-of-way line, run thence South 33 degrees 27 minutes 07 East a distance of 8.00 feet to a point located on the Land Lot line common to Land Lots 251 and 246; continue thence along said right-of-way line South 33 degrees 27 minutes 07 second East, a distance of 133.39 feet to a point; continue thence along said right-of-way line of Pleasantdale Road South 33 degrees 27 minutes 07 seconds East a distance of 133.39 feet to a point; continuing along said right-of-way line, run thence South 33 degrees 27 minutes 07 seconds East a distance of 133.39 feet to a point; continuing along said right-of-way line, run thence South 33 degrees 27 minutes 07 seconds East a distance of 25.01 feet to a point marked by an iron pin found, said point being the TRUE PLACE OR POINT OF BEGINNING.

From the POINT OF BEGINNING as thus established, continue thence along said right-of-way line South 32 degrees 55 minutes 47 seconds East a distance of 272.72 feet to a point marked by an iron pin found; leaving said right-of-way line, run thence North 58 degrees 23 minutes 45 seconds East a distance of 389.42 feet to a point marked by an iron pin found; run thence North 31 degrees 17 minutes 04 seconds West a distance of 274.86 feet to a point marked by an iron pin found; run thence South 58 degrees 04 minutes 40 seconds West a distance of 397.27 feet to a point located on the northeasterly right-of-way line of Pleasantdale Road, said point being the TRUE PLACE OR POINT OF BEGINNING.

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TOGETHER WITH:

TRACT TWO

ALL THAT TRACT or parcel of land lying and being in Land Lot 246 of the 6th District, Gwinnett County, Georgia, designated at Tract Two, containing 1.456 acre, according to a Survey for 6884 Buford Hwy, LLC and E.H. Holdings, LLC, dated November 1, 2013, prepared by Gresham Planning & Development, Inc. and bearing the seal of William P. Gresham, Georgia Registered Land Surveyor No. 2880, said tract being more particularly described according to said survey as follows:

To locate the TRUE POINT OF BEGINNING, commence at a point marked by an iron pin set located at the southwesternmost point of the mitred intersection of the northeasterly right-of-way line of Pleasantdale Road (50 foot right-of-way) and the southeasterly right-of-way line of U.S. Highway No. 23 (a.k.a. Buford Highway), and run thence along said right-of-way line of Pleasantdale Road South 33 degrees 48 minutes 44 seconds East a distance of 216.55 feet to a point; continuing along said right-of-way line, run thence South 33 degrees 27 minutes 07 East a distance of 8.00 feet to a point located on the Land Lot line common to Land Lots 251 and 246; continue thence along said right-of-way line South 33 degrees 27 minutes 07 second East, a distance of 133.39 feet to a point; continue thence along said right-of-way line of Pleasantdale Road South 33 degrees 27 minutes 07 seconds East a distance of 133.39 feet to a point, said point being the TRUE PLACE OR POINT OF BEGINNING.

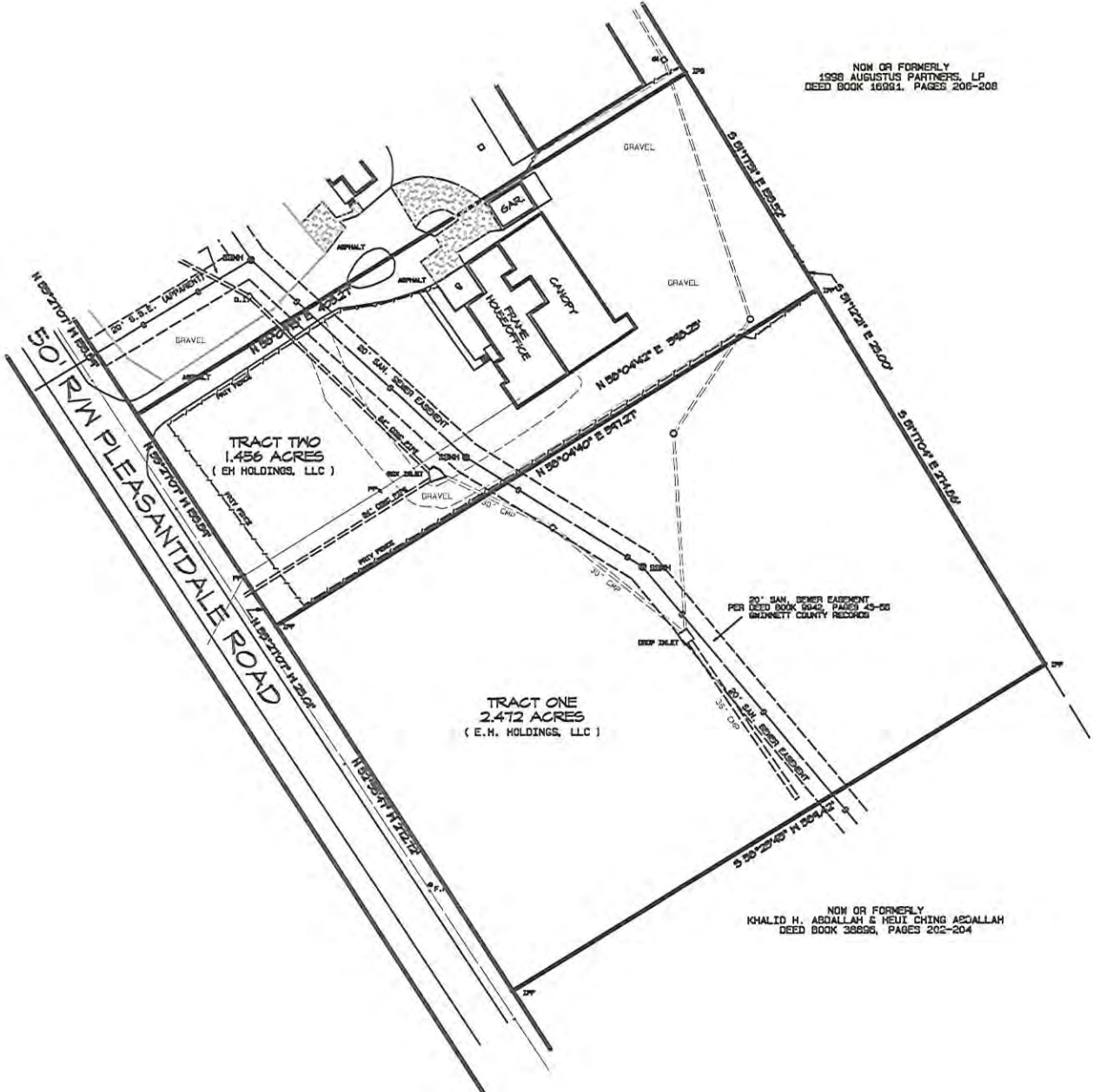
From the POINT OF BEGINNING as thus established, continuing along said right-of-way line South 33 degrees 27 minutes 07 seconds East a distance of 133.39 feet to a point; continuing along said right-of-way line, run thence South 33 degrees 27 minutes 07 seconds East a distance of 25.01 feet to a point marked by an iron pin found; leaving said right-of-way line, run thence North 58 degrees 04 minutes 40 seconds East a distance of 397.27 feet to a point marked by an iron pin found; run thence North 31 degrees 17 minutes 51 seconds West a distance of 133.52 feet to a point marked by an iron pin set; run thence South 58 degrees 03 minutes 15 seconds West a distance of 403.27 feet to a point located on the northeasterly right-of-way line of Pleasantdale Road, said point being the TRUE PLACE OR POINT OF BEGINNING.

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NON OR FORMERLY
 1998 AUGUSTUS PARTNERS, LP
 DEED BOOK 16981, PAGES 205-208

20' SANITARY EASEMENT
 PER DEED BOOK 6042, PAGES 45-50
 BRUNNICK COUNTY RECORDS

NON OR FORMERLY
 KHALID H. ABDALLAH & HEUI CHING ABDALLAH
 DEED BOOK 38626, PAGES 202-204

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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:

See Exhibit "B".

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

See Exhibit "B".

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

See Exhibit "B".

- (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:

See Exhibit "B".

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

See Exhibit "B".

- (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:

See Exhibit "B".

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EXHIBIT "B"
EH HOLDINGS, LLLP'S (THE "APPLICANT") RESPONSE
2661 (6569) AND 2645 (6517) PLEASANTDALE ROAD, DORAVILLE ("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 as and occupied by industrial, landscaping, and storage uses, and is consistent with the industrial uses along that portion of Buford Highway and Pleasantdale Road. The rezoning of the Property to M-1 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 is near the intersection of Buford Highway and Pleasantdale Road, a major commercial and industrial corridor and adjacent and nearby property is made up, almost entirely, of similar industrial and commercial uses.

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

No. The Property has been exclusively occupied by commercial and industrial uses for over 10 years and residential zoning is neither consistent nor applicable to the current uses and surrounding area. Under the current residential, R-75 zoning, the Property would have almost no chance of any reasonable or likely economic use in the major industrial and commercial corridor in which its located.

- 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. 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 rezoning would be entirely consistent with the letter and intent of the Gwinnett 2030 Unified Plan and Comprehensive Plan for this corridor.

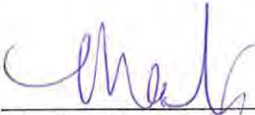
- F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE PROPOSED REZONING.

To restrict the subject property to the current residential zoning district leaves the Applicant and Owner 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 the continued commercial and industrial use, permitted by right under the requested and nearby M-1 zoning district, is appropriate as applied to the subject Property and is consistent with the surrounding uses.

This 6th day of December, 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 EH HOLDINGS, LLLP

The Owner and Applicant, EH Holdings, LLLP (hereinafter, "Owner/Applicant"), submits this Rezoning for the subject property located at 2645 (f/k/a 6517) and 2661 (f/k/a 6569) Pleasantdale Road, Doraville, Georgia, (hereinafter, collectively the "Subject Property") to bring the Subject Property in compliance pursuant to the applicable Gwinnett County zoning ordinances, for the continued use by the current tenant, Russell Landscaping; for outdoor storage as an accessory use to that business located on 2661 Pleasantdale Road; and for parking on the property known as 2645 Pleasantdale Road.

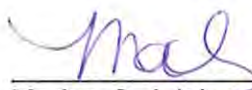
The Subject Property is located near the Gwinnett - Dekalb County line, near the intersection of Buford Highway and Pleasantdale Road, surrounded by similar commercial and industrial property. The Subject Property has been used by Russell Landscaping for storage of equipment and materials for over 10 years. The Property is located adjacent to and across from similar industrial and commercial uses. The additional parking area will not be paved and will be composed of a pervious material. The Subject Property is well-maintained and the existing storage area is effectively screened by a solid, 8 foot, wood fence. The continued use of the Subject Property for continued industrial and landscaping services is appropriate and consistent with the surrounding area.

This proposed, corrective rezoning is consistent with the use and quality of the Subject Property and the Pleasantdale Road and Buford Highway corridor. The existing uses have not been shown to hinder or impact the properties around them. The Owner/Applicant and their 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 6th day of December, 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 EH HOLDINGS, LLLP

The Applicant and Owner, EH Holdings, LLLP (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, for the property known as 2661 (f/k/a 6569) and 2645 (f/k/a 6517) Pleasantdale Road, Doraville, Georgia (hereinafter, collectively the "Property") are and 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 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 requested by the Applicant, and is not economically suitable for development under the present residential 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

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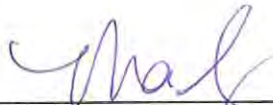
the extent such different conditions would have the effect of further restricting the Applicant's utilization of the subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional classification, and would likewise violate each of the provisions of the constitutions as set forth herein.

Accordingly, the Applicant respectfully requests that the rezoning application submitted by the Applicant relative to the Property, with any amendments submitted by the Applicant, be granted, and that the Property be rezoned to the zoning classification and conditions requested therein.

This 6th day of December, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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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.

[Handwritten Signature]

12-6-13

Signature of Applicant

Date

Marian C. Adeimy, Attorney for Owner/Applicant

Type or Print Name and Title

Ginger Conroy

12-11-13

Signature of Notary Public

Date



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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.

[Handwritten Signature]

12-6-13

Signature of Property Owner

Date

Marian C. Adeimy, Attorney for Owner/Applicant

Type or Print Name and Title

[Handwritten Signature]

12-6-13

Signature of Notary Public

Date



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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.

Marian C. Adeimy 12-6-13 Marian C. Adeimy, Attorney for Owner/Applicant
 SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE

Marian C. Adeimy 12-6-13 Marian C. Adeimy, Attorney for Owner/Applicant
 SIGNATURE OF APPLICANT'S DATE TYPE OR PRINT NAME AND TITLE
 ATTORNEY OR REPRESENTATIVE

Ginger Conroy 12-4-13
 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: See Exhibit "C" attached.

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

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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