

**REZONING APPLICATION**

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

APPLICANT INFORMATION	PROPERTY OWNER INFORMATION*
NAME: Nancy G. Lail & Stephanie Humphrey c/o Andersen, Tate & Carr, PC ADDRESS: 1960 Satellite Blvd., Suite 4000 CITY: <u>Duluth</u> STATE: <u>GA</u> ZIP: <u>30097</u> Enterprise - PHONE: <u>(770) 822-0900</u>	NAME: Nancy G. Lail & Stephanie Humphrey c/o Andersen, Tate & Carr, PC ADDRESS: 1960 Satellite Blvd., Suite 4000 CITY: <u>Duluth</u> STATE: <u>GA</u> ZIP: <u>30097</u> PHONE: <u>(770) 822-0900</u>
CONTACT PERSON: <u>Marian C. Adeimy, Attorney</u> PHONE: <u>(678) 518-6855</u> 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/Tenant
PRESENT ZONING DISTRICT(S): <u>R-100</u> REQUESTED ZONING DISTRICT: <u>C-2</u> LAND DISTRICT(S): <u>7</u> LAND LOT(S): <u>153</u> ACREAGE: <u>3.3</u> ADDRESS OF PROPERTY: <u>2984 McGinnis Ferry Road</u> PROPOSED DEVELOPMENT: <u>Commercial, office and neighborhood retail</u>	

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>Approx. 3</u>
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. <u>Max. 100,000 sq. ft.</u>
Gross Density: _____	Density: <u>n/a</u>
Net Density: _____	

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

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## **Legal Description**

2984 McGinnis Ferry Road (3.3 acres)

All that tract or parcel of land lying and being in Land Lot 153, District 7, City of Suwanee, Gwinnett County Georgia and being more particularly described as follows:

Beginning at an iron pin set (1/2" rebar) on the southwesterly right of way of McGinnis Ferry Road (R/W varies), said point being S 34°28'05"E - 378.47' from a Pk Nail set at the intersection of McGinnis Ferry Road and Autumnbrook Way and the TRUE POINT OF BEGINNING.

Thence along the right of way of McGinnis Ferry Road S 23°41'28"E a distance of 416.65 feet to a 1" open top pipe found;

Thence leaving said right of way S 59°27'36"W a distance of 364.39 feet to a 1-1/2" open top pipe found;

Thence N 18°56'38"W a distance of 424.42' to a 1/2" rebar found;

Thence N 59°49'23"E a distance of 328.77 feet to a 1/2" rebar set on the southerly right of way of McGinnis Ferry Road and the true point of beginning.

Said tract contains 143,786 Sq. Ft / 3.30 Acres as per a survey prepared for Nancy G. Lail and Stephanie G. Humphrey by Diversified Technical Group, LLC dated 2/23/16 (project no. 16111)

RZC2016-00013

Received Planning & Development Dept. April 1, 2016

# LEGEND

R/W RIGHT OF WAY  
WM WATER METER  
B/L BUILDING LINE  
F FIRE HYDRANT  
V VALVE  
MH+ WATER MAIN  
MANHOLE  
G GAS LINE  
PP POWER POLE  
N&C NAIL IN CAP  
LP LIGHT POLE

FES FLARED END SECTION  
JB JUNCTION BOX  
HW HEADWALL  
IPF IRON PIN FOUND  
IPS IRON PIN SET  
E ELECTRIC POWER  
R RADIUS OF CURVATURE  
PP POWER POLE  
A ARC OF CURVE  
INV INVERT  
DI DROP INLET

NOW OR FORMERLY  
WILLIAM H. ERWIN ETAL TRUST  
PIN: 7-168-005  
DEED BOOK 13099, PAGE 189

SUWANEE RIDGE - UNIT THREE  
PREPARED BY PRECISION PLANNING INC.  
RECORDED IN PLAT BOOK 95, PAGE 227

LOT 2

NOW OR FORMERLY  
SUNTRUST BANK  
PIN: 7-168-056  
DEED BOOK 48953, PAGE 71

TOTAL AREA:  
143,786 SQ. FT / 3.30 ACRES

PROPERTY ADDRESS:  
2984 MCGINNIS FERRY ROAD

NOW OR FORMERLY  
NANCY G. LAIL & STEPHANIE G. HUMPHREY  
PIN: 7-152-007

SUWANEE RIDGE - UNIT THREE  
PREPARED BY PRECISION PLANNING INC.  
RECORDED IN PLAT BOOK 95, PAGE 227

LOT 1

NOW OR FORMERLY  
CHI ATLANTA I-85 LLC  
PIN: 7-153-130  
DEED BOOK 48866, PAGE 482

General Notes:  
SURVEY AS PER IRON PINS FOUND AND REFERENCES  
AS NOTED.

SURVEY DONE WITHOUT THE BENEFIT OF A TITLE  
COMMITMENT AND PROPERTY IS SUBJECT TO ALL  
MATTERS OF TITLE.

SUBJECT PROPERTY DOES NOT LIE WITHIN A 100 YEAR  
FLOOD DISTRICT AS PER F.I.R.M. PANEL NO.  
1313500043F, EFFECTIVE DATE SEPTEMBER 29, 2006

RETRACEMENT SURVEY  
AUTHORIZED BY JODY LAIL

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. 15-6-67

GRAPHIC SCALE



## SURVEYOR'S CERTIFICATE

I, J. SCOTT SMITH, A GEORGIA REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT  
THIS PLAT IS TRUE AND CORRECT, AS TO THE PROPERTY LINES AND IMPROVEMENTS SHOWN  
HEREON; THAT IT WAS PREPARED FROM AN ACTUAL FIELD SURVEY OF THE PROPERTY DEPICTED,  
HEREON, EITHER BY ME, OR UNDER MY SUPERVISION; THAT ALL MONUMENTS SHOWN, HEREON  
ACTUALLY EXISTED AT THE TIME THE FIELD SURVEY WAS CONDUCTED AND THAT THEIR LOCATION  
SIZE, TYPE AND MATERIAL ARE CORRECTLY REPRESENTED.

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAD A CLOSURE PRECISION (BEFORE  
ADJUSTMENT) OF 1 FOOT IN 27,142 FEET WITH AN ANGULAR ERROR OF 2 SECONDS PER ANGLE  
POINT AND WAS ADJUSTED USING LEAST SQUARES ADJUSTMENT.

THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN  
1 FOOT IN 506,326 FEET.

THE EQUIPMENT USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS HEREON WAS:  
A TOPCON PS-103 TOTAL STATION.

FIELD WORK COMPLETED ON FEBRUARY 26, 2016

BY:

J. SCOTT SMITH - Georgia Land Surveyor No. 3014

Boundary Survey  
NANCY G. LAIL &  
STEPHANIE G. HUMPHREY  
CITY OF SUWANEE

COUNTY: GWINNETT LAND LOT (S): 153 DISTRICT: 7 STATE: GEORGIA

SCALE: 1" = 40' DATE: 2/23/16 DRAWN: J.S.S. CHECKED: J.S.S. JOB NO. 16111

## DIVERSIFIED TECHNICAL GROUP, L.L.C.

LAND SURVEYING  
RESIDENTIAL & COMMERCIAL SITE DESIGN  
2700 BRASELTON HIGHWAY - SUITE 10-430  
Dacula, Georgia 30019  
PH. 770-614-7095 - FAX 770-814-7099  
EMAIL: DtgSurvey@yahoo.com  
Web: DtgSurvey.com





**REZONING APPLICANT'S RESPONSE**  
**STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER**

PURSUANT TO REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Attached.

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

Attached.

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

Attached.

- (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:

Attached.

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

Attached.

- (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:

Attached.

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## EXHIBIT "B"

### APPLICANT'S RESPONSES IN SUPPORT OF REZONING

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

Yes. The requested C-2 zoning and commercial use is consistent with the nearby uses, and provides an appropriate use in light of the future right-of-way plans and given the property's location at an interchange with I-85, a major interstate, and McGinnis Ferry, a major mixed-use and commercial thoroughfare.

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

No. Nearby property is zoned commercial or contains more intense commercial and residential uses. The property provides an appropriate transitional zoning along I-85, and accordingly, the zoning request is compatible with the existing uses and usability of the adjacent and nearby property.

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

No. Due to the property's location and existing zoning, conditions and restrictions, for low density residential uses based on the area's history, the subject property does not have reasonable economic use as currently zoned and conditioned, and has remained vacant and undeveloped.

- D) WHETHER THE REQUESTED 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 is located in an area with access to public water and sewer, and direct access to two major thoroughfares, highways and interstate. The development is consistent with the Unified Plan, which supports similar residential development in this mostly residential corridor. Gwinnett County precedent has historically approved residential uses as appropriate for property located adjacent to a community park. The proposed community will not cause excessive use of existing streets, transportation facilities or utilities.

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

Yes. 2030 Unified Plan identifies the subject property and similar I-85 interchanges as appropriate locations for more intense, non-residential uses.

- 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 REQUESTED REZONING.

Yes. The zoning requests and application to rezone the property to C-2 is absolutely necessary to enable the Applicant to market the property so as to allow for a feasible economic use.

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# ANDERSEN | TATE | CARR

ANDERSEN, TATE & CARR, P.C.  
ONE SUGARLOAF CENTRE  
1960 SATELLITE BOULEVARD, SUITE 4000  
DULUTH, GEORGIA 30097  
(770) 822-0900  
FACSIMILE (770) 822-9680  
[www.atclawfirm.com](http://www.atclawfirm.com)

Marian C. Adeimy  
Direct Phone: (678) 518-6855

Direct Fax: (770) 236-9702  
Email: [madeimy@atclawfirm.com](mailto:madeimy@atclawfirm.com)

March 31, 2016

## ***VIA HAND DELIVERY AND E-MAIL***

Gwinnett County  
Department of Planning and Development  
Attn: Kathy Holland and Jeffrey West  
446 West Crogan Street  
Lawrenceville, GA 30046-2440

**RE: Letter of Intent in Support of Rezoning for Nancy G. Lail and Stephanie Humphrey (collectively, the "Applicant") for the property located at 2984 McGinnis Ferry Road (the "Property")**

Dear Ms. Holland, Mr. West and Planning Department:

On behalf of the Property Owner and Applicant Nancy G. Lail and Stephanie Humphrey (collectively, the "Applicant") through their attorney, Andersen, Tate & Carr, PC and Marian C. Adeimy, Esq., the Applicant submits this Application for Rezoning and, if needed, related variances, as this Application may be amended, for the property known as 2984 McGinnis Ferry Road (hereinafter, the "Property"), being approximately 3.3 acres, for commercial, neighborhood retail and potential office development.

### **I. Request for Rezoning**

The Property is currently zoned for single-family residential, based on its previous, no longer viable use. The Property is located at a major interchange at McGinnis Ferry and I-85. The Property is also subject to a future SPLOST and transportation project which includes the improvement of the bridge over I-85. The Applicant seeks to rezone the Property to C-2 – Commercial zoning, for future subdivision, to allow for commercial, neighborhood retail and office uses consistent with those in the area and appropriate for the Property at this location, in order to allow for economic use and development.

The Property remained undeveloped during the economic downturn, but has since become appropriate for commercial uses like those in the immediate area, and like the C-2 uses found at similar interchanges with I-85. The proposed commercial uses will also serve residents and homes in the area.

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## **II. Constitutional Objections**

The portions of the Gwinnett County Unified Development Ordinance, as amended, (the "UDO") which classify or condition the Property into any more or less intensive zoning classification and/or zoning conditions other than as requested by the Applicant and property owner are and would be unconstitutional in that they would destroy the Applicant's and Property Owner'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, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the UDO, as applied to the Property, which restricts its use to the present zoning classification, uses, regulations, requirements, and conditions is unconstitutional, illegal, null and void, constituting a taking of the Applicant's and the Property 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, Paragraphs I and 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 and Property Owner any economically viable use of the Property while not substantially advancing legitimate state interests.

The Property is presently suitable for development subject only to the approval of the requested rezoning, as requested and amended by the Applicant, and is not economically suitable for development under its present zoning and development classification, conditions, regulations, and restrictions due to its location, shape, size, surrounding development, and other factors. A denial of the requested rezoning and/or variances 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, Paragraphs I and 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 approve the Applicant's and Property Owner's requested rezoning request and related variances, with only such additional 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.

Any zoning designation, condition, or variance related to the Property subject to conditions which are different from the requested variances and 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 Property 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 as set forth hereinabove.

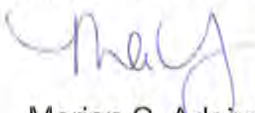


### III. Conclusion

The Applicant respectfully requests that the Gwinnett County Board of Commissioners, Planning Commission and Planning staff recommend and approve the Applicant's rezoning request, to allow the property owner and Applicant a viable, quality and economic use of the Property. The Applicant and its representatives welcome the opportunity to meet with the Gwinnett County Board of Commissioners, Planning Commissioners, and staff to answer any questions.

Respectfully submitted this 31<sup>st</sup> day of March, 2016,

**ANDERSEN, TATE & CARR, PC**



Marian C. Adeimy  
Attorney for Applicant

*Enclosures*  
(Application and Exhibits)

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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.

Mary 3/31/16  
Signature of Applicant Date

Marian C. Adeimy, Attorney

Type or Print Name and Title

Mary Jane O'Neal 3/31/16  
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.

*Anna C. [Signature]* 3/31/16  
Signature of Property Owner Date  
By Authorized Agent for Property Owners as attached hereto.

*Shanan Adams, attorney*  
Type or Print Name and Title

*Mary Jane O'Neal* 3/31/14  
Signature of Notary Public 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.

Mary 3/31/16 Marian C. Adeimy, Attorney  
SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE

Mary 3/31/16 Marian C. Adeimy, Attorney  
SIGNATURE OF APPLICANT'S DATE TYPE OR PRINT NAME AND TITLE  
ATTORNEY OR REPRESENTATIVE

Julie A Mason 3-31-2016  
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. (See attached exhibit.)  
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)

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

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

<b>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</b>	<b>CONTRIBUTIONS</b>	<b>DATE CONTRIBUTION WAS MADE</b>
Charlotte Nash Commission Chairwoman	\$1,000	March 2016
Jace Brooks, District 1 Commissioner	\$80.69 \$750 \$500	April 2, 2015 May 2015 March 2016
John Heard, District 4 Commissioner	\$1,000 \$150 \$200	January 9, 2014 May 5, 2014 March 26, 2014
Lynette Howard, District 2 Commissioner	\$1,000	March 19, 2014
Tommy Hunter, District 3 Commissioner	\$750 \$500	March 5, 2015 January 27, 2016

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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:**  
(Map Reference Number)

7 - 152 - 007  
District Land Lot Parcel

Signature of Applicant

Marian C. Adeimy, Attorney

Type or Print Name and Title

Date

**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)

NAME

TITLE

DATE

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