

SPECIAL USE PERMIT APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: <small>Beverly J. Searles Foundation, Inc. c/o Mahaffey Pickens Tucker, LLP</small>	NAME: <u>Janene Holladay</u>
ADDRESS: <u>1550 North Brown Road, Suite 125</u>	ADDRESS: <u>984 Old Forge Lane</u>
CITY: <u>Lawrenceville</u>	CITY: <u>Jefferson</u>
STATE: <u>Georgia</u> ZIP: <u>30043</u>	STATE: <u>Georgia</u> ZIP: <u>30549</u>
PHONE: <u>770.232.0000</u>	PHONE: <u>770.232.0000</u>
CONTACT PERSON: <u>Shane Lanham</u> PHONE: <u>770.232.0000</u>	
CONTACT'S E-MAIL: <u>slanham@mptlawfirm.com</u>	

*Include any person having a property interest and any person having a financial interest in any business entity having property interest (use additional sheets if necessary).

APPLICANT IS THE:	
<input type="checkbox"/> OWNER'S AGENT	<input type="checkbox"/> PROPERTY OWNER <input checked="" type="checkbox"/> CONTRACT PURCHASER
EXISTING/PROPOSED ZONING: <u>C-2/O-I</u>	BUILDING/LEASED SQUARE FEET: <u>+/-125,000</u>
LAND DISTRICT(S): <u>1</u>	LAND LOT(S): <u>001</u> ACREAGE: <u>+/-4.839</u>
ADDRESS OF PROPERTY: <u>2736 Hamilton Mill Road</u>	
SPECIAL USE REQUESTED: <u>Retirement Community, Independent Living</u>	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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All that tract or parcel of land lying and being in Georgia Militia District 1397 of Gwinnett County, Georgia, being more particularly described as follows:

COMMENCING at a point at the northwesterly end of a mitered corner formed by the southwesterly right of way of Hamilton Mill Road with the northwesterly right of way of Sardis Church Road; thence northwesterly along said southwesterly right of way 853.97 feet to a 3/4" rebar found; thence South 36 degrees 10 minutes 44 seconds West a distance of 5.06 feet to a point and **THE TRUE POINT OF BEGINNING**; thence leaving said right of way South 36 degrees 10 minutes 44 seconds West a distance of 285.34 feet to a 1/2" iron pipe found; thence South 61 degrees 33 minutes 29 seconds East a distance of 149.68 feet to a 3/4" rebar found; thence South 35 degrees 44 minutes 30 seconds West a distance of 711.17 feet to a 3/4" open top pipe found; thence North 57 degrees 05 minutes 30 seconds West a distance of 299.42 feet to a 1/2" rebar found; thence North 35 degrees 59 minutes 03 seconds East a distance of 684.98 feet to a 1" open top pipe found; thence South 62 degrees 43 minutes 23 seconds East a distance of 139.19 feet to a point; thence North 36 degrees 10 minutes 44 seconds East a distance of 285.40 feet to a point on the southwesterly right of way of Hamilton Mill Rd; thence South 62 degrees 24 minutes 50 seconds East a distance of 10.11 feet to the **TRUE POINT OF BEGINNING**.

Said tract or parcel of land contains 4.8390 acres (210,789 square feet) more or less.

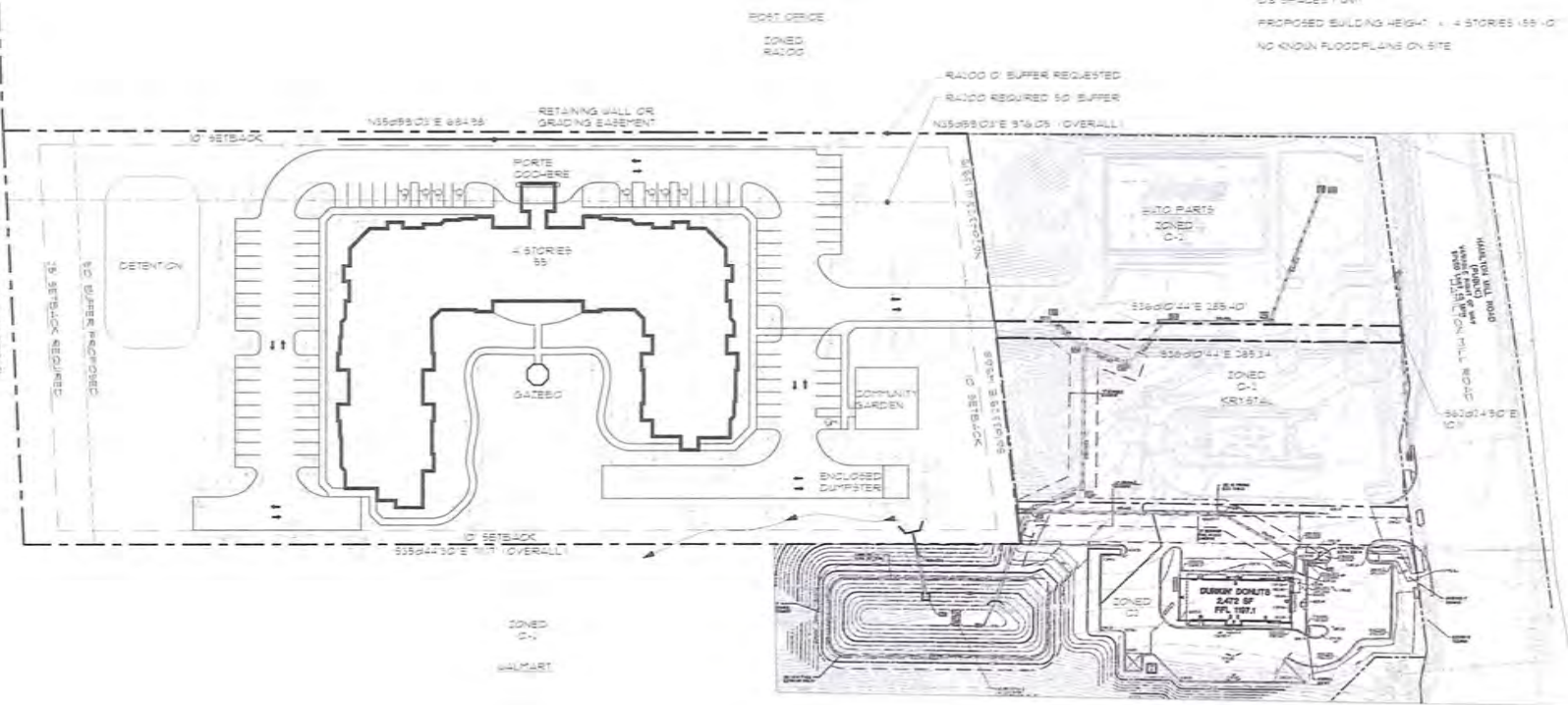
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16 REPRODUCTION
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FACENT



1 CONCEPTUAL SITE PLAN
1"=40'



MPA
CSP1

NOT RELEASED FOR CONSTRUCTION

SPECIAL USE PERMIT APPLICANT'S RESPONSE
STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

PURSUANT TO REQUIREMENT 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 SPECIAL USE PERMIT WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:

Please see attached

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

Please see attached

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

Please see attached

- (D) WHETHER THE PROPOSED SPECIAL USE PERMIT 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 attached

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

Please see 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 SPECIAL USE PERMIT:

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REZONING AND SPECIAL USE PERMIT APPLICANT'S RESPONSE
STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

(A) Yes, the proposed Rezoning and Special Use Permit applications (the "Applications") will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The proposed development will provide a transitional use from the commercial uses along Hamilton Mill Road to the residential uses to the southwest.

(B) No, the proposed development will not adversely affect the existing use or usability of adjacent or nearby properties. The proposed development will enhance the surrounding area and serve as an amenity for the community by providing additional housing options for seniors and allowing them to age in place closer to their families.

(C) Due to the location and layout of the subject property and the character of surrounding developments, the subject property does not have reasonable economic use as currently zoned.

(D) No, the proposed Applications will not result in an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The proposed development will generate less vehicular traffic than other permitted uses in the C-2 and O-I zoning classification and will not have any effect on the school system other than to generate revenue through an increase in the ad valorem taxes on the subject property.

(E) Yes, the proposed development is in conformity with the policy and intent of the Gwinnett County 2030 Land Use Plan. Policy Goal A.4.4 of the 2030 Plan is to "Support Expanded Housing Opportunities for Seniors."

(F) Applicant submits that the commercial/retail nature of the area and close proximity to residential areas provides additional support for approval of the Applications.

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Matthew P. Benson
Gerald Davidson, Jr.*
Brian T. Easley
Kelly O. Faber
Mary Grace Griffin
Christopher D. Holbrook
Nicholas N. Kemper

Shane M. Lanham
Austen T. Mabe
Jeffrey R. Mahaffey
David G. McGee
Steven A. Pickens
Andrew D. Stancil
R. Lee Tucker, Jr.
*Of Counsel

**LETTER OF INTENT FOR
REZONING AND SPECIAL USE PERMIT APPLICATIONS OF
BEVERLY J. SEARLES FOUNDATION, INC.**

Mahaffey Pickens Tucker, LLP submits this letter of intent and related rezoning and special use permit applications (the “Applications”) on behalf of the Beverly J. Searles Foundation, Inc. (the “Applicant”) in order to develop an approximately 4.78 acre tract (the “Property”) located in northeastern Gwinnett County off of Hamilton Mill Road north of its intersection with Interstate 85. The Property is surrounded on all sides by commercial and/or institutional uses including a United States Post Office, an auto parts store, restaurants, and a Walmart. The Property is currently wooded and vacant. Specifically, the Applicant is requesting a rezoning of the Property to the O-I zoning classification, a Special Use Permit for the use of Retirement Community, Independent Living, and an additional Special Use Permit for a building height increase to 55 feet. The Applicant is also requesting a buffer reduction along the northwesterly property line where adjacent to the Post Office property, which is zoned RA-200. The subject Property is currently zoned C-2 pursuant to RZC2005-00054. The Applicant requests approval of the Applications in order to allow the development of an Independent Living Retirement Community. The proposed retirement community will consist of a single 4-story building with approximately 125,000 square feet and approximately 55 feet tall.

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The Applicant is proposing to develop a senior living facility that will allow current residents of Gwinnett County to “age in place” in their current neighborhoods and communities. As discussed below, the Unified Plan specifically encourages developments that allow residents to age in place as a way to increase the quality of life for citizens of Gwinnett County. Ensuring that there are ample housing options for seniors allows current residents to remain in their home area as they progress through various life stages. Moreover, it provides housing options for senior citizens that retire from out of the area and choose to relocate closer to their families who are living in the area. The proposed retirement community is designed for active adults and will provide several amenities to serve future residents. Specifically, the community will include landscaped common areas, walkways with benches, a large picnic pavilion, koi pond, resident vegetable and cutting gardens, a butterfly garden, gas grill area, fire pit and gazebo. Interior amenities will include common spaces dedicated for a library, computer lab, game room, billiards room, theatre, classroom, beauty salon and main event room. Residences would be provided with full kitchens including dishwasher, stove, refrigerator, and microwave. Further, kitchens come equipped with modern powder-based stovetop fire suppression canisters above the stove top. Additionally, each and every unit will feature an exterior patio/balcony.

Approval of the Applications will reduce the intensity of potential development on the Property and will provide an appropriate transition of land uses from the high-intensity commercial uses along Hamilton Mill Road and the lower-intensity residential uses to the southwest. Moreover, The Gwinnett County 2030 Unified Plan (the “2030 Plan”) specifically encourages the type of development that is proposed by the Applications. Policy A.4.4 of the 2030 Plan is to “Support Expanded Housing Opportunities for Seniors.” According to the 2030 Plan, “as more people choose to ‘age in place’ and/or relocate to Gwinnett to be closer to

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children and grandchildren, demand for various forms of senior housing will rise.” The proposed development will create a community for seniors to “age in place” in close proximity to necessary services such as grocery stores, pharmacies, and health care services as well as recreational activities at Duncan Creek Park and the Hamilton Mill Branch of the Gwinnett County Public Library system.

The Applicant and its representatives welcome the opportunity to meet with staff of the Gwinnett County Department of Planning & Development to answer any questions or to address any concerns relating to the matters set forth in this letter or in the Applications filed herewith. The Applicant respectfully requests your approval of these Applications.

This 1st day of March, 2018.

Respectfully submitted,

MAHAFFEY PICKENS TUCKER, LLP



Shane M. Lanham

Attorneys for the Applicant

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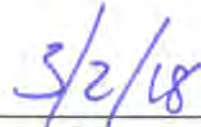
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SPECIAL USE PERMIT APPLICANT'S CERTIFICATION

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.



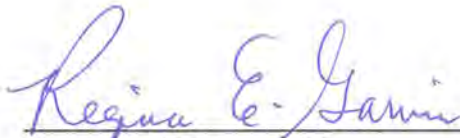
Signature of Applicant



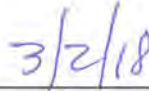
Date

Shane Lanham, Attorney for the Applicant

Type or Print Name and Title



Signature of Notary Public



Date



Notary Seal

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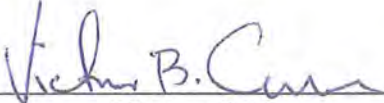
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SPECIAL USE PERMIT APPLICANT'S CERTIFICATION

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 3/2/18
Signature of Applicant Date

DAVID RUSSELL, DEVELOPMENT DIRECTOR
Type or Print Name and Title BEVERLY J. SEARLES, FOUNDATION

 3/2/18
Signature of Notary Public Date



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SPECIAL USE PERMIT 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.

D. Janene Holladay *[Signature]* *March 1, 2018*
Signature of Property Owner Date

D. Janene Holladay *Dan Bryant* *Richard Campbell*
Type or Print Name and Title

Sara E. Carmichael *3-1-18*
Signature of Notary Public Date



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CONFLICT OF INTEREST CERTIFICATION FOR SPECIAL USE PERMIT

The undersigned below, making application for a Special Use Permit, 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.

SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE



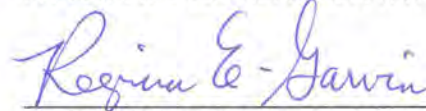
3/2/18

Shane Lanham, Attorney for the Applicant

SIGNATURE OF APPLICANT'S
ATTORNEY OR REPRESENTATIVE

DATE

TYPE OR PRINT NAME AND TITLE



3/2/18

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

Mahaffey Pickens Tucker, LLP

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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**CONFLICT OF INTEREST CERTIFICATION FOR REZONING/CHANGE IN
CONDITIONS AND SPECIAL USE PERMIT APPLICATIONS**

MAHAFFEY PICKENS TUCKER, LLP

NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS	DATE
Charlotte Nash	\$1000	03/08/2016
John Heard	\$2000	02/20/2018

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Updated 03/01/2018

CONFLICT OF INTEREST CERTIFICATION FOR SPECIAL USE PERMIT

The undersigned below, making application for a Special Use Permit, 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.

DAVID RUSSELL 3/2/18 DAVID RUSSELL, DEVELOPMENT
SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE DIR

SIGNATURE OF APPLICANT'S ATTORNEY OR REPRESENTATIVE DATE TYPE OR PRINT NAME AND TITLE

VICTORIA B. CURRAN 3/2/18
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 DAVID RUSSELL
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)

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

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VERIFICATION OF CURRENT PAID PROPERTY TAXES FOR SPECIAL USE PERMIT

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 SPECIAL USE PERMIT REQUEST.**

PARCEL I.D. NUMBER: 1 - 001 - 032
(Map Reference Number) District Land Lot Parcel

Signature of Applicant

Date

Shane Lanham, Attorney for the 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)

Ingrid Espinal
NAME

TSA II
TITLE

3/02/2018
DATE

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JUSTIFICATION FOR REZONING AND SPECIAL USE PERMIT APPLICATIONS

The portions of the Gwinnett County Unified Development Ordinance (the “UDO”) which classify or may classify the property which is the subject of this Application (the “Property”) into any less intensive zoning classification 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 UDO as applied to the subject Property, which restricts its use to the present zoning classification 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 development under the O-I classification with the Special Use Permits (“SUP”) as requested by the Applicant, and is not economically suitable for development under the present C-2 zoning classification of Gwinnett County. 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

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Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to rezone the Property to the O-I zoning classification with the requested SUPs with 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 rezoning of the subject Property to the O-I classification, and/or grant of the SUPs, 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 rezoning and SUP application submitted by the Applicant relative to the Property be granted and that the Property be rezoned to the zoning classification as shown on the respective application.

This 1st day of March, 2018.

Respectfully submitted,

MAHAFFEY PICKENS TUCKER, LLP



Shane M. Lanham
Attorneys for Applicant

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