

**REZONING APPLICATION**

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

APPLICANT INFORMATION	OWNER INFORMATION*
HREG Venture Owner, LLC c/o Mahaffey NAME: <u>Pickens Tucker, LLP</u> ADDRESS: <u>1550 North Brown Road, Suite 125</u> CITY: <u>Lawrenceville</u> STATE: <u>Georgia</u> ZIP: <u>30043</u> PHONE: <u>770.232.0000</u>	NAME: <u>HREG Venture Owner, LLC</u> ADDRESS: <u>2870 Peachtree Rd NW, Ste 721</u> CITY: <u>Atlanta</u> STATE: <u>Georgia</u> ZIP: <u>30305</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>	

**APPLICANT IS THE:**

OWNER'S AGENT   
  PROPERTY OWNER   
  CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): C-2 REQUESTED ZONING DISTRICT: M-1  
 LAND DISTRICT(S): 6 LAND LOT(S): 209 ACREAGE: +/- 15.91  
 ADDRESS OF PROPERTY: 4000 Venture Drive  
 PROPOSED DEVELOPMENT: Office Distribution Warehouse

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units: <u>NA</u>	No. of Buildings/Lots: <u>1/1</u>
Dwelling Unit Size (Sq. Ft.): <u>NA</u>	Total Building Sq. Ft.: <u>156,263</u>
Gross Density: <u>NA</u>	Density: <u>+/- 9,822 square feet per acre</u>
Net Density: <u>NA</u>	

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

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TRACT DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 209 OF THE 6TH DISTRICT, GWINNETT COUNTY, GEORGIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE AT THE ONE-HALF INCH REBAR FOUND AT THE LAND LOT CORNER COMMON TO LAND LOTS 208, 209, 230 AND 231, THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE BOUNDARY LINE COMMON TO LAND LOTS 208 AND 209, SOUTH 29 DEGREES 49 MINUTES 01 SECONDS EAST A DISTANCE OF 2002.80 FEET TO, A ONE-HALF INCH REBAR FOUND ON THE NORTHWESTERN RIGHT-OF-WAY OF INTERSTATE HIGHWAY 85. (HAVING A VARIABLE RIGHT-OF-WAY); THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE SAID NORTHWESTERN RIGHT-OF-WAY OF INTERSTATE HIGHWAY 85 THE FOLLOWING COURSES AND DISTANCES: SOUTH 54 DEGREES 07 MINUTES 21 SECONDS WEST A DISTANCE OF 378.07 FEET TO A CONCRETE MONUMENT FOUND; SOUTH 59 DEGREES 58 MINUTES 46 SECONDS WEST A (DISTANCE OF 265.00 FEET TO A POINT; SOUTH 52 DEGREES 44 MINUTES 43 SECONDS WEST A DISTANCE OF 403.11 FEET TO A ONE-HALF INCH REBAR FOUND; SOUTH 59 DEGREES 50 MINUTES 25 SECONDS WEST A DISTANCE OF 338.48 FEET TO A ONE-HALF INCH REBAR FOUND, WHICH IRON PIN IS THE TRUE POINT OF BEGINNING; SAID TRUE POINT OF BEGINNING THUS BEING ESTABLISHED, THENCE CONTINUING IN A SOUTHWESTERLY DIRECTION ALONG THE SAID NORTHWESTERN RIGHT-OF-WAY OF INTERSTATE HIGHWAY 85, SOUTH 59 DEGREES 50 MINUTES 25 SECONDS WEST A DISTANCE OF 626.81 FEET TO A ONE-HALF INCH REBAR FOUND; THENCE DEPARTING SAID NORTHWESTERN RIGHT-OF-WAY OF INTERSTATE HIGHWAY 85, NORTH 26 DEGREES 01 MINUTES 18 SECONDS WEST A DISTANCE OF 1210.55 FEET TO A ONE-HALF INCH REBAR FOUND. THENCE NORTH 73 DEGREES 40 MINUTES 00 SECONDS EAST A DISTANCE OF 565.77 FEET TO A ONE-HALF INCH REBAR FOUND ON THE SOUTHWESTERN RIGHT-OF-WAY OF LIDDELL ROAD (HAVING A VARIABLE WIDTH RIGHT-OF-WAY AT THIS POINT); THENCE RUNNING IN A SOUTHEASTERLY DIRECTION ALONG THE SOUTHWESTERN RIGHT-OF-WAY OF VENTURE DRIVE THE FOLLOWING COURSES AND DISTANCES: SOUTH 16 DEGREES 48 MINUTES 05 SECONDS EAST A DISTANCE OF 92.89 FEET TO A ONE-HALF INCH REBAR FOUND; SOUTH 28 DEGREES 50 MINUTES 33 SECONDS EAST A DISTANCE OF 110.55 FEET TO A ONE-HALF INCH REBAR FOUND, THE SAID VENTURE DRIVE HAVING A 100 FOOT RIGHT-OF-WAY AT THIS POINT, THENCE IN A NORTHEASTERLY DIRECTION ALONG THE SAID SOUTHWESTERN RIGHT-OF-WAY OF VENTURE DRIVE ALONG THE ARC OF A CURVE TO THE LEFT HAVING AN ARC DISTANCE OF 81.09 FEET AND HAVING A RADIUS OF 900.00 FEET (SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 82 DEGREES 16 MINUTES) 2 SECONDS EAST A CHORD DISTANCE OF 81.07 FEET) TO A NAIL AND CAP SET IN AN ASPHALT DRIVE; THENCE DEPARTING SAID SOUTHWESTERN RIGHT-OF-WAY OF VENTURE DRIVE, SOUTH 26 DEGREES 01 MINUTES 18 SECONDS EAST A DISTANCE OF 842.57 FEET TO AN IRON PIN FOUND, WHICH IRON PIN IS THE TRUE POINT OF BEGINNING.

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**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:

Please see attached

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

Please see attached

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

Please see attached

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- (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 attached

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

Please see attached

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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 APPROVAL OR DISAPPROVAL OF THE PROPOSED REZONING:

Please see attached

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**STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER**

- (A) The proposed Rezoning will permit a use that is suitable in light of the use and development of adjacent and nearby property. The subject Property is located adjacent to property zoned for, multifamily, commercial, and industrial uses and is bordered by Interstate 85.
- (B) The proposed Rezoning will not adversely affect the existing use or usability of adjacent or nearby property. Rather the proposed use of the property will complement the use or usability of adjacent or nearby property.
- (C) Due to the size, location, layout, and character of surrounding uses, the Applicant submits that the Property has no reasonable economic use as currently zoned.
- (D) The proposed Rezoning will not result in a use which will or could cause an excessive or burdensome use of the existing streets, transportation facilities, utilities or schools. The Property has convenient access to Interstate 85 with access to utilities.
- (E) The proposed rezoning is in conformity with the policy and intent of the Land Use Plan as it would allow a use consistent with nearby properties in close proximity to activity centers. Also, the subject tract is adequately served by transportation thoroughfares providing appropriate ingress and egress to and from the property.
- (F) The existing zoning classifications of adjacent and nearby properties, along with the fact that the subject tract is located in the Regional Activity Center near a major interstate give additional supporting grounds for the approval of the requested rezoning.

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Matthew P. Benson  
Gerald Davidson, Jr.\*  
Brian T. Easley  
Kelly O. Faber  
Christopher D. Holbrook  
Shane M. Lanham

Austen T. Mabe  
Jeffrey R. Mahaffey  
Steven A. Pickens  
Andrew D. Stancil  
R. Lee Tucker, Jr.

\*Of Counsel

**LETTER OF INTENT FOR REZONING APPLICATION OF  
HREG VENTURE OWNER, LLC**

Mahaffey Pickens Tucker, LLP submits the attached rezoning application (the “Application”) on behalf of HREG Venture Owner, LLC (the “Applicant”), relating to the proposed use of an approximately 15.91-acre tract of land (the “Property”) located near Gwinnett Place Mall. The Property has direct access to Venture Drive and is adjacent to the right-of-way of Interstate 85. The Property is currently zoned C-2 and contains a concrete tilt-up wall and steel construction type retail sales/office warehouse building with approximately 156,000 square feet. The Property also includes a truck yard and parking area, 8 truck bays, a concrete truck entrance, and 740 parking spaces including 24 handicap spaces. The Property formerly housed a Dave and Buster’s location which closed in March 2019 and a Haverty’s Outlet which closed in December 2019. Currently, the building is unoccupied.

The Applicant is requesting to rezone the Property to the M-1 zoning classification in order to use the Property for light industrial and/or office warehouse/distribution uses. The proposed use of the Property would complement the surrounding mix of land uses and is compatible with the policies of the Gwinnett County 2040 Unified Plan (the “2040 Plan”). The Property is surrounded by property zoned C-2, C-3, M-1, and RM-24 and the proposed office warehouse/distribution facility would diversify the land use mix of the area. The adjacent parcel to the west was rezoned from M-1 to RM-24 in 2017 and although the subject Property was developed prior to the neighboring parcel’s 2017 rezoning, this new zoning classification could impose a new buffer requirement on the subject property. Accordingly, the Applicant is requesting a buffer reduction to reduce the width of the required buffer along the Property’s westerly boundary line where adjacent to land zoned RM-24 to zero feet.

The 2040 Plan Future Development Map locates the Property within the Regional Activity Center Character Area. The 2040 Plan provides that this character area “is intended for

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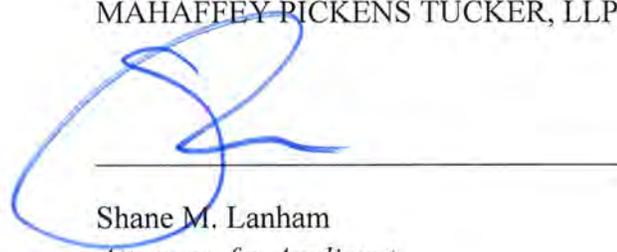
areas that have intense commercial and office/employment activity, as well as some residential elements.” While the surrounding area has some mixed residential uses to the west and northwest, the immediate area is characterized by retail and commercial uses. The proposed office warehouse/distribution facility would naturally complement the nearby residential uses as future employees would be attracted to neighborhoods located in close proximity to the Property. The proposed use would also enhance the area by diversifying the land use mix by converting a large commercial/retail building to a major employment center with a greater economic impact than the current use. The proposed use would provide high-quality jobs to an important area of the County but would also be easily accessible from other areas of Gwinnett due to the Property’s immediate access to Interstate 85.

The Applicant respectfully submits that the proposed development is consistent with the policies of the 2040 Plan and would be compatible with the use and development of adjacent and surrounding properties. The Applicant welcomes 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 Application filed herewith. The Applicant respectfully requests your approval of the Application.

This 2nd day of January, 2020.

Respectfully Submitted,

MAHAFFEY-RICKENS TUCKER, LLP



Shane M. Lanham

*Attorneys for Applicant*

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## JUSTIFICATION FOR REZONING

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 M-1 classification 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 Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to rezone the Property to the M-1 classification 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,

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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 M-1 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 rezoning 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 19th day of May, 2020

Respectfully submitted,

MAHAFFEY PICKENS TUCKER, LLP

Shane M. Lanham  
*Attorneys for Applicant*

1550 North Brown Road  
Suite 125  
Lawrenceville, Georgia 30043  
(770) 232-0000

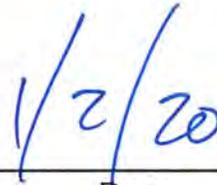
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**REZONING APPLICANT'S CERTIFICATION**

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.



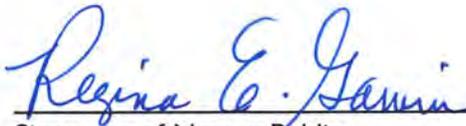
Signature of Applicant



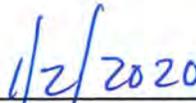
Date

**Shane Lanham, Attorney for the Applicant**

Type or Print Name and Title



Signature of Notary Public



Date



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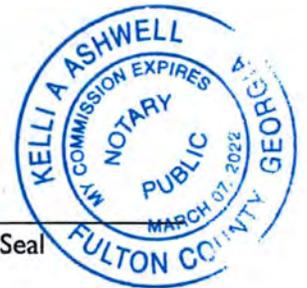
**REZONING APPLICANT'S CERTIFICATION**

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.

D Hanison 12/19/2019  
Signature of Applicant Date

Daniel Hanison, Manager, HREG Venture Owner, LLC  
Type or Print Name and Title

Kelli A Ashwell 12/19/2019  
Signature of Notary Public Date Notary Seal



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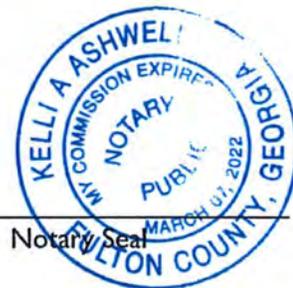
**REZONING PROPERTY OWNER'S CERTIFICATION**

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.

*D Hanison* 12/19/2019  
Signature of Property Owner Date

Daniel Hanison, Manager, HREG Venture Owner, LLC  
Type or Print Name and Title

*Kelli A. Ashwell* 12/19/2019  
Signature of Notary Public Date Notary Seal

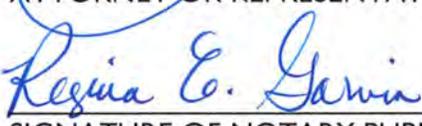


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**CONFLICT OF INTEREST CERTIFICATION FOR REZONING**

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.

SIGNATURE OF APPLICANT	DATE	TYPE OR PRINT NAME AND TITLE
	1/2/20	Shane M. Lanham, Attorney for Applicant
SIGNATURE OF APPLICANT'S ATTORNEY OR REPRESENTATIVE	DATE	TYPE OR PRINT NAME AND TITLE
	1/2/2020	
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)
Please see attached		

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**

<u>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</u>	<u>CONTRIBUTIONS</u>	<u>DATE</u>
None		

**JEFF MAHAFFEY**

<u>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</u>	<u>CONTRIBUTIONS</u>	<u>DATE</u>
Clint Dixon	\$1500	06/26/2019

**LEE TUCKER**

<u>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</u>	<u>CONTRIBUTIONS</u>	<u>DATE</u>
Clint Dixon	\$1000	06/26/2019

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Updated 10/02/2019



**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:**                      6                      . 209                      . 030  
(Map Reference Number)                      District                      Land Lot                      Parcel

Signature of Applicant

12/31/19

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)

Julie Smith  
NAME

TSA II  
TITLE

12-31-19  
DATE

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