



## **CITY OF STONECREST, GEORGIA**

### **CITY COUNCIL VIRTUAL MEETING – AGENDA**

**3120 Stonecrest Blvd. Stonecrest, GA 30038**

**Monday, November 22, 2021 at 6:00 PM**

*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1      Council Member Rob Turner – District 2*

*Council Member Jazzmin Cobble – District 3      Council Member George Turner – District 4*

*Council Member Tammy Grimes – District 5*

**Citizen Access:** [Stonecrest YouTube Live Channel](#)

- I. CALL TO ORDER:** George Turner, Mayor Pro-Tem
- II. ROLL CALL:** Sonya Isom, Deputy City Clerk
- III. INVOCATION**
- IV. PLEDGE OF ALLEGIANCE**
- V. APPROVAL OF THE AGENDA**
- VI. REVIEW AND APPROVAL OF MINUTES**
  - [a.](#) Approval - of the September 10, 2021 Special Called City Council Meeting Minutes
  - [b.](#) Approval - of the September 27, 2021 City Council Meeting Minutes
  - [c.](#) Approval - of the October 4, 2021 Special Called City Council Meeting Minutes
  - [d.](#) Approval - of the October 11, 2021 Special Called City Council Meeting Minutes
  - [e.](#) Approval - of the October 25, 2021 City Council Meeting Minutes
  - [f.](#) Approval - of the October 29, 2021 Special Called City Council Meeting Minutes
  - [g.](#) Approval - of the November 4, 2021 Special Called City Council Meeting Minutes
- VII. PUBLIC COMMENTS**

*(This Meeting will be conducted virtually, the public comments received via email by 4 pm on the day of the meeting will be read or played via voice memo or video into the minutes by the City Clerk)*

*There is a three (3) minute time limit for each speaker during public comment.*

## **VIII. PUBLIC HEARINGS**

*(This meeting will be conducted virtually, the public comments received via email in advance of the meeting will be read or played via voice memo or video into the minutes by the City Clerk)*

*There is a ten (10) minute time limit for each item during all public hearings.*

- [a.](#) Approval – of RZ-21-003 - APEX LAND Co. - Jim Summerbell
- [b.](#) Approval – of RZ-21-007 Arabia Mountain Conservation Overlay Expansion - Jim Summerbell
- [c.](#) Approval – of RZ-21-008, ACE Homes – Jim Summerbell
- [d.](#) Approval – of TMOD-21-008, Administration – Jim Summerbell
- [e.](#) Approval – of TMOD-21-009, Special Events – Jim Summerbell
- [f.](#) Approval – of TMOD-21-010, Prohibited Uses and Limitation on Industrial Zones – Jim Summerbell
- [g.](#) Approval – of TMOD-21-011, Restrictions on Residential Conversion – Jim Summerbell
- [h.](#) Approval – of TMOD-21-012, Gravel Parking – Jim Summerbell
- [i.](#) Approval – of the Proposed ROW Abandonment of a Portion of Lyons Road – Danielle Matricardi

## **IX. CONSENT AGENDA**

## **X. ANNOUNCEMENTS**

## **XI. REPORTS & PRESENTATIONS**

## **XII. OLD BUSINESS**

- [a.](#) Approval – of the Tree Protection Ordinance Amendment (2nd Read) – Gia Scruggs
- [b.](#) Approval – of the Decorum Ordinance (2nd Read) – Winston Denmark
- [c.](#) Approval – of the RZ-21-005 Withdrawal – Jim Summerbell

## **XIII. NEW BUSINESS**

- [a.](#) Approval – of the Discover Dekalb Contract – Johnathan Bartlett

[b.](#) Approval – of the City Participation in GMA Retirement System – Steve McClure

[c.](#) Approval – of the CDW Contract Approval for Tablets – Gia Scruggs

**XIV. CITY MANAGER UPDATE**

**XV. MAYOR AND COUNCIL COMMENTS**

**XVI. EXECUTIVE SESSION**

*(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)*

**XVII. ADJOURNMENT**

Americans with Disabilities Act

*The City of Stonecrest does not discriminate on the basis of disability in its programs, services, activities and employment practices.*

*If you need auxiliary aids and services for effective communication (such as a sign language interpreter, an assistive listening device or print material in digital format) or reasonable modification to programs, services or activities contact the ADA Coordinator, Sonya Isom, as soon as possible, preferably 2 days before the activity or event.*



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1    Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3    Council Member George Turner- District 4*

*Council Member Tammy Grimes – District 5*

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### SPECIAL CALLED VIRTUAL MEETING - MIMUTES

September 10, 2021 6:00 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

- I. **CALL TO ORDER:** Mayor Pro Tem, George Turner
- II. **ROLL CALL:** Sonya Isom, Deputy City Clerk  
All members present.
- III. **AGENDA DISCUSSION ITEMS:**
  1. Approval of Executive Search Firm to Conduct Various Searches  
**Motion 1** – made by Councilmember Jazzmin Cobble to approve the Executive Search Firm to conduct various searches as presented. Seconded by Council Member Tammy Grimes.  
**Motion passed unanimously.**
  2. Approval of OpTech Contract Amendment  
**Motion 2** — made by Councilmember Rob Turner to approve the Executive Search Firm to conduct various searches as presented. Seconded by Council Member Jazzmin Cobble .  
**Motion passed unanimously.**
  3. Update on Contract with NEOGOV to Provide Human Resources Information System.  
City Manager Janice Allen Jackson introduced the item, then Gia Scruggs and Steven McClure then gave more details. Ms. Scruggs will get additional information over to Council Member Rob Turner. NEOGOV use to be used by the State of Georgia.
  4. Discussion of Stonecrest Housing Authority (SHA) IGA  
City Manager Janice Allen Jackson introduced the item and in the packet is the most recent draft of the IGA. Council Member Cobble, spoke on this matter to make clear if we should enter into an IGA and what resources the city should lend to the SHA. The City Attorney Denmark said the city is not obligated to do anything.

#### IV. EXECUTIVE SESSION

(when an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

**Motion 3** – made by Councilmember Rob Turner to go into Executive Session for real estate Matters Seconded by Council Member Tammy Grimes.

**Motion passed unanimously.**

**Motion 4** – made by Councilmember Jazzmin Cobble to come out of Executive Session for real estate Matters Seconded by Council Member Rob Turner.

**Motion passed unanimously.**

##### 5. Approval of Real Estate Matters

**Motion 5** – made by Councilmember Jazzmin Cobble to approve the easement as negotiated by the city attorney's office for *Davis Miles Construction Corporate*. Seconded by Council Member Rob Turner.

**Motion passed unanimously.**

**Motion 6** – made by Councilmember Jazzmin Cobble to approve the easement as negotiated by the city attorney's office for Georgia Power come out of Executive Session for real estate Matters Seconded by Council Member Tammy Grimes.

**Motion passed unanimously.**

#### V. ADJOURNMENT

Declared at by Mayor ProTem George Turner at 7:31 PM



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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1    Council Member Rob Turner - District 2*

*Council Member Jazzmin Cobble – District 3    Council Member George Turner - District 4*

*Council Member Tammy Grimes – District 5*

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### CITY COUNCIL VIRTUAL MEETING - MINUTES

Monday, September 27, at 6:00 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

#### I. CALL TO ORDER

Mayor *Pro Tem* George Turner called meeting to order at 6:00pm

#### II. ROLL CALL

Deputy City Clerk Sonya Isom determined that there was a quorum.

Mayor and all Councilmembers were virtually present.

#### III. INVOCATION

Councilmember Rob Turner gave invocation.

#### IV. PLEDGE OF ALLEGIANCE

Pledge of Allegiance led by Mayor *Pro Tem* George Turner.

#### V. APPROVAL OF THE AGENDA

**Motion 1** - Councilmember Jazzmin Cobble motioned to add an appointment to the Finance Oversight Committee due to the resignation of a Finance Oversight Committee member.

Added as Item F under New Business/Appointment.

**Motion 1 - Motion carried.**

**Motion 2** – Councilmember Rob Turner moved to approve the September 27, 2021 City Council Meeting Agenda with stated addition under Item F, New Business. Seconded by Councilmember Jazzmin Cobble.

**Motion 2 – Motion carried unanimously.**



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### VI. REVIEW AND APPROVAL OF MINUTES

- a. **Approval** – of the August 23, 2021 City Council Meeting Minutes.

Mayor *Pro Tem* Turner notes correction of the spelling of the Construction Board of Appeals Member Clara Black-Delay.

Mayor *Pro Tem* notes correction of District Two Zoning Board of Appeals Membership Dwight Jones to be replaced by Appointment of Gwendolyn Green.

**Motion 1** – Councilmember Tammy Grimes moved to approve the August 23, 2021 City Council Meeting Minutes with modifications as stated. Seconded by Councilmember Rob Turner.

**Motion carried unanimously 5-0.**

### VII. PUBLIC COMMENTS

Four (4) Public comments received in advance of the meeting and read into the minutes by Deputy City Clerk Isom.

1. Suzanne Frick
2. Gail Richardson
3. Jerney Scott
4. Faye Cofield

Public comments concluded.

Mayor *Pro Tem* Turner inquires to Acting City Manager Janice Allen Jackson to speak to the number of Code Enforcement Officers. Acting City Manager stated that there is a full-time force, to include Code Enforcement Director and four (4) Code Enforcement Officers. She further stated that additional code enforcement personnel will be recommended in the upcoming budget.

Mayor *Pro Tem* Turner stated that additional responses to public comments will be made in writing.

Councilmember Cobble proposed the opportunity for Code Enforcement Director Alejandro Ferrell to add additional commentary. Mayor *Pro Tem* Turner allowed commentary.

Director Ferrell provided code enforcement updates, relevant to the Public Comment(s).

### VIII. PUBLIC HEARINGS

None.



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### IX. REPORTS & PRESENTATIONS

#### a. Proclamation

Mr. Samuel Wyatt celebrated his 100<sup>th</sup> Birthday. Councilman Jimmy Clanton presented special proclamation to Mr. Wyatt to honor his longevity and contribution to the community.

Comments made by Honoree Mr. Wyatt and Councilmembers Turner, Grimes, Cobble.

### X. OLD BUSINESS:

#### a. Appointment – to the Board of the East Metro Dekalb CID – *Jonathan Bartlett*.

To appoint a member to the East Metro DeKalb CID. The City of Stonecrest CID Advisory Committee met on September 14, 2021 and voted to recommend Mr. Cornell McBride, Jr. for consideration by Council, to serve on the East Metro CID Board through December 31, 2021.

Mr. Cornell McBride, Jr. not present.

**Motion 1** - Councilmember Turner motioned to appoint Cornell McBride, Jr. to the Board of the East Metro DeKalb CID as presented; seconded by Councilmember Clanton.

**Motion carried unanimously 5-0.**

#### b. Approval – of Parks and Recreation Phase 3 Reopening Re-evaluation – *Brandon Riley*.

The Parks and Recreation Department is seeking approval from City Council regarding re-evaluating the 3<sup>rd</sup> phase reopening plan that would increase the number of indoor participants from 50 to 100 people and allow open gym in the Browns Mill Recreation Center after the Labor Day Weekend.

According to Director Riley the trend in covid-19 cases within our region have reversed and the infection rate is on the rise. Position has been reversed and no longer seeking approval of Parks and Recreation Phase 3 Reopening.

Brief discussion.

**Motion 1** - Councilmember Cobble motioned to approve the Parks and Recreation Phase 3 Reopening Re-evaluation as modified, to include the continuation of Phase 2 approved number of 50 participants for indoor activities and Phase 3 Reopening of outdoor activities; seconded by Councilmember Grimes.

**Motion carried unanimously 5-0.**

#### c. Approval – of RZ-21-002, Alphabet Day Care – *Jim Summerbell*.

To take action on a rezoning request for 3174 Miller Road. The applicant is requesting to rezone from Residential Med Lot (R-100) to Office Institutional (OI) to operate Child Day Care Center.



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Applicant is not present. Planning and Zoning Director Summerbell did confirm interest in applicant moving forward. Mr. Summerbell made suggestion to contact applicant.

Item moved to End of Agenda.

Applicant now present.

**Motion 1** – Councilmember Turner motioned to approve rezoning request for 3174 Miller Road. The applicant is requesting to rezone from Residential Med Lot (R-100) to Office Institutional (OI) to operate Child Day Care Center as presented, with the stated conditions; seconded by Councilmember Grimes.

**Motion carried unanimously 5-0.**

### XI. NEW BUSINESS:

**a. Approval** – of Dekalb Municipal Association Invoice – *Gia Scruggs*.

The DeKalb Municipal Association (DMA) allows cities within DeKalb County to pay a membership dues. The Finance Department received an invoice for the 2021 DMA dues in the amount of \$38, 432.10. The Finance Director is seeking approval to pay the invoice presented. Invoice is past due.

**Motion 1** – Councilmember Turner motioned to approve DeKalb Municipal Association Invoice for 2021 as presented; seconded by Councilmember Cobble.

**Motion carried unanimously 5-0. Directive provided for Finance Director to pay 2021 DMA Invoice.**

**b. Approval** – of FY22 Budget Calendar – *Gia Scruggs*.

The Finance Director and City Manager worked together to put together an annual budget process calendar. The current Charter states that the City Manager shall submit to Council a proposed operating and capital budget for the ensuing fiscal year by November 1.

Recommended action is to approve the FY22 Budget Calendar.

**Motion 1** – Councilmember Cobble motioned to approve the FY22 Budget Calendar, as presented; seconded by Councilmember Grimes.

**Motion carried unanimously 5-0.**

**c. Approval** – of City Hall Lease Amendment – *Janice Allen Jackson/Jim Nichols*.

Consider an amendment to our current lease with Stonecrest Center for additional space at 3120 Stonecrest Boulevard, the location of the current City Hall.

Brief Discussion. Consensus to Table Item C – Approval of City Hall Lease Amendment for Special Called Meeting Scheduled on Monday, October 4, 2021.



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**Motion 1** – Councilmember Cobbled motioned to defer/table Item C – Approval of City Hall Lease Amendment for Special Called Meeting Scheduled on Monday, October 4, 2021, at 5:30pm; seconded by Councilmember Turner.

**Motion carried unanimously 5-0. Item C Approval of City Hall Lease Amendment deferred for Special Called Meeting Scheduled on Monday, October 4, 2021, at 5:30pm.**

**d. Appointment** – of Municipal Court Judge(s) – *Mayor Pro Tem George Turner.*

City of Stonecrest has been offered an opportunity to expand the number of qualified municipal judge for the city with the training and qualifying at the expense of the DeKalb State Court.

DeKalb County’s proposal to enlarge the number of municipal court judges for the City of Stonecrest in order to assist in the elimination of the DeKalb County State Court case backlog.

Appointments are of Honorable Judge Latasha Barnes, Honorable Judge Curtis Miller, and Honorable Judge Janet Scott.

**Motion 1** - Councilmember Cobble motioned to appoint the Municipal Court Judgeships, as presented; seconded by Councilmember Grimes.

**Motion carried unanimously 5-0.**

**e. Approval** – of Vehicle for Multi-department Use – *Mayor Jason Lary.*

Mayor Lary seeking action from Council to purchase a vehicle for use by departments as reference on the email thread within agenda packet.

Inquire made by Councilmember Clanton, to confirm that vehicle will not be assigned to any individual. Confirmed.

Brief discussion.

Mayor *Pro Tem* Turner recommended that City form an alliance with other agencies in the city that does not have the same restrictions as Government. Further recommends that Council “hold off on this.”

**Motion 1** – Councilmember Cobble motioned to deny the Vehicle for Multi-department Use, as presented; seconded by Councilmember Grimes.

Councilmember Clanton made inquiry into the definition of ‘denial’. Councilmember Cobble responds.

**Motion carried 4-0. Councilmember Clanton descents – Nay.**

Mayor Lary yields to Mayor *Pro Tem* Turner in request to add Special Called Meeting to reinstate Mayor’s original vehicle allowance. Mayor *Pro Tem* Turner stated that matter would be addressed



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and returned to meeting at hand.

**f. Appointment** – of Finance Oversight Committee Member.

District 3 had a change in member appointed to the Finance Oversight Committee. Finance Committee Member Jennifer Moore will no longer be able to serve at this time. Councilmember and Finance Oversight Committee Chair Cobble would like to appoint Michael Strong to committee.

**Motion 1** - Councilmember Cobble motioned to appoint Michael Strong to Finance Oversight Committee Member to replace Jennifer Moore; seconded by Councilmember Clanton.

**Motion carried unanimously 5-0.**

### XII. CITY MANAGER UPDATE

**a. COVID Update.**

COVID Update provided by Acting City Manager Janice Allen Jackson. Acting City Manager responded to City Council inquiries.

**b. American Rescue Plan Update.**

American Rescue Plan Update provided by Acting City Manager Janice Allen Jackson. To date, two (2) proposals have been received.

Brief discussion. Inquires responded by Acting City Manager and Mr. Bartlett.

### XIII. MAYOR AND COUNCIL COMMENTS

Held until after Executive Session.

No additional comments from Acting City Manager or City Attorney.

Mayor threatened to show everyone his “hairy behind” the next time he feels disrespected. Mayor further commented on the reduction of his vehicle allowance/vehicle reimbursement and expresses frustration.

District 1 Councilmember Clanton recognized Mr. Wyatt and District 5 citizen for reaching a milestone of 100 Years Old. Made announcement of Community Awareness Event on October 9th.

District 2 Councilmember Turner commented on Covid-19 and staying safe.

District 3 Councilmember Cobble announced upcoming event – Screen on the Green and Entrepreneur Expose on October 2nd.

District 5 Councilmember Grimes discussed HB 202 and upcoming event to discuss the same.

District 4 Mayor *Pro Tem* Turner announced upcoming construction activity within the city and meeting to discuss the development of the houses. When date has been confirmed, informational link will be sent to the public. Encouraged vaccination to fight the spread of Covid 19.



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### XIV. EXECUTIVE SESSION:

*(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)*

**Motion 1** - Councilmember Cobble moved to go into Executive Session for Legal and Real Estate matters; seconded by Councilmember Turner.

**Motion 1 - Motion carried unanimously 5-0.**

**Motion 2** - Second motion made by Councilmember Turner to return to the Virtual City Council Meeting; seconded by Councilmember Cobble.

**Motion 2 - Second motion carried unanimously 5-0.**

### XV. ADJOURNMENT

Mayor *Pro Tem* Turner moved to adjourn the meeting. Councilmember Cobble motioned to adjourn; seconded by Councilmember Grimes.

**Motion carried unanimously.**

Meeting adjourned at 9:09pm.



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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Tammy Grimes – District 5*

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### SPECIAL CALLED MEETING MINUTES

#### VIRTUAL MEETING

October 4, 2021 5:30 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

**I. CALL TO ORDER:** Mayor Pro Tem, George Turner

**II. ROLL CALL:** Sonya Isom, Deputy City Clerk

All members present.

**III. AGENDA DISCUSSION ITEMS:**

1. **Approval** - of City Hall Lease Amendment – *Janice Allen Jackson/Jim Nichols*

City Manager Janice Allen Jackson suggested Council go into Executive Session to discuss real estate matters.

**Motion 1** – made by Councilmember Rob Turner to go into Executive Session for matters of real estate. Seconded by Councilmember Tammy Grimes.

**Motion passed unanimously.**

**Motion 2** – made by Councilmember Jazzmin Cobble to exit the Executive Session and return to the regular scheduled Special Called Meeting. Seconded by Councilmember Tammy Grimes.

**Motion passed unanimously.**

**Motion 3** – made by Councilmember Rob Turner to defer the City Lease Amendment to a Special Called Meeting to be held prior to the Work Session scheduled for October 11, 2021. Seconded by Councilmember Jimmy Clanton.

**Motion passed unanimously.**

**Motion 4** – made by Councilmember Jazzmin Cobble to establish a Special Called Meeting on Monday, October 11, 2021 at 5:30pm. Seconded by Councilmember Jimmy Clanton.

**Motion passed unanimously.**

2. **Decision** - Repudiation of Action of Misconduct - *Mayor Pro Tem George Turner*

Councilmember Jimmy Clanton stated his unreadiness and questioned if this matter required an Executive Session and wanted to confirm if Council counts as personnel. Attorney Alicia Thompson confirmed this item is not required to go into Executive Session.

Councilmember Jimmy Clanton agrees no citizen should have to listen to negative comments during a Council meeting but feels Council should first define the resolution and what constitutes a violation. There should be guidelines in place prior to taking action.

Mayor Pro Tem George Turner stated the Resolution has been considered over the last 7 days and that Council does not condone or encourage staff addressing everyone without the utmost respect.

Councilmember Jazzmin Cobble noted there is a Code of Ethics that exist but it does not have guidelines clarifying what is not acceptable. The City Manager and legal team are working to establish the current document.

**Motion 1** – made by Mayor Pro Tem George Turner to adopt the Resolution of Repudiation of Action of Misconduct. Seconded by Councilmember Jazzmin Cobble.  
**Motion passed 4-1.** Councilmember Jimmy Clanton voted Nay.

#### IV. EXECUTIVE SESSION

(when an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

#### V. ADJOURNMENT

**Motion 1** – made by Councilmember Jazzmin Cobble to end the Special Called Meeting. Seconded by Councilmember Tammy Grimes.

**Motion passed unanimously.**



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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Tammy Grimes – District 5*

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### SPECIAL CALLED MEETING AGENDA

#### VIRTUAL MEETING

October 11, 2021 at 5:37 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

**I. CALL TO ORDER:** Mayor Pro Tem, George Turner

**II. ROLL CALL:** Sonya Isom, Deputy City Clerk

All members present.

**III. AGENDA DISCUSSION ITEMS:**

1. **Approval** - of City Hall Lease Amendment – *Janice Allen Jackson/Jim Nichols*

City Manager, Janice Allen Jackson suggested Council go into Executive Session to discuss this lease agreement.

**Motion 1** – made by Councilmember Jazzmin Cobble to go into Executive Session for matters of real estate. Seconded by Councilmember Robert Turner. **Motion passed unanimously.**

**IV. EXECUTIVE SESSION**

(when an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

**Motion 2** – made by Councilmember Rob Turner to end the Executive Session on real estate matters and resume the Special Called Council Meeting. Seconded by Councilmember Tammy Grimes. **Motion passed unanimously.**

**Motion 3** – made by Councilmember Jazzmin Cobble to amend the City Hall lease contract to include the space that is available downstairs plus the space that is available upstairs. Seconded by Councilmember Tammy Grimes. **Motion passed unanimously.**

**V. ADJOURNMENT**

**Motion 1** – made by Councilmember Jazzmin Cobble to end the Special Called Meeting. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

Meeting adjourned at 6:17 P.M.



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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1    Council Member Rob Turner - District 2*

*Council Member Jazzmin Cobble – District 3    Council Member George Turner - District 4*

*Council Member Tammy Grimes – District 5*

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### CITY COUNCIL VIRTUAL MEETING MINUTES

Monday, October 25 at 6:03 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

**I. CALL TO ORDER:** George Turner, Mayor Pro-Tem

**II. ROLL CALL:** Tomika R. Lewis, Acting City Clerk

All members were present.

**III. INVOCATION**

Councilmember Rob Turner gave the invocation.

**IV. PLEDGE OF ALLEGIANCE**

**V. APPROVAL OF THE AGENDA**

Acting City Clerk, Tomika Lewis informed Council that the first three items under “New Business” needed to be moved to “Public Hearings” on the agenda. Mayor Pro Tem Turner stated the following items will be moved to “Public Hearings”: RZ-21-005; TMOD-21-007; and TMOD-21-008.

Mayor Pro Tem Turner stated there was an appointment to the SPLOST Committee that will be discussed under “Announcements”.

Deputy City Manager, Jim Nichols inquired if it was possible to move Item (e) from New Business to (h) the end of the agenda.

**Motion 1** – made by Councilmember Rob Turner to approve the agenda for City Council’s virtual meeting for Monday, October 25<sup>th</sup> with the stated changes. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

**VI. PUBLIC COMMENTS**

Mayor Pro Tem Turner mentioned that at the last “Public Comments” he stated Council would get back to those who made comments in a written form, which has not happened. He then mentioned



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personnel has to be put in place to make sure the necessary research is done and we can answer questions on a consistent basis. Mayor Pro Tem Turner also addressed previous meeting comments: approval of the Miller Rd. Daycare; SeaQuest Project; ethical treatment of animals; trash and vacant property.

Acting City Clerk, Tomika Lewis read a public comment from [fayeiswhoiam@gmail.com](mailto:fayeiswhoiam@gmail.com) pertaining to RZ-21-005.

*Mayor Pro Tem Turner suggested skipping the “Oath of Office” item for now and moving to the “Announcements” item.*

### X. ANNOUNCEMENTS

Councilmember Grimes gave a brief introduction of Mr. Lemuel Hawkins and recommended appointing him to the SPLOST Committee.

**Motion 2** – made by Councilmember Jazzmin Cobble to approve Mr. Lemuel Hawkins as a member of the SPLOST Committee. Seconded by Councilmember Tammy Grimes. **Motion passed unanimously.**

*The Council moved to “OLD BUSINESS” on the agenda.*

### XII. OLD BUSINESS:

#### a. **Approval** – of the Holiday City Council Meeting Schedule - Jim Nichols

Deputy City Manager, Jim Nichols recommended that the December 28 meeting be moved to Monday, December 20 to not interfere with holiday plans that many Council and staff may have planned at the end of the year.

**Motion 3** – made by Councilmember Jazzmin Cobble to approve the change to the City Council schedule, to change the meeting from December 28 to December 20. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

*The Council moved to “OATH OF OFFICE” on the agenda.*

### XIII. OATH OF OFFICE

#### a. **Construction Board of Appeals**

Judge Ramsey administered the Oath of Office to the following Construction Board of Appeals members: Clara Delay, Mike Burdette, and Kerry Williams.

*The Council moved to “PUBLIC HEARINGS” on the agenda.*



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### XIV. PUBLIC HEARINGS

a. **Approval** – of RZ-21-005, 6301 Browns Mill Road - Jim Summerbell

Planning and Zoning Director, Jim Summerbell gave a brief overview of the rezoning request, RZ-21-005 located at 6301 Browns Mill Road. The applicant requested to rezone the subject property within the Arabia Mountain Conservation Overlay from Residential Medium Lot (R-100) to Residential Small Lot (RSM) for the development of a 20 single-family detached house community. Staff recommended approval with conditions.

**Motion 4** – made by Councilmember Rob Turner to go into Public Hearing for RZ-21-005. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

*The Public Hearing opened.*

Michele Battle gave a brief presentation of the proposed development to be located in the Arabian Mountain Overlay District.

Acting City Clerk, Tomika Lewis read a public comment from Dave Marcus, 6501 Rockland Road, Stonecrest, GA 30038 in opposition to RZ-21-005.

**Motion 5** – made by Councilmember Rob Turner to close the Public Hearing for RZ-21-005. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

*The Public Hearing closed.*

**Motion 6** – made by Councilmember Tammy Grimes to defer this RZ-21-005 for a 30-day cycle. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

b. **Approval** – of TMOD-21-007, Private Permitting Review – Jim Summerbell

Planning and Zoning Director, Jim Summerbell gave a brief overview of TMOD-21-007, Private Permitting and proposed a text amendment to the Stonecrest Code of Ordinances, Chapter 7 – Building and Construction. This would include the adoption of the GMA model ordinance for Private Permitting Prequalification for review and inspection. The Planning Commission recommended unanimously to adopt the text amendment.

**Motion 7** – made by Councilmember Rob Turner to go into the Public Hearing for TMOD-21-007. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

*The Public Hearing opened.*

There were no public comments for this item.



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**Motion 8** – made by Councilmember Jimmy Clanton to end the Public Hearing on TMOD-21-007. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

*The Public Hearing closed.*

**Motion 9** – made by Councilmember Jimmy Clanton to approve TMOD-21-007. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

c. **Approval** – of TMOD-21-008, Administration – *Jim Summerbell*

Planning and Zoning Director, Jim Summerbell gave a brief overview of TMOD-21-008, a proposed text amendment to the Stonecrest Code of Ordinances, Chapter 27, Article 7 – Administration regarding application procedures, training requirements for commission and board members, and public notification of rezoning and building activity. The Planning Commission recommended to the City Council consider adding a provision for stipends for commission and board members.

**Motion 10** – made by Councilmember Rob Turner to go into the Public Hearing for TMOD-21-008. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

*The Public Hearing opened.*

There were no public comments for this item.

**Motion 11** – made by Councilmember Tammy Grimes to end the Public Hearing on TMOD-21-008. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

*The Public Hearing closed.*

**Motion 12** – made by Mayor Pro Tem George Turner to defer this item to the next City Council meeting and City Council Work Session. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

### XV. CONSENT AGENDA

There were no items under the Consent Agenda.

### XVI. REPORTS & PRESENTATIONS

There were no reports or presentations.

### XVII. OLD BUSINESS:

- a. This item was discussed earlier in the meeting.



## CITY OF STONECREST, GEORGIA

b. **Approval** – of the NEOGOV Human Resource Contract Amendment – *Gia Scruggs*

Finance Director, Gia Scruggs gave a brief overview of the proposed Human Resource Management tool, NEOGOV to assist the City with the onboarding process, learning management tool and e-forms. Staff requested approval for an additional service for a contract amount of \$23,476.00. The original contract amount was for a not to exceed amount of \$17,223.50.

**Motion 13** – made by Councilmember Jazzmin Cobble to approve. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

c. **Approval** – of the Tree Protection Ordinance Amendment – *Gia Scruggs*

The current ordinance did not allow for the establishment of a separate fund to accept tree bankfunds. The tree Protection ordinance be amended to include Tree Protection Administration to allow for the receipt and disbursement of funds.

**Motion 14** – made by Councilmember Jazzmin Cobble to approve. Seconded by Councilmember Rob Turner. **Motion withdrawn due to a second reading occurring at the next Regular City Council meeting.**

### XVIII. NEW BUSINESS:

*Items a, b, and c were heard under Public Hearings.*

d. **Approval** – of the Decorum Resolution – *Winston Denmark*

This should be an ordinance. Resolutions are not a permanent policy and should require two reads. Colleague Alicia Thompson read the first read regarding the following parameters: The purpose of this item is to establish conduct and decorum guidelines for all elected officials in the COS and discussed 4 specific areas of conduct. The first read will be either amended or passed as an ordinance on the second read which will be presented at a future meeting. Penalties were also mentioned.

e. **Presentation** – of Benefits Declarations Ordinance – *Steve McClure*

An ordinance and declaration application which will allow COS to participate in the benefits system life and health programs. This is to be administered by GMA and needs to be effective by December 1, 2021. Healthcare, Vision, Dental, Life and Short Term disability are all parts of the Employee Benefit program. This declarations and ordinance will require two readings. A special call meeting was set for Oct. 29 for ten minutes.

Jazzmin Cobble offered a motion to approve the health benefits declaration page for the City of Stonecrest. Jimmy Clanton seconded the motion. All approved unanimously.



## CITY OF STONECREST, GEORGIA

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f. **Presentation** – of the Benefits Declaration and Ordinance - *Steven McClure*

Acting Human Resources Director, Steven McClure presented an ordinance and declaration and application for approval to allow the City of Stonecrest to participate in the Georgia Municipal Employees Benefit System's Life and Health Program, administered by GMA, effective December 1, 2021.

Mr. McClure informed the Mayor and Council that the ordinance and declaration are prepared by GMA, and they will not administer the program without the ordinance signed by the Mayor and City Council.

Due to this ordinance needing two readings and this would be the first meeting, the Council agreed to meet on Friday, October 29, 2021, at 6:00p.m. for the second reading.

**Motion 15** – made by Councilmember Jazzmin Cobble to approve the Health Declaration page for the City of Stonecrest. Seconded by Councilmember Jimmy Clanton. **Motion passed unanimously.**

g. **Presentation** – of the Employee Retirement Program - *Steven McClure*

Acting Human Resources Director, Steven McClure presented the Employee Retirement Program and requested approval for the City to participate in the Georgia Municipal Association 401a Defined Contribution Plan, including a 457b plan, effective December 1, 2021.

**Motion 16** – made by Council member Rob Turner to approve the Employee Retirement Program for the City of Stonecrest. Seconded by Councilmember Jazzmin Cobble. **Motion passed unanimously.**

h. **Presentation** - of The Union at Stonecrest – *Winston Denmark*  
*Pete Walker, President/CEO of Housing Authority of DeKalb Co.*

The City of Stonecrest has been approached by a developer and the Dekalb Housing Authority to issue tax exempt revenue bonds and approve a public finance transaction. This is referring to a multi-residential 122 multi-family unit called The Union on Hillendale Road. They also want to be approved to operate within the city limits. The Lou Walker Senior Center made a public comment.

**Motion 17** - Council member T. Grimes made a motion to approve the request (consent resolution) for The Union at Stonecrest and the Dekalb County Housing Authority contingent upon the city asking that the fees are coming to the City of Stonecrest. Council member Rob Turner seconded the motion. The motion was unanimously approved.



## CITY OF STONECREST, GEORGIA

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- I. **Presentation** - FY2022 Budget Recommendation – *Janice Allen Jackson and Gia Scruggs*  
City Manager, Janice Jackson presented the budget and approval presentation and they are seeking budget approval on November 10, 2021 (the public hearing is Nov. 8) and to also allow positions to be advertised sooner. This includes major changes from last year's budget. Major sources of revenue were also discussed: real property; total business taxes; general business licenses and building permits. This makes total revenues of \$13,746,000. The next steps would be to set Budget Work Session Dates. A consensus was made to have the Budget Work Session on Nov. 10 at 6 p.m.

### **XIX. CITY MANAGER UPDATE**

a. COVID Report – City Manager, Janice Jackson

Ms. Jackson started with the good news that the COVID numbers are trending in the right direction, (based on the data published by the DeKalb County Health Department.) The case count in the past 7 days has been steadily declining from 125 to 76 per 100,000 people.

Council members discussed how and if they are now able to consider in-person meetings and/or hybrid meetings. A decision was made to stay virtual until the first in-person meeting of the council. On Nov. 8, they will be ready for committee meetings to go in-person as well in the Chamber to accommodate the public.

### **XX. MAYOR AND COUNCIL COMMENTS**

Council member Turner – We're in an election and have to make those votes count for the protection of our city.

Council member Cobble – Councilman Cobble and Commissioner Marie Davis-Johnson will be hosting a food distribution commission at United Methodist Church this Saturday from 11 – 1 p.m.

Council member Grimes – Early voting has started and ends on October 29. Election Day is Nov. 2. Exercise your right to vote!

Mayor Pro Tem Turner - 8 lbs., 5 oz., 19.5" long –bouncing baby girl. I am a grandfather for the second time as of Saturday morning.

Mayor Lary - Three exciting events going on all week long:

1. The annual scholarship and career fest is going on at New Birth Missionary Baptist Church. Over a million dollars have been distributed thus far.
2. The Harvest Fest will be at the new Black Wall Street this week. On Saturday and Sunday, there will be a sneak preview at some of the stores and businesses there.
3. There will be a HBCU homecoming celebration at the mall along with trunk or treat this weekend.



## CITY OF STONECREST, GEORGIA

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### XXI. EXECUTIVE SESSION:

*(When an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)*

The Council did not meet in Executive Session.

### XXII. ADJOURNMENT

**Motion 18** – made by Council member Clanton to adjourn. Seconded by Council member Grimes. **Motion passed unanimously.**

Meeting adjourned at 10:09 P.M.

#### Americans with Disabilities Act

*The City of Stonecrest does not discriminate on the basis of disability in its programs, services, activities and employment practices.*

*If you need auxiliary aids and services for effective communication (such as a sign language interpreter, an assistive listening device or print material in digital format) or reasonable modification to programs, services or activities contact the ADA Coordinator, Sonya Isom, as soon as possible, preferably 2 days before the activity or event.*



## CITY OF STONECREST, GEORGIA

*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1    Council Member Rob Turner - District 2*

*Council Member Jazzmin Cobble – District 3    Council Member George Turner - District 4*

*Council Member Tammy Grimes – District 5*

### SPECIAL CALLED CITY COUNCIL MEETING *MINUTES*

Friday, October 29, 2021 at 6:00 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

**I. CALL TO ORDER:** George Turner, Mayor Pro-Tem

**II. ROLL CALL:** Tomika R. Lewis, Acting City Clerk

Mayor Jason Lary was absent, all other members present.

**III. PUBLIC COMMENTS**

*(This meeting will be conducted virtually. The public comments received via email by 4:00pm on the day of the meeting, will be read or played via voice memo or video into the minutes by the City Clerk.)*

*There is a three (3) minute time limit for each speaker during public comment.*

1. Read in by Tomika R. Lewis, Acting City Clerk .

Angela Russell, which employees and departments in the city of Stonecrest will this employee benefits system be put in place for?

**IV. DISCUSSION ITEM:**

a. **Approval** – of the Employee Benefits System Ordinance (*2<sup>nd</sup> Read*)- *Steven McClure*

**Motion 1** – made by Councilmember Jazzmin Cobble to approve, Seconded by Councilmember Robert Turner. **Motion passed unanimously** at the 7<sup>th</sup> minute of the meeting.

**V. EXECUTIVE SESSION:**

*(When an executive session is required, one will be called for the following issues:*

*1)Personnel, 2) Litigation, 3) Real Estate)*

**VI. ADJOURNMENT**

**Motion 1** – made by Councilmember Jazzmin Cobble to end the Special Called Meeting. Seconded by Councilmember Tammy Grimes. **Motion passed unanimously.**

Meeting adjourned at 6:08 P.M.



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Tammy Grimes – District 5*

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### SPECIAL CALLED MEETING AGENDA

#### VIRTUAL MEETING

November 4, 2021 at 5:32 P.M.

Citizen Access: [Stonecrest YouTube Live Channel](#)

**I. CALL TO ORDER:** Mayor Pro Tem, George Turner

**II. ROLL CALL:** Tomika R. Lewis, Acting City Clerk

All members present.

**III. PUBLIC COMMENTS**

**IV. DISCUSSION ITEM:**

a. **Approval** – Emergency Extension of Virtual Meeting Dates

Mayor Pro Tem Turner stated the Dekalb County, Stonecrest area numbers of COVID-19 cases have increased.

City Manager, Janice Allen Jackson stated the numbers from Dekalb County were currently up to 65 cases per 100,000 Countywide.

The Council briefly discussed this item and recommended the continuance of meeting virtually.

City Attorney, Winston Denmark gave a brief update on the ordinance stating the city was not obligated to do two reads for an emergency ordinance, per the City Charter.

**Motion 1** – made by Councilmember Jazzmin Cobble to emergency extension of the ordinance to allow for virtual meetings to continue through January 24, 2022. Seconded by Councilmember Robert Turner. **Motion passed unanimously.**

**V. EXECUTIVE SESSION**

(when an executive session is required, one will be called for the following issues: 1) Personnel, 2) Litigation, 3) Real Estate)

The Council did not enter into Executive Session.

**VI. ADJOURNMENT**

**Motion 2** – made by Councilmember Jazzmin Cobble to adjourn. Seconded by Councilmember Rob Turner. **Motion passed unanimously.**

Meeting adjourned at 5:43 P.M.



## CITY COUNCIL AGENDA ITEM

**SUBJECT: RZ-21-003, APEX Land Company**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** Click or tap to enter a date. - Click or tap to enter a date.

**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To hold a public hearing and take action on RZ-21-003, a request by Apex Land Company to rezone the property at 3177 Panola Rd and 5207 Thompson Mill Road from R-100 (Residential Medium Lot) District and NS (Neighborhood Shopping) District to RSM (Small Lot Residential) District for the development of a 65-unit townhome community.

**FACTS:** See staff report

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approve with conditions

**ATTACHMENTS:**

- (1) Attachment 1 - RZ-21-003APEX Land Staff Report
- (2) Attachment 2 - Rezoning Application amendment submitted on August 27, 2021 with updated letter of intent, and original zoning application dated June 2, 2021



## **CITY COUNCIL AGENDA ITEM**

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- (3) Attachment 3 - Technical memorandums concerning traffic impacts
- (4) Attachment 4 - RZ-21-003 Public Participation Plan
- (5) Attachment 5 - Zoning Agreement between Panola Mills HOA and the property owners of subject property, which includes the conditions of zoning placed on the property by DeKalb County in 2008 (Z-08-15000)

RZ-21-003 Attachment 1: Staff Report



## PLANNING & ZONING STAFF REPORT

RZ-21-003

City Council Regular Meeting: November 22, 2021

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### GENERAL INFORMATION

<b>Petition Number:</b>	RZ-21-003
<b>Applicant:</b>	Apex Land Company, LLC
<b>Owner:</b>	Zacharia Majed; Mohammed Al Mulki Rania; Amir Haffer
<b>Project Location:</b>	3177 Panola Rd and 5207 Thompson Mill Road, Parcel Numbers 16 022 01 245 and 16 022 01 023
<b>District:</b>	District 3 – Jazzmin Cobble
<b>Acreage:</b>	Approximately 9.56 acres
<b>Existing Zoning:</b>	R-100 (Residential Med Lot) District and NS (Neighborhood Shopping)
<b>Proposed Zoning:</b>	RSM (Small Lot Residential)
<b>Comprehensive Plan Character Area Designation</b>	Suburban Neighborhood
<b>Proposed Development/Request:</b>	A 65-unit townhome community
<b>Staff Recommendations:</b>	Approval with conditions
<b>Planning Commission Recommendation:</b>	Planning Commission recommended Approved with conditions on September 7, 2021.

**PLANNING & ZONING STAFF REPORT**

RZ-21-003

**Aerial Map**



**Zoning Case: RZ-21-003**

**Address: 3177 Panola Road and 5207 Thompson Mill Road**



PLANNING & ZONING STAFF REPORT

RZ-21-003

Zoning Map



**Zoning Case: RZ-21-003**

**Current Zoning: R-100 and NS**

**Address: 3177 Panola Road and 5207 Thompson Mill Road**

**Proposed Zoning: RSM**



## PLANNING & ZONING STAFF REPORT

RZ-21-003

### **PROJECT OVERVIEW**

#### **Location**

The subject property is located at 3177 Panola Road and 5207 Thompson Mill Road. The property is located at the intersection of Thompson Mill Rd and Panola Road.

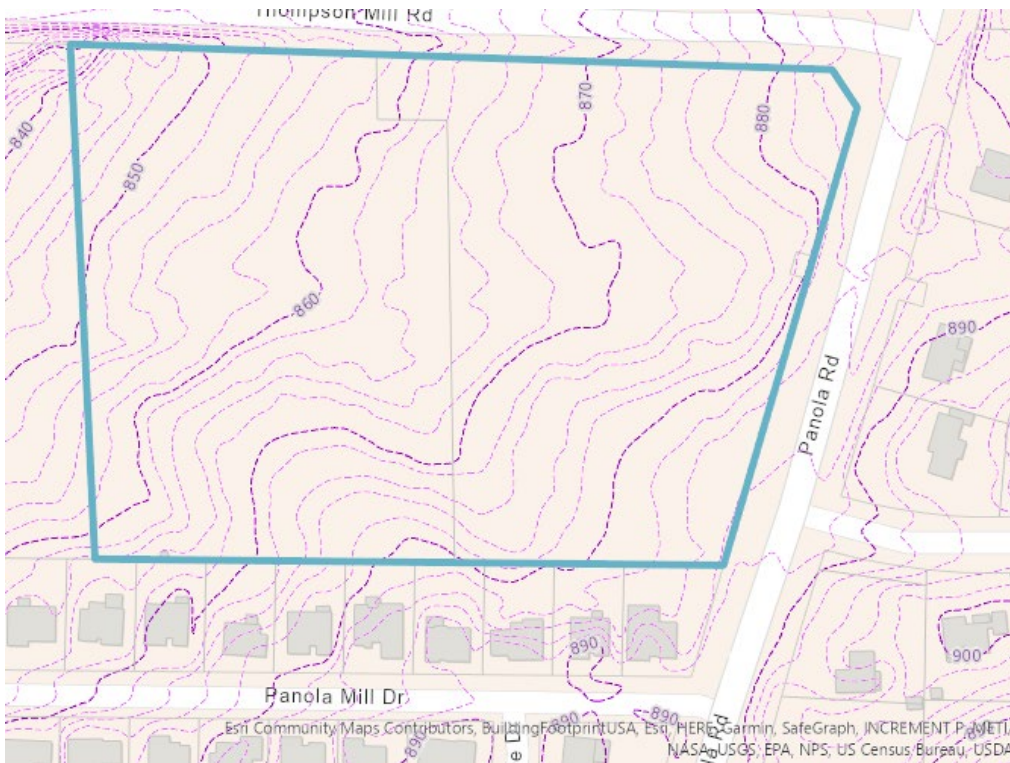
The property is bounded by Thompson Mill Road to the north, a single family home to the west. Panola Mill Subdivision to the South, and Panola Road to the east. Winslow Crossing Subdivision is located across Panola Road to the east, and Cavalier @100 apartment complex is located across Thompson Mill Road to the north.

#### **Background**

Currently, the property is vacant, and zoned for single-family residential, R-100 and Neighborhood Shopping. The subject property was previously rezoned by DeKalb County in 2008, CZ-08-15000 for a 25,000 sf shopping center, see attached Dekalb County case report.

The topography of the property relatively level sloping away from Panola Road toward to stream to the west of the site. The site is currently wooded. There are no streams on the property, but a stream does traverse near the northwest corner of

**Topo Map of the Subject Property**





## PLANNING & ZONING STAFF REPORT

RZ-21-003

the property such that the stream buffer does cross over the property. The proposed development will not encroach into the buffer. Rather, the trees that currently exist in the buffer will remain. There are also no known archeological or historic sites on the property, see Environmental Site Analysis in the application materials.

### Rezoning Request

The applicant is requesting to rezone the subject property RSM for the development for a 65-unit fee simple townhome community, a less intensive use than that of approved use for a shopping center. The site plan submitted on August 27, 2021 indicates two points of access, one on Thompson Mill Road and another on Panola Road.

### Conceptual Site Plan



## PLANNING & ZONING STAFF REPORT

RZ-21-003

Elevations (see attached application materials for full set of elevations.)



FRONT ENTRY RENDERING





## PLANNING & ZONING STAFF REPORT

RZ-21-003

### Public Participation

The applicant did submit a public participation plan, and held multiple community meetings with the Panola Mills, Glencroft, Havenwood and Woodgrove communities via Zoom prior to August 3. These meetings did lead to scaling back of the density of original proposal for the development, see attached application materials. The applicant conducted another public meeting on September 1. Prior to the September 7, 2021 Planning Commission meeting.

### Traffic Analysis

Staff has received many emails voicing concerns over the potential impact of the development, particularly concerning increased traffic congestion and safety. A trip generation report, dated 6/8/2021 and prepared by Lumin8 Transportation Technologies indicates that the traffic impact to the area for residential use would be half that if developed as currently approved for retail development. The applicant did not prepare a traffic study as requested by the Planning Commission, but as stated earlier did scale down the proposed density of the development, which would reduce any potential traffic impacts.

### STANDARDS OF REZONING REVIEW

*Section 7.3.4 of the Stonecrest Zoning Ordinance list eight factors to be considered in a technical review of a zoning case completed by the Planning and Zoning Department and Planning Commission. Each element is listed with staff analysis.*

#### **A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.**

The subject property is located within the Suburban character area of the Stonecrest 2038 Comprehensive Plan, as described on page 128 of the Comp Plan.

“The intent of the Suburban Neighborhood character area is to recognize those areas of the city that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. These areas include those developed (built out) and those under development pressures. Those areas are characterized by low pedestrian orientation, limited transit access, scattered civic buildings and curvilinear street patterns. The proposed density for areas of this type is up to 8 dwelling units per acre.”

The residential requested density is within the policy guidelines of Comp Plan.

#### **B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties.**

As described before, the subject property is surrounded by residential uses, and proposed townhome development is more suitable to the residential character of the area than currently permitted retail development, see previous zoning map.



## PLANNING & ZONING STAFF REPORT

RZ-21-003

**C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

The property is currently zoned R-100 and NS, and does have limited economic use as currently zoned, though market conditions have not favored development, The requested use of the property is less intensive than that as currently zoned, and considered to have more market value or greater economic use.

**D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties.**

The proposed zoning proposal is not anticipated to have a negative impact on the existing use or usability of adjacent or nearby properties. Staff believes the suggested zoning for a townhome development would complement the area better than the currently allowed use of a shopping center.

**E. Whether there are other existing or changing conditions affecting the use and development of the property, which gives supporting grounds for either approval or disapproval of the zoning proposal.**

There are no changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the zoning proposal.

**F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.**

There are currently no historic buildings, sites, districts, or archaeological resources on the subject property.

**G. Whether the zoning proposal will result in a use that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

According to a trip generation report, dated 6/8/2021 and prepared by Lumin8 Transportation Technologies the traffic impact to the area for residential use would be half that if developed as currently approved for retail development. As also indicated in a memo from the City Engineer dated June 14, planned improvements to Thompson Mill Road for widening from 2 to 4 lanes and for its intersection with Panola Road will help to mitigate the negative impacts of the proposed development and a full traffic study is not required for the site, as it does not meet the 190 units requirement for such a study.

**H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.**

Environmental Site Analysis included in the application indicates no significant environmental impact. The zoning proposal will not adversely impact the environment or surrounding natural resources. Steps are being taken to mitigate any potential stormwater runoff.



## PLANNING & ZONING STAFF REPORT

RZ-21-003

### STAFF RECOMMENDATION

The applicant meets all the criteria for approval. Therefore, staff recommends **APPROVAL** of **RZ-21-003** the following condition:

1. The future development of the site shall be for a maximum of 65 townhome units, and in general conformity with conceptual plan submitted with this rezoning application amendment prepared by Contineo Group for Apex Land Company and dated 8/27/21.
2. The roof line for each building shall be varied.
3. Exterior building materials shall comply with the Article 5 standards of the Stonecrest Zoning Ordinance. The front façade of the units shall incorporate multiple textures and materials similar to the elevations submitted to the Stonecrest Planning Department.
4. A 20ft undisturbed buffer, along with a 10ft landscape strip, shall be in place along the southern boundary line of the Subject Property.
5. Opaque privacy fencing shall be placed along or near the perimeter of the southern boundary line of the property adjacent to the Panola Mills subdivision.
6. There shall be a Mandatory Homeowners Association which shall own and maintain the common areas, and enforce the covenants placed on the townhome community.
7. The maximum height of the units shall be 2 stories or 35ft in height.
8. Prior to the issuance of any land disturbance permit, the Applicant must provide evidence of a legal mechanism under which all land to be held in common and used for greenspace purposes within the development shall be protected in perpetuity. Such legal mechanism shall include a declaration of restrictive covenants and the formation of a homeowner association, which assure in perpetuity each of the following mandatory requirements:
  - a. That all land held in open space will remain undivided and shall not be subdivided or removed from joint access or benefit in perpetuity;
  - b. That all subsequent property owners in the development will be placed on notice of this development restriction through the deed records filed with the Superior Court of DeKalb County;
  - c. That all land held as greenspace will be properly maintained and that no liability or maintenance responsibilities for the land held as greenspace shall accrue to the City of Stonecrest (the "City");
  - d. That a legal entity exists for notice of deficiencies in maintenance of the land held as greenspace, correction of these deficiencies, and assessment of liens against the properties for the cost of the correction of these deficiencies by a third party or the City;
  - e. That the legal mechanism will become effective and enforceable prior to or at the time of recording the final plat and the sale of any individual properties within the Subject Property; and
  - f. That all requirements of the legal mechanism used to comply with the regulations of this condition will be specified on the final plat to be recorded with the Clerk of Superior Court of DeKalb County.
  - g. Equal access and right of use to all greenspace by all homeowners;
  - h. Mandatory and automatic membership in the homeowners' association for all homeowners and their successors;
  - i. A fair and uniform method of assessment and collection/payment for dues, maintenance and related costs;
  - j. Homeowners' association lien authority to ensure the collection of dues from all members;
  - k. Perpetual and continued maintenance and liability by the homeowners' association of land held as greenspace; and
  - l. Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of DeKalb County.



## PLANNING & ZONING STAFF REPORT

RZ-21-003

- m. The recorded covenants shall contain a 15% rental restriction, which rental restriction shall be enforced solely by the Homeowner's Association to the extent permitted by law, with an exception for active military personal that are required to relocate. THE CITY WILL VERIFY THAT THE 15% RENTAL RESTRICTION IS IN THE DECLARATION OF RESTRICTIVE COVENANTS RECORDED SIMULTANEOUSLY WITH THE FINAL PLAT FOR THE COMMUNITY, HOWEVER, THE CITY HAS NO ABILITY TO ENFORCE THE RENTAL RESTRICTION AND DOES NOT EXPRESS ANY OPINION AS TO THE ENFORCEABILITY OF RENTAL RESTRICTIONS IN RESIDENTIAL COMMUNITIES.
9. Each unit shall have either a 1 or 2 car garage with each unit having a pad in front for two cars. Additionally, the development shall provide a minimum of 29 guest parking spaces.
10. The access on Panola Road shall be a right in-right out only, and a deceleration lane shall be installed.
11. A 5ft sidewalk and minimum 6ft landscape strip shall be installed along the property frontage on Thompson Mill Road and Panola Road. Additionally, the sidewalk on Panola Road shall connect offsite into the existing sidewalk in front of the Panola Mill Subdivision.
12. The development shall provide a minimum of 20% enhanced open space.

**Attachment 2:**

RZ-21-003 Application Amendment VsfW  
August 27<sup>th</sup> 5' 5#Z



## Battle Law

**August 27, 2021**

**VIA: Email {jsummerbell@stonecrestga.gov}**

**CLIENT/MATTER REF: Apex Land Company, LLC., 3177 Panola Road & 5207 Thompson Mill Road, Stonecrest, GA**

Attn: Jim Summerbell, AICP  
Planning and Zoning Director  
City of Stonecrest Planning and Zoning Division  
3120 Stonecrest Boulevard, Suite 190  
Stonecrest, GA 30038

Mr. Summerbell,

We hereby submit this amended Site Plan and amended Statement of Intent in reference to the above-mentioned application, located on Panola Road and Thompson Mill Road, Stonecrest, GA. Please find the latest documents, attached. Thank you.

Best,

*Dani Blumenthal*

Danielle Blumenthal  
Urban Planner  
Email: dlb@battlelawpc.com

## **AMENDED AND RESTATED STATEMENT OF INTENT**

And  
Other Material Required by the City of Stonecrest, Georgia Zoning Ordinance  
For

A Rezoning from NS and R-100 to RSM pursuant to the City of  
Stonecrest Zoning Ordinance

Of

Apex Land Company, LLC.  
c/o Battle Law, P.C.

For

+/- 9.56 acres of Land being all of  
Parcel Nos. 16 022 01 245 and 16 022 01 023  
Being in the 3<sup>rd</sup> District, City of Stonecrest

Submitted for Applicant by:

Michèle L, Battle  
Battle Law, P.C.  
3562 Habersham at Northlake  
Building J, Suite 100  
Tucker, GA 30084

## **I. STATEMENT OF INTENT**

Apex Land Company, LLC. (the “Applicant”) is seeking a rezoning for property located at the corner of Panola Road and Thompson Mill Road. The property is comprised of addresses 3177 Panola Road and 5207 Thompson Mill Road, bearing the parcel numbers 16 022 01 245 and 16 022 01 023, (the “Subject Property”). The Subject Property is currently zoned R-100 and NS with a land use designation of Suburban. The Applicant is seeking a rezoning to rezone the Subject Property to RSM for the development of a sixty-five (65) unit fee simple townhome community.

In addition to the above and the following the Applicant would like to point out that the Subject Property, as it lies today, is slated for development as a 25,000 square-foot shopping center. The NS zoning district, as well as the zoning conditions attached to the property, allow for the owner of this land to construct a shopping center in what is clearly a residential corridor. It is the contention of the Applicant that, in addition to the Rezoning Application Criteria below, the City Council take into consideration this fact. That intense of a use in this residential area would be highly out of place. This zoning proposal is much more in line with the abutting and nearby uses already in place and would improve upon them by creating a diversity of product and a transitional buffer between the apartments to the North and the single-family homes to the South and West.

This document is submitted both as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and the Rezoning Application Criteria. A surveyed plat and conceptual site plan of the Subject Property has been filed contemporaneously with the Application, along with other required materials.

## **III. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF APPLICANT’S CONSTITUTIONAL RIGHTS**

The portions of the City of Stonecrest Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed 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 the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the City of Stonecrest Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant’s Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of

Georgia of 1983, and the Equal Protection and Due Process Clauses 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.

A denial of this Application would constitute an arbitrary irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia. A refusal by the City of Stonecrest City Council to amend the land use and/or rezone the Subject Property to the classification as requested by the Applicant 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 Property subject to conditions which are different from the conditions requested by the Applicant to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

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The portions of the City of Stonecrest Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed 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 the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

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A refusal to allow the special land use permit in questions would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

## **V. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the simultaneous Future Land Use Amendment Application and Rezoning Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Stonecrest so that such recommendations or input might be incorporated as conditions of approval of this Application.

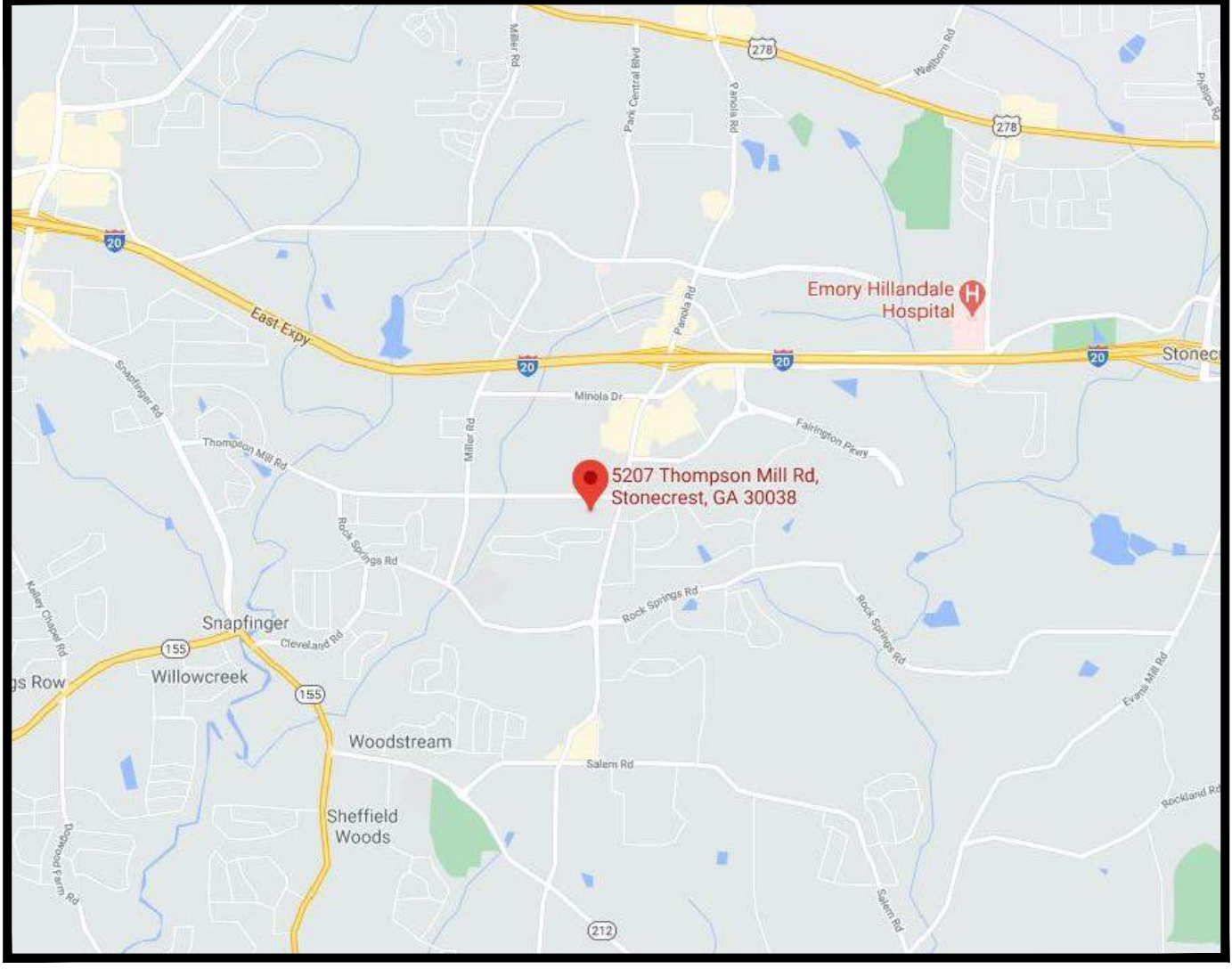
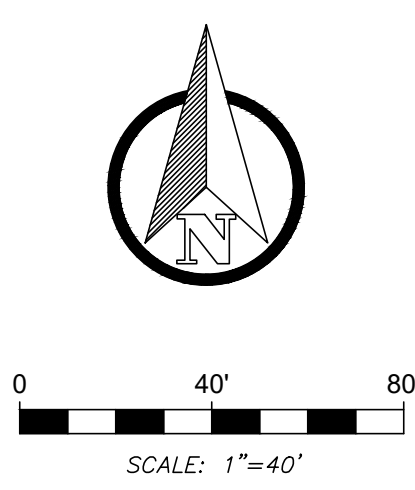
This 27th day of August 2021.

Respectfully submitted,



---

Michèle L. Battle, Esq.



VICINITY MAP  
N.T.S.

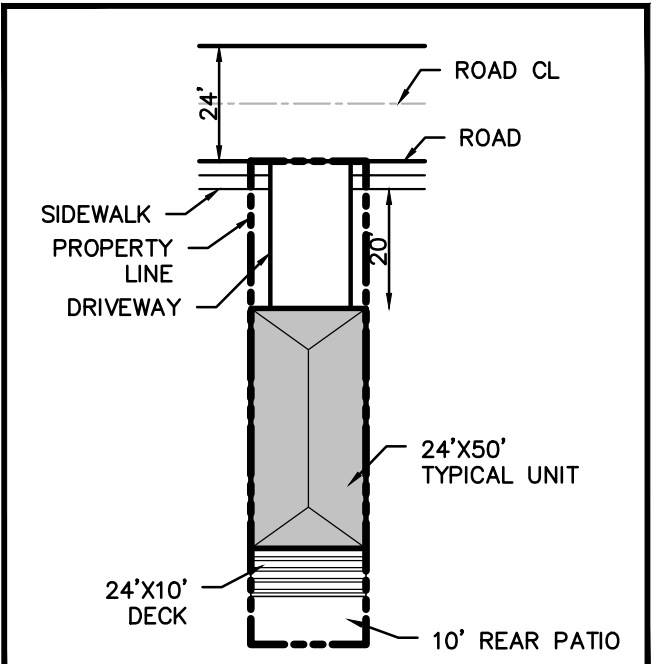
SITE LEGEND

- PROPERTY LINE
- BUILDING SETBACK/BUFFER
- FENCE
- UNIT COUNT

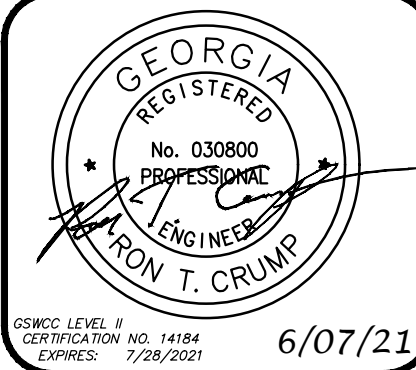
SITE DATA

LOCAL JURISDICTION	CITY OF STONECREST
PRIMARY PARCEL ID	1602201023, 1602201002
ZONING DESIGNATION	R-100/NS
PROPOSED ZONING	RSM
TOTAL PROPERTY ACREAGE	±9.59 ACRES
TOTAL DISTURBED ACREAGE	TBD
PROPOSED USE	TOWNHOMES
NUMBER OF UNITS	65
MAXIMUM HEIGHT	3 STORIES OR 45'
LOT COVERAGE	75%
FRONT SETBACK	0' + ROW + STREETSCAPE
SIDE SETBACK	0' MIN. WITH 10' BETWEEN BLDGS
REAR SETBACK	20'
OPEN SPACE PROVIDED	4.87 Acres (50.7% OF TOTAL)
STREETSCAPE(FRONTAGE ROAD)	6' LANDSCAPE STRIP +5' SIDEWALK
TRANSITIONAL BUFFER	20' FROM RSM ZONING

DENSITY BONUS: (DWELLING UNITS PER ACRE (DU/ACRE))	
CHARACTER AREA:	NEIGHBORHOOD CHARACTER AREA
BONUS TYPES IN PROJECT:	PUBLIC IMPROVEMENTS (EXTENDED SIDEWALK) ADDITIONAL ENHANCED OPEN SPACE (20%)
METHOD:	MULTIPLY THE BASE X % = ADDITIONAL UNITS ELIGIBLE
STEP 1: CALCULATE DENSITY GAINED BY BONUS TYPE:	
PUBLIC IMPROVEMENTS:	ENHANCED OPEN SPACE (20%)
BASE DENSITY: 4	BASE DENSITY: 4
% BONUS: 20%	% BONUS: 50%
BASE X 20% = 4 X 20% = 0.8	BASE X 50% = 4 X 50% = 2
STEP 2: ADD BONUS DENSITY TO BASE DENSITY	
BASE + CUMULATIVE BONUS = TOTAL DENSITY ALLOWED	
4 + (0.8 + 2) = 6.80 DU/ACRE CALCULATED DENSITY	
USE DENSITY FOR RSM = 6.80 DU/ACRE	
STEP 3: PROPOSED DENSITY	
TOTAL UNITS PROPOSED / TOTAL AREA = PROPOSED UNITS PER ACRE	
65 UNITS / 9.56 ACRES = 6.77 DU/ACRE	



TYPICAL UNIT DETAIL  
NTS



CONTINEO GROUP  
755 COMMERCE DRIVE  
SUITE 800  
DECATUR, GA 30030  
770.335.7403  
www.tcg.engineer



APEX  
LAND COMPANY

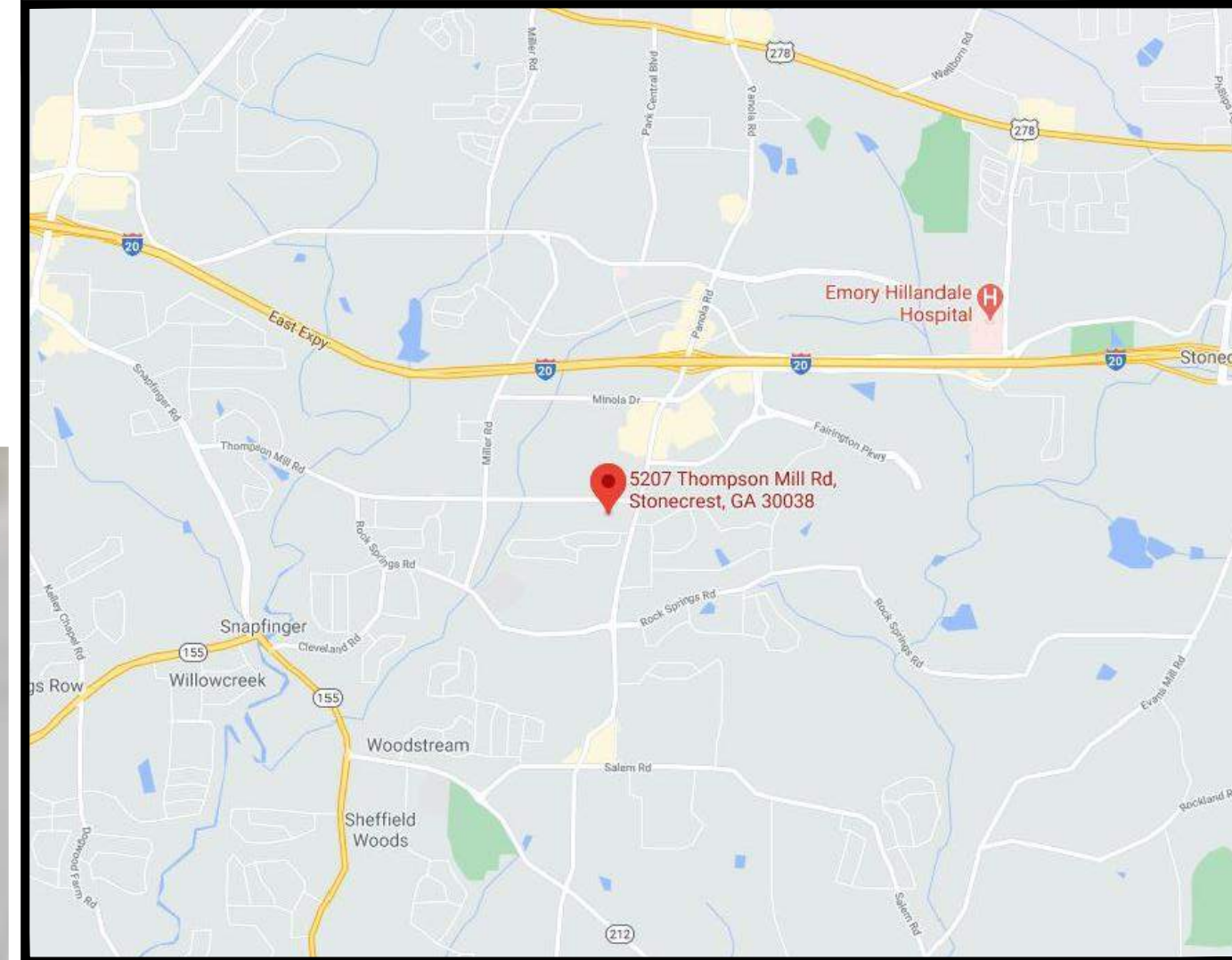
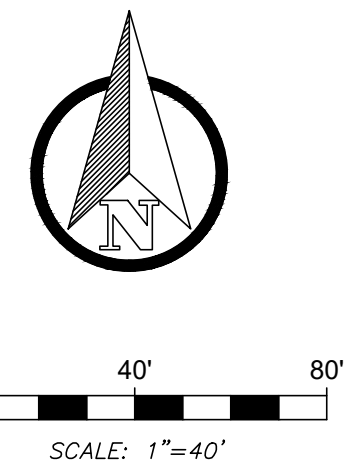
THOMPSON MILL &  
PANOLA ROAD  
ISSUED FOR: CONCEPT  
JURISDICTION: CITY OF STONECREST  
LOCATION: 5207 & 5165 THOMPSON MILL RD  
LITHONIA, GA

#	DATE	REVISIONS

DRAWN:	CHECK:
EGS	BHR
JOB NO:	DATE:
21-120	08/27/21

CONCEPT  
PLAN 9  
SHEET  
C100

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VICINITY MAP

N.T.S.

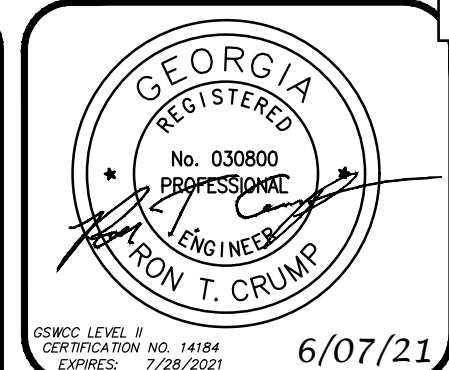
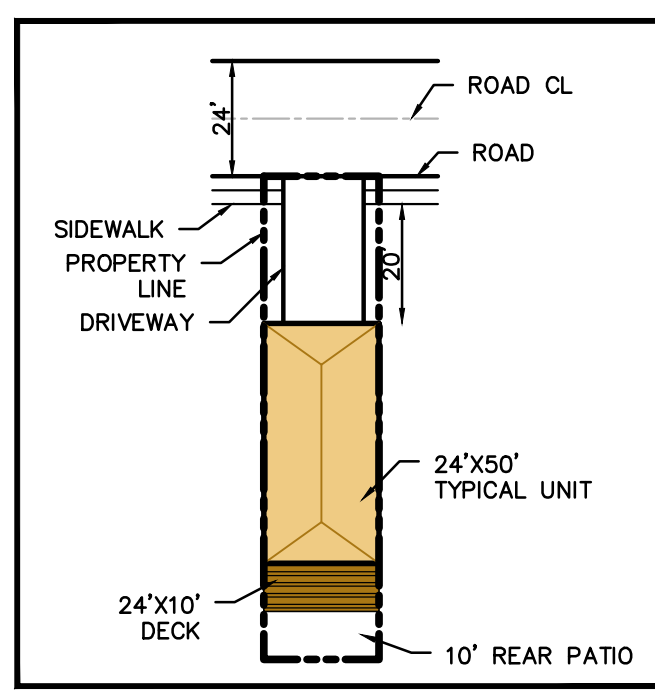
SITE LEGEND

- PROPERTY LINE
- BUILDING SETBACK/BUFFER
- XX XX XX FENCE
- (10) UNIT COUNT

SITE DATA

LOCAL JURISDICTION	CITY OF STONECREST
PRIMARY PARCEL ID	1602201023, 1602201002
ZONING DESIGNATION	R-100/NS
PROPOSED ZONING	RSM
TOTAL PROPERTY ACREAGE	±9.59 ACRES
TOTAL DISTURBED ACREAGE	TBD
PROPOSED USE	TOWNHOMES
NUMBER OF UNITS	65
MAXIMUM HEIGHT	3 STORIES OR 45'
LOT COVERAGE	75%
FRONT SETBACK	0' + ROW + STREETSCAPE
SIDE SETBACK	0' MIN. WITH 10' BETWEEN BLDGS
REAR SETBACK	20'
OPEN SPACE PROVIDED	5.32 Acres (55.5% OF TOTAL)
STREETSCAPE(FRONTAGE ROAD)	6' LANDSCAPE STRIP +5' SIDEWALK
TRANSITIONAL BUFFER	20' FROM RSM ZONING

DENSITY BONUS: (DWELLING UNITS PER ACRE (DU/ACRE))	
CHARACTER AREA:	NEIGHBORHOOD CHARACTER AREA
BONUS TYPES IN PROJECT:	PUBLIC IMPROVEMENTS (EXTENDED SIDEWALK) ADDITIONAL ENHANCED OPEN SPACE (20%)
METHOD: MULTIPLY THE BASE X % = ADDITIONAL UNITS ELIGIBLE	
STEP 1: CALCULATE DENSITY GAINED BY BONUS TYPE:	
PUBLIC IMPROVEMENTS: ENHANCED OPEN SPACE (20%)	
BASE DENSITY: 4	BASE DENSITY: 4
% BONUS: 20%	% BONUS: 50%
BASE X 20% = 4 X 20% = 0.8	BASE X 50% = 4 X 50% = 2
STEP 2: ADD BONUS DENSITY TO BASE DENSITY	
BASE + CUMULATIVE BONUS = TOTAL DENSITY ALLOWED	
4 + (0.8 + 2) = 6.80 DU/ACRE CALCULATED DENSITY	
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TOTAL UNITS PROPOSED / TOTAL AREA = PROPOSED UNITS PER ACRE	
65 UNITS / 9.56 ACRES = 6.77 DU/ACRE	



CONTINUED GROUP  
7555 COMMERCE DRIVE  
SUITE 800  
DECATUR, GA 30030  
770.335.7403  
www.tcg-engineer.com



APEX  
LAND COMPANY

THOMPSON MILL &  
PANOLA ROAD

ISSUED FOR: CONCEPT

JURISDICTION: CITY OF STONECREST

LOCATION: 5207 & 5165 THOMPSON MILL RD  
LITHONIA, GA

#	DATE	REVISIONS

DRAWN: EGS  
CHECK: BHR

JOB NO: 21-120  
DATE: 08/27/21

CONCEPT  
PLAN 9

SHEET C101

**RZ-21-003:**

AdY<sup>^</sup> S<sup>d</sup>Ma<sup>`</sup> [ YSbb<sup>^</sup>USf[a<sup>`</sup> VSfW<g<sup>`</sup> VS<sup>l</sup> S<sup>'</sup> S<sup>#</sup>z

**STATEMENT OF INTENT**

And  
Other Material Required by the City of Stonecrest, Georgia  
Zoning Ordinance  
For  
A Rezoning from NS and R-100 to RSM pursuant to the City  
of Stonecrest Zoning Ordinance  
Of  
Apex Land Company, LLC.,  
For  
+/-9.56 acres of Land  
Being all of  
Parcel Nos. 16 022 01 245 and 16 022 01 023  
Being in 3rd District,  
City of Stonecrest

Submitted for Applicant by:

Michèle L. Battle  
Battle Law, P.C.  
One West Court Square, Suite  
750 Decatur, Georgia 30030  
(404) 601-7616 Phone  
(404) 745-0045 Facsimile  
[mlb@battlelawpc.com](mailto:mlb@battlelawpc.com)

## **I. STATEMENT OF INTENT**

Apex Land Company, LLC. (the “Applicant”) is seeking a rezoning for property located at the corner of Panola Road and Thompson Mill Road. The property is comprised of addresses 3177 Panola Road and 5207 Thompson Mill Road, bearing the parcel numbers 16 022 01 245 and 16 022 01 023, (the “Subject Property”). The Subject Property is currently zoned R-100 and NS with a land use designation of Suburban. The Applicant is seeking a rezoning to rezone the Subject Property to RSM for the development of a seventy-six (76) unit fee simple townhome community.

In addition to the above and the following the Applicant would like to point out that the Subject Property, as it lies today, is slated for development as a 25,000 square-foot shopping center. The NS zoning district, as well as the zoning conditions attached to the property, allow for the owner of this land to construct a shopping center in what is clearly a residential corridor. It is the contention of the Applicant that, in addition to the Rezoning Application Criteria below, the City Council take into consideration this fact. That intense of a use in this residential area would be highly out of place. This zoning proposal is much more in line with the abutting and nearby uses already in place and would improve upon them by creating a diversity of product and a transitional buffer between the apartments to the North and the single-family homes to the South and West.

This document is submitted both as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and the Rezoning Application Criteria. A surveyed plat and conceptual site plan of the Subject Property has been filed contemporaneously with the Application, along with other required materials.

## **II. REZONING APPLICATION CRITERIA**

*A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;*

The zoning proposal is in conformity with the policy and intent of the comprehensive plan. While the rezoning alone would not conform to the comprehensive plan, the combination of the rezoning and land use amendment does conform with the plan. Granting both will change the future land use from Suburban Neighborhood to Urban Neighborhood. This change will allow for the rezoning proposal from NS and R-100 to M-1 in full satisfaction of the comprehensive plan.

*B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;*

The zoning proposal will permit a use that is suitable in view of the use and development

of adjacent and nearby properties. Currently, taking into consideration the future land use, zoning, and existing conditions on the Subject Property, it is slated to be developed as a shopping center. However, the property is almost exclusively surrounded by residential uses. The zoning proposal will allow the development of a residential use that will bring much less intensity to the residential developments that surround the Subject Property. Therefore, the zoning proposal will permit use that is suitable in view of the use and development of adjacent and nearby properties.

*C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;*

The Subject Property as currently zoned has an economic use, albeit an unreasonable one given the surrounding area. The Subject Property is currently laid out to be developed as a shopping center. The zoning, future land use, and current conditions were put in place for the purpose of developing a shopping center. So, while the Subject Property could be used for this economic end, putting a shopping center on this property would be an unreasonable burden on the surrounding residences. The shopping center would be built directly in the middle of various residential neighborhoods and would generate traffic late into the evening. The zoning proposal would allow for a townhome community to be built here instead, which would generate much less traffic than a shopping center.

*D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;*

The zoning proposal will not adversely affect the existing use or usability of adjacent or nearby property. The zoning proposal will be much more in line than what the Subject Property is currently laid out for. The proposed townhome community will serve as another residential development to serve the area's housing market. One detail to point out is that the ingress/egress plan is designed to maximize access to the nearby highway, while simultaneously minimizing the amount of traffic that would be traveling past neighboring communities. This is achieved by placing an exit at the Northern side of the Subject Property to allow quick access to the light, and thereby the highway. The ingress/egress on the Southeastern portion of the property will be a right-in/right-out only. This way, residences returning to their home can turn right into their community without having to cross the ingress/egress of the neighboring community to the South.

*E. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;*

The Applicant is not aware of any existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal.

*F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; and*

The zoning proposal will not adversely affect historic buildings, sites, district, or archaeological resources.

*G. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.*

### **III. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF APPLICANT'S CONSTITUTIONAL RIGHTS**

The portions of the City of Stonecrest Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed 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 the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the City of Stonecrest Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses 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.

A denial of this Application would constitute an arbitrary irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the City of Stonecrest City Council to amend the land use and/or rezone the Subject Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and

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United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses 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.

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## **V. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the simultaneous Future Land Use Amendment Application and Rezoning Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Stonecrest so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 8th day of June, 2021.

Respectfully submitted,



---

Michèle L. Battle, Esq.  
Attorney For Applicant



## Applicant/Petitioner Notarized Certification

Petitioner states under oath that: (1) he/she is the executor or Attorney-In-Fact under a Power-of- Attorney for the owner (attach a copy of the Power-of-Attorney letter and type name above as "Owner"); (2) he/she has an option to purchase said property (attach a copy of the contract and type name of owner above as "Owner"); (3) he/she has an estate for years which permits the petitioner to apply (attach a copy of lease and type name of owner above as "Owner").

<b>Applicant / Petitioner</b>	Signature:		Date: 6/ 2/2021
	Address: 4080 McGinnis Ferry Road, Suite 203		City, State: Alpharetta, GA. Zip: 30005
	Phone: 770-777-4704		
	Sworn to and subscribed before me this <u>2</u> day of <u>June</u> , 20 <u>21</u>		
<b>Attorney / Agent</b>	Notary Public: <u>Sheah D. Carnes</u>		
	Signature:		
	Address: One West Court Square, Suite 750		
	City, State: Decatur, GA. Zip: 30030		
Phone: 404-601-7616		Sworn to and subscribed before me this <u>1st</u> day of <u>June</u> , 20 <u>21</u>	
Notary Public:			



Affidavit

To the best of my knowledge, this zoning application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Stonecrest Zoning Ordinance.

Applicant's Name: Apex Land Company, LLC.

Applicant's Signature: 

Date: 6/ 2 /2021

Sworn to and subscribed before me this 2 Day of June 20 21

Notary Public: Leah D. Carnes

Signature: Leah D. Carnes

My Commission Expires: 02/20/24



☐ Application Fee ☐ Sign Fee ☐ Legal Fee

Fee: \$

Payment: ☐ Cash ☐ Check ☐ CC

Date:

☐ Approved ☐ Approved with Conditions ☐ Denied

Date:

**\*One sign is required per street frontage and/or every 500 feet of street frontage**

Notary


Fee



## Campaign Disclosure Statement

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 City of Stonecrest City Council or a member of the City of Stonecrest Planning Commission?

☐ Yes ☒ No

Applicant / Owner	Signature: 
	Address: 4080 McGinnis Ferry Road, Suite 203, Alpharetta, GA. 30005
	Date: 6/2/2021

If you answered yes above, please complete the following section:


Date	Government Official	Official Position	Description	Amount



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☐ Yes ☒ No

Applicant / Owner	Signature: 
	Address: One West Court Square, Suite 750, Decatur, GA. 30030
	Date: 6/ 1 /2021

If you answered yes above, please complete the following section:

Date	Government Official	Official Position	Description	Amount

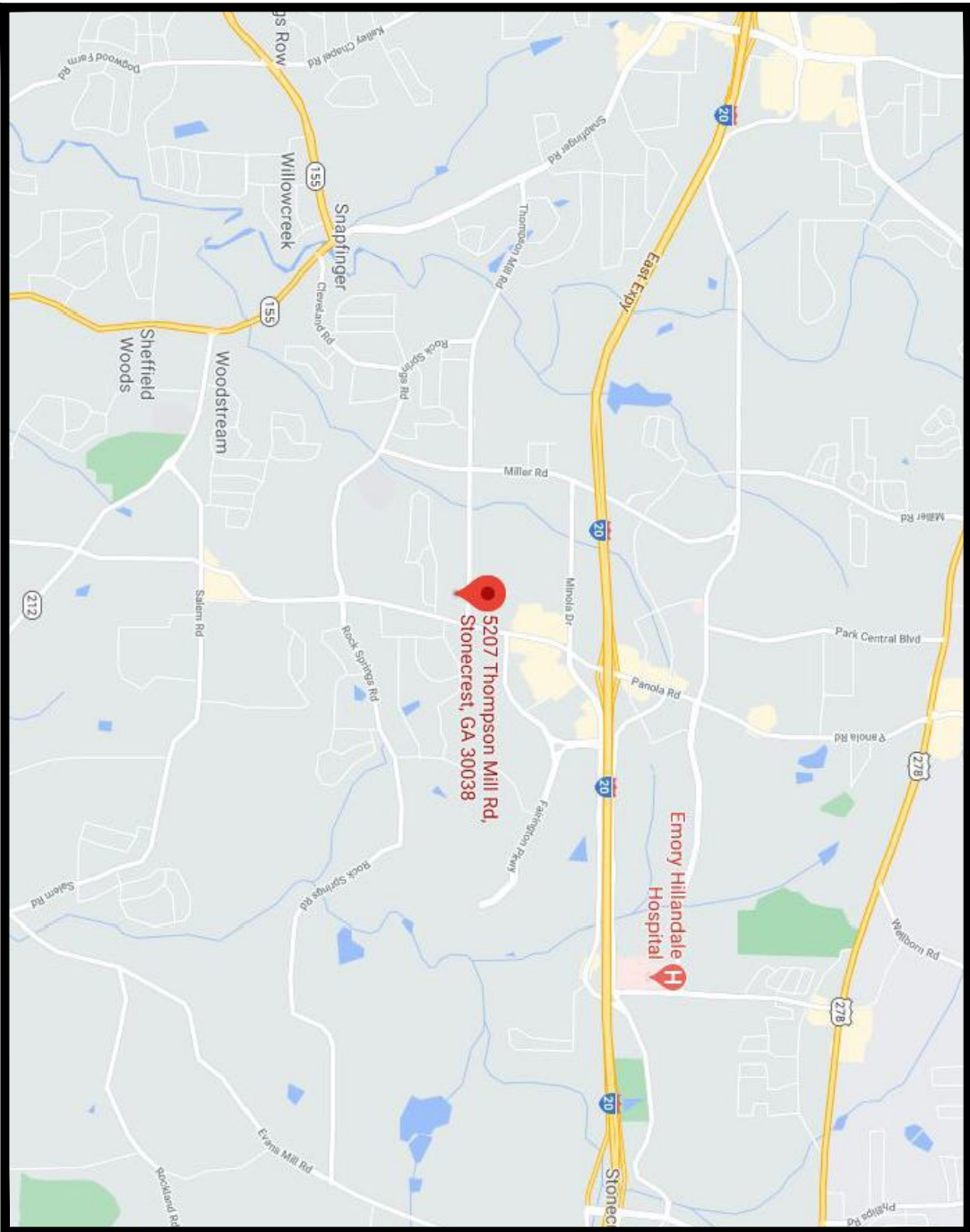
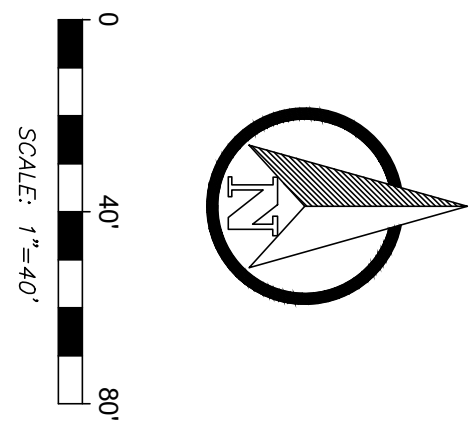


## Rezoning Application

Owner Information	Owner's Name: Zacharia Majed; Mohammed Al Mulki Rania; Amir Haffer	
	Owner's Address: 1275 VINTAGE CLUB DR. DULUTH GA 30097	
	Phone:	Fax: Email:
	Property Address: 3177 Panola Road and 5207 Thompson Mill Road	Parcel Size:
	Parcel ID: 16 022 01 245; 16 022 01 023	
	Current Zoning Classification: NS and R-100	
	Requested Zoning Classification: RSM	
	Name: Apex Land Company, LLC.	
	Address: 4080 McGinnis Ferry Road Suite 203, Alpharetta, GA. 30005	
	Phone: 770-7774704 Fax:	
Property Information	Cell: 404-732-4136 Email: aaronrissler@icloud.com	
	Is this development and/or request seeking any incentives or tax abatement through the City of Stonecrest or any entity that can grant such waivers, incentives, and/or abatements?	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	1. Will the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby properties?	
	Yes.	
	2. Will the affected property of the zoning proposal have a reasonable economic use as currently zoned?	
	Yes.	
	3. Will the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?	
	No.	
	Questionnaire	4. Are other existing or changing conditions affecting the existing use or usability of the development of the property which give supporting grounds for either approval or disapproval of the zoning proposal?
None that the Applicant are aware of.		
5. Will the zoning proposal adversely affect historic buildings, sites, districts, or archaeological resources?		
No.		
6. Will the zoning proposal result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?		
No.		

NOTE: THIS CONCEPTUAL DESIGN SHOULD BE UTILIZED AS A GRAPHICAL REPRESENTATION OF A POSSIBLE DESIGN CHOICE. THE INFORMATION ON THIS PLAN WAS DESIGNED FROM LIMITED MATERIAL AND HAS ITS INACCURACIES. THEREFORE, IT SHOULD NOT BE USED FOR CONSTRUCTION UNTIL ALL APPLICABLE MATERIAL NEEDED HAS BEEN REVIEWED AND INCORPORATED.

# PRELIMINARY CONCEPT



## VICINITY MAP

N.T.S.

## SITE LEGEND

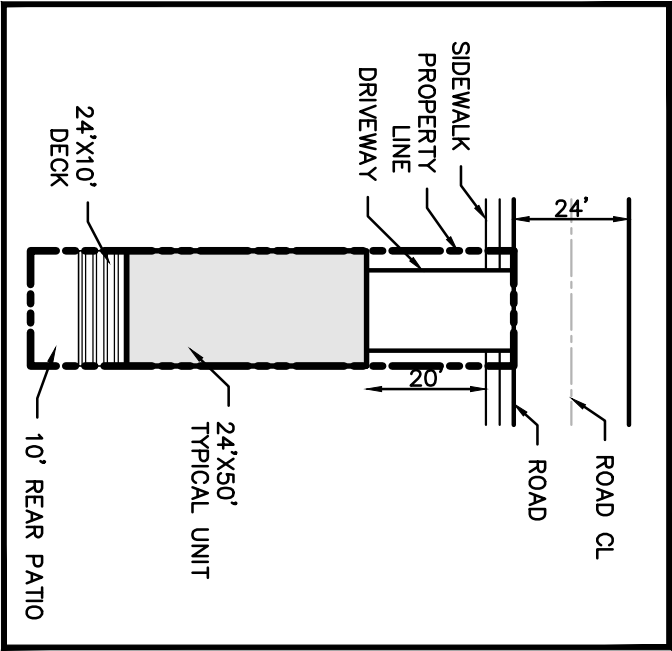
PROPERTY LINE  
BUILDING SETBACK/BUFFER  
FENCE  
UNIT COUNT

10

### SITE DATA

LOCAL JURISDICTION	CITY OF STONECREST
PRIMARY PARCEL ID	1602201023, 1602201002
ZONING DESIGNATION	R-100/NS
PROPOSED ZONING	RSM
TOTAL PROPERTY ACREAGE	49.59 ACRES
TOTAL DISTURBED ACREAGE	TBD
PROPOSED USE	TOWNHOMES
NUMBER OF UNITS	76
MAXIMUM HEIGHT	4 STORIES OR 60'
LOT COVERAGE	73%
FRONT SETBACK	0' + ROW + STREETScape
SIDE SETBACK	0' MIN. WITH 10' BETWEEN BLOSS
REAR SETBACK	20'
OPEN SPACE PROVIDED	4.87 Acres (50.7% OF TOTAL)
STREETSCAPE(FRONTAGE ROAD)	6' LANDSCAPE STRIP +5' SIDEWALK
TRANSITIONAL BUFFER	30' FROM RSM ZONING

DENSITY BONUS: (DWELLING UNITS PER ACRE (DU/ACRE))		
CHARACTER AREA:	NEIGHBORHOOD CHARACTER AREA	
BONUS TYPES IN PROJECT:	PUBLIC IMPROVEMENTS SUSTAINABILITY ELEMENTS ADDITIONAL ENHANCED OPEN SPACE	
METHOD:	MULTIPLY THE BASE X % = ADDITIONAL UNITS ELIGIBLE	
STEP 1: CALCULATE DENSITY GAINED BY BONUS TYPE:		
PUBLIC IMPROVEMENTS	SUSTAINABILITY ELEMENTS	ADDITIONAL ENHANCED OPEN SPACE
BASE DENSITY: 4	BASE DENSITY: 4	BASE DENSITY: 4
X BONUS: 20%	X BONUS: 50%	X BONUS: 100%
BASE X 20% = 4 X 20% = 0.8	BASE X 50% = 4 X 50% = 2	BASE X 100% = 4 X 100% = 4
STEP 2: ADD BONUS DENSITY TO BASE DENSITY		
BASE + CUMULATIVE BONUS = TOTAL DENSITY ALLOWED		
4 + (0.8 + 2 + 4) = 10.8 DU/ACRE CALCULATED DENSITY		
USE MAX ALLOWED DENSITY FOR RSM = 8 DU/ACRE		
STEP 3: PROPOSED DENSITY		
TOTAL UNITS PROPOSED / TOTAL AREA = PROPOSED UNITS PER ACRE		
76 UNITS / 3.58 ACRES = 7.34 DU/ACRE		

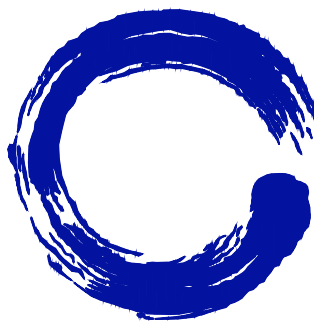


TYPICAL UNIT DETAIL

## THOMPSON MILL & PANOLA ROAD

ISSUED FOR: CONCEPT  
JURISDICTION: CITY OF STONECREST  
LOCATION: 5207 & 5165 THOMPSON MILL RD LITHONIA, GA

## APEX LAND COMPANY



**CONTINEO GROUP**  
755 COMMERCE DRIVE  
SUITE 800  
DECATUR, GA 30030  
770.335.9403  
www.fcg.engineer

#	DATE	REVISIONS

These drawings and the design represented herein are the exclusive property of The Contineo Group. Reproduction or any use of these drawings other than for the project intended without the express written consent of The Contineo Group is prohibited. Any unauthorized use will be subject to legal action.

DRAWN: EGS  
CHECK: BHR

JOB NO: 21-120  
DATE: 06/07/21

## CONCEPT PLAN 6

SHEET C100





## Property Owner(s) Notarized Certification

The owner and petitioner acknowledge that this Zoning Map Petition application form is correct and complete. By completing this form, all owners of the subject property certify authorization of the filing of the application for zoning amendment, and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

Property Owner (If Applicable)	Signature: <u>M S Zakaria</u>	Zacharia Majed	Date: <u>6/7/2021</u>
	Address: 1275 Vintage Club Drive	City, State: Duluth, GA.	Zip: 30097
	Phone: <u>678-957-9293</u>		
	Sworn to and subscribed before me this <u>7</u> day of <u>June</u> , 20 <u>21</u>		
Property Owner (If Applicable)	Notary Public: <u>Leah D. Carnes</u>		
	Signature: <u>Leah D. Carnes</u>	Mohammed A. Rafiki Rana	Date: <u>6/7/2021</u>
	Address: 1275 Vintage Club Drive	City, State: Duluth, GA	Zip: 30097
	Phone: <u>404-931-2825</u>		
Property Owner (If Applicable)	Sworn to and subscribed before me this <u>7</u> day of <u>June</u> , 20 <u>21</u>		
	Notary Public: <u>Leah D. Carnes</u>		
	Signature: <u>Amin Hoffman</u>	Amin Hoffman	Date: <u>6/7/2021</u>
	Address: 1275 Vintage Club Drive	City, State: Duluth, GA	Zip: 30097
Property Owner (If Applicable)	Phone: <u>404-252-7975</u>		
	Sworn to and subscribed before me this <u>7</u> day of <u>June</u> , 20 <u>21</u>		
	Notary Public: <u>Leah D. Carnes</u>		



FRONT ENTRY RENDERING



LEFT SIDE ELEVATION

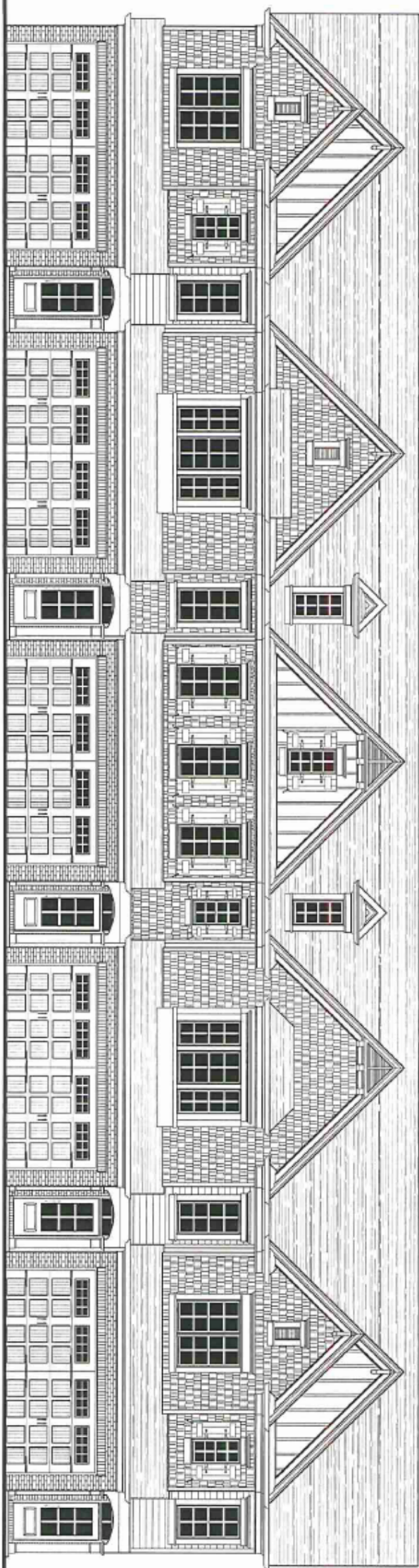


REAR ELEVATION

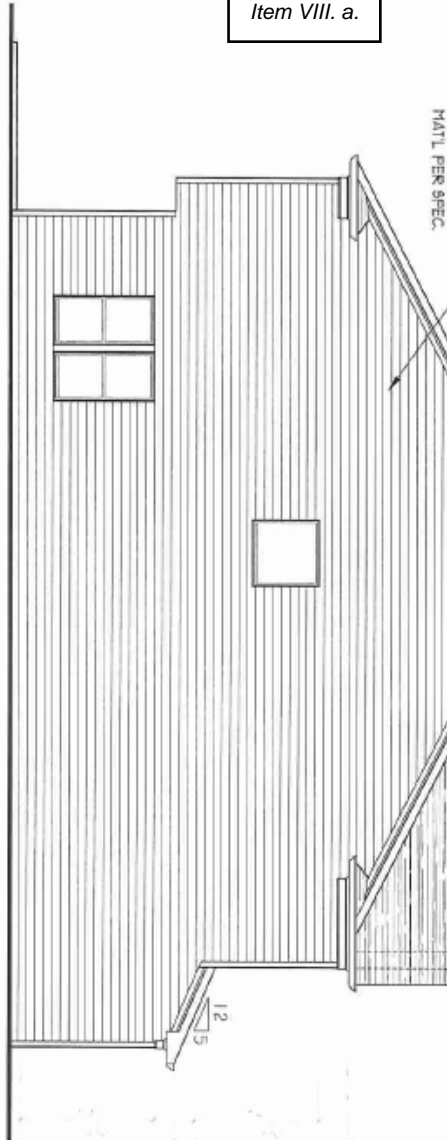


RIGHT SIDE ELEVATION

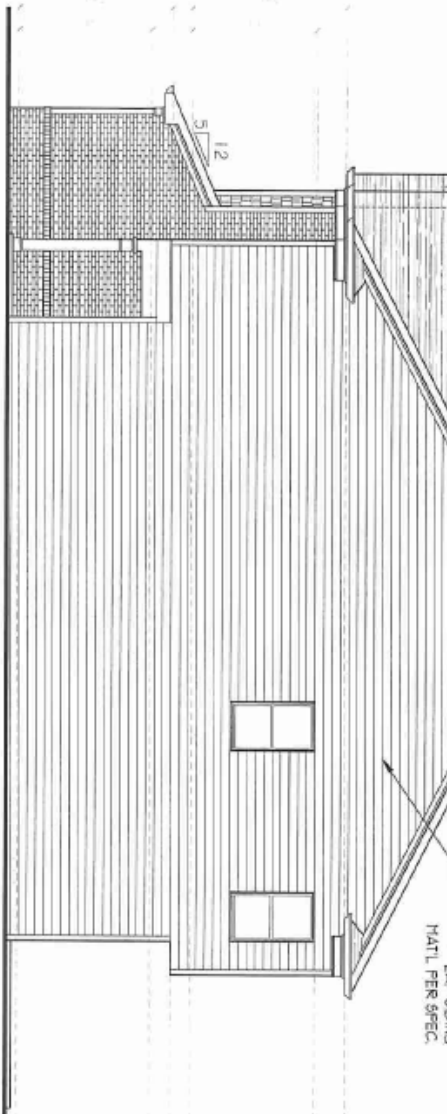
24' x 50' Front Entry Product Townhomes  
Typical Side & Rear Elevations



Front Elevation - 5 Units Building

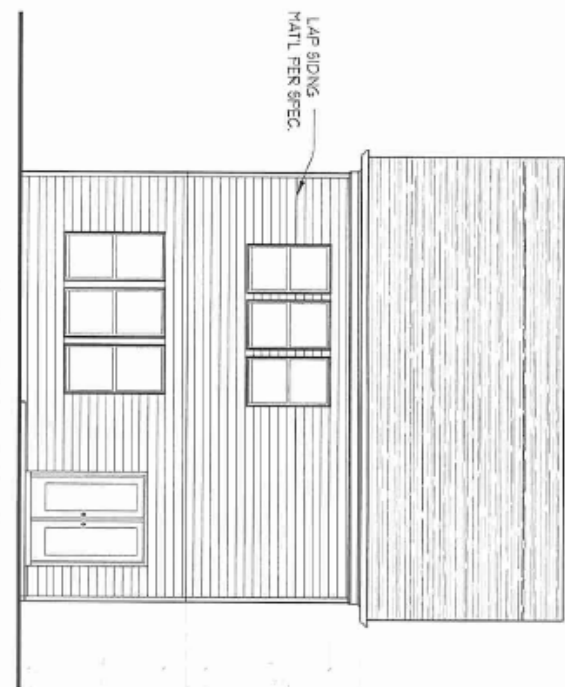


LEFT SIDE ELEVATION



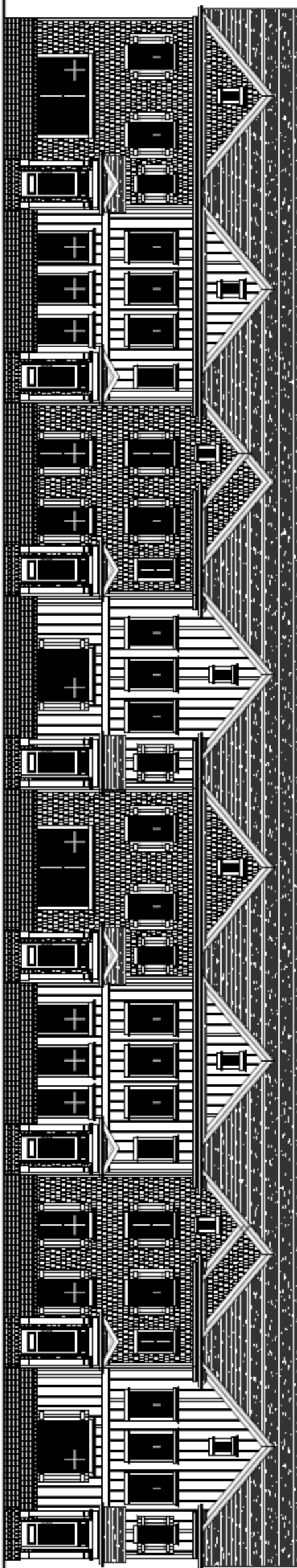
RIGHT SIDE ELEVATION

EXTERIOR MATERIALS:		
BUILDING ELEMENT	MATERIAL	TYPE
FACADE	BRICK	QUEEN SIZE
	BOARD & BATTEN	FIBER CEMENT PANEL SIDING W/ 1X3 BATTS AT 12" OC.
	SIDING	CONCRETE LAP SIDING
	SHAKE	HARDIE STRAIGHT LAY
FRONT OFFSET	BRICK	QUEEN SIZE
SIDES & REAR	SIDING	CONCRETE LAP SIDING
ROOF	ARCHITECTURAL SHINGLES	LANDMARK PRO
SHED DORMER/ ACCENT ROOF	ARCHITECTURAL SHINGLES	LANDMARK PRO
FRONT PORCH ROOF	ARCHITECTURAL SHINGLES	LANDMARK PRO
PORCH FLOOR	CONCRETE	MONO
FRONT WINDOWS	VINYL	SDI, W/ GRILL & OVER 4, WHITE
SIDE & REAR WINDOWS	VINYL	1 OVER 1, WHITE
FRONT DOOR	WOOD	3/0X6/0 & LITE/1 PANEL, W/ 10" TRANSOM



REAR ELEVATION

Sides & Rear Elevations







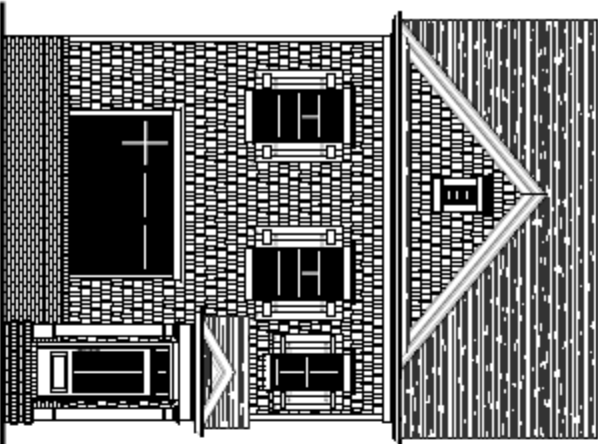
LEFT SIDE ELEVATION



REAR ELEVATION



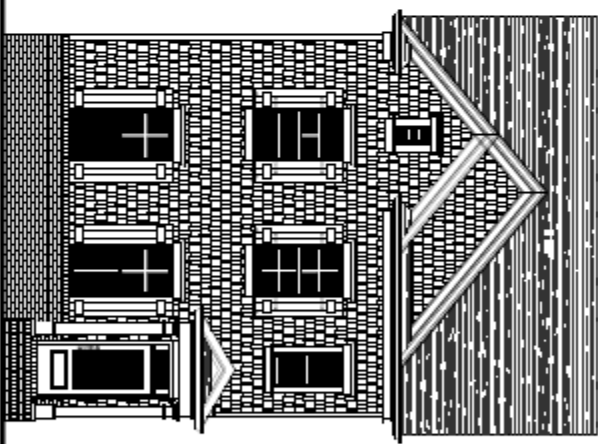
RIGHT SIDE ELEVATION



ELEVATION A



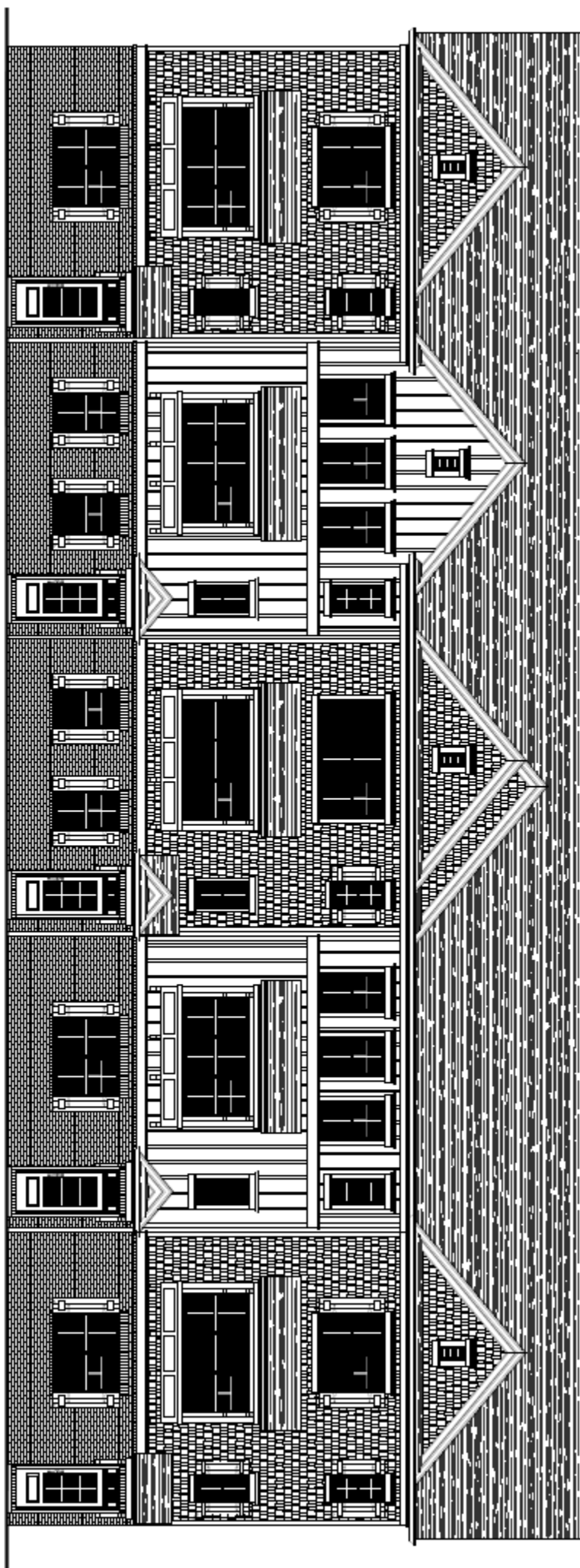
ELEVATION B



ELEVATION C



ELEVATION D

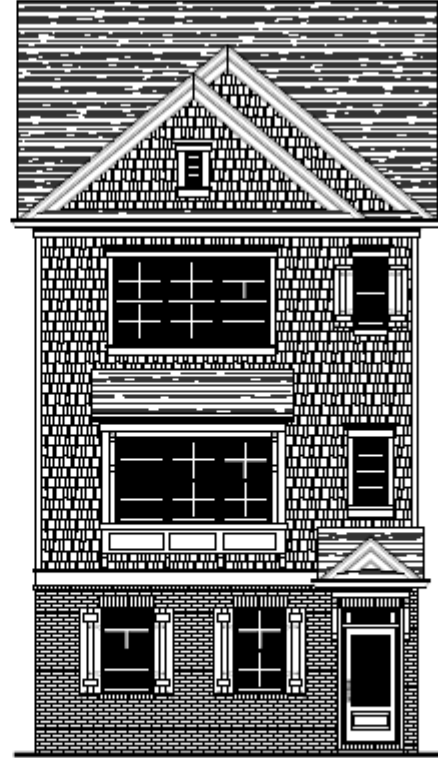




*ELEVATION A*



*ELEVATION B*



*ELEVATION C*



*ELEVATION D*

**Attachment 3, RZ-21-003:**

Technical Memorandums concerning traffic impacts

# TECHNICAL MEMORANDUM

55 Millard Farmer Ind. Blvd.  
Newnan, GA 30263  
678.423.0050  
www.Lumin8.com

**Subject:** Land Use Comparison

**Location:** Stonecrest, GA

**Date:** 06/08/2021

**To:** Aaron Rissler, Apex Land Company

**From:** Speedy Boutwell, PE, PTOE

---

## INTRODUCTION

This technical memorandum includes conducting a trip generation comparison between a residential development and a retail development for the southwest corner of the Thompson Mill Road and Panola Road intersection in Stonecrest, GA. The proposed location is shown in Figure 1.

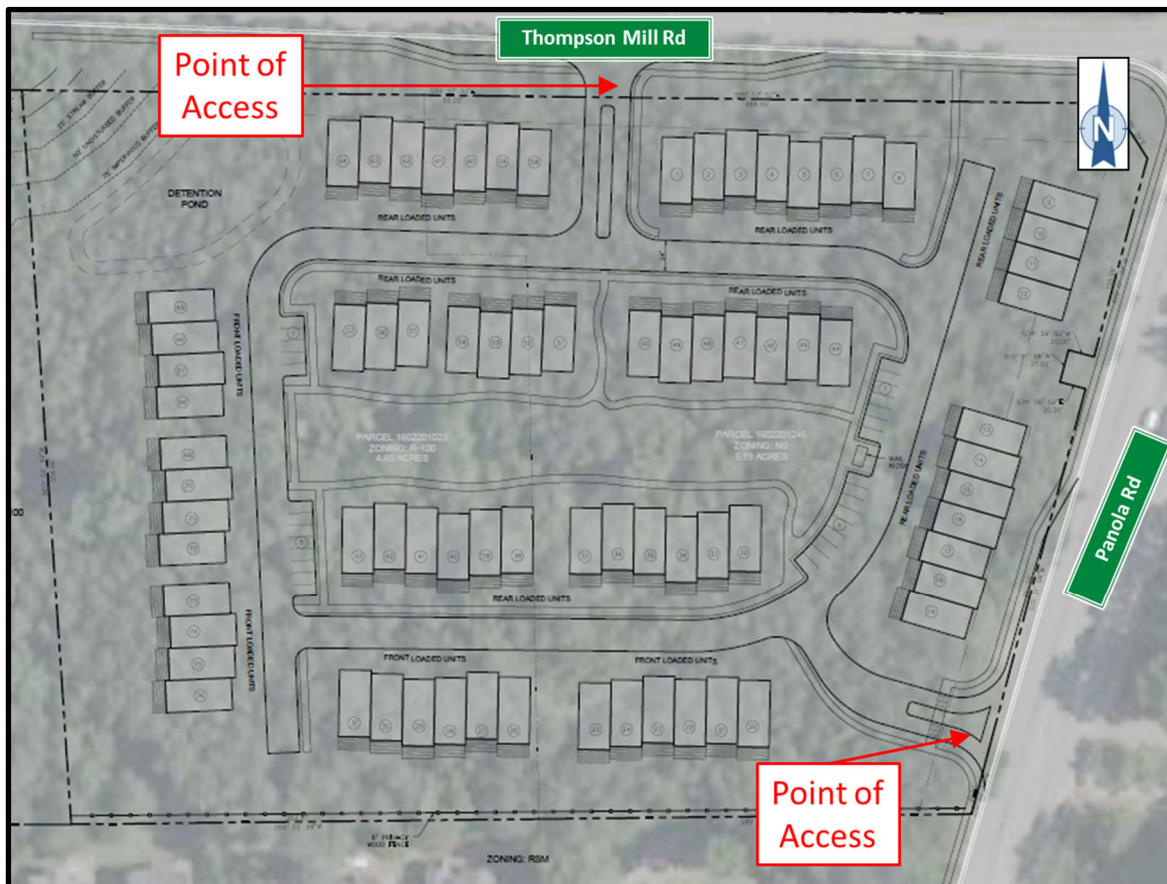
**Figure 1: PROPOSED LOCATION**



## DEVELOPMENT TYPES

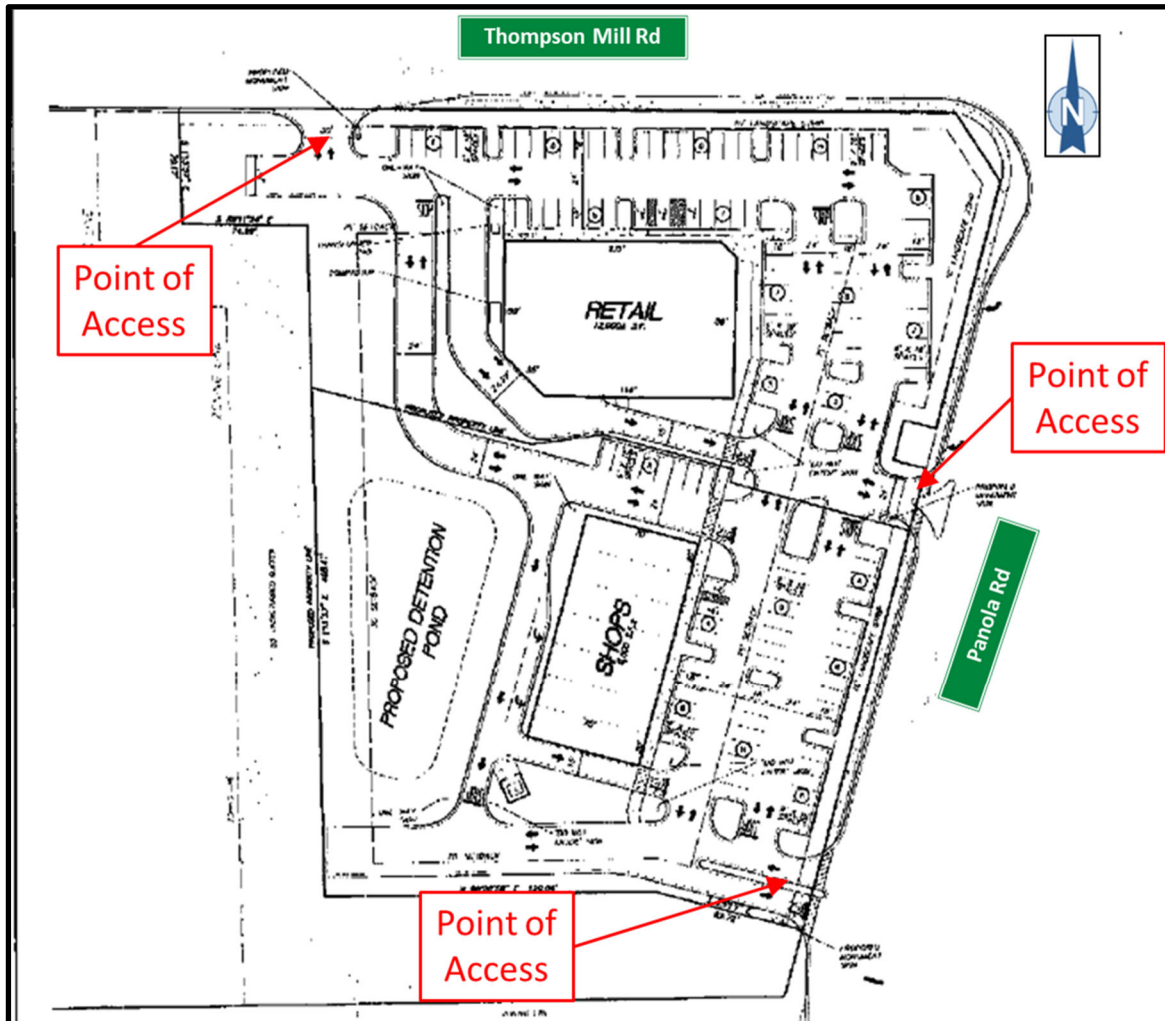
The residential development proposes a total of 76 townhomes. According to the site plan the residential development would have two points of access. The site plan for the residential development is shown below in Figure 2.

**Figure 2: RESIDENTIAL PLAN**



The retail development proposes two separate buildings with a gross total of 21,800 SF of retail space. According to the site plan the retail development would have three points of access. The site plan for the retail development is shown below in Figure 3.

**Figure 3: RETAIL PLAN**



# PROJECTED CONDITIONS

## TRIP GENERATION

The trips generated by the development were estimated using trip generation rates found in ITE's publication *Trip Generation*, 10<sup>th</sup> Edition. *TripGen 10* software from Trafficware was used to facilitate the calculation. The trip generation publication contains multiple associated trip rates for the listed land use. The rate that resulted in the larger trip generation was used for this study. The weekday AM and PM Peak Hour trip generation estimates correspond to the peak hour of the adjacent street.

## RESIDENTIAL

The trip generation for the residential development can be seen below in Table 1. ITE Code 220 (Multifamily (Low-Rise)) was used for the proposed development, as this code specifically calls out the 'townhouse' use. The trip generation data is attached.

**Table 1: TRIP GENERATION – RESIDENTIAL**

ITE CODE	LAND USE DESCRIPTION	SIZE	DAILY TRIPS	AM PEAK HOUR			PM PEAK HOUR		
				ENTER	EXIT	TOTAL	ENTER	EXIT	TOTAL
220	Townhouses	76 units	556	9	28	37	29	17	46

## RETAIL

The trip generation for the retail development can be seen below in Table 2. The ITE Codes used for the retail development were assumed based on the site plan in Figure 3. The trip generation data is attached.

**Table 2: TRIP GENERATION – RETAIL**

ITE CODE	LAND USE	SIZE	DAILY 2-WAY TRIPS	AM PEAK HOUR			PM PEAK HOUR		
				ENTER	EXIT	TOTAL	ENTER	EXIT	TOTAL
814	Shops	9.8 KSF	622	18	13	31	35	32	67
815	Retail	12 KSF	638	10	4	14	29	29	58
UNADJUSTED VOLUME			1260	28	17	45	64	61	125
PASS-BY TRIPS			-240	0	0	0	-16	-16	-32
ADJUSTED VOLUME (TOTAL NEW TRIPS)			1020	28	17	45	48	45	93

## CONCLUSION

Based on the findings of this technical memorandum, the conclusions are as follows:

- A trip generation was completed for a residential development with 76 townhomes:
  - The development is estimated to produce 556 daily trips to the adjacent streets (278 entering, 278 exiting).
  - The AM peak hour produces 37 total trips (9 entering, 28 exiting).
  - The PM peak hour produces 46 total trips (29 entering, 17 exiting).
- A trip generation was completed for a retail development with 21,800 SF of space:
  - The development is estimated to produce 1,260 total daily trips including pass-by trips (630 entering, 630 exiting).
  - The AM peak hour produces 45 total trips (28 entering, 17 exiting).
  - The PM peak hour produces 93 total trips (48 entering, 45 exiting).
- Based on the results of the Trip Generations, it is expected the retail development would generate twice the number of daily trips than the residential development.

## Trip Generation Summary

Item VIII. a.

Alternative: Alternative 1

Phase:

Open Date: 6/8/2021

Project: Residential

Analysis Date: 6/8/2021

ITE	Land Use	Weekday Average Daily Trips				Weekday AM Peak Hour of Adjacent Street Traffic				Weekday PM Peak Hour of Adjacent Street Traffic			
		*	Enter	Exit	Total	*	Enter	Exit	Total	*	Enter	Exit	Total
220	LOW-RISE 1		278	278	556		9	28	37		29	17	46
	76 Dwelling Units												
Unadjusted Volume			278	278	556		9	28	37		29	17	46
Internal Capture Trips			0	0	0		0	0	0		0	0	0
Pass-By Trips			0	0	0		0	0	0		0	0	0
Volume Added to Adjacent Streets			278	278	556		9	28	37		29	17	46

Total Weekday Average Daily Trips Internal Capture = 0 Percent

Total Weekday AM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

Total Weekday PM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

\* - Custom rate used for selected time period.

Source: Institute of Transportation Engineers, Trip Generation Manual 10th Edition

**TRIP GENERATION 10, TRAFFICWARE, LLC**

## Trip Generation Summary

Item VIII. a.

Alternative: Alternative 1

Phase:

Open Date: 6/8/2021

Project: Retail

Analysis Date: 6/8/2021

ITE	Land Use	Weekday Average Daily Trips				Weekday AM Peak Hour of Adjacent Street Traffic				Weekday PM Peak Hour of Adjacent Street Traffic			
		*	Enter	Exit	Total	*	Enter	Exit	Total	*	Enter	Exit	Total
814	STOREVARIETY 2		311	311	622		18	13	31		35	32	67
	9.8 1000 Sq. Ft. GFA												
815	STOREDISC 1		319	318	638		10	4	14		29	29	58
	12 1000 Sq. Ft. GFA												
Unadjusted Volume			630	630	1260		28	17	45		64	61	125
Internal Capture Trips			0	0	0		0	0	0		0	0	0
Pass-By Trips			120	120	240		0	0	0		16	16	32
Volume Added to Adjacent Streets			510	510	1020		28	17	45		48	45	93

Total Weekday Average Daily Trips Internal Capture = 0 Percent

Total Weekday AM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

Total Weekday PM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

\* - Custom rate used for selected time period.

Source: Institute of Transportation Engineers, Trip Generation Manual 10th Edition

**TRIP GENERATION 10, TRAFFICWARE, LLC**

Ten 10th Street, NW, Suite 1400  
Atlanta, Georgia 30309  
United States  
T +1.404.978.7600  
F +1.404.978.7660  
[www.jacobs.com](http://www.jacobs.com)

---

<b>Subject</b>	<b>Proposed Townhome Development, Thompson Mill Road at Panola Road</b>	<b>Project Name</b>	Stonecrest, Georgia
<b>Attention</b>	Jim Summerbell, Planning and Zoning Director		
<b>From</b>	Tom Udell, City Engineer		
<b>Date</b>	June 14, 2021		

---

A townhome development has been proposed at the southwest corner of Thompson Mill Road at Panola Road. The proposal will construct 78 units. This is below the threshold of 190 units to trigger a traffic study. The current zoning is for a commercial development which will produce more traffic than the proposed residential. The city's transportation master plan identifies Thompson Mill Road for widening from 2 to 4 lanes, as well as intersection improvements at Panola Road.

**Attachment 4:**

RZ-21-003 Public Participation Plan

## PUBLIC PARTICIPATION PLAN FORM D

Applicant: Apex Land Company, LLC.

1. The following individuals (property owners within a quarter mile of the property), homeowner's associations, political jurisdictions, other public agencies, etc., will be notified in accordance with the requirements of Article 28.4.7 of the City of South Fulton Zoning Ordinance:

Everybody living in the following communities: Panola Mills, Glencroft, Havenwood, and Woodgrove communities.

2. The individuals and others listed in 1. above will be notified of the requested rezoning/use permit using the following method(s): (e.g., letters, meeting notices, telephone calls, e-mails, etc.)

Letters and meeting notices to set up meetings that will be held via Zoom

3. Individuals and others listed in 1. above will be allowed to participate in the following manner: (At least one meeting at a convenient time and location is required.)

We will hold Zoom meetings with the community members.

*Attach additional sheets as needed.*

## Havenwood Community Meeting Registration Report

First Name	Last Name	Email	Registration Time	Approval Status	
Donna	Priest-Brown	<a href="mailto:dpriestbrown@bellsouth.net">dpriestbrown@bellsouth.net</a>	2021-06-01 17:55:57	approved	
Tracy	Smith	<a href="mailto:msmuscular@gmail.com">msmuscular@gmail.com</a>	2021-06-01 18:00:56	approved	
Percy	Butler	<a href="mailto:percydecatur@aol.com">percydecatur@aol.com</a>	2021-05-31 20:46:48	approved	
Joel	Thibodeaux	<a href="mailto:jbthibodeaux@gmail.com">jbthibodeaux@gmail.com</a>	2021-06-01 18:05:35	approved	
Cecile	Bryant	<a href="mailto:cecilebryant1@gmail.com">cecilebryant1@gmail.com</a>	2021-06-01 18:12:05	approved	
Michele	Battle	<a href="mailto:battlelawpc@gmail.com">battlelawpc@gmail.com</a>	2021-06-01 17:56:54	approved	
LaShawnda	Walker	<a href="mailto:lashawnda.walker9@gmail.com">lashawnda.walker9@gmail.com</a>	2021-06-01 18:10:13	approved	
Sharon	McPherson	<a href="mailto:sharon_mcperson@yahoo.com">sharon_mcperson@yahoo.com</a>	2021-06-01 13:38:23	approved	
Harold	Smith	<a href="mailto:famu4us@bellsouth.net">famu4us@bellsouth.net</a>	2021-05-31 19:09:41	approved	
Gabby Miles		<a href="mailto:gabbymiles706@gmail.com">gabbymiles706@gmail.com</a>	2021-06-01 18:10:21	approved	
Diane Robinson		<a href="mailto:dianemrobinson49@gmail.com">dianemrobinson49@gmail.com</a>	2021-06-01 16:39:52	approved	
Franklin Eaves		<a href="mailto:franklin2230038@yahoo.com">franklin2230038@yahoo.com</a>	2021-06-01 18:30:55	approved	
Danielle	Blumenthal	<a href="mailto:Dlb@battlelawpc.com">Dlb@battlelawpc.com</a>	2021-06-01 17:57:44	approved	
faye Coffield		<a href="mailto:faye@fayecoffieldinvestigations.com">faye@fayecoffieldinvestigations.com</a>	2021-06-01 18:15:51	approved	
Sandra	Willis	<a href="mailto:handsofjazz27@gmail.com">handsofjazz27@gmail.com</a>	2021-05-31 13:55:23	approved	
Gabby	Miles	<a href="mailto:edwina328@gmail.com">edwina328@gmail.com</a>	2021-06-01 17:50:22	approved	
		<a href="mailto:mlb@battlelawpc.com">mlb@battlelawpc.com</a>	2021-06-01 17:56:56	approved	
Erma	Brown	<a href="mailto:erma324@gmail.com">erma324@gmail.com</a>	2021-06-01 18:20:37	approved	
Jazzmin Randall Cobble		<a href="mailto:jazzmin.cobble@gmail.com">jazzmin.cobble@gmail.com</a>	2021-06-01 18:07:34	approved	
Aaron	Rissler	<a href="mailto:aaronrissler@icloud.com">aaronrissler@icloud.com</a>	2021-06-01 18:05:43	approved	
Carl	Manson	<a href="mailto:crlmanson@aol.com">crlmanson@aol.com</a>	2021-05-28 16:51:54	approved	
Clara	DeLay	<a href="mailto:lithonialawyer@gmail.com">lithonialawyer@gmail.com</a>	2021-06-01 17:54:05	approved	
Doris	Johnson	<a href="mailto:dorisej@bellsouth.net">dorisej@bellsouth.net</a>	2021-05-27 23:56:39	approved	
Bernard	Knight	<a href="mailto:bknightattorney@att.net">bknightattorney@att.net</a>	2021-06-01 18:12:54	approved	
T.PG.		<a href="mailto:togmO3@gmail.com">togmO3@gmail.com</a>	2021-06-01 18:04:45	approved	
Aristo 5		<a href="mailto:lsharpefranklin@gmail.com">lsharpefranklin@gmail.com</a>	2021-05-27 18:17:06	approved	
Staci Hopkins		<a href="mailto:shopkins1975@gmail.com">shopkins1975@gmail.com</a>	2021-06-01 17:54:47	approved	
Joysjazz		<a href="mailto:1joysjazz@gmail.com">1joysjazz@gmail.com</a>	2021-05-30 13:09:25	approved	
Pat		<a href="mailto:pwil789@comcast.net">pwil789@comcast.net</a>	2021-06-01 05:41:09	approved	
Stacey	Thibodeaux	<a href="mailto:staceythibodeaux@gmail.com">staceythibodeaux@gmail.com</a>	2021-06-01 18:01:11	approved	

## Glencroft Community Meeting Registration Report

First Name	Last Name	Email	Registration Time	Approval Status	
Wanda	McKenzie	<a href="mailto:DMack71@yahoo.com">DMack71@yahoo.com</a>	2021-05-26 18:31:36	approved	
Tracy	Smith	<a href="mailto:msmuscular@gmail.com">msmuscular@gmail.com</a>	2021-06-01 19:13:34	approved	
Patsi Turner		<a href="mailto:turnerg1@comcast.net">turnerg1@comcast.net</a>	2021-06-01 18:49:49	approved	
Pat Coffee		<a href="mailto:coffee48@bellsouth.net">coffee48@bellsouth.net</a>	2021-06-01 18:52:30	approved	
Jazzmin Randall Cobble		<a href="mailto:jazzmin.cobble@gmail.com">jazzmin.cobble@gmail.com</a>	2021-06-01 18:06:46	approved	
Michele	Battle	<a href="mailto:battlelawpc@gmail.com">battlelawpc@gmail.com</a>	2021-06-01 19:09:21	approved	
Valorie		<a href="mailto:valoriemccoy@outlook.com">valoriemccoy@outlook.com</a>	2021-05-31 22:20:19	approved	
Diane Robinson		<a href="mailto:dianemrobinson49@gmail.com">dianemrobinson49@gmail.com</a>	2021-06-01 19:15:30	approved	
Aaron	Rissler	<a href="mailto:aaronrissler@icloud.com">aaronrissler@icloud.com</a>	2021-06-01 18:05:09	approved	
		<a href="mailto:mlb@battlelawpc.com">mlb@battlelawpc.com</a>	2021-06-01 19:09:25	approved	

## Woodgrove Community Meeting Registration Report

First Name	Last Name	Email	Registration Time	Approval Status	
Donna	Priest-Brown	<a href="mailto:dpriestbrown@bellsouth.net">dpriestbrown@bellsouth.net</a>	2021-06-03 18:00:20	approved	
Kathy		<a href="mailto:bollikat@yahoo.com">bollikat@yahoo.com</a>	2021-06-03 18:09:47	approved	
Lois Hyde		<a href="mailto:loiswhyde01@gmail.com">loiswhyde01@gmail.com</a>	2021-06-03 18:05:03	approved	
Samuel Long		<a href="mailto:lonsam0324@gmail.com">lonsam0324@gmail.com</a>	2021-06-02 15:18:24	approved	
Michele	Battle	<a href="mailto:battlelawpc@gmail.com">battlelawpc@gmail.com</a>	2021-06-03 18:01:06	approved	
LaShawnda	Walker	<a href="mailto:lashawnda.walker9@gmail.com">lashawnda.walker9@gmail.com</a>	2021-06-02 18:12:39	approved	
Mickey		<a href="mailto:starbord2562@gmail.com">starbord2562@gmail.com</a>	2021-06-03 18:12:48	approved	
Sharunda	Buchanan	<a href="mailto:sdb4@cdc.gov">sdb4@cdc.gov</a>	2021-05-28 10:38:09	approved	
Jean	Brooks-Eberhardt	<a href="mailto:jbjean7@gmail.com">jbjean7@gmail.com</a>	2021-06-01 19:44:56	approved	
Danielle	Blumenthal	<a href="mailto:Dlb@battlelawpc.com">Dlb@battlelawpc.com</a>	2021-06-03 17:55:14	approved	
Alisa	Clark	<a href="mailto:alisaclark@glorypcs.com">alisaclark@glorypcs.com</a>	2021-05-28 09:02:45	approved	
Luther	Tookes	<a href="mailto:luthertookes@bellsouth.net">luthertookes@bellsouth.net</a>	2021-06-03 13:43:38	approved	
		<a href="mailto:mlb@battlelawpc.com">mlb@battlelawpc.com</a>	2021-06-03 18:01:08	approved	
Barbara Senior		<a href="mailto:seniorbarbara133@gmail.com">seniorbarbara133@gmail.com</a>	2021-06-03 18:23:25	approved	
Galaxy S20+ 5G		<a href="mailto:robert3476@aol.com">robert3476@aol.com</a>	2021-05-26 20:14:46	approved	
Nijel	Bordenave	<a href="mailto:nbordenave@yahoo.com">nbordenave@yahoo.com</a>	2021-06-03 18:13:53	approved	
A Jackson		<a href="mailto:Arquidalebutler@yahoo.com">Arquidalebutler@yahoo.com</a>	2021-05-29 07:39:30	approved	
Jazzmin Randall Cobble		<a href="mailto:jazzmin.cobble@gmail.com">jazzmin.cobble@gmail.com</a>	2021-06-01 18:05:12	approved	
alecia washington		<a href="mailto:cityofhopeoutreach@yahoo.com">cityofhopeoutreach@yahoo.com</a>	2021-06-03 16:35:03	approved	
R Rasberry		<a href="mailto:rlrasberry@bellsouth.net">rlrasberry@bellsouth.net</a>	2021-06-03 18:25:43	approved	
Shanta Morris		<a href="mailto:smorris411@outlook.com">smorris411@outlook.com</a>	2021-06-03 18:38:24	approved	
Aaron	Rissler	<a href="mailto:aaronrissler@icloud.com">aaronrissler@icloud.com</a>	2021-06-01 14:30:30	approved	
Christine	Character	<a href="mailto:faithprinting123@gmail.com">faithprinting123@gmail.com</a>	2021-06-02 00:20:09	approved	
joyce		<a href="mailto:ja5233@yahoo.com">ja5233@yahoo.com</a>	2021-06-03 18:07:53	approved	
Carl	Manson	<a href="mailto:crlmanson@aol.com">crlmanson@aol.com</a>	2021-06-03 18:20:36	approved	

MICHÈLE L. BATTLE, ESQ.  
President

May 20, 2021

**RE: A Proposed Rezoning and Comprehensive Land Use Change for 3177 Panola Rd and 5207 Thompson Mill Rd.**

Dear Property Owner:

We would like to invite you to join our Zoom Video Meeting on **Tuesday, June 3, 2021**, from 6:00 pm to 7:00pm to discuss a proposed rezoning and land use amendment for the properties located at 3177 Panola Rd. and 5207 Thompson Mill Rd. My client, Apex Land Company, is seeking to develop a townhome project on the property.

Below are the meeting instructions. There are multiple ways for you to join the meeting, including via your computer, tablet, or cell phone, with or without video. If you are unable to make it, but would like to learn more, please contact our office at (404) 601-7616 ext. 7 or email us at [jtm@battlelawpc.com](mailto:jtm@battlelawpc.com) and we will send you a summary of the meeting.

**You are invited to a Zoom meeting.**

**When: June 3, 2021 06:00 PM Eastern Time (US and Canada)**

**Register in advance for this meeting:**

**<https://otago.zoom.us/join>**

**Meeting ID: 864 8203 1456**

**Passcode: 853279**

**After registering, you will receive a confirmation email containing information about joining the meeting.**

Please contact our offices if you have any questions regarding the meeting.

Sincerely,

*Michèle L. Battle*

Michèle L. Battle



## **Zoom Step by Step Instructions**

Go to <https://otago.zoom.us/join> and Enter the Meeting ID that you have been provided with in the appropriate field and click “Join” (the meeting ID will be a 9 digit or 10 digit number)

### **If joining from a mobile Device**

If you are joining from a mobile device (Android smartphone/tablet, Apple iPhone/iPad) then it will simply prompt you to download the Zoom Cloud Meeting app from the App/Play Store.

### **If joining from a computer**

When entering a Zoom meeting for the first time from a computer you may need to download a small application file. This process is easy to complete on all commonly used browsers. Google Chrome should automatically download the file.

Just before Entering the meeting you will be prompted to enter a display name. This name is simply to identify you in the meeting.

### **Join Audio via Computer**

You will then be prompted how you wish to join your audio. If you wish to join audio via the telephone, follow the instructions further down, otherwise simply select Join Computer by Audio.

### **Join Audio via Telephone**

Dial in using (646) 558-8656, after entering the Meeting ID, you will be prompted to enter your Participant ID/Password. Simply enter this number followed by # and the video audio will then be synchronized.

### **Raising Your Hand**

As the non-speaker if you wish to ask a question or make a point during the meeting it's good protocol to use the “Raise Hand” facility.

If the tool bar is not showing at the bottom of the Zoom window, place your cursor over the Zoom window so it appears and select the “Participants” icon.

A window listing other participants will appear, there is also a “Raise Hand” icon, click the icon to make it known to the Host that you would like to raise your hand.

If you wish to lower your hand, click the “Lower Hand” icon that will have replaced the “Raise Hand” icon.

### **Leave Meeting**

To leave a meeting from Zoom on your desktop, select “End Meeting” then “Leave Meeting.”

**Attachment 5, RZ-21-005:**

Zoning Agreement between Panola Mills HOA and the property owners of subject property, which includes the conditions of zoning placed on the property by DeKalb County in 2008 (Z-08-15000)

2009081556 DEED BOOK 21381 Pg 152

Filed and Recorded:  
4/16/2009 4:16:41 PM  
Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

Space Above Reserved for Recording Data

After Recording, return to:  
Michèle L. Battle  
Smith, Gambrell & Russell, LLP  
Promenade II, Suite 3100  
1230 Peachtree St., N.E.  
Atlanta, GA 30309

Cross Reference to Owner Deed:  
Deed Book: 5492  
Page: 684

### ZONING AGREEMENT

This Zoning Agreement (the "Agreement") is entered into this \_\_\_\_ day of February, 2009, by and between **PANOLA MILLS HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation (the "Association") and **M.S. Zakaria, Trustee for M.S. Zakaria M.D., P.C., Employers Profit Sharing Trust; Mohammad Al-Mulki, Trustee for Rania Al-Mulki; Mohammad Al-Mulki, Trustee for Izat Al-Mulki; Mohammad Al-Mulki, Trustee for Dania Al-Mulki and Amin Haffar,** (collectively "**Owner**")

As of the date of execution of this Agreement, the parties listed as the "Owner" have fee simple title to the Zoning Tract and the Residential Tract. This Agreement is made in contemplation of the sale of the Zoning Tract to Cornerstone Development Partners, LLC or another development company, with the Owner retaining the Residential Tract

### **WITNESSETH**

If the rezoning of the Zoning Tract is approved by the DeKalb County Board of Commissioners, the Association agrees that the Owner will be bound by the following:

WHEREAS, Owner owns approximately 5.190 acres of land (the "Zoning Tract") lying and being in Land Lots 22 and 43 of the 16th District of DeKalb County, Georgia as more particularly described in Exhibit "A" attached hereto labeled Tract 2 and by this reference incorporated herein; and

WHEREAS, Owner owns approximately 4.39 acres of land (the "Residential Tract") lying and being in Land Lot 22 of the 16th District of DeKalb County, Georgia as more particularly described in Exhibit "B" attached hereto labeled Tract 1 and by this reference incorporated herein; and

LIT:1057150.4

WHEREAS, Owner filed with the DeKalb County Planning Department (the "Planning Department") Rezoning Application No. Z-08-15000 (the "Rezoning Application") to rezone the Zoning Tract from R-100 to NS; and

WHEREAS, Owner and the Association desire to enter into this Agreement governing the development of both the Zoning Tract and the Residential Tract (the "Subject Properties").

NOW, THEREFORE, for and in consideration of the agreement of Owner to amend its Rezoning Application (and future applications) as hereinafter provided to incorporate certain conditions and in consideration of the mutual benefits flowing between the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of said parties, Owner hereby agrees as follows:

1. Use of Zoning Tract. The approval of the Rezoning Application by the DeKalb County Board of Commissioners shall be subject to certain conditions of zoning, which are contained in Exhibit "D" attached hereto and by this reference incorporated herein (the "Zoning Conditions"). In addition, the parties have agreed that when the Zoning Tract is developed and the sidewalks along Panola Rd are installed, the owner of record at the time that the Zoning Tract is developed will, at its cost, extend the sidewalks along Panola Road to the entrance of the Association's subdivision. Further, when the Zoning Tract is developed, as part of the landscaping design for its frontage, the owner of record at the time that the Zoning Tract is developed agrees to spend up to \$5000.00 to assist the Association in improving the landscape design at the entrance to their subdivision as shown on Exhibit "C" attached hereto and by this reference incorporated herein (the "Panola Mills Entrance Landscape Plan"). Notwithstanding anything herein to the contrary, the terms and conditions set forth in this paragraph 1 regarding the use of the Zoning Tract, shall terminate automatically and become immediately null and void and of no force and effect if subsequent to the approval of the Rezoning Application the Zoning Tract is rezoned to any residential zoning district under the DeKalb County Zoning Ordinance, or under the zoning ordinance of the then applicable governing authority.
2. Use of Residential Tract. Owner has agreed and hereby does agree that the use of the Residential Tract shall be limited to residential dwellings and neither Owner nor any developer of the Residential Tract shall seek to rezone the Residential Tract to any non-residential zoning classification. The foregoing use restriction does not exclude the use of the Residential Tract for non-residential uses permitted in residential dwellings by Special Land Use Permit, Special Exception or otherwise, under the residential zoning district then applicable to the Residential Tract.
3. Covenant Running with the Land. The parties have agreed that the uses of the Subject Properties are central to the entry of this Agreement by the Association. Upon execution of this Agreement and approval of the Rezoning Application, subject to the Zoning Conditions and any other additional conditions approved by the DeKalb County Board of Commissioners, Owner shall record this Agreement as a covenant on its title to the Subject

Properties. This Agreement shall be recorded so as to run with and bind the Subject Properties and any successors, successors-in-title, legal representatives and assigns of Owner and shall run to the benefit of and be enforceable by the Association. This Agreement is deemed a covenant and shall extend for twenty (20) years, and shall renew itself automatically every twenty (20) years, unless within sixty (60) days prior to the expiration of such twenty (20) year term, the Association elects to terminate this Agreement by recording in the DeKalb County, Georgia real property records written notice of the Association's election to terminate the Agreement. Notwithstanding anything herein to the contrary, this entire Agreement shall terminate automatically and become immediately null and void and of no force and effect upon: (i) the denial of the Rezoning Application by the DeKalb County Board of Commissioners, (ii) the voluntary dissolution of the Association, or (iii) twenty-four (24) months after the date that the Association is administratively dissolved by the Georgia Secretary of State's Office.

4. Breach. If Owner breaches any of the terms or conditions set forth herein, the Association shall have the right to give Owner written notice of such breach, simultaneously with filing a complaint with the DeKalb County Code Enforcement Department. If Owner fails to cure such breach within thirty (30) days after receipt of such notice, then the Association shall have the right to: (i) enforce the covenants and agreements hereunder by injunction, specific performance or other appropriate proceedings in law or in equity in the Superior Court of DeKalb County, Georgia, or through mediation, to which Owner hereby consents.
5. Notices. (a) All notices shall be in writing and shall be deemed to have been properly given (i) when delivered in person, or (ii) one (1) business day, after deposit with Federal Express, Express Mail, or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set forth below:

Contact info for Owner at the time of this Agreements Execution

M.S Zakeria, M.D,  
1590 Bethsaida Rd  
Riverdale Ga. 30296

Mohammad Al-Mulki, M.D  
830 Heard's Ferry Rd  
Atlanta, Ga. 30328-4726

With a Copy

to: Any Owner of Record at time of Notice if different from above

With a Copy  
to:

Cornerstone Development Partners  
Mark Renier  
3625 Cumberland Boulevard  
Suite 540  
Atlanta, GA 30339

With a copy  
to:

Michèle L. Battle, Esq.  
Land Use Group  
Smith, Gambrell & Russell, LLP  
1230 Peachtree St., N.E.  
Promenade II, Suite 3100  
Atlanta, GA 30309

Association: Jackie Johnson  
5002 Panola Mill Drive  
Lithonia, GA 30038

Rejection or other refusal by the addressee to accept, or the inability of the courier service to deliver because of a change of address of which no notice was given, shall be deemed to be receipt of the notice sent. Any party shall have the right, from time to time, to change the address to which notices to it shall be sent by giving to the other party at least ten (10) days prior notice of the change of address.

(b) In an effort to keep the line of communication open between the Zoning Tract owner, the Association and the surrounding communities, Owner shall notify the Association in writing (the "Change of Developer Notice") of any conveyance of all or any portion of the Zoning Tract to a successor owner and/or developer of the improvements to be developed on the Zoning Tract. The Change of Developer Notice shall include contact information for the new owner/developer, including, name of the new owner or developer, address, telephone number, fax number and e-mail address and the name of the primary contact person for such owner or developer.

6. MISCELLANEOUS.

- a. This Agreement shall be binding on the successors, successors-in-title, legal representatives and assigns of Owner. Time is of the essence. This Agreement shall survive the sale of all or a portion of the Subject Properties.
- b. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

- c. No representations that are not contained herein shall be binding upon the parties. Each signatory hereto is authorized to execute this Agreement.
- d. The introductory paragraphs to this Agreement are incorporated herein by this reference.
- e. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and shall be controlled in all respects by the laws of the State of Georgia. Notwithstanding anything herein, no modification of this Agreement, shall have any force or effect except where agreed in writing, signed by all parties hereto.
- f. Should any part of this Agreement be declared invalid or void by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion or portions hereof, and such remaining portion or portions shall be deemed to be in full force and effect.
- g. The preambles of this Agreement are incorporated into this Agreement and made a part hereof as if fully restated herein in their entirety. A waiver by any of the parties hereto of any breach hereof shall not operate nor be construed as a waiver of any subsequent breach by any party.
- h. As it is the intent of the parties hereto that this Agreement be enforceable, the parties hereto do hereby waive, surrender and forego any defense which might prevent the enforcement of this Agreement as a covenant, including, but not limited to the following: any defense regarding any lack of privity, any issue of standing, or consideration. The parties further acknowledge the ability, if necessary, to enforce this Agreement as a covenant through privity of conscience.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

## OWNER:

Signed, sealed and delivered in  
the presence of:

Karen B. Peritt

Witness

Nedon A. Haley

Notary Public

My Commission Expires:

[Notary Seal]

M.S. Zakaria  
M.S. Zakaria, Trustee for M.S. Zakaria M.D.,  
P.C., Employers Profit Sharing Trust  
(as to an undivided 50% interest)

Signed, sealed and delivered in  
the presence of:

Karen B. Peritt

Witness

Nedon A. Haley

Notary Public

My Commission Expires:

Nedon A. Haley

[Notary Seal]

Mohammad Al-Mulki  
Mohammad Al-Mulki, Trustee for Rania Al-Mulki  
(as to an undivided 21% interest)

Mohammad Al-Mulki  
Mohammad Al-Mulki, Trustee for Izat Al-Mulki (as  
to an undivided 12% interest)

Mohammad Al-Mulki  
Mohammad Al-Mulki, Trustee for Dania Al-Mulki (as to  
an undivided 12% interest)

Signed, sealed and delivered in  
the presence of:

Karen B. Peritt

Witness

Nedon A. Haley

Notary Public

My Commission Expires:

[Notary Seal]

Amin Haffar  
Amin Haffar, Individually  
(as to an undivided 5% interest)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

**ASSOCIATION:**

Signed, sealed and delivered in the presence of:

PANOLA MILLS HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation

Britton

By: Jackie Johnson

Witness

Jackie Johnson, Its President

Laungerine Nelson

Notary Public

My Commission Expires: May 10 2010

[Notary Seal]



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**EXHIBIT "A"**  
**Legal Description**

**Zoning Tract**

All that tract or parcel of land lying and being in Land Lots 22 and 43, 16th District of Dekalb County, Georgia, and being more particularly described as follows:

Beginning at a right of way monument found at the northwest end of the mitered intersection of the south right of way of Thompson Mill Road (80 foot right of way) and the northwest right of way of Panola Road (variable right of way);  
thence along said mitered right of way intersection South 32 degrees 35 minutes 30 seconds East, a distance of 49.14 feet to a right of way monument;  
thence along the northwest right of way of Panola Road South 15 degrees 01 minutes 08 seconds West, a distance of 155.05 feet to a point;  
thence continuing along said right of way North 74 degrees 58 minutes 52 seconds West, a distance of 20.00 feet to a point;  
thence continuing along said right of way South 15 degrees 01 minutes 08 seconds West, a distance of 25.00 feet to a right of way monument;  
thence continuing along said right of way South 74 degrees 58 minutes 52 seconds East, a distance of 20.00 feet to a point;  
thence continuing along said right of way South 15 degrees 01 minutes 08 seconds West, a distance of 290.09 feet to a point;  
thence continuing along said right of way South 15 degrees 01 minutes 08 seconds West, a distance of 41.56 feet to a point;  
thence leaving said right of way South 89 degrees 20 minutes 58 seconds West, a distance of 326.41 feet to a point;  
thence North 01 degrees 15 minutes 57 seconds West, a distance of 424.66 feet to a point;  
thence North 89 degrees 11 minutes 24 seconds West, a distance of 74.99 feet to a point;  
thence North 01 degrees 15 minutes 57 seconds West, a distance of 120.10 feet to a point on the south right of way of Thompson Mill Road;  
thence along said right of way South 89 degrees 17 minutes 52 seconds East, a distance of 50.03 feet to a point;  
thence continuing along said right of way South 89 degrees 17 minutes 52 seconds East, a distance of 469.55 feet to a right of way monument;  
said point being the POINT OF BEGINNING.  
Said tract or parcel containing 226,065 square feet or 5.190 acres.

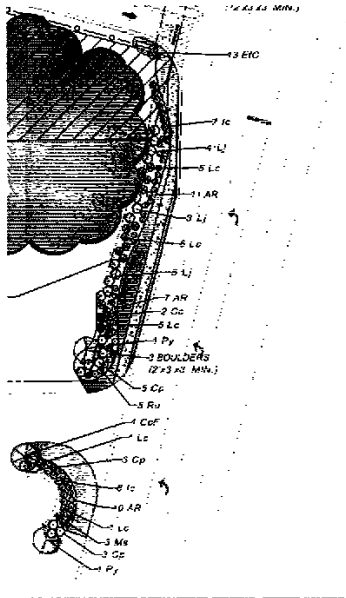
**EXHIBIT "B"****Legal Description****Residential Tract**

All that tract or parcel of land lying and being in Land Lots 22, 16th District of Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a right of way monument found at the northwest end of the mitered intersection of the south right of way of Thompson Mill Road (80 foot right of way) and the northwest right of way of Panola Road (variable right of way);  
thence along the south right of way of Thompson Mill Road North 89 degrees 17 minutes 52 seconds West, a distance of 469.55 feet to a point;  
thence continuing along said right of way North 89 degrees 17 minutes 52 seconds West, a distance of 50.03 feet to a point;  
said point being the POINT OF BEGINNING;  
thence leaving said right of way South 01 degrees 15 minutes 57 seconds East, a distance of 120.10 feet to a point;  
thence South 89 degrees 11 minutes 24 seconds East, a distance of 74.99 feet to a point;  
thence South 01 degrees 15 minutes 57 seconds East, a distance of 424.66 feet to a point;  
thence South 89 degrees 20 minutes 58 seconds West, a distance of 352.87 feet to a 3/8" rebar;  
thence North 03 degrees 50 minutes 35 seconds West, a distance of 554.66 feet to a 1/2" crimped top pipe on the south right of way of Thompson Mill Road;  
thence along said right of way South 89 degrees 17 minutes 52 seconds East, a distance of 303.03 feet to a point;  
said point being the POINT OF BEGINNING.

Said tract or parcel containing 191,634 square feet or 4.40 acres and being more particularly shown on a Zoning Plat for Cornerstone Development Partners, LLC by Armstrong Land Surveying, Inc. dated July 2, 2008, last revised September 19, 2008, and being the portion of Tract 2 outside of the limits of rezoning.

## EXHIBIT "C"

**"Panola Mills Entrance Landscape Plan"****PLANT LIST**

KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	MATURE HT
<b>TREES</b>						
Tc	12	<i>Carya canadensis</i> 'Forest Pansy'	FOREST PANSY REDBUD	3" CAL.	REFER TO PLAN	20-30'
Tj	7	<i>Prunus X yedoensis</i>	YOSHINO CHERRY	3" CAL.	REFER TO PLAN	20-30'
Te	8	<i>Quercus shumardii</i>	SHUMARD OAK	3" CAL.	REFER TO PLAN	40-60'
Tp	10	<i>Ulmus parvifolia</i>	LACESBARK ELM	3" CAL.	REFER TO PLAN	40-60'
<b>SHRUBS</b>						
Sh	80	<i>Abelia chinensis</i> 'Rose Creek'	ROSE CREEK ABELIA	3 GAL.	3'-0" O.C.	
Sh	5	<i>Chamaecyparis obtusa</i> 'Graciosa'	GLENNER HINOKI	5'-6" HT.	REFER TO PLAN	
Sh	17	<i>Chamaecyparis pisifera</i> 'Filiformis'	GOLDEN MOP CYPRESS	3 GAL.	5'-0" O.C.	
Sh	104	<i>Ilex cornuta</i> 'Caliente'	CARISSA HOLLY	18-24" HT.	3'-6" O.C.	
Sh	11	<i>Lagerstroemia</i> 'GAMAD II'	RASPBERRY DAZZLE CREPE MYRTLE	2-3' HT.	4'-0" O.C.	
Sh	12	<i>Ligustrum japonicum</i> 'Recurvifolium'	RECURVE LAURUSTRUM	3-4' HT.	6'-0" O.C.	
Sh	55	<i>Loropetalum chinensis</i> var. 'rubrum'	RUBY LOROPETALUM	2-3' HT.	4'-0" O.C.	
Sh	28	<i>Masconchus sinensis</i> 'Gracilimus'	MAIDEN ORASS	3 GAL.	5'-0" O.C.	
Sh	25	<i>Nandina domestica</i> 'Gulf Stream'	GULF STREAM NANDINA	18-24" HT.	3'-0" O.C.	
Sh	54	<i>Renealmia umbellata</i> 'Georgia Parle'	GEORGIA PETITE INDIAN PAWTHORN	12-18" HT.	3'-0" O.C.	
<b>GROUND COVER</b>						
Gc	50	<i>Eucalyptus fortunei</i> var. 'coloratus'	WINTERCREEPER EUCALYPTUS	1 GAL.	2'-0" O.C.	
<b>ANNUALS</b>						

**EXHIBIT "D"**

**Conditions of Zoning**

**(Z-08-15000)**

**Dated 12/04/08**

Special Conditions. As of the date of execution of this Agreement, the parties listed as the "Owner" have fee simple title to the Zoning Tract and the Residential Tract. This Agreement is made in contemplation of the sale of the Zoning Tract to Cornerstone Development Partners, LLC ("Purchaser") with the Owner retaining the Residential Tract.

Notwithstanding anything herein to the contrary, the party nominally listed as "Owner" shall have absolutely no obligations under paragraph 1 of this Agreement and any notice affecting the Residential Tract shall be sent to M. S. Zakaria, M.D., 1590 Bethsaida Road, Riverdale, GA 30296.

**ZONING CONDITIONS (Z-08-15000)****Dated 12/04/08**

1. The Subject Property shall be developed as a retail or office or restaurant center substantially similar to the concept plan dated July 7, 2007, subject to modifications and eliminations approved by the DeKalb County Planning Department, and prepared by LAI Engineering, Job No.: 8193PROJ (the "Site Plan"), a copy of which was submitted to the DeKalb County Planning and Development Department on December 4, 2008 and is attached hereto as Exhibit "A" and by this reference incorporated herein. The development on the Subject Property shall be limited to buildings with a total square footage not to exceed 25,000 sq. ft.
2. While the landowner has pursued the much lighter zoning designation of NS (Neighborhood Shopping) instead of the more intense C1 designation, the landowner has agreed to further restrict the NS allowable uses. All of the following uses A-G are allowed under the NS designation. However, the landowner has agreed that any of the uses below that have a strike through will be prohibited uses. All other uses A – G below without a strike through will be the allowable uses.
  - a. ~~Animal hospital, veterinary clinic, pet supply store, and animal grooming shop;~~
  - b. Art Gallery and art supply store;
  - d. ~~Child day care center;~~
  - e. Office uses as follows:
    - (1) Accounting office;
    - (2) Engineering and architectural office;
    - (3) Financial services office;
    - (4) Insurance office;
    - (5) Legal office;
    - (6) Medical office;
    - (7) Real estate office;
  - f. ~~Recreational facilities where such activities are wholly enclosed within a building;~~
  - g. Restaurants, but not including drive-through restaurants; **The Subject Property will not lease space to a "restaurant" tenant that in Owners's reasonable judgment is inconsistent with restaurants typically found in first class shopping centers. For example, no pizza take out only, Chinese take out only, or Mexican take out only restaurants will be permitted. Furthermore, those allowable restaurants tenants will occupy no less than 1,000 square feet and such restaurants whose primary use is for the sale of lunch and dinner food items will be permitted so long as its take out sales do not exceed 50% of its total sales.**  
  
**Furthermore, if there are any freestanding restaurants located within Subject Property, they will occupy no less than 3,500 SF and will have no less than 50 seats.**
  - h. ~~Place of worship~~

LIT\1057245.2

- i. Retail sales as follows, but not including adult entertainment establishment and not including adult service facility:
  - (1) Apparel and accessory store; with the exception that Jean Stores or athletic apparel/shoe stores will be prohibited
  - (2) Book, greeting card and stationary store;
  - (3) Camera and photographic supply store;
  - (4) ~~Convenience store;~~
  - (5) Florist;
  - (6) Food stores, including bakeries
  - (7) Gift novelty and souvenir stores, excluding any dollar store (i.e., Dollar General, Family Dollar, Dollar Tree, 99 Cent Stores or other similar store);
  - (8) ~~Hardware store;~~
  - (9) Hobby, toy and game store; with the exception that electronic video game stores will be prohibited
  - (10) ~~Jewelry store;~~
  - (11) Music and musical equipment store;
  - (12) ~~News dealers and newsstand;~~
  - (13) Office supplies and equipment store
  - (14) Pharmacy, including convenience items;
  - (15) Quick copy printing store;
  - (16)
  - (17) Sporting goods and bicycle sale;
  - (18) ~~Variety store;~~
  - (19) ~~Video tape sales and rental store;~~
  
- f. Services, personal, as follows:
  - (1) ~~Barbershop, beauty shop, and similar personal service establishments;~~
  - (2) ~~Coin-operated laundry and dry cleaning store;~~
  - (3) ~~Laundry and dry cleaning establishment and pickup station;~~
  - (4) ~~Personal care home, congregate;~~
  - (5) ~~Personal care home, family;~~
  - (6) ~~Personal care home, group;~~
  - (7) ~~Personal care home, registered;~~
  - (8) Day spas offering personal services such as massages and skin treatments, as well as other personal care services which may include hair and nail care.
  - (9) Photographic studios.
  
- g. Services, repair, as follows:
  - (1) ~~Jewelry repair store;~~
  - (2) ~~Shoe repair store.~~

- 3. Accessory uses and structures allowed on the Subject Property shall consist of all accessory uses and structures allowed within the NS Zoning District as enumerated in DeKalb County Zoning Code Sec. 27-559.
- 4. In order to be clear about other uses **not permitted** in NS and thus this property, the following uses shall also be strictly prohibited on the Subject Property;

- a. Electronic game playing centers.
  - b. Adult entertainment centers.
  - c. Adult novelty stores.
  - d. Pawn shops.
  - e. Pool halls.
  - f. Tattoo parlors.
  - g. Individual barbershops and beauty salons, but not businesses operating as a day spa offering two (2) or more of the individually prohibited service establishments, along with massages, skin treatments, etc.
  - h. Liquor store, spirits wholesale or retail, and wine shops. Notwithstanding the foregoing, this condition shall not prevent liquor, wine, beer or other spirits from being sold in restaurant(s) on the Subject Property.
  - i. Rental stores leasing furniture, trucks, tools and/or equipment (excluding stores lasing items used for the improvement of physical fitness and health).
  - j. Automobile, boat, and trailer sales and service (excluding sale or leasing of self propelled water craft, like canoes).
  - k. Car title offices.
  - l. Farmers' or flea markets, defined as an occasional or periodic market held in an open area or structure where individual non-tenant sellers offer goods to the public.
5. No outdoor storage of merchandise will be permitted within the development, and no outdoor vending machines or supplies will be permitted within the development.
6. There shall be designated bicycle parking.
7. No exposed neon or box signs shall be permitted on the exterior of the buildings.
8. All four sides of buildings on the Subject Property shall consist of brick, stone, stucco or glass (including metal and glass store fronts and/or curtain wall systems). E.I.F.S., painted dimensioned wood, cement material (such as hardieplank), metal panels, colored precast concrete, cast stone, architectural blocks and/or cedar shake may be used as an accent material only, not to exceed 20% of the surface area. The building façade plans to be substantially similar to the elevations attached hereto as Exhibit "B" subject to modifications as some national restaurants and other retailers may require.
9. The common areas within the development shall be kept and maintained in first class order and repair as compared to any other first class mixed use development similar to the caliber, type and character of the development on the Subject Property and located in the general area. A Property

Owners Association ("POA") shall be created and shall assume maintenance responsibilities for the Subject Property's common area once the development is completed.

10. As shown on the Landscape Plan dated July 7, 2008 prepared by LAI, Engineering Job NO.: 8193PROJ attached hereto as Exhibit "C", the Panola Rd and Thompson Mill Rd frontages shall be heavily landscaped with flowering trees, shrubs, and perennials. Developer will also agree to an improved landscape strip in the right of way outside the north and east property lines to the curb line of Panola Rd and Thompson Mill Rd and in order to soften the view of the parking fields, developer will create a landscaped berm along Panola Rd and Thompson Mill Road frontages as topography allows. Once planted, developer shall be responsible for the maintenance of planted materials within the limits of its property for a period of 24 months from the date a Land Disturbance Permit is issued for development of the project, and shall replace any diseased or dead landscape material as needed. After this 24 month period, the obligation and financial responsibility to maintain landscaping shall be imposed upon the mandatory POA established to maintain all common areas of the Subject Property.
11. Free standing signage along the road frontage shall be monument style with sign bases constructed of brick, stone or stucco finishes/veneers in compliance with all other standards of Chapter 21, Sign Regulations.
12. Any exterior lights, including building lights, walkway lighting, safety/security lights and parking lot lights will be screened, shielded, and/or shaded so as to minimize glare and the casting of light outside the new development. No lighting will bleed or shine onto neighboring properties. The west and south lighting of the building will be implemented with wall pack fixtures. Front lighting will be implemented with shoebox or decorative type fixtures with low (e.g. 20 foot) lighting standards. Gooseneck and "Historical period" lighting fixtures will be incorporated in building and parking lot design.
13. Outdoor seating shall be allowed in the front or side of restaurant uses..
14. Detention structures on the Subject Property shall conform to all DeKalb County Code requirements and shall reduce the current run-off rate by 10%. Further, draining improvements shall be subject to approval of the Development Division of the Planning and Development Department, and the Drainage Division of the Public Works Department. Class 3 concrete piping will run from detention facility and flow to allowable culvert on Thompson Mill Rd.
15. No construction shall take place Monday through Thursday, 7:00 p.m. – 7:00 a.m., Friday, 7:00 p.m. – Saturday, 9:00 a.m., and Saturday, 4:00 p.m. – 12:00 a.m. No construction will be allowed on Sunday. Inaudible interior construction will be allowed Monday through Thursday, 7:00 p.m. – 8:00 p.m. General construction activities shall be limited to Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. and Saturday between the hours of 9:00 a.m. and 4:00 p.m.
16. All utilities are to be underground.
17. Transportation and access improvements shall be subject to approval by the Development Division of the Planning and Development Department, and the Transportation Division of the Public Works Department.
18. Garbage dumpsters shall have sound-deadening gaskets and shall be located within a gated, masonry enclosure. Excluding special circumstances, Garbage dumpster pickup shall be between 6:30 a.m. and 8:00 p.m., Monday through Saturday.

19. The Site Plan may include portions of the Subject Property that will be subdivided in the future. Parts of the Subject Property may be conveyed as separate tracts and to separate owners with different ownership structures under the zoning plan. Should there be a conveyance of part of the Subject Property to different owners, all zoning conditions (and variances, if any) shall remain applicable to any portion of the conveyed property, regardless of what future person or entity owns the subdivided portion of the Subject Property. Conveyance of part of the Subject Property to different owners shall not require any changes to the zoning plan for the development (nor variances, if any). The newly-created property lines which arise from these conveyances are not required to observe setback, buffer or other requirements provided the building layout for the project as a whole continues to comply substantially with the Site Plan. The development at issue is a master planned development and shall be developed as such.
20. HVAC Root Top units will be screened from view and not visible from the ground or neighboring properties.
21. The owner of the Subject Property agrees to enter into a binding agreement with Panola Mills Subdivision and DeKalb County and a deed restriction will be placed on the balance of this 9.5 acre tract prohibiting any future retail/shopping center zoning.

**EXHIBIT "A" to ZONING CONDITIONS**

**SITE PLAN**



**EXHIBIT "B" to ZONING CONDITIONS**

**Elevation**

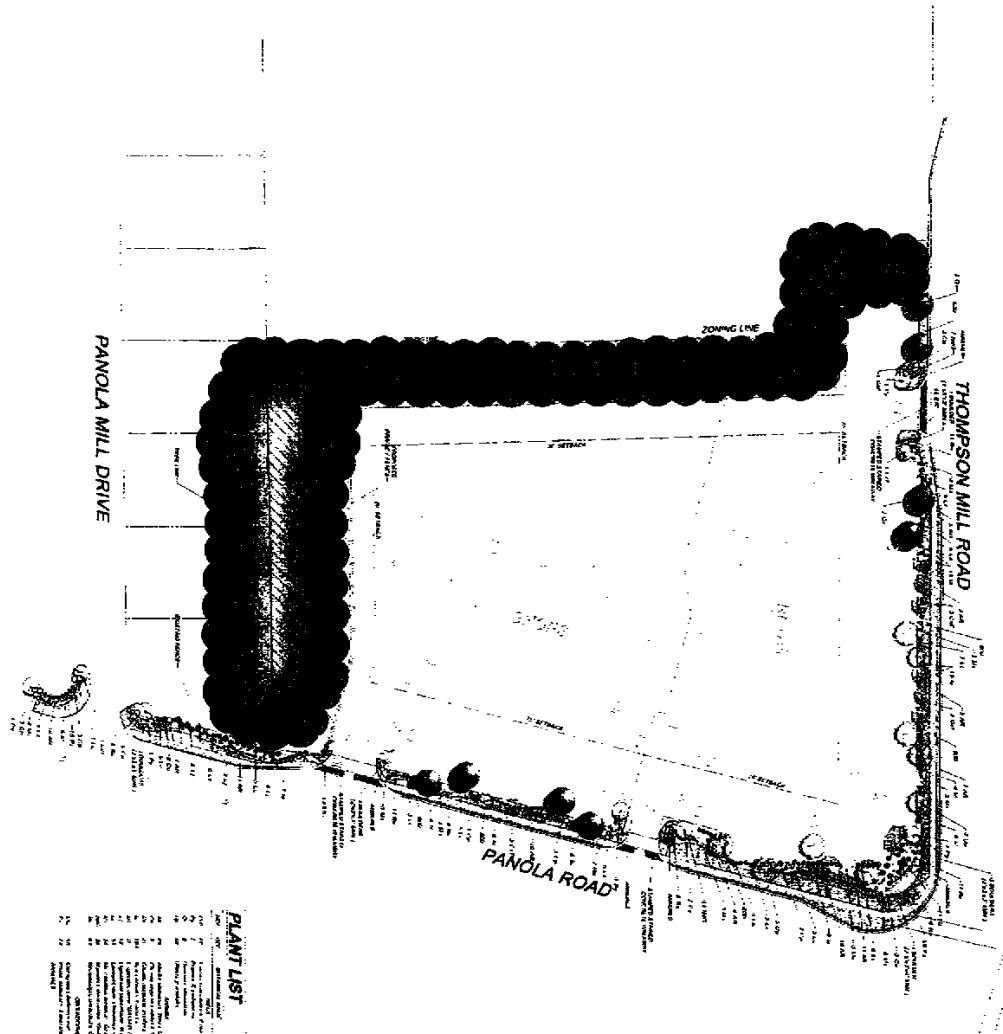


*Panola Mill Station*

DeKalb County, Georgia

**EXHIBIT "C" to ZONING CONDITIONS**

**Landscape Plan**



**PLANT LIST**

NO.	PLANT NAME	QUANTITY	NOTES
1	PLANT NAME	1	NOTES
2	PLANT NAME	1	NOTES
3	PLANT NAME	1	NOTES
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100	PLANT NAME	1	NOTES

NOT FOR CONSTRUCTION

DATE: 01/11/2011

PROJECT: PANOLA ROAD RETAIL

CLIENT: CONVERSE DEVELOPMENT PARTNERS, LLC

DESIGNER: LAI ENGINEERING

SCALE: 1"=40'



**LAI ENGINEERING**

1800 PARKWAY PL. - STE. 720  
MARIETTA, GA 30067  
PHONE: 770.433.0807  
FAX: 770.433.1262  
WWW.LAIENGINEERING.COM

**PANOLA ROAD RETAIL**

2156 PANOLA ROAD

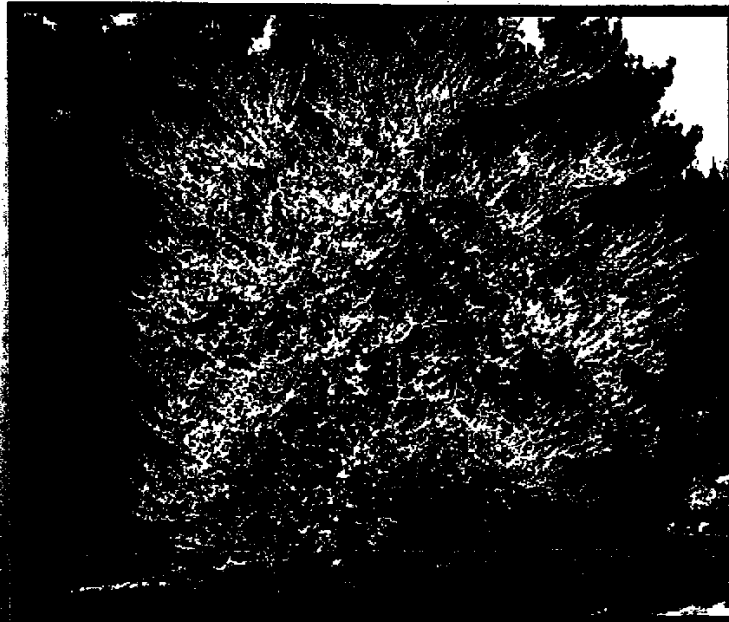
PREPARED FOR:

CONVERSE DEVELOPMENT PARTNERS, LLC

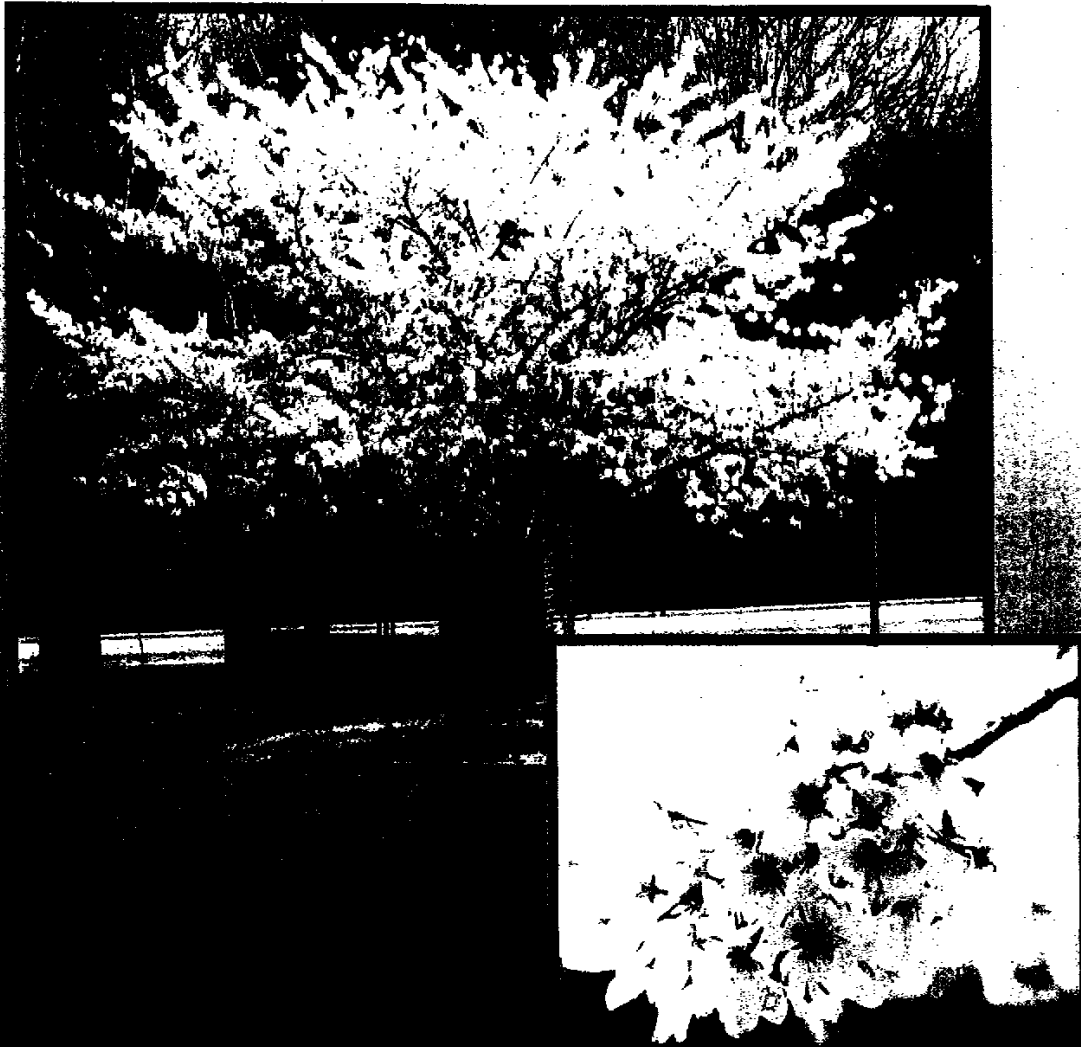
LITHONIA, GEORGIA

REVISIONS

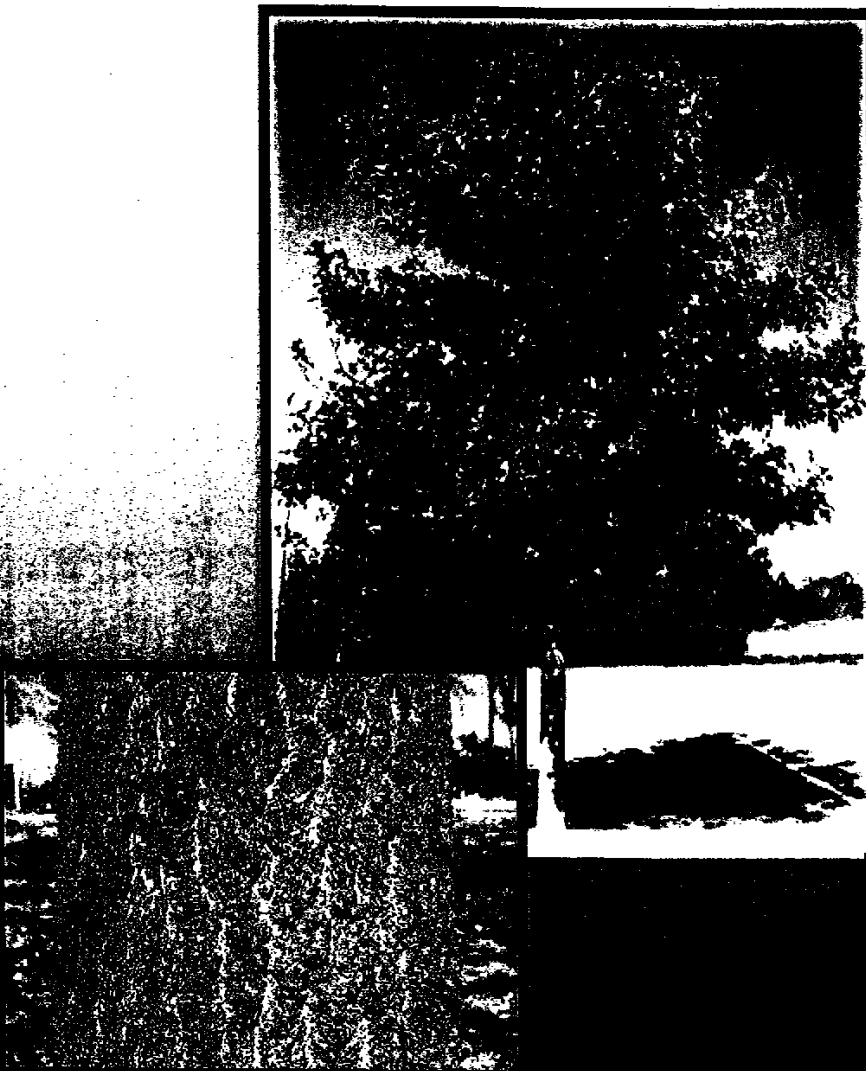
NO.	DESCRIPTION	DATE
1	ISSUED FOR CONSTRUCTION	01/11/2011



Forest Pansy Redbud



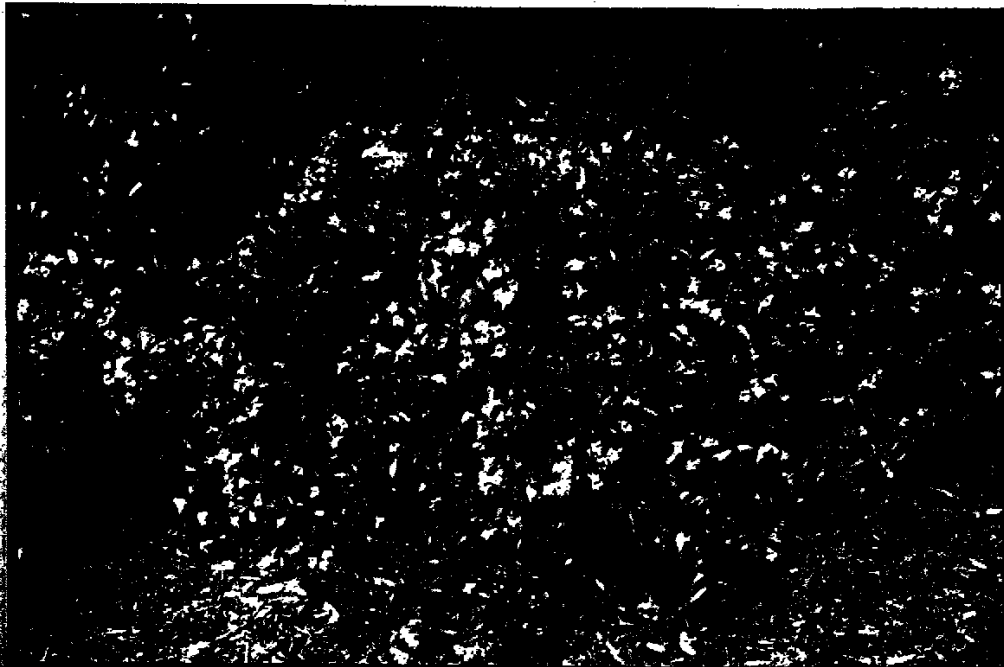
Yoshino Cherry



Shumard Oak



Lace Bark Elm



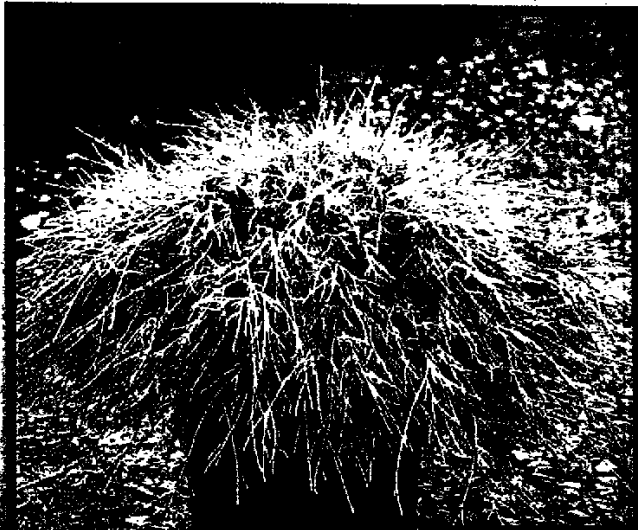
Rose Creek Abelia



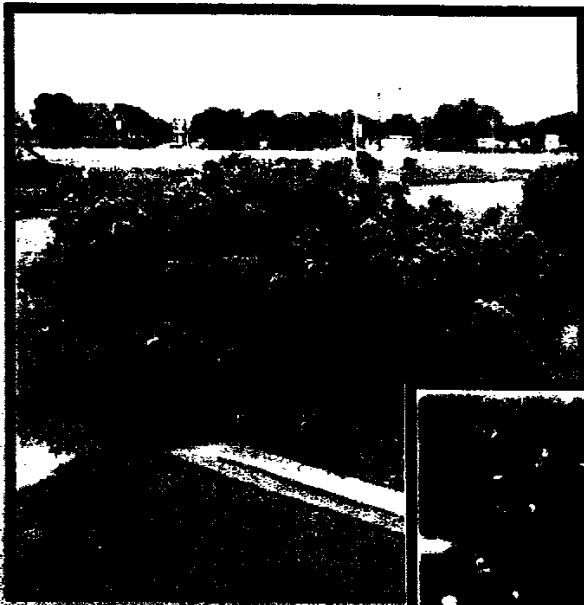
**Slender Hinoki**



**Carissa Holly**



Golden Mop Cypress



## Raspberry Dazzle Crepe Myrtle



## Euonymus Wintercreeper

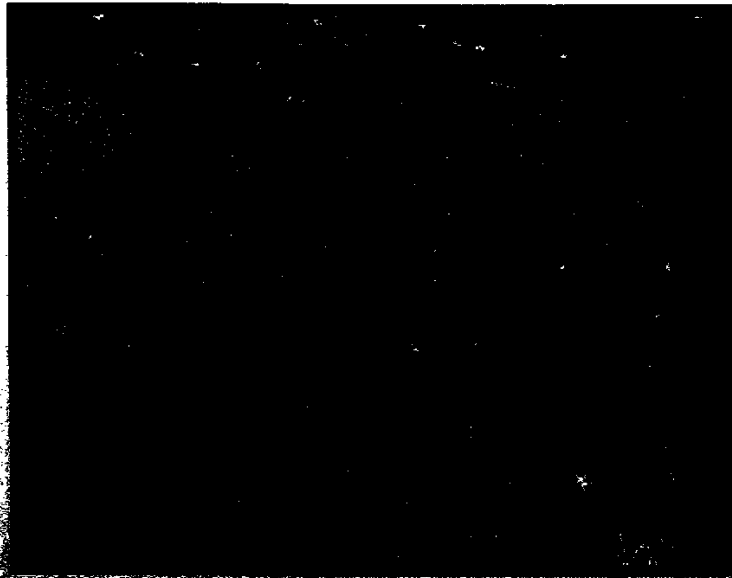




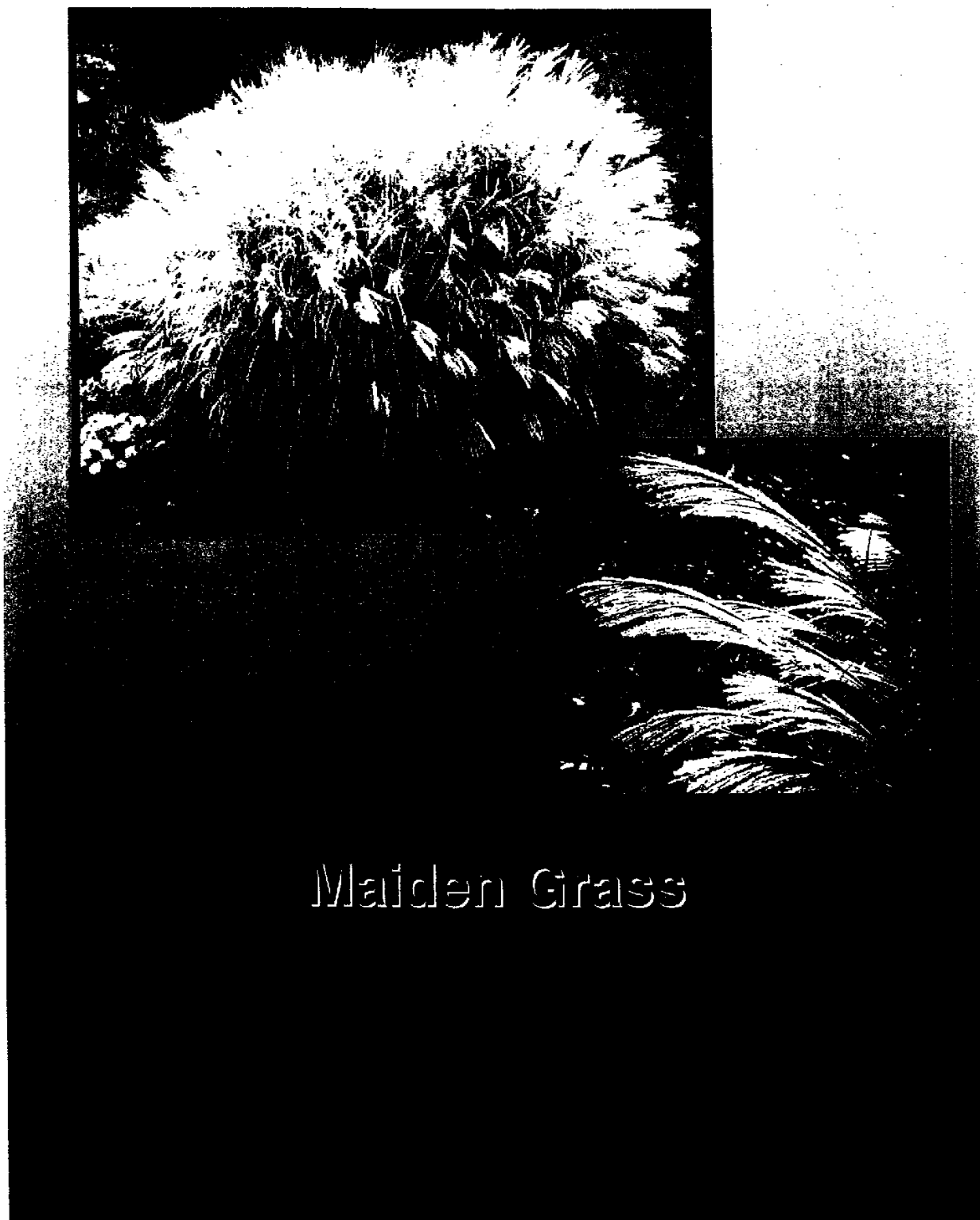
## Recurve Ligustrum



Georgia Petite  
Indian Hawthorn



Ruby Loropetalum



Maiden Grass



## CITY COUNCIL AGENDA ITEM

**SUBJECT: RZ-21-007, Arabia Mountain Conservation Overlay Expansion**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** [Click or tap to enter a date.](#)

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** - [Click or tap to enter a date.](#)

**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To hold a public hearing and take action on RZ-21-007 a City-initiated rezoning of approximately 160 acres on 17 parcels of land east of Klondike Road and Plunkett Road, south of Hayden Quarry Road and north of Rockland Road from the Stonecrest Area Overlay, Tier 5 to the Arabia Mountain Conservation Overlay.

**FACTS:** See staff report

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer [Click or tap here to enter text.](#)

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:**

- (1) Attachment 1 - RZ-21-007, Staff Report
- (2) Attachment 2 - [Click or tap here to enter text.](#)
- (3) Attachment 3 - [Click or tap here to enter text.](#)



## CITY COUNCIL AGENDA ITEM

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(4) Attachment 4 - Click or tap here to enter text.

(5) Attachment 5 - Click or tap here to enter text.

RZ-21-007 - Arabia Mountain Conservation Overlay Expansion - Staff Report

**PLANNING & ZONING STAFF REPORT**

RZ-21-007

**City Council Regular Meeting, November 22, 2021****GENERAL INFORMATION****Petition Number:** RZ-21-007**Applicant:** City of Stonecrest, Planning & Zoning Dept**Owner/ Property Location:** Multiple owners see chart below. Seventeen (17) parcels of land east of Klondike Rd and Plunkett Rd, south of Hayden Quarry Road, and north of Rockland Road

Parcel ID	Address	Acreage	Owner/Developer
16 139 02 010	6815 Hayden Quarry Rd	25.0	Dekalb County Budget Dept
16 139 02 017	3216 Klondike Road	0.6	Kelly, James Roger *
16 139 02 020	3220 Klondike Road	1.0	Tannehill, Carol Torbush *
16 139 02 008	3230 Klondike Road	3.2	Torbush, Elizabeth Diane *
16 139 02 016	3240 Klondike Road	0.5	Brown, C H *
16 139 02 007	3278 Klondike Road	42.0	Brantley Investments LP
16 139 02 019	3304 Klondike Road	1.0	McAllister, Shonette
16 140 03 018	3280 Plunkett Road	0.4	State of Georgia
16 140 03 027	3310 Plunkett Road	2.4	Ballew, Avery *
16 140 03 016	3350 Plunkett Road **	41.0	Treefort Properties LLC
16 140 03 019	3332 Plunkett Road	2.5	Treefort Properties LLC
16 140 03 020	3418 Plunkett Road **	12.2	Merrit Homes Inc
16 140 03 028	3466 Plunkett Road	14.5	Morris, Fred B *
16 140 03 008	6900 Rockland Road	6.1	Latsis, David *
16 140 03 026	6914 Rockland Road	7.0	Brown, Patrick L *
16 141 06 001	3582 Plunkett Road	0.4	Landell, Shani Ruth Augustin
16 141 06 002	6888 Rockland Road	0.5	Landell, Shani Ruth Augustin

\* Owner Occupied, Address of owner matches property address

\*\* Address has open permits

**Council District:** District 1 – Jimmy Clanton**Acreage:** Approximately 160.03 acres**Existing Zoning:** R-100 (Residential Med Lot) District, Stonecrest Area Overlay, Tier 5

## PLANNING & ZONING STAFF REPORT

RZ-21-007

<b>Proposed Zoning:</b>	R-100 (Residential Med Lot) District, Arabia Mountain Conservation Overlay
<b>Comprehensive Plan Character Area Designations:</b>	Conservation/Open Space, Suburban, and Rural Residential
<b>Proposed Development/Request:</b>	Proposed city-initiated rezoning from Stonecrest Area Overlay, Tier 5 to Arabia Mountain Conservation Overlay.
<b>Staff Recommendations:</b>	Approval
<b>Planning Commission Recommendation:</b>	Approval.

### Aerial Map, RZ-21-007

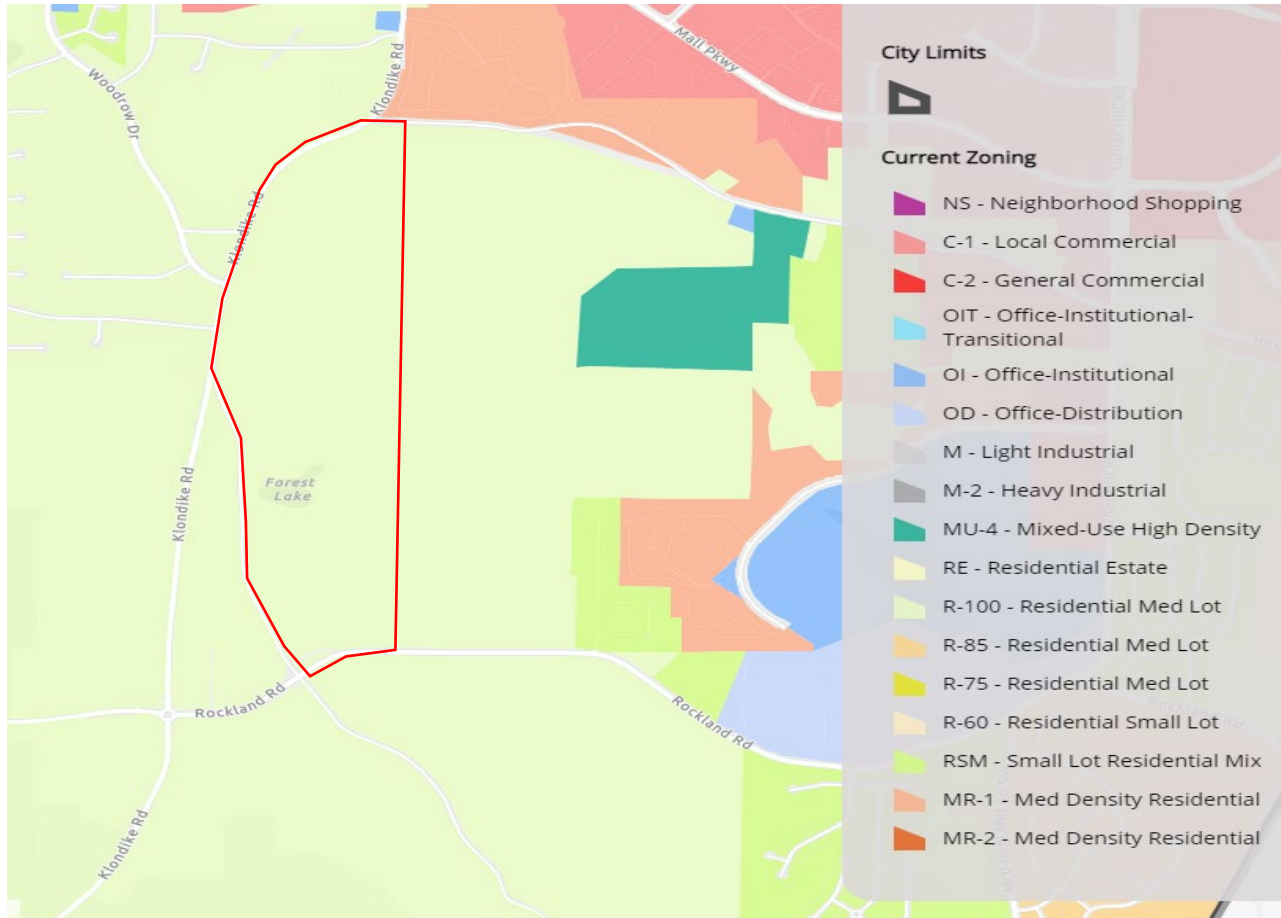




## PLANNING & ZONING STAFF REPORT

RZ-21-007

### Zoning Map, RZ-21-007

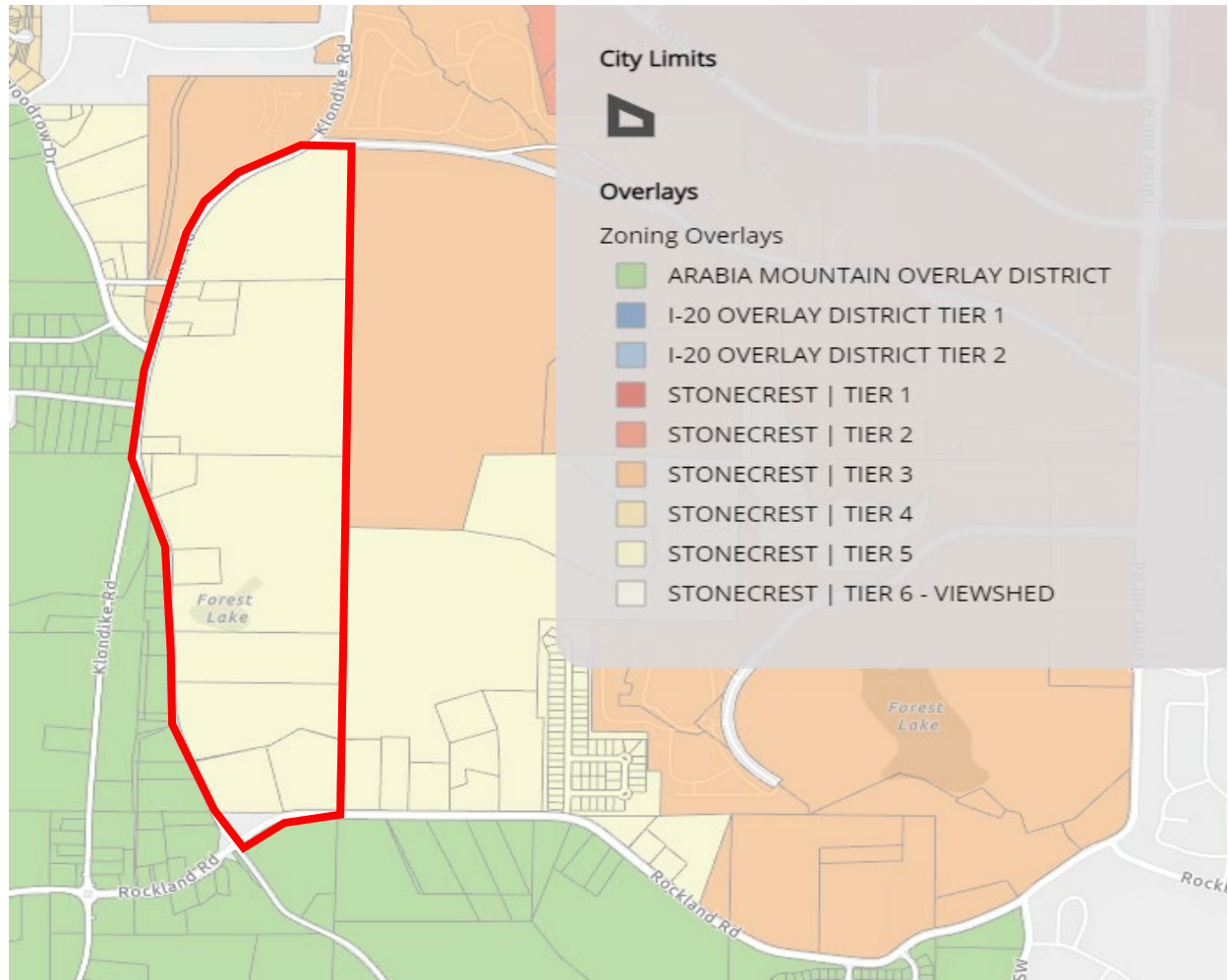


*The area in question is outlined in red and is zoned R-100, Single Family Residential*

## PLANNING & ZONING STAFF REPORT

RZ-21-007

### Overlay District Map

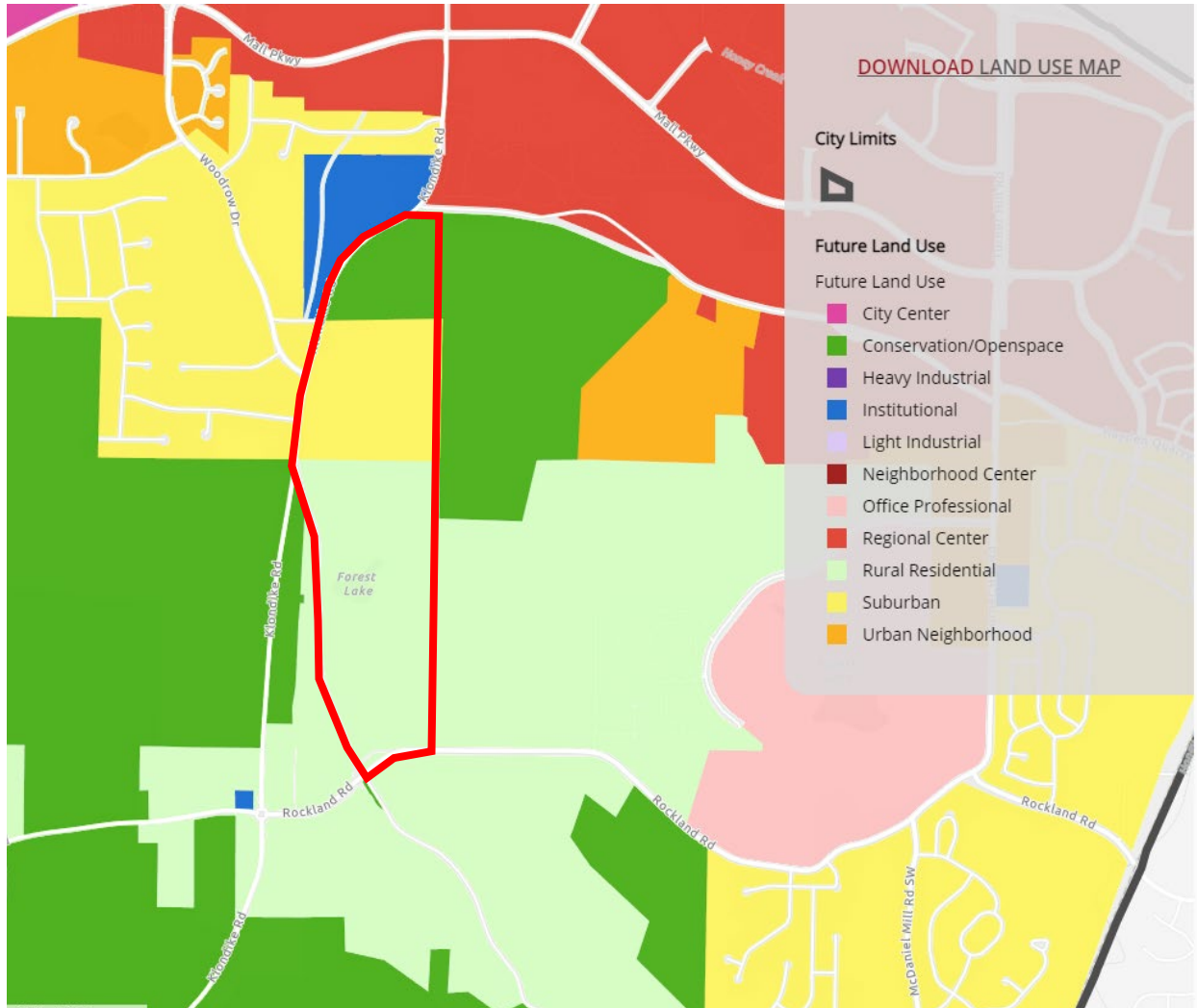


*The area in question is outlined in red and is in Tier 5 of the Stonecrest Area Overlay, adjacent to the Arabia Mountain Conservation Overlay to the west and south.*

## PLANNING & ZONING STAFF REPORT

RZ-21-007

### Future Land Use Map, RZ-21-007



*Subject Area includes 3 character areas on the Future Land Use Plan: Conservation/Open Space, Suburban, and Rural Residential*

## PLANNING & ZONING STAFF REPORT

RZ-21-007

### OVERVIEW

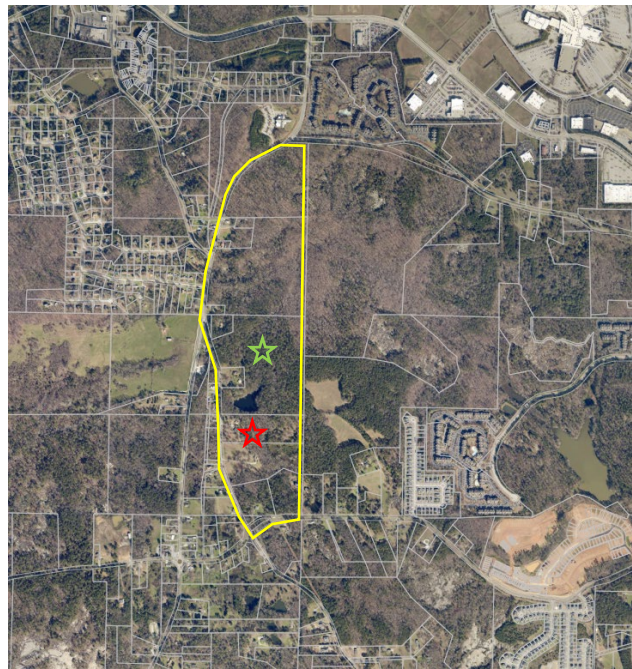
#### **Location**

The subject property is comprised of seventeen (17) parcels of land east of Klondike Rd and Plunkett Rd, south of Hayden Quarry Road, and north of Rockland Road and includes approximately 160 acres.

#### **Background and reason for the rezoning**

Currently, the area contains a number of single-family homes in wooded and agricultural setting, dotted with rock outcropping, consistent with the character with the other lands in Arabia Mountain Conservation Overlay. Klondike and Plunkett Road is a major gateway to the Davidson-Arabia Mountain Nature Preserve, and the offices of the Arabia Mountain Alliance are across Plunkett Road from the subject area.

Though the area is currently very much character with the Arabia Mountain overlay, it also lies with in the Stonecrest Area Overlay District, which would allow the future development of office and commercial uses along Plunkett Road. Recently some permits have been granted for construction in the area, which has raised concerns about maintaining the overall rural character of the area. The best way to preserve that character is to expand the adjacent Arabia Mountain Conservation Overlay to include the subject area.



One of these proposed developments that raised interest in the rezoning is a 11-lot subdivision being development by Merritt Homes at 3418 Plunkett Road on 12.2 acres, the location is denoted by a red star on the map above. The other development that raised interest in the rezoning is the restoration of an historic home at 3350 Plunkett Road on 42 acres by Treefort Properties, location denoted by a green star on the map above. The historic home is being proposed to be used as a special event venue and Bed n Breakfast.

#### **Rezoning Request**

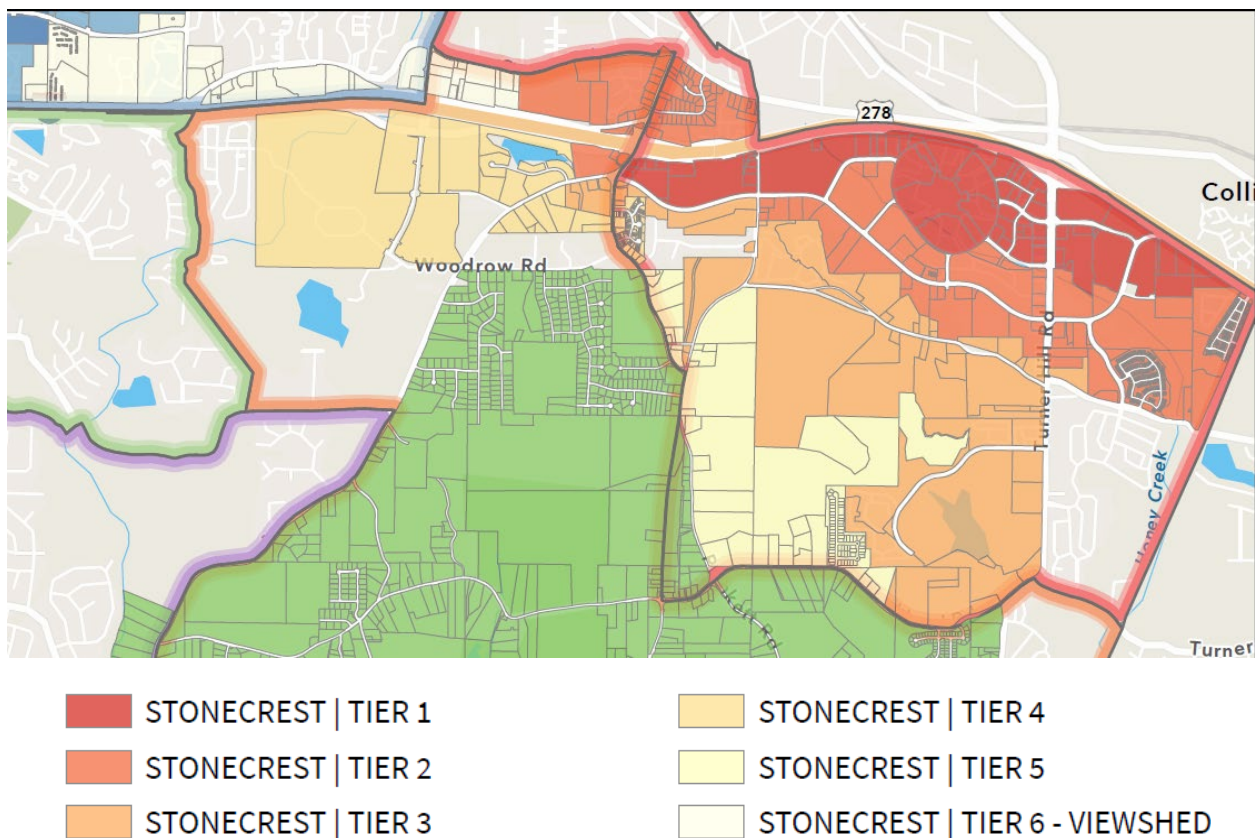
The city is proposing to rezone the area from the Stonecrest Area Overlay, Tier 5 to the Arabia Mountain Conservation Overlay. The base zoning of R-100 would remain in place. To better understand what the implication of this rezoning would be, here are some basic facts about overlay districts in general and the two overlay districts in question.

## PLANNING & ZONING STAFF REPORT

RZ-21-007

- An overlay district is a zoning district which is applied over one or more previously established zoning districts (base zones), establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. In this case the base zone is R-100.
- Communities often use overlay zones to protect special features, such as historic buildings, wetlands, steep slopes, and waterfronts. The Arabia Mountain Conservation Overlay is protective Overlay District. It is intended to preserve the natural resources of the Davidson-Arabia Mountain Nature Preserve, one of the city's major attractions and natural assets.
- Overlay zones can also be used to promote specific development projects, such as mixed-used developments, housing along transit corridors, or to impose design guidelines. The Stonecrest Area Overlay is a promotional Overlay District. It is intended to promote the economic growth in and around the city's largest commercial center.

### Current Zoning – Stonecrest Area Overlay





## PLANNING & ZONING STAFF REPORT

RZ-21-007

The Stonecrest Area Overlay is a promotional Overlay District:

- It is comprised of six tiers, Tier 5 can be found in Section 3.15.2 of the Zoning Ordinance
- Tier 5, Cluster Village Mixed-use Zone “primary intent is to encourage single-family detached residential developments with associated neighborhood commercial and office uses to serve the convenience needs of the local community in a village or cluster concept.” [Sub-section A.]
- “Tier 5 also seeks to preserve the rural and scenic beauty of the Arabia Mountain Preserve while providing flexibility to allow for creativity in site design and development.”
- **It does permit non-residential uses along Plunkett Road**, but restricts office and commercial uses fronting Klondike and Rockland roads. [Subsection E.4.]
- Imposes Design Guidelines to ensure that development is in keeping with look and character of the Mall area.

Permitted uses are governed by the base zoning, but also include the following:

1. Adult day care facility.
2. Bed and breakfast.
3. Child day care facility.
4. Assembly hall.
5. Cultural facility.
6. Detached single-family dwelling.
7. Office uses.
8. Personal care facility.
9. Place of worship.
10. Retail, excluding drive-through facilities, automobile service stations, commercial amusements, convenience store, liquor stores, package store, and recreation, indoor.
11. Office/medical.
12. Personal services establishment.

Though the Stonecrest Area Overlay allows many non-residential uses to be built by right in Tier 5, it does also include a list of **prohibited uses**:

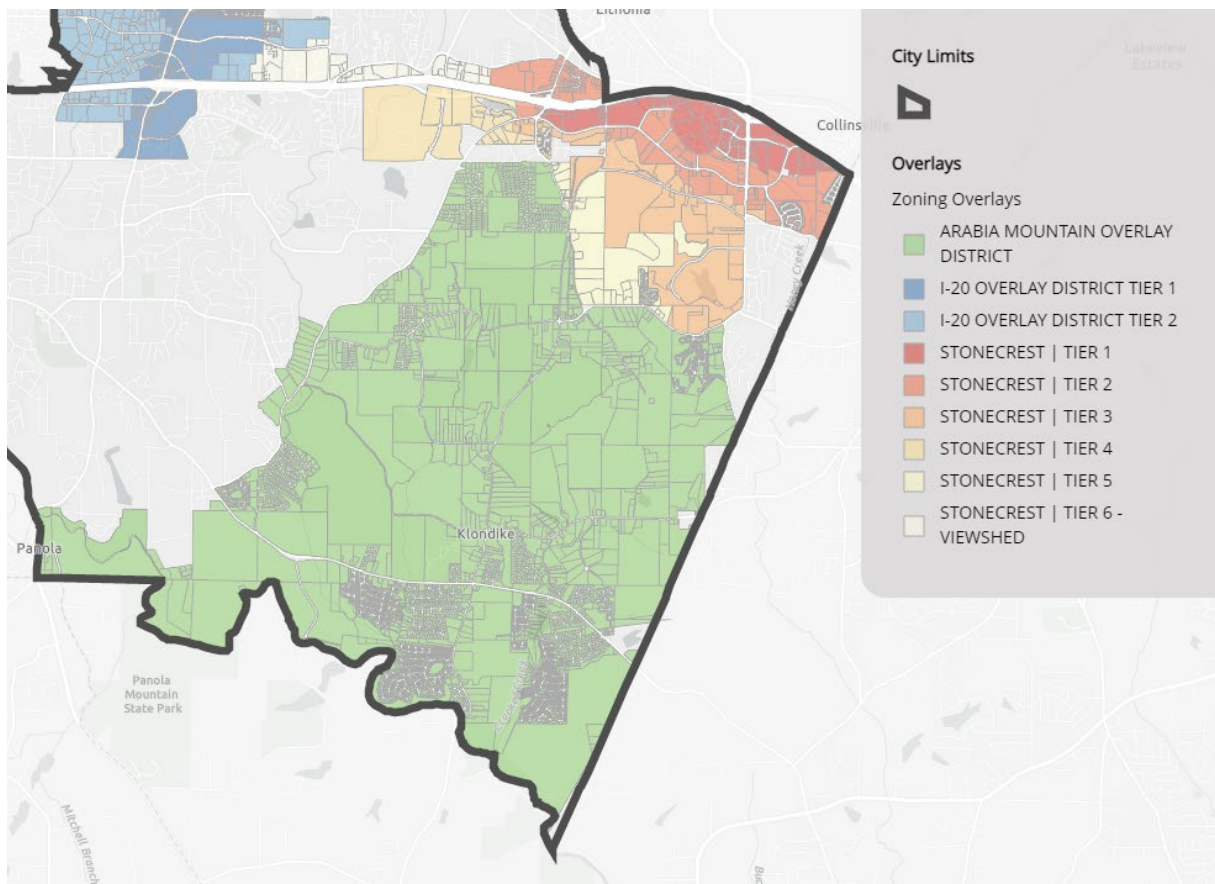
1. Kennels.
2. Junkyard.
3. Tire retreading and recapping.
4. Sexually oriented businesses.
5. Go-cart concession.
6. Outdoor storage.
7. Automobile repair, major.
8. Hotel/motel.
9. Automobile sales.
10. Temporary outdoor sales.
11. Pawn shops.

## PLANNING & ZONING STAFF REPORT

RZ-21-007

12. Liquor stores.
13. Nightclubs.
14. Late-night establishments.
15. Car wash, self service.
16. Self-storage.
17. Funeral home.
18. Mortuary.
19. Crematorium.
20. Farm equipment and supplies sales establishment.
21. Multifamily dwelling unit.

### Proposed Zoning – Arabia Mountain Conservation Overlay



The Arabia Mountain Conservation Overlay is the largest overlay district in the City, occupying approximately a third of the city area. It includes a number of design requirements above and beyond what a typical R-100 subdivision must adhere to. These requirements include:



## PLANNING & ZONING STAFF REPORT

RZ-21-007

### Sec. 3.4.7 Lot Coverage

- Net lot coverage shall not exceed 25%

### Sec. 3.4.8 Clearing and grading of lots

- Clearing/grading shall be limited to 35% of net lot area

### Sec. 3.4.9 Development Standards

- Prohibits Clear cutting of trees
- Minimum side yard setback shall be 10 feet
- 30% greenspace required
- Internal radius of cul-de-sac can be maximum of 35 feet; must have grass and vegetation for the inner circle of turn-arounds (Sec. 3.4.9 B.b)
- Required exterior boundary buffer (Sec. 3.4.9 C) of 50 feet

Like the Stonecrest Area Overlay, the Arabia Mountain Conservation Overlay also expressly includes a list of permitted uses regardless of the underlying zoning, which are:

1. Recreation, passive and nature preserve
2. Dog parks
3. Bed and breakfast homes
4. Outdoor Concert Halls
5. Urban Garden

The list of prohibited uses in the Arabia Mountain Conservation Overlay is longer than the Stonecrest Area Overlay, Tier 5 prohibited list, and includes the following:

1. Sexually-oriented businesses.
2. Drive-in Theater.
3. Fairground or Amusement Park.
4. Swimming pools as part of a commercial Recreation, Outdoor use or Recreation club; but not including swimming pools incidental to Open space, clubhouse or pool amenity.
5. Coliseum or stadium, except for outdoor Concert Halls.
6. Nightclub or late night establishment.
7. Outdoor storage, mini-warehouses, and storage buildings.
8. Pawn shops.
9. Mortuary or Crematorium.
10. Alcohol Outlets.
11. Salvage yards and junk yards.
12. Motel or Extended Stay Motel.
13. Shelter for homeless persons.



## PLANNING & ZONING STAFF REPORT

RZ-21-007

14. Transitional housing facility.
15. Fuel Dealers, Fuel Pumps and Accessory Fuel Pumps.
16. Automobile and truck rental and leasing, Automobile brokerage, Automobile mall, Automobile recovery and storage, Automobile rental and leasing, Automobile repair and maintenance, major, Automobile repair and maintenance, minor, Automobile sales, Automobile service station, Automobile upholstery shop, Automobile wash/wax service, Recreational vehicle/boat sales and service, Freight service, Transportation equipment and storage or maintenance (vehicle), and Vehicle storage yard.
17. Commercial parking garage/structure; Commercial parking lots.
18. Convenience store.
19. Drive-through facilities.
20. Personal service establishments.
21. Check cashing facility.
22. Heavy equipment storage.
23. Truck stops.
24. Warehouses.
25. Solid waste disposal, Private industry solid waste disposal facility.
26. Bus station or terminal.
27. Ambulance service facility, Private ambulance service, Dispatch office.

### Comparison between the two overlay districts

Bringing the subject area into the Arabia Mountain Conservation Overlay would protect Plunkett Road from commercial development and help preserve the tree canopy of the area. The basic question should the area be promoted for future development in line with the goals of the Stonecrest Area Overlay, or be protected from future commercial encroachment more inline with the character of the areas to the west and south?

### Public Participation

Property owners within 100 feet of subject property were mailed notices of the proposed rezoning, and the rezoning was presented at a Community Planning Information Meeting on September 20, 2021 at 6 PM via Zoom.com. The meeting was well attended, and the general consensus of the group was in favor of the rezoning.

### STANDARDS OF REZONING REVIEW

**Section 7.3.4** of the Stonecrest Zoning Ordinance list eight factors to be considered in a technical review of a zoning case completed by the Planning and Zoning Department and Planning Commission. Each element is listed with staff analysis.



## PLANNING & ZONING STAFF REPORT

RZ-21-007

**A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.**

The subject property is located within three character areas on the Future Land Use Map of the Stonecrest Comprehensive Plan: Conservation/Open Space, Suburban Neighborhood, and Rural Residential.

- The intent of the **Conservation and Open Space** Character Area is to preserve areas in the city with significant natural and ecological features, as well as environmentally sensitive recreational facilities for public enjoyment. These areas consist of undeveloped natural lands, environmentally sensitive and conservation areas that are not suitable for development. It also includes land used for active recreational purposes that provide for a wide range of activities with some land designated for cultural and historic preservation.
- The intent of the **Suburban Neighborhood** character area is to recognize those areas of the city that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. These areas include those developed (built out) and those under development pressures. Those areas are characterized by low pedestrian orientation, limited transit access, scattered civic buildings and curvilinear street patterns. The proposed density for areas of this type is up to 8 dwelling units per acre.
- The purpose of the **Rural Residential** Character Area is to provide for areas that are suitable for low-density housing with densities of up to four (4) dwelling units per acre. Single-family detached housing is the most appropriate type of development for this district. Stable Low-Density Residential Districts should be protected from encroachment of higher density or high intensity uses.

The proposed rezoning would be in compliance with the purpose and intent of each of these character areas and would be in conformity with the overall goals of the comprehensive plan.

**B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties.**

As shown in the table below, the subject property is primarily surrounded by properties zoned for single family residential, the only difference being the overlay districts.



## PLANNING &amp; ZONING STAFF REPORT

RZ-21-007

Adjacent & Surrounding Properties	Zoning (Petition Number)	Overlay District
Subject Property	R-100 (Residential Med Lot) District	Stonecrest Area, Tier 5
Adjacent: North	R-100 and MR-1 (Residential Med Lot) Districts	Stonecrest Area, Tier 3
Adjacent: West	R-100 (Residential Med Lot) District	Arabia Mountain Conservation, Stonecrest Area, Tiers 3 and 5
Adjacent: East	R-100 (Residential Med Lot) District	Stonecrest Area, Tiers 3 and 5
Adjacent: South	R-100 (Residential Med Lot) District	Arabia Mountain Conservation

The proposed change in zoning would permit a use that would be suitable in view and development of the nearby properties. The rezoning would allow a medium density development that is consistent with the adjacent R-100 and MR-1 zoning, but also built to a higher conservation standard consistent with the intent of the Arabia Mountain Conservation Overlay District.

**C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

The property is currently zoned R-100 and will remain so, which permits single family detached homes. The change in overlay districts would just impose stricter conservation standards than those currently allowed. The property does have reasonable economic use as currently zoned.

**D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties.**

The proposed zoning proposal is not anticipated to have a negative impact on the existing use or usability of adjacent or nearby properties, but rather preserve overall character of the area and its natural resources, and promote quality development.

**E. Whether there are other existing or changing conditions affecting the use and development of the property, which gives supporting grounds for either approval or disapproval of the zoning proposal.**

There are no changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the zoning proposal.



## PLANNING & ZONING STAFF REPORT

RZ-21-007

**F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.**

There are currently no historic buildings, sites, districts, or archaeological resources registered on the subject property on the subject property. However, as described earlier 3350 Plunkett Road does contain an old farm house, built in late 19<sup>th</sup> Century that is being renovated. This rezoning would help preserve the historic context of the site it sits on.

**G. Whether the zoning proposal will result in a use that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

This rezoning will not impact existing streets, transportation facilities, utilities or schools.

**H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.**

The zoning proposal will help preserve the environment or surrounding natural resources, and will have no adverse impact on these resources.

### **RECOMMENDATION**

Staff and Planning Commission recommends unconditional **APPROVAL** of **RZ-21-007**.



## CITY COUNCIL AGENDA ITEM

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**SUBJECT: RZ-21-008, ACE Homes LLC**

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**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

---

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

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**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

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**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** [Click or tap to enter a date.](#)

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):**    - [Click or tap to enter a date.](#)

---

**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To hold a public hearing and take action on RZ-21-008, a request by ACE Homes LLC to rezone the property at 2261 South Stone Mountain Lithonia Rd, 2241 South Stone Mountain Lithonia Road, and 1780 Phillips Road totaling approximately 70 acres from Local Commercial (C-1) and Medium Density Residential (MR-1) with conditions to C-1 and MR-1 with different conditions including a different site plan that reduces the area zoned C-1 from 3.92 acres to 2.68 acres, and increases the area zoned MR-1 proportionately.

**FACTS:** See staff report

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer [Click or tap here to enter text.](#)

**RECOMMENDED ACTION:** Approve with conditions

**ATTACHMENTS:**

(1) Attachment 1 - RZ-21-008, Staff Report



## **CITY COUNCIL AGENDA ITEM**

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- (2) Attachment 2 - RZ-21-008 Application Materials
- (3) Attachment 3 - Sewer Capacity Evaluation
- (4) Attachment 4 - Site Plan Exhibits
- (5) Attachment 5 - DeKalb County Rezoning Case File, Z-07-13333

Attachment 1: RZ-21-008 Staff Report



## PLANNING & ZONING STAFF REPORT

RZ-21-008

City Council Regular Meeting, November 22, 2021

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### GENERAL INFORMATION

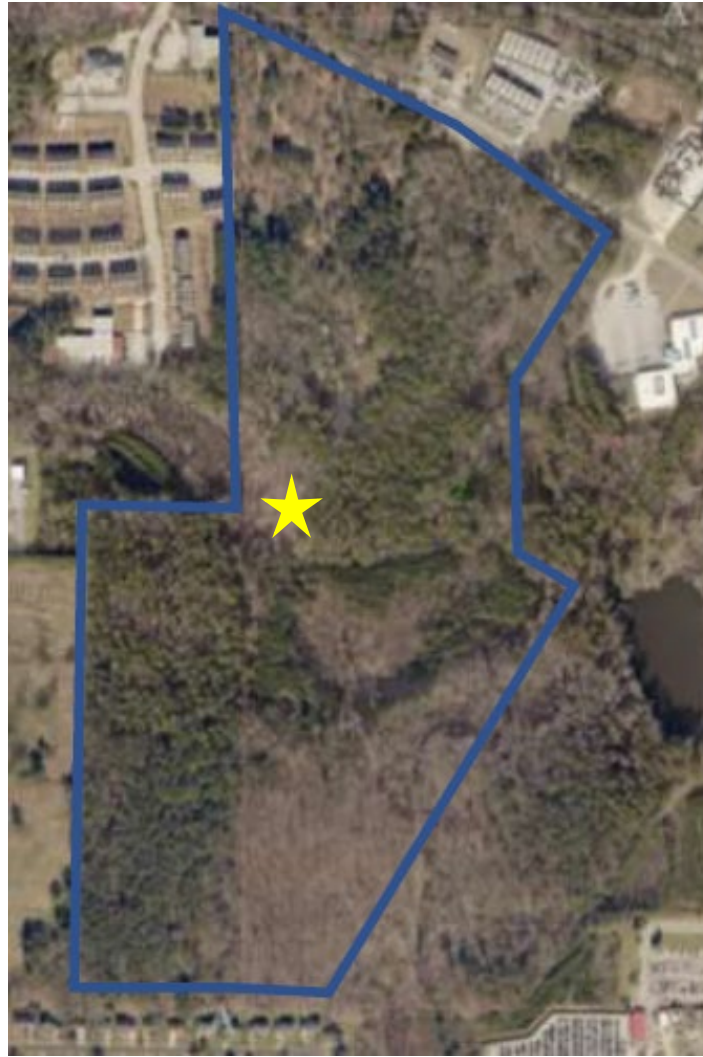
<b>Petition Number:</b>	RZ-21-008
<b>Applicant:</b>	ACE Homes LLC, represented by Prime Engineering
<b>Owner:</b>	ACE Homes LLC
<b>Project Location:</b>	2261 South Stone Mountain Lithonia Rd (Parcel ID# 16 124 02 011), 2241 South Stone Mountain Lithonia Rd (Parcel ID# 16 124 02 016), and 1780 Phillips Rd (Parcel ID# 16 101 03 011)
<b>Council District:</b>	District 1 – Jimmy Clanton
<b>Acreage:</b>	Approximately 70 acres
<b>Existing Zoning:</b>	Medium Density Residential (MR-1) and Local Commercial (C-1)
<b>Proposed Zoning:</b>	Rezoning of 2241 South Stone Mountain Lithonia Road (part) from C-1 to MR-1, decreasing the size of the C-1 from 3.92 acres to 2.68 acres, and a change in conditions for a proposed Medium Density Residential (MR-1) development at 2241 South Stone Mountain Lithonia Road, 2261 South Stone Mountain Lithonia Rd, and 1780 Phillips Rd
<b>Comprehensive Plan Character Area Designation:</b>	Suburban Neighborhood
<b>Proposed Development/Request:</b>	Stonecrest Estates, a mixed-use development consisting of 131 town homes and 202 single family homes, with new roads, clubhouse, pool, walking trail, pavilion and a 2.68 acre commercial lot.
<b>Staff Recommendation:</b>	Approval with conditions
<b>Planning Commission Recommendation:</b>	Approval with conditions



## PLANNING & ZONING STAFF REPORT

RZ-21-008

### Aerial Map, RZ-21-008





## PLANNING & ZONING STAFF REPORT

RZ-21-008

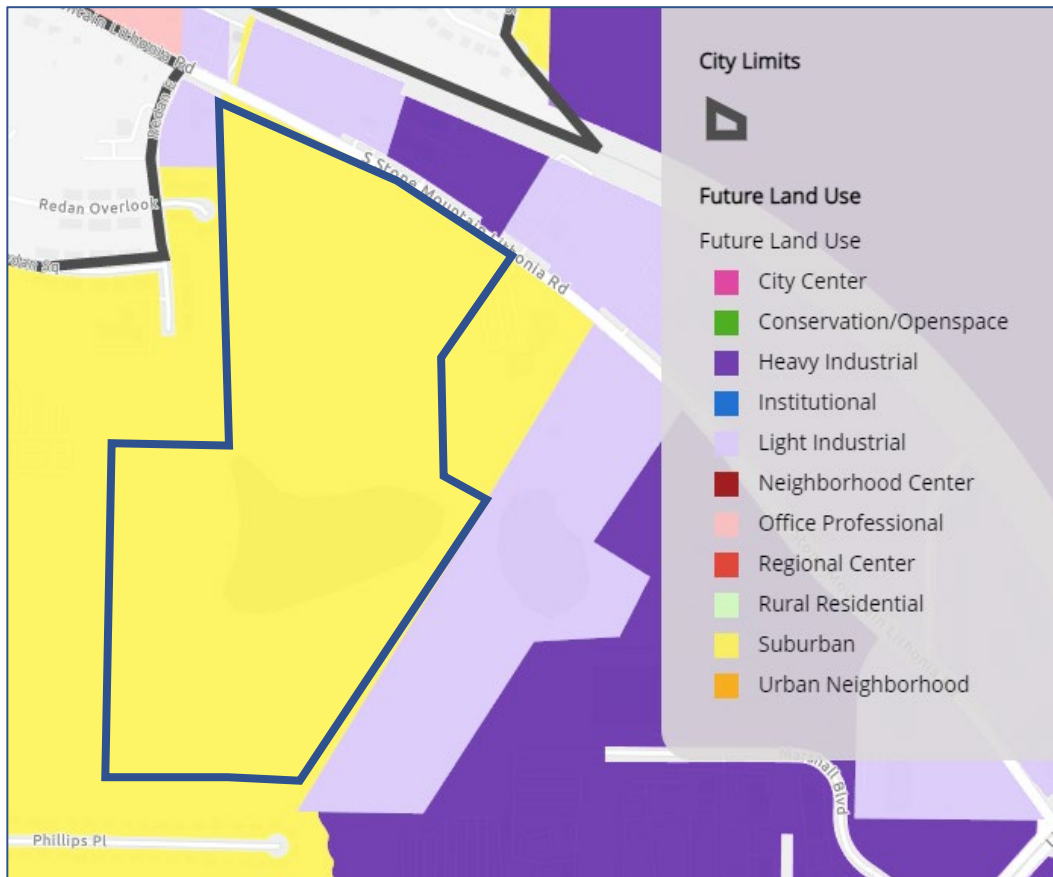
### Zoning Map



PLANNING & ZONING STAFF REPORT

RZ-21-008

Future Land Use Map



## PLANNING & ZONING STAFF REPORT

RZ-21-008

### **PROJECT OVERVIEW**

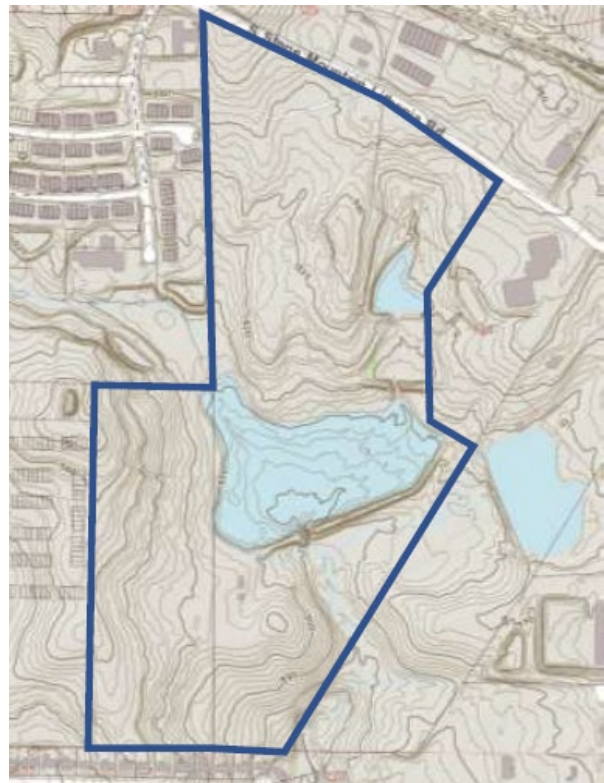
#### **Location**

The subject property is located on the south side of South Stone Mountain Lithonia Road, just west of the E DeKalb County Board of Health office and just west of Redan Square Townhome Community off of Redan East.

#### **Background**

Currently, the subject property is undeveloped forest land. But was approved in 2007, Z-07-13333, by DeKalb County for a medium density residential development that included Senior Living, townhomes, single-family (on MR-1) and small scale commercial (on C-1). Due to the real estate crash in 2008 the development was never constructed as proposed.

The topography of the property slopes down toward three former lakes, and associated streams. The dams that created the lakes were breached in the mid 2000s. As a result there are some wetlands and two streams on the site but they will not be disturbed. A separate stream buffer variance to encroach in 7 locations around the wetlands was approved by the Zoning Board of Appeals, on September 21, 2021, case V-21-003.



#### **Rezoning Request**

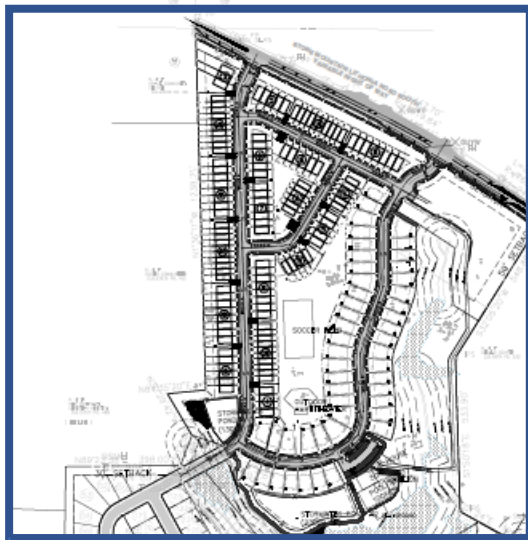
The applicant is requesting to slightly reconfigure the zoning boundaries between the approved C-1 and MR-1, and change the conditions of the Z-07-13333 zoning case to adhere to a new site plan. The original 2007 site plan included a senior living component that is no longer part of the proposal.

The commercial portion of the Stonecrest Estates will be decreasing the size from 3.92 acres to 2.68 acres. Adding more land to the MR-1 zoned portion of the project. As proposed the mixed-use development would consist of 131 town homes and 202 single family homes, with new roads, clubhouse, pool, walking trail, pavilion and the small commercial lot.

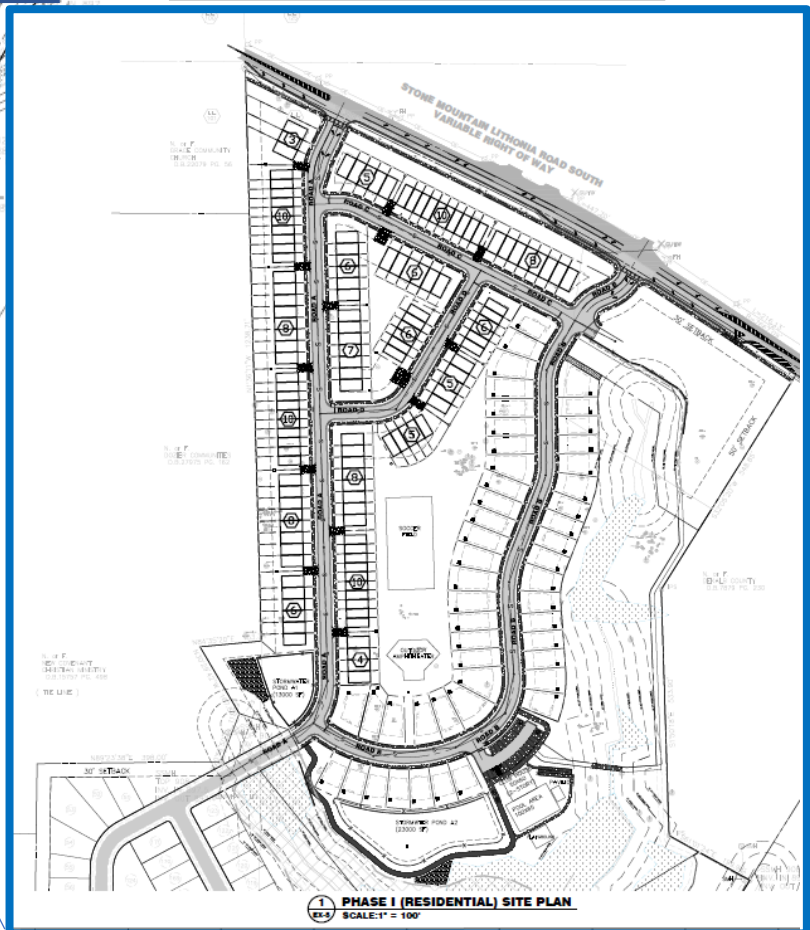
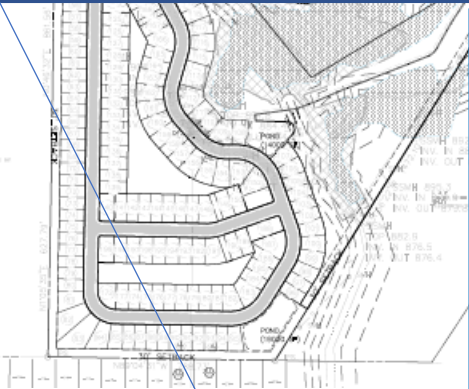
**PLANNING & ZONING STAFF REPORT**

RZ-21-008

Conceptual Site Plan prepared by Prime Engineering, received September 7, 2021



Stonecrest Estates, Phase 1





## PLANNING & ZONING STAFF REPORT

RZ-21-008

The site plan presented in this report is the result of several concept plan reviews by staff with the applicant in July and August 2021. These meetings included the Planning & Zoning Director, the Chief Building Official, and the City Engineer. This latest version of the plan submitted on September 7 was found to conform to the zoning and site design requirements of MR-1 and C-1. Modifications to the plan were made ensure proper buffers between the C-1 and MR-1 portions of the site and to allow adequate parking for townhome visitors.

### Public Participation

Property owners within 1000 feet of subject property were mailed notices of the proposed rezoning. The city-sponsored community information meeting was held on September 20, 2021, at 6:00 pm via Zoom.com. Several residents show up at the community meeting regarding the rezoning application and others watch via YouTube. There were some concerns expressed from the participants about the impacts on streams and traffic, as well as the potential for residential-industrial land use conflicts if the industrial areas to the east ever were developed.

### STANDARDS OF REZONING REVIEW

**Section 7.3.4** of the Stonecrest Zoning Ordinance list eight factors to be considered in a technical review of a zoning case completed by the Planning and Zoning Department and Planning Commission. Each element is listed with staff analysis.

**A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.**

The subject property is located within the Suburban Neighborhood character area of the Stonecrest Comprehensive Plan. The intent of the Suburban Neighborhood character area is to recognize those areas of the city that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. These areas include those developed (built out) and those under development pressures. Those areas are characterized by low pedestrian orientation, limited transit access, scattered civic buildings and curvilinear street patterns. The proposed density for areas of this type is up to 8 dwelling units per acre.

The proposed development would meet the intent of the Comprehensive Plan.

**B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties.**

As shown in the table on the next page, the subject property is surrounded by a mix of land uses.

**PLANNING & ZONING STAFF REPORT**

RZ-21-008

<b>Adjacent &amp; Surrounding Properties</b>	<b>Zoning (Petition Number)</b>	<b>Land Use</b>	<b>Density Non-Residential (SF/Acre) Residential (Units/Acre)</b>
Subject Property	MR-1 and C-1,	Undeveloped	NA
Adjacent: North	C-1 and C-2	Gas station and body shop	NA
Adjacent: West	R-100, RSM and M	Two churches, a residential development and neighborhood scale commercial properties	Varied, less than 6 units/ac
Adjacent: East	R-100 and M	Government Bldg	NA
Adjacent: South	RSM (Small Lot Residential Mix)	Single family subdivision	5 units/ac

The proposed change in zoning would permit a use that would be suitable in view and development of the nearby properties. The rezoning would allow a medium density residential development and neighborhood scale commercial that is consistent with the adjacent residential development. The stream buffer and preserved open space on the site will serve as a natural buffer to any potential industrial development to the east.

**C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

The property is currently zoned the same as proposed, just in a different configuration. It does have a reasonable economic use, that will not change with the rezoning.

**D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties.**

The proposed zoning proposal is not anticipated to have a negative impact on the existing use or usability of adjacent or nearby properties, thanks to the careful preservation of wetlands within the property buffers.

**E. Whether there are other existing or changing conditions affecting the use and development of the property, which gives supporting grounds for either approval or disapproval of the zoning proposal.**

There are no changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the zoning proposal.



## PLANNING & ZONING STAFF REPORT

RZ-21-008

**F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.**

There are currently no historic buildings, sites, districts, or archaeological resources on the subject property.

**G. Whether the zoning proposal will result in a use that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

Access to the property will be S Stone Mountain Lithonia Road that staff believes would have the traffic capacity to handle the volume of traffic generated by the zoning change. The zoning proposal will not cause an excessive or burdensome on utilities as Dekalb County states the property has the sewer capacity for the intended use. The proposed use will not create an excessive burden on schools.

**H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.**

The zoning proposal will not adversely impact the environment or surrounding natural resources.

### **RECOMMENDATION**

The applicant meets all the criteria for approval. Therefore, staff and the Planning Commission recommend **APPROVAL** of **RZ-21-008** the following conditions:

1. The future development of the site shall be in compliance with the general concept plan submitted on September 7, 2021 with this rezoning application prepared by Prime Engineering.
2. A Home Owners Association (HOA) will be established prior to the approval of a final plat for the development. HOA membership will be requirement of all property owners within the development.
3. Prior to the issuance of any land disturbance permit, the Applicant must provide evidence of a legal mechanism under which all land to be held in common and used for greenspace purposes within the development shall be protected in perpetuity.
4. The applicant must submit a tree save and landscaping plan to the Director prior to issuance of building or land development permits.
5. The City Engineer shall review and approve driveway location prior to the issuance of building or land development permits.
6. A minimum 5-foot sidewalk shall be installed along the property frontage on S Stone Mountain Lithonia Road.

Attachment 2: RZ-21-008 Application Materials

# PRIME ENGINEERING INCORPORATED®

Item VIII. c.

September 7, 2021 (Revised)

City of Stonecrest  
Community Development Department  
3120 Stonecrest Blvd.  
Stonecrest, GA 30038

Re: **Letter of Intent**  
Stonecrest Estates  
Stonecrest, GA

To Whom It May Concern:

This serves as our letter of intent of rezoning for the MR-1 and C-1 properties on our parcel. The purpose of the rezoning will be to adjust the property lines to meet the new developments (primarily residential) design. Specifically, we will be decreasing the size of the C-1 from 3.92 acres to 2.68 acres. The MR-1 will increase by 1.24 acres. No change in use is proposed. The pre-application meeting was held virtually through Microsoft TEAMS on August 2, 2021 at 11:00 AM.

The Subject Property will be a 70-acre mixed-use development consisting of 131 town homes and 202 single family homes, with new asphalt roads, clubhouse, pool, walking trail, pavilion and a 2.7-acre commercial lot in the northeast portion of the property. The existing Subject Property is an undeveloped forest area.

#### **Comprehensive Plan Land Use Map Amendments:**

The land use will not be changing. We are adjusting property lines to meet the zoning requirements for the commercial portion of the Subject Property so there will be no impact to the existing zoning. (See Attached Comprehensive Plan Land Use Map Amendments)

#### **Zoning Map Amendments:**

Amendments required to the zoning map include reflection of the new zoning district line locations for the commercial and residential properties, and an update to the approved site plan on the subject property. (See Attached Zoning Map Amendments and Site Plan)

Sincerely,



Robert R. MacPherson, P.E.  
Vice President  
Prime Engineering, Inc.



## Rezoning Application

Owner Information	Owner's Name: Mehbs Omar	
	Owner's Address: 5945 Peachtree Corners East, Norcross, GA 30071	
	Phone: 770-560-5069	Fax: Email: mehbsomar@bellsouth.net
	2261 South Stone Mountain Lithonia Rd,	
	Property Address: Stoncrest, GA 30327	Parcel Size: 70.01 Acres
	Parcel ID: 16-124-02-001	
	Current Zoning Classification: MR-1 (Medium Density Residential) and C-1 (Local Commercial)	
	Requested Zoning Classification: MR-1 (Medium Density Residential) and C-1 (Local Commercial)	
	Name: Stonecrest Estates - Phase I	
	Address: 2261 South Stone Mountain Lithonia Rd, Stoncrest, GA 30327	
Property Information	Phone: 404-425-7124	Fax:
	Cell: 678-457-3592	Email: (Rob MacPherson) RMacPherson@prime-eng.com
	Is this development and/or request seeking any incentives or tax abatement through the City of Stonecrest or any entity that can grant such waivers, incentives, and/or abatements?	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	1. Will the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby properties?	
	Yes	
	2. Will the affected property of the zoning proposal have a reasonable economic use as currently zoned?	
	Yes	
	3. Will the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?	
	No	
Questionnaire	4. Are other existing or changing conditions affecting the existing use or usability of the development of the property which give supporting grounds for either approval or disapproval of the zoning proposal?	
	No	
	5. Will the zoning proposal adversely affect historic buildings, sites, districts, or archaeological resources?	
	No	
	6. Will the zoning proposal result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools? No	



Affidavit

Notary

Fee

To the best of my knowledge, this zoning application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Stonecrest Zoning Ordinance.

Robert R. MacPherson

Applicant's Name:

*Robert R. MacPherson*

Applicant's Signature:

Date: 09/07/2021

Sworn to and subscribed before me this

7th

Day of

September

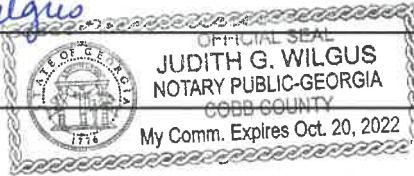
20 21

*Judith G. Wilgus*

Notary Public:

*Judith G. Wilgus*

Signature:



My Commission Expires:



Application Fee



Sign Fee



Legal Fee

Fee: \$ 2,000

Payment:



Cash



Check



CC

Date: 09/07/2021



Approved



Approved with Conditions



Denied

Date:

**\*One sign is required per street frontage and/or every 500 feet of street frontage**



## Property Owner(s) Notarized Certification

The owner and petitioner acknowledge that this Zoning Map Petition application form is correct and complete. By completing this form, all owners of the subject property certify authorization of the filing of the application for zoning amendment, and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

Property Owner (If Applicable)	Signature:	Date: 09/02/2021	
	Address: 5945 PEACHTREE COUNTRY EAST	City, State: NORCROSS, GA	Zip: 30071
	Phone: 678-249-8971		
	Sworn to and subscribed before me this 02 day of September, 2021		
Property Owner (If Applicable)	Notary Public:		
	Signature:	Date:	
	Address:	City, State:	Zip:
	Phone:		
Property Owner (If Applicable)	Sworn to and subscribed before me this _____ day of _____, 20____		
	Notary Public:		
	Signature:	Date:	
	Address:	City, State:	Zip:
Property Owner (If Applicable)	Phone:		
	Sworn to and subscribed before me this _____ day of _____, 20____		
	Notary Public:		



## Applicant/Petitioner Notarized Certification

Petitioner states under oath that: (1) he/she is the executor or Attorney-In-Fact under a Power-of- Attorney for the owner (attach a copy of the Power-of-Attorney letter and type name above as "Owner"); (2) he/she has an option to purchase said property (attach a copy of the contract and type name of owner above as "Owner"); (3) he/she has an estate for years which permits the petitioner to apply (attach a copy of lease and type name of owner above as "Owner").

Applicant / Petitioner	Signature:		Date: 09/02/2021
	Address: 5945 PEACHTREE CORNERS EAST, NORCROSS, GA		Zip: 30071
	Phone: 678-249-8971		
	Sworn to and subscribed before me this 02 day of September, 2021		
Attorney / Agent	Notary Public:		
	Signature:		
	Address:		City, State:
	Phone:		Zip:
Sworn to and subscribed before me this _____ day of _____, 20____			
Notary Public:			



## Campaign Disclosure Ordinance

Campaign Disclosure Ordinance

Please read the law and complete the Campaign Disclosure Statement on the following page if you are requesting a Rezoning, Concurrent Variance, or Conditional Use.

GA Citation/Title

GA Code 36-67A-3, Disclosure of campaign contributions \*38069 Code, 36-67A-3

**CODE OF GEORGIA TITLE 36. LOCAL GOVERNMENT PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS**  
(Current through 2000 General Assembly)

36-67 Disclosure of campaign contributions.

- a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.
- c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government of any of its agencies on the rezoning application.

(code 1981, 36-67A-3, enacted by Ga. L. 1986, p. 1269, 1; Ga. L. 1991, p. 1365, 1; Ga. L. 1993, p. 91, 36.)

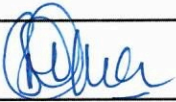
*Official Code of Georgia Annotated* Copyright 1982 – 2000 State of Georgia.



### Campaign Disclosure Statement

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 City of Stonecrest City Council or a member of the City of Stonecrest Planning Commission?

☐ Yes ☒ No

Applicant / Owner	Signature: 
	Address: 5945 PEACHTREE CORNERS EAST, NORCROSS, GA 30071
	Date: 09/02/2021

If you answered yes above, please complete the following section:

Date	Government Official	Official Position	Description	Amount

September 7, 2021

City of Stonecrest  
Community Development Department  
3120 Stonecrest Blvd.  
Stonecrest, GA 30038

Re: **Environmental Site Analysis**  
Stonecrest Estates -Phase I  
Stonecrest, GA

To Whom It May Concern:

We would like to request modifications to the existing zoning for the MR-1 and C-1 properties on our parcel. As part of this process, an Environmental Site Analysis is required.

**1. Conformance to the Comprehensive Plan:**

- a. Describe the proposed project and the existing environmental conditions on the site:** The Subject Property will be a 70-acre mixed-use development consisting of 131 town homes and 202 single family homes, with new asphalt roads, clubhouse, pool, walking trail, pavilion and a 2.7-acre commercial lot in the northeast portion of the property. The existing Subject Property is an undeveloped forest area. The site formerly had three ponds on the parcel that appeared to have been breached in the mid 2000's. As a result, there are some wetlands on the site but will not be disturbed. Furthermore, two streams exist onsite. The streams will also not be impacted.
- b. Describe the adjacent properties:** The adjacent properties consist of a gas station and body shop to the north, a government building to the east, industrial property to the southeast, single family residential to the south, two churches, a residential development and commercial properties to the west.
- c. Describe how the project conforms to the Comprehensive Land Use Plan:** The existing zoning is MR-1 (medium density residential) and C-1 (local commercial). The proposed project will conform to the same zoning since no change in land use is proposed.
- d. Include the portion of the Comprehensive Plan Land Use Map which supports the project's conformity to the Plan:** A copy of the City of Stonecrest's Zoning Map is included.
- e. Evaluate the proposed project with respect to the land use suggestion of the Comprehensive Plan as well as any pertinent Plan policies:** The proposed project does not affect the existing land use suggestion.

**2. Environmental Impacts of the Proposed Project**

The attached survey shows both the wetlands, streams and flood plain on the Subject property. The proposed rezoning for the development will have minimal impact to these environmental measures.

- a. Wetlands:** According to the National Wetlands Inventory and an onsite wetlands survey, the Subject Property area has designated as Wetlands within 200 feet of the site.

Community Development  
City of Stonecrest  
September 7th, 2021  
Page 2

- b. Floodplain:** According to the FEMA National Flood Hazard interactive mapping system, the Subject Property is in an area within the 100-year flood Zone AE.
- c. Streams/Stream Buffers:** Based on field observations and the DeKalb County topographic map there are streams that runs through the Subject Property that require 25-foot, 50-foot and 75-foot stream buffers.
- d. Slopes exceeding 25 percent over a 10-foot rise in elevation:** Based on verification by the Applicant's surveyor, there are slopes exceeding 25 percent over a 10-foot rise in elevation on the Subject Property. USGS Topographic Quadrangle map is included in civil construction plans.
- e. Vegetation:** The Subject Property consists of an undeveloped forest area. Tree replacement in accordance with the City's code will be satisfied.
- f. Wildlife Species (including fish and endangered species):** Based on field observation, to the Applicant's knowledge, there are no endangered species located on the Subject Property.
- g. Archeological/Historical Sites:** Based on field observation, to the Applicant's knowledge, there are no archeological or historical sites located on the Subject Property.

### 3. Project Implementation Measures

- a. Protection of environmentally sensitive areas:** All environmentally sensitive areas located on the Subject Property shall be adequately protected with temporary and permanent Erosion Control Measures, as referenced on the civil construction documents.
- b. Protection of water quality:** All stormwater runoff generated from a site shall be adequately treated before discharge in accordance with the City of Stonecrest. We have designed 2 stormwater detention ponds with water quality that stormwater will enter and be filtered before discharging.
- c. Minimization of negative impacts on existing infrastructure:** The existing infrastructure surrounding the Subject Property will not be negatively impacted by the development of the proposed project.
- d. Minimization on archeological/historically significant areas:** Based on field observation, to the Applicant's knowledge, there are no archeological or historical sites located on the Subject Property.
- e. Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal and industrial uses:** The Subject Property will not have a negative impact on the environmentally stressed communities.
- f. Creation and preservation of green space and open space:** Tree save areas will be created on the Subject Property using Erosion Control Measures to preserve existing trees and open space areas have been created throughout the development, as referenced on the civil construction documents.
- g. Protection of citizens from the negative impacts of noise and lighting:** It is the Applicant and Owner's intent to adhere to the City of Stonecrest Noise and Lighting ordinances for the Subject Property.
- h. Protection of parks and recreational green space:** None exist on the Subject Property

Community Development  
City of Stonecrest  
September 7th, 2021  
Page 3

but there will be proposed recreational green space, as referenced on the civil construction documents.

- i. **Minimization of impacts to wildlife habitats:** Based on field observation, to the Applicant's knowledge, there are no endangered species located on the Subject Property.

Sincerely,



Robert R. MacPherson, P.E.  
Vice President  
Prime Engineering, Inc.

**Attached**

1. Overall Site Plan
2. Boundary/Topographic Map
3. Legal Description (Existing)
4. Legal Description (Proposed)
5. Phase I (Residential) Site Plan

# PRIME ENGINEERING INCORPORATED®

## Comprehensive Plan Land Use Map Amendments

Analyze the impact of the proposed rezoning and provide a written point-by-point response to the following questions:

- a. Whether the proposed land use change will permit uses that are suitable in view of the use and development of adjacent and nearby property; *The proposed zoning request will have no impact to the use or development of adjacent or nearby property.*
- b. Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property; *The proposed rezoning will have no adverse effect on existing use or useability of adjacent or nearby property.*
- c. Whether the proposed land use change will result in uses that will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools; *The proposed rezoning will have no impact to existing infrastructure or facilities in the area.*
- d. Whether the amendment is consistent with the written policies in the comprehensive plan text; *The proposed rezoning is consistent with the comprehensive plan. The C-1 property will be reconfigured and decreased in size by 1.24 acres and the residential will be increased the same.*
- e. Whether there are environmental impacts or consequences resulting from the proposed change; *We anticipate no impact to any environmental areas as a result of the proposed rezoning.*
- f. Whether there are impacts on properties in an adjoining governmental jurisdiction in cases of proposed changes near city boundary lines; *The proposed rezoning should have no impact to adjacent jurisdictional cases as the property is surrounded by the City of Stonecrest on public streets.*
- g. Whether there are other existing or changing conditions affecting the use and development of the affected land areas that support either approval or denial of the proposed land use change; *We know of no other existing or changing conditions affecting the use of this property.*
- h. Whether there are impacts on historic buildings, sites, districts or archaeological resources resulting from the proposed change; *We know of no impacts to any historical buildings, sites or archaeological resources as a result of this rezoning.*



Robert R. MacPherson, P.E.

# PRIME ENGINEERING INCORPORATED®

## Community Participation Plan

2261 S. Stone Mountain Lithonia Road  
Stonecrest, GA 30327

The applicant will provide the community with the opportunity to participate in local meetings to fully understand what the rezoning request is all about. The plan includes the following:

### Part 1

- 1) Distribution of a flier /letter to all residents and businesses within 500 feet of the subject property. We will also distribute flier to HOA's and industrial organizations in the immediate vicinity of the parcel. (List of addresses to be provided by city to applicant).
- 2) Applicant will mail flier/letter by the October 1, 2021 identifying a time and location of an informational meeting which we will conduct to allow the community to better understand the proposed rezoning.

### Part 2

The applicant will submit a community meeting report summarizing the results of the meetings identified above. The report shall include:

- 1) Sign-in sheet of attendees.
- 2) Summary of concerns or issues expressed in community meeting.
- 3) A summary of applicant responses of concerns or issues expressed.



Robert R MacPherson, P.E.

# PRIME ENGINEERING INCORPORATED®

## Zoning Map Amendments

Analyze the impact of the proposed rezoning and provide a written point-by-point response to the following questions:

- a. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan; *We believe this rezoning is in conformity with the plan.*
- b. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties; *Copy blue, we believe the use is suitable to adjacent and nearby properties.*
- c. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned; *Copy blue, this request is simply cleaning up the zoning to make the development more useable for the intended zoning of the site.*
- d. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property; *Copy blue, there should be no adverse effects on the use of adjacent properties.*
- e. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal; *Due to the proposed develop plans of the entire site, this proposed relocation of the commercial zoning will enhance both parcels zoning because the lot lines will provide greater improved buffers between the two zoning uses.*
- f. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; *No impacts to historical building, sites or archeological resources are anticipated.*
- g. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools; *The proposed rezoning (relocation of property/lines) will have no impact to schools, streets or utilities.*




---

Robert R. MacPherson, P.E.

Property Line Description: Stonecrest Estates

All that tract or parcel of land lying and being in Land Lot 124 and Land lot 101 of the 16th District, 2nd Section, Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a common corner to land lots 100, 125, 124 & 101' Thence along common land lot line to L.L. 124 and 101; Thence South 01 degrees 10 minutes 20 seconds East, 17.50 feet to a point at the south right of way line of Stone Mountain Lithonia Road (Variable R/W); Said point being the POINT OF BEGINNING.

Thence along the south right of way line of Stone Mountain Lithonia Road (Variable R/W) South 63 degrees 58 minutes 10 seconds East, 583.15 feet to a point;

Thence continuing along said the south right of way line a curve to the right, an arc distance of 447.7 feet, said curve having a radius of 3619.84 feet and being subtended by a chord of 447.41 feet, at South 60 degrees 29 minutes 25 seconds East, to a point; Thence continuing along said the south right of way line South 57 degrees 00 minutes 39 seconds East, 110.28 feet to a point; Thence continuing along said the south right of way line a curve to the right, an arc distance of 216.13 feet, said curve having a radius of 7667.09 feet and being subtended by a chord of 216.12 feet, at South 56 degrees 11 minutes 37 seconds East, to a point;

Thence continuing along said the south right of way line South 55 degrees 22 minutes 34 seconds East, 8.38 feet to a point;

Thence leaving said the right of way South 32 degrees 05 minutes 20 seconds West, 548.85 feet to a point;

Thence South 01 degrees 50 minutes 18 seconds East, 533.9 feet to a 1/2" rebar set;

Thence South 61 degrees 01 minutes 24 seconds East, 199.94 feet to a 1/2" rebar set;

Thence South 31 degrees 56 minutes 22 seconds West, 1472.10 feet to a 1/2" rebar set;

Thence North 89 degrees 04 minutes 31 seconds West, 788.73 feet to a 1/2" rebar set;

Thence North 01 degrees 05 minutes 35 seconds East, 627.79 feet to a 1/2" rebar set;

Thence North 00 degrees 46 minutes 32 seconds East, 861.56 feet to a 1" open top;

Thence North 89 degrees 23 minutes 38 seconds East, 398 feet to a 1/2" rebar set;

Thence North 20 degrees 56 minutes 50 seconds East, 111.99 feet to a point at center of stream;

Thence (a tie line-centerline stream is property line) North 30 degrees 29 minutes 42 seconds West, 167.8 feet to a point;

Thence leaving the stream North 84 degrees 35 minutes 20 seconds East, 133.34 feet to an axle found;

Thence North 01 degrees 36 minutes 11 seconds West, 1238.71 feet to a point at the south right of way line of Stone Mountain Lithonia Road (Variable R/W); said point being the POINT OF BEGINNING;

Said tract or parcel of land contains 70.01 acres.

### **Attachment 3: Sewer Capacity Evaluation**

770.621.7200 (o)  
770.621.7271 (f)  
DeKalbCountyga.gov

Watershed Management  
1580 Roadhaven Drive  
Stone Mountain, GA 30083



DeKalb County  
GEORGIA

Chief Executive Officer  
Michael Thurmond

Board of Commissioners

District 1  
Nancy Jester

District 2  
Jeff Rader

District 3  
Larry Johnson

District 4  
Stephen Bradshaw

District 5  
Mereda Davis Johnson

District 6  
Kathie Gannon

District 7  
Lorraine Cochran-Johnson

## LETTER SHOWING SEWER CAPACITY

December 02, 2020

**Attention: Kalyn Keeney**  
Prime Engineering, Inc.  
3715 Northside Pkwy NW. Bldg 300, Ste. 200  
Atlanta, GA 30327

**Re: 2261 S Stone Mountain Lithonia Rd.**  
**16<sup>th</sup> Dist. LL 124**  
**Craft HB 334 Unit Subdivision**  
**Polebridge**

Dear Ms. Kenney:

The DeKalb County Department of Watershed Management ("DWM") received a sewer capacity request regarding the potential availability of sanitary sewer capacity at the above-referenced location. In response to the inquiry, DWM staff confirms that sanitary sewer capacity may be available for the subject property at this time. **After evaluating your capacity request, it has been determined based on the criteria set forth in DWM's Interim Sanitary Sewer Capacity Evaluation Program dated July 13, 2018 that DWM's wastewater collection, transmission, and treatment system has adequate capacity to receive the wastewater flow contribution from your sewer service connection as documented in your sewer capacity request. As such, approval to proceed with the project is granted with regards to sanitary sewer capacity.**

Please note that the determination of available capacity expressed herein is not guaranteed as it is based upon the known conditions as of the date of this correspondence and on the provided anticipated capacity needs associated with the project. In the event that sewer system infrastructure improvements are required to accommodate any new flow contribution and ensure adequate sewer system capacity as a result of development on the referenced property, the developer will be responsible for the cost associated with installing any such improvements to the existing sewer system infrastructure pursuant to DeKalb County Code of Ordinances, Chapter 25, Article IV – "Sewers and Sewerage Disposal". Once installed and accepted by DeKalb County, the improvements will be owned and maintained by DeKalb County.

This information is based on currently available data and should only be used to substantiate the potential availability of sewer services as of the date of this correspondence. Circumstances are subject to change and the potential capacity indicated herein is in no way guaranteed.

Should you have any questions or concerns in reference to this response, please do not hesitate to contact the Division of Planning & Development of DWM at [mlotts@dekalbcountyga.gov](mailto:mlotts@dekalbcountyga.gov).

Sincerely,

  
Zachary L. Williams

Executive Assistant/Chief Operating Officer

  
Brent Zern, PE

Assistant Director, Dept. of Watershed Mgmt.



**DEKALB COUNTY, GEORGIA  
DEPARTMENT OF WATERSHED MANAGEMENT  
CAPACITY ANALYSIS**

**Craft HB 334 Unit Subdivision**

**Request Date:** 07/31/2020

**Request Closing Date:** 09/09/2020

1	Property Name and Address		2261 S Stone Mountain Lithonia Rd	
2	Sewershed/Basin		Polebridge	
3	Proposed Property Tie-in Manhole ID		16-124-s203	
4	Net Prop. Daily Ave. Flow from Property		63,852.50 GPD	
	Net Prop. Peak Flow from Property		159,631.25 GPD	
5	Downstream historical SSOs with incomplete remedial actions to prevent reoccurrence?		No	
6	Downstream gravity sewer capacity available per 6a-6c below?		Yes	
	a	Hydraulic Model Capacity Check	Model predicted dry weather flow less than 85% of the pipe capacity or 80% of the pipe diameter for all downstream gravity pipes?	No <sup>1</sup>
			Model predicted max month average daily flow (MMADF) flow less than 100% of the pipe capacity for all downstream gravity pipes?	No <sup>1</sup>
	b	Model Network Anomaly	If 6a = No, are model results due to gravity sewer model network anomalies (reverse-grade pipes, flat-grade pipes, etc)?	Yes <sup>1</sup>
			Is capacity determined by reviewer to be available for gravity pipes with network anomalies (reverse-grade, flat-grade pipes, etc.)?	Yes <sup>1</sup>
			Is capacity determination documentation provided?	Yes
	c	Capacity Request Flow Monitoring	Is capacity request flow monitoring data available and analyzed?	N/A
			Is capacity determined by reviewer to be available based upon analysis of flow monitoring data?	N/A
			Is capacity determination documentation provided?	N/A
	7	All downstream lift station firm capacities greater than model predicted flow for MMADF scenario?		Yes
8	Downstream treatment facility hydraulic capacity greater than model predicted flow for MMADF scenario? <sup>2</sup>		Yes <sup>2</sup>	
9	Downstream intergovernmental connection capacity greater than model predicted flow for MMADF scenario?		NA	
10	<p>Comments: 'In this profile there are positive sloped flat pipes (less than minimum design slopes) and negative sloped pipes that are indicating full pipe capacity less than 85% during dry weather. In such cases, engineering judgement has been used to determine adequate capacity exists for the flow rates calculated by the model, which includes 0.8 d/D open channel flow. The maximum d/D for this flow path is 0.66</p> <p><sup>2</sup>Treatment plant capacity was determined and provided by the County (January 1, 2018 email). Average design flow is used for the treatment capacity evaluation. Treatment plant MMADF flow of 9.03 mgd for Pole Bridge was evaluated through the "Updated of Capacity parameters for Snapfinger and Pole Bridge Wastewater Treatment Facilities (WWTFs)" Technical Memo dated February 22nd, 2019 prepared by the Connet Decree Program Management Team.</p>			
11	Hydraulic Modeler Initial		PS & SM	

By signing below, this certifies, based on sound engineering judgement, that capacity is available having considered appropriate factors necessary to make that determination including sanitary flow contributions from site specific sources, use of the County's hydraulic model as certified by CH2M Hill, flow data, and historical data, which are all incorporated into the County's Interim Capacity Program and SOPs as authorized by DeKalb County government on July 13, 2018.

Name: Michelle L. (Jackam) Otts, PE

Title: Engineer Principal

Date: 09/09/2020



# SEWER CAPACITY EVALUATION REQUEST

Department of Watershed Management

## Project Information:

DeKalb County AP # [REDACTED]

Project Address: 2261 S Stone Mtn. Lithonia Rd  
Lithonia, GA 30028  
(City, State, Zip Code)

Intended Tie-in Manhole ID: 16-124-s203

Total Peak Flow Requesting: 159,631.25 GPD  
Proposed Peak Flow minus existing peak flow

Project Name: Craft HB 334 Unit Subdivision

Type of Development: Commercial

Land Lot and Parcel ID: Land Lots 101&124 of the 16th District  
Parcel # 1612402016, 1612402001, 161010301

Sewershed: ~~Snapfinger~~ Basin

**POLEBRIDGE**

## Developer/Owner Information:

Company's Name: Craft Home Builders

Address: 5945 Peachtree Corners East

Contact Name: Anthony Duncun

City, State, Zip Code: Norcross, GA 30071

Phone Number: (770) 271-1554

Email Address: anthonyduncan150@gmail.com

## Engineer Information:

Company's Name: Prime Engineering, Inc.

Address: 3715 Northside Parkway NW  
Bldg 300, Suite 200

Contact Name: Kalyn Keeney, P.E.

City, State, Zip Code: Atlanta, Georgia 30327

Phone Number: 404-425-7145

Email Address: kkeeney@prime-eng.com

## Please include the following items in your submittal package:

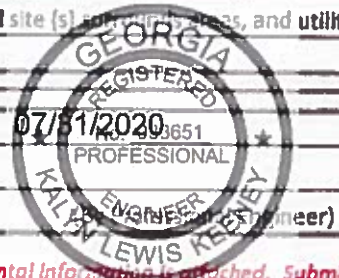
- ☒ Proposed Peak Daily Flow Calculation based on attached guidelines (See Appendix B)
  - ☐ Existing Developments
  - ☒ New Conditions
- ☒ Separate detailed calculation sheet signed by the owner or owner's representative for each project
- ☒ All requested flows greater than 500 gpd ADF must be sealed by Professional Engineer
- ☒ Geographical Information System (GIS) map clearly showing the proposed site (s) with roads, easements, and utilities
- ☐ Proposed utility plan, if available

Name: Kalyn L. Keeney, P.E.

Date: 07/31/2020

Signed: Kalyn L. Keeney

Seal:



Capacity Evaluation Request will not be accepted until form is fully completed and all supplemental information is attached. Submit documents to [sewercapacity@dekalbcountyga.gov](mailto:sewercapacity@dekalbcountyga.gov)

## Internal Use Only

Date Capacity Request

Received By:

Reviewed and Accepted:

Signed:

### **DeKalb County Sewer Capacity Evaluation Form**

The project includes the construction of 334 residences, a 1,350 SF coffee shop, a 6,600 SF convenience store and a two-story club house with a total area of 6,000 SF (3,000 SF/floor).

**Calculation of Average Daily Flow Based on Appendix B, using peaking factor of 4.**

**Proposed Residence, Single family at 185 GPD/residence:**

$$334 \text{ Residences} \times 185 \text{ GPD} = 61,790 \text{ GPD}$$

**Proposed Full Service Restaurant/Bar/Caterer**

$$\text{Coffee Shop: } 30 \text{ ft} \times 45 \text{ ft} = 1,350 \text{ SF} / 1,000 \text{ SF} \times 550 \text{ GPD} = 742.50 \text{ GPD}$$

**Proposed Service Station/Convenience Store**

$$\text{Convenience Shop: } 60 \text{ ft} \times 110 \text{ ft} = 6,600 \text{ SF} / 1,000 \text{ SF} \times 100 \text{ GPD} = 660 \text{ GPD}$$

**Proposed Club House, two-story (Using Offices not including food service 110 GPD/1,000 SF):**

$$(50 \text{ ft} \times 60 \text{ ft}) \times 2 = 3,000 \text{ SF} \times 2 = 6,000 \text{ SF} / 1,000 \text{ SF} \times 110 = 1,050 \text{ GPD}$$

$$\text{Proposed Total Flow} = 61,790 + 742.50 + 660 + 660 = 63,852.50 \text{ GPD}$$

1. **Total Peak** Flow using a peaking factor of 2.5 from Appendix B on the Sewer Capacity Form.

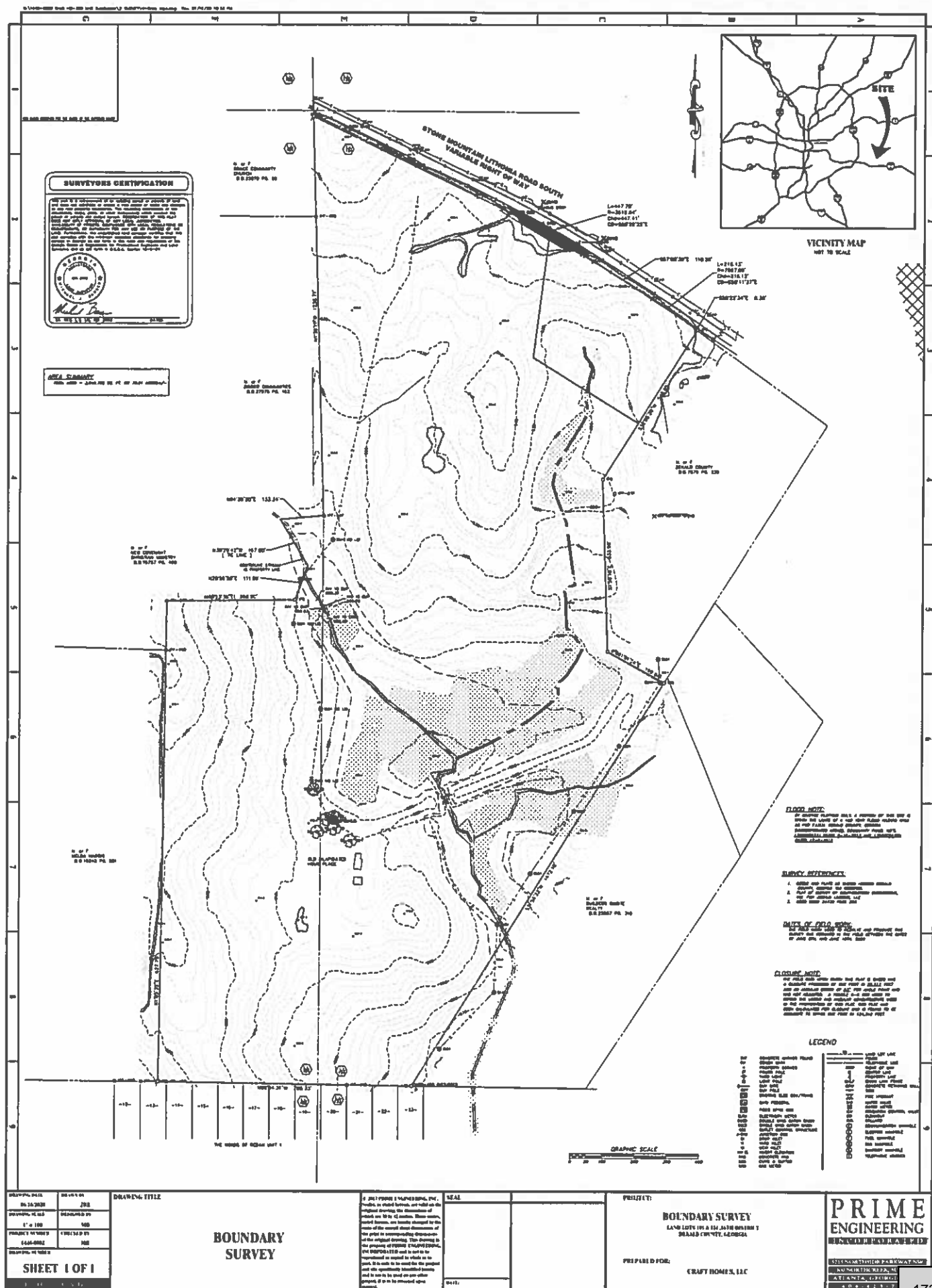
**Total Peak Flow Requesting:**

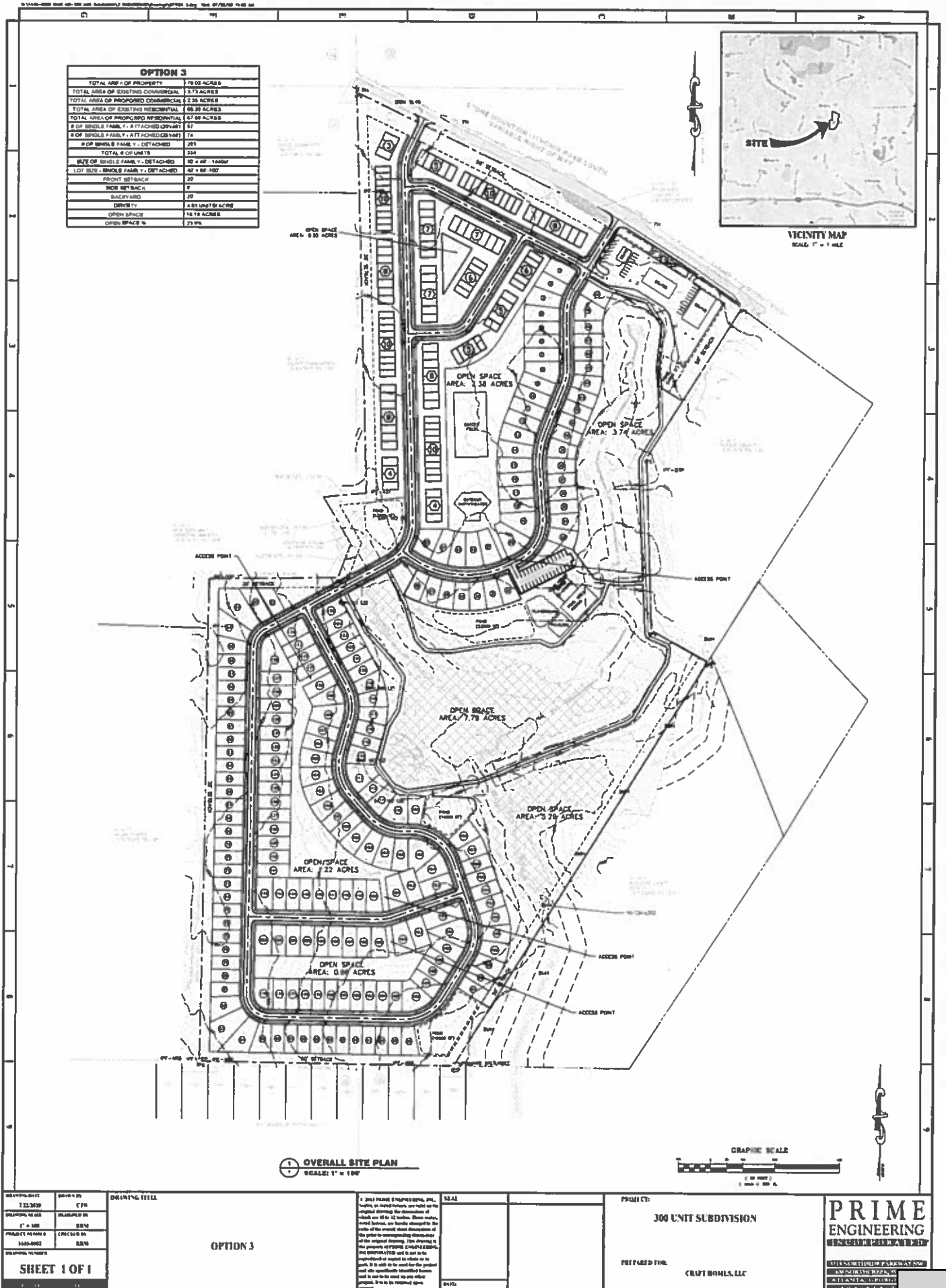
$$\text{Total} = \text{Proposed} \times \text{Peaking Factor} = 63,852.50 \text{ GPD} \times 2.5 = 159,631.25 \text{ GPD}$$



Kalyn L. Keeney













**Sewer Capacity Request Address:** 2261 S Stone Mountain Lithonia Rd

**Job Name:** Craft HB 334 Unit Subdivision

**Manhole Connection:** 16-124-s203

**Basin:** Polebridge

-  pipe surcharge <80% of depth (<0.8 max surcharge)
-  pipe surcharge between 80-99% of depth (0.8 to 0.99 max surcharge)
-  pipe at full capacity on only one end of the pipe (max surcharge=1)
-  pipe at full capacity throughout pipe (max surcharge=2)
-  in profiles, pipe above 85% capacity for DWF and 100% for MMADF
-  in plan view, flow path from tie-in to end of system

 Historic SSO in plan view

 Pump station

 Node/manhole

Height (in)=height of pipe in inches

Grad (%)=gradient of pipe in percent

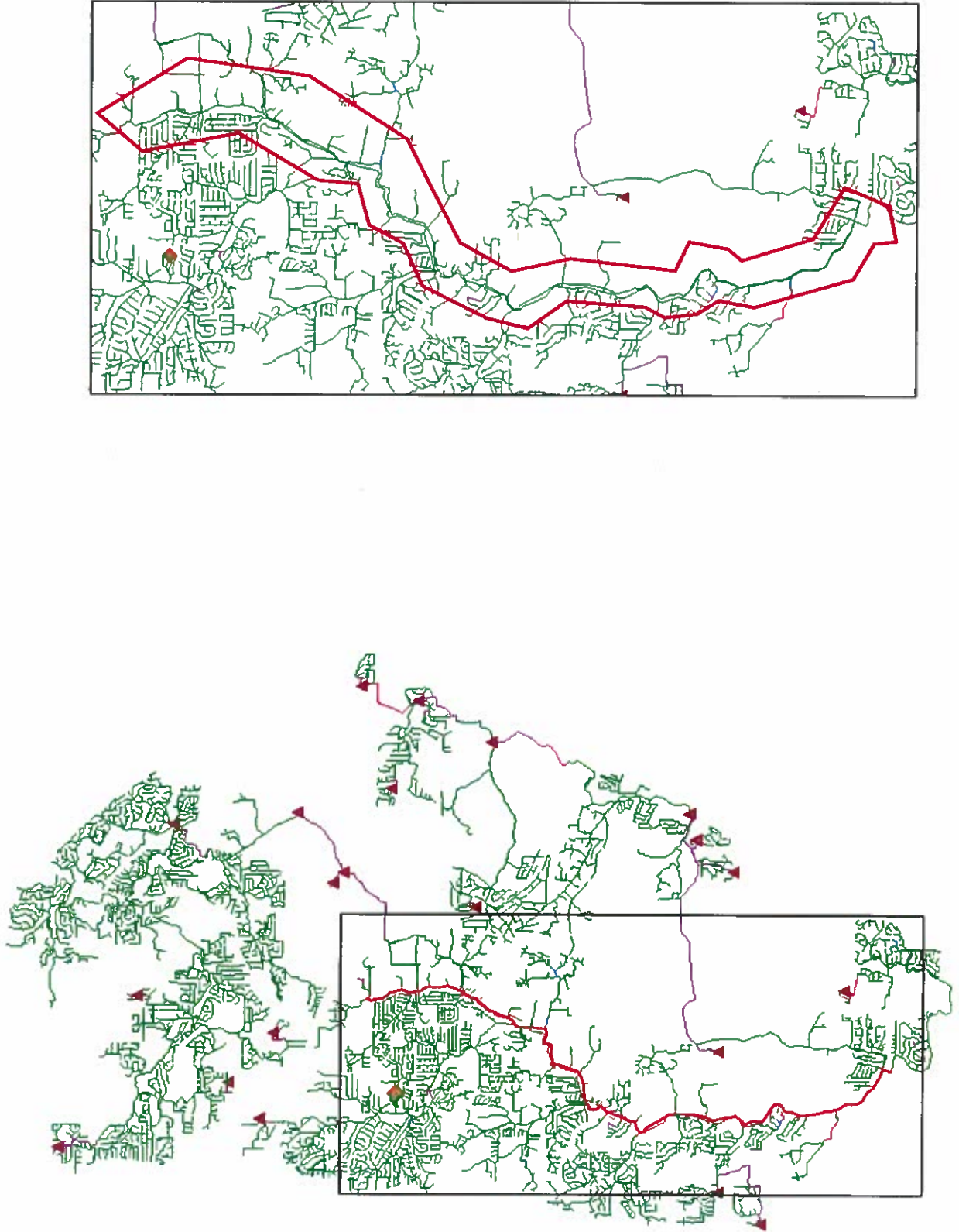
PFC (MGD)=pipe full capacity is an approximation of the pipe flow capacity running full using Manning's Equations in MGD

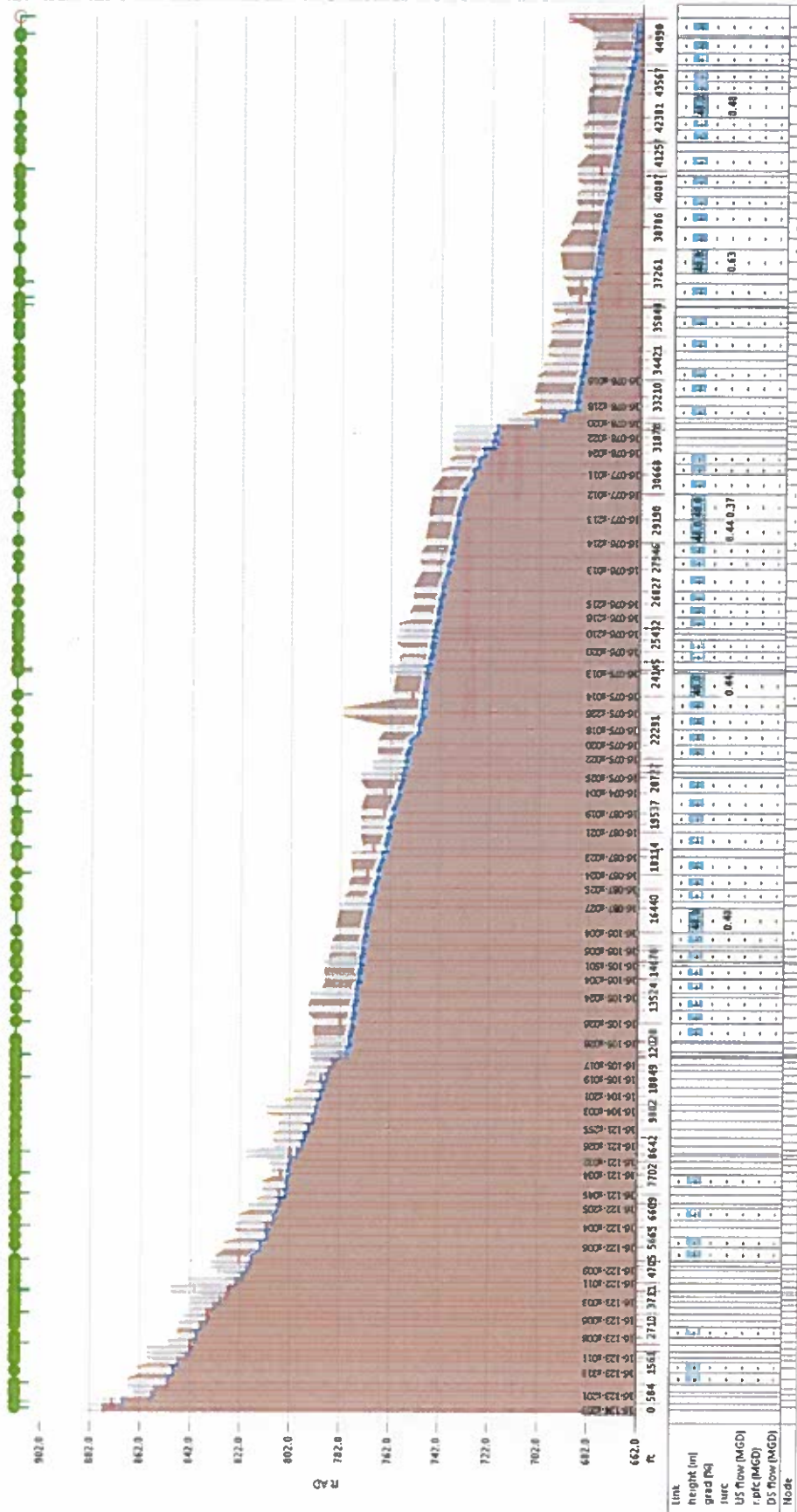
Surc=maximum surcharge state or depth over diameter of pipe (colors of pipes in profile and plan to match)

US and DS Flow (MGD)=model predicted upstream and downstream flow within the pipe

*Note 1: Any hydraulic model calculations showing negative or zero pipe capacity are invalid for reverse-grade (negative slope) and flat-grade (0 slope) pipe segments. In addition, positive sloped flat pipes (less than minimum design slopes) will likely indicate full pipe capacity less than 85% during dry weather. In such cases, engineering judgement shall be used to determine whether adequate capacity exists for the flow rates calculated by the model, which includes 0.8 d/D open channel flow.*

**2261 Stone Mountain Lithonia Road – December 2017 Model DWF Run Version 104 – 2020 Scenario**



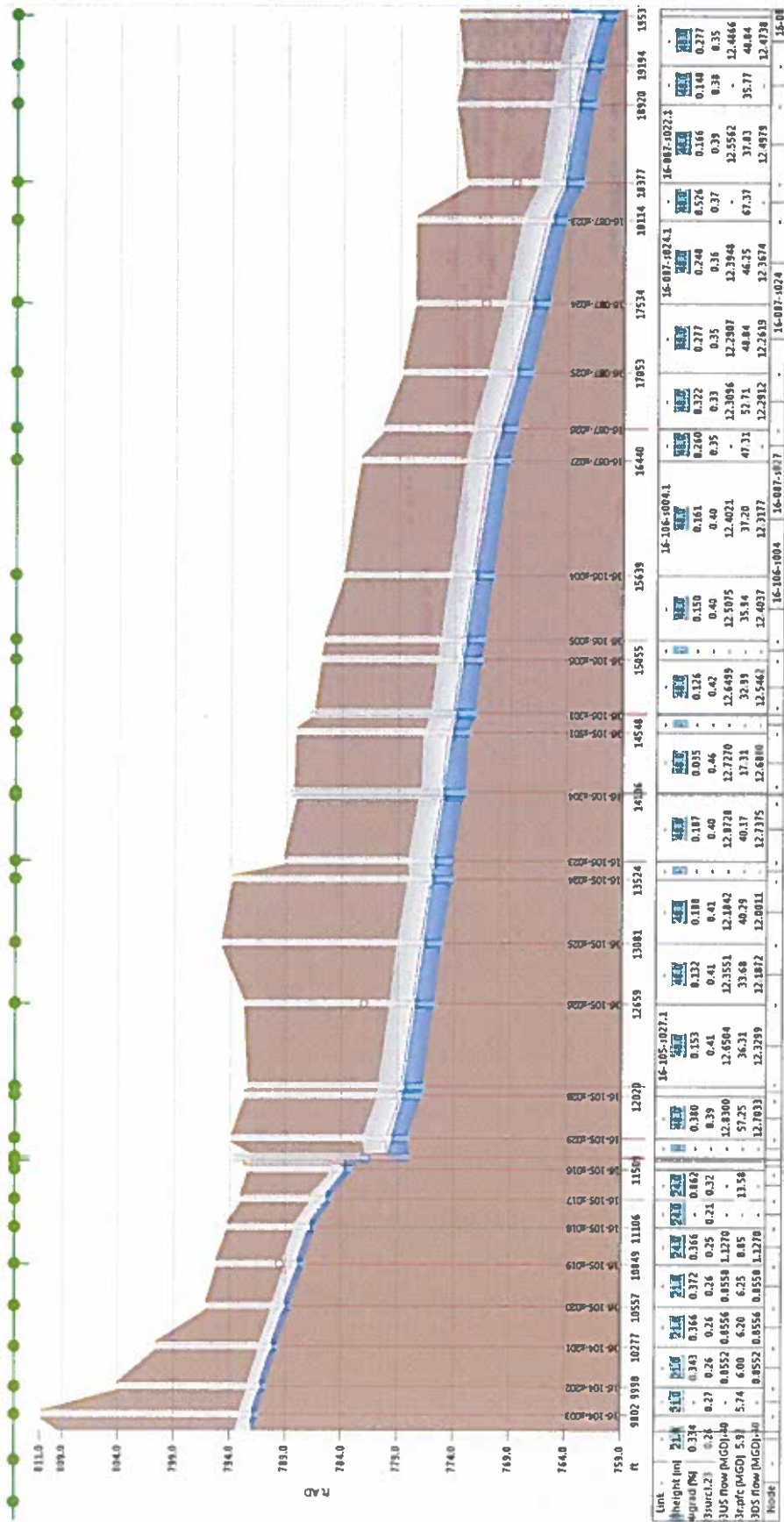


Entire Section





## Section 2



Section 3

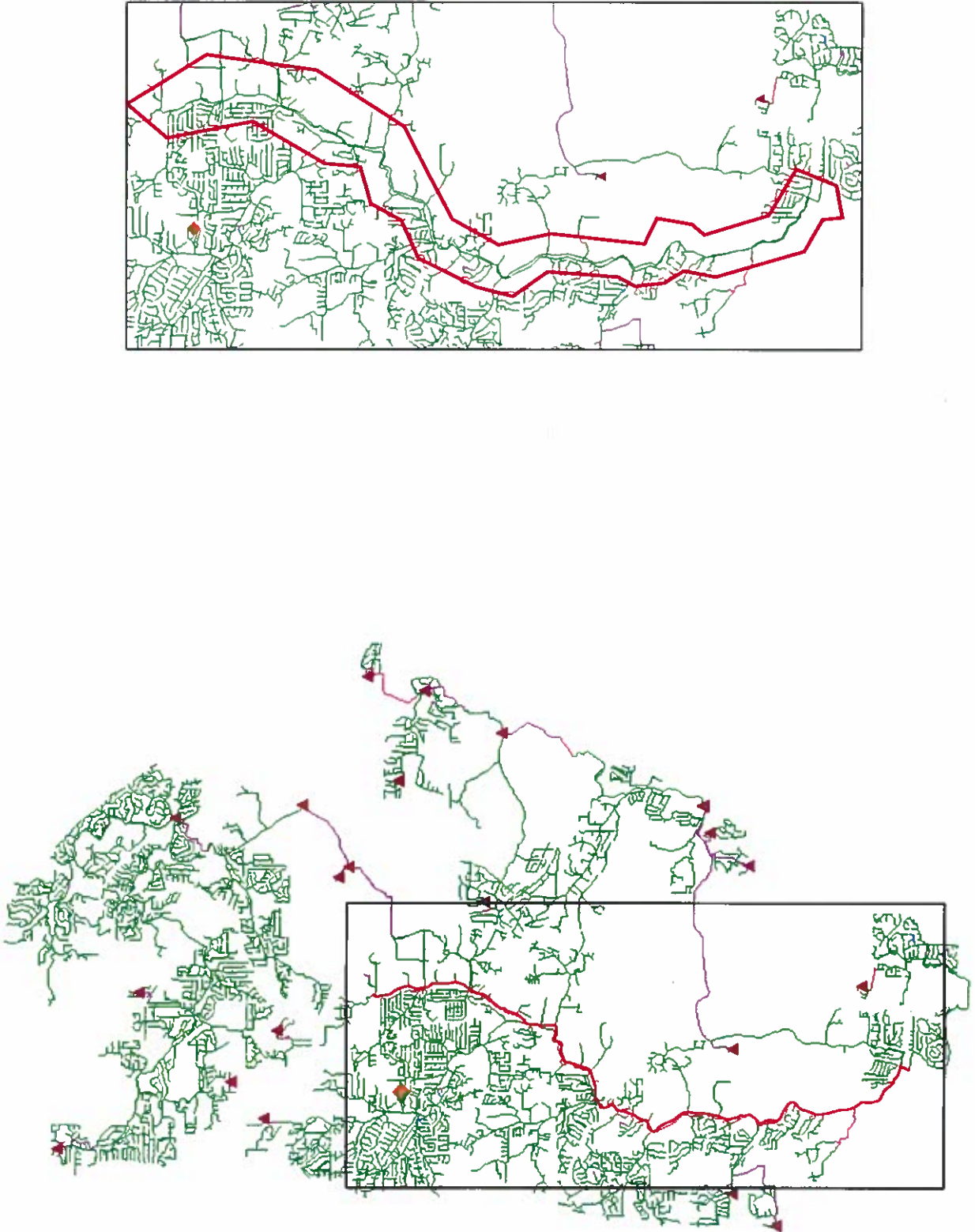


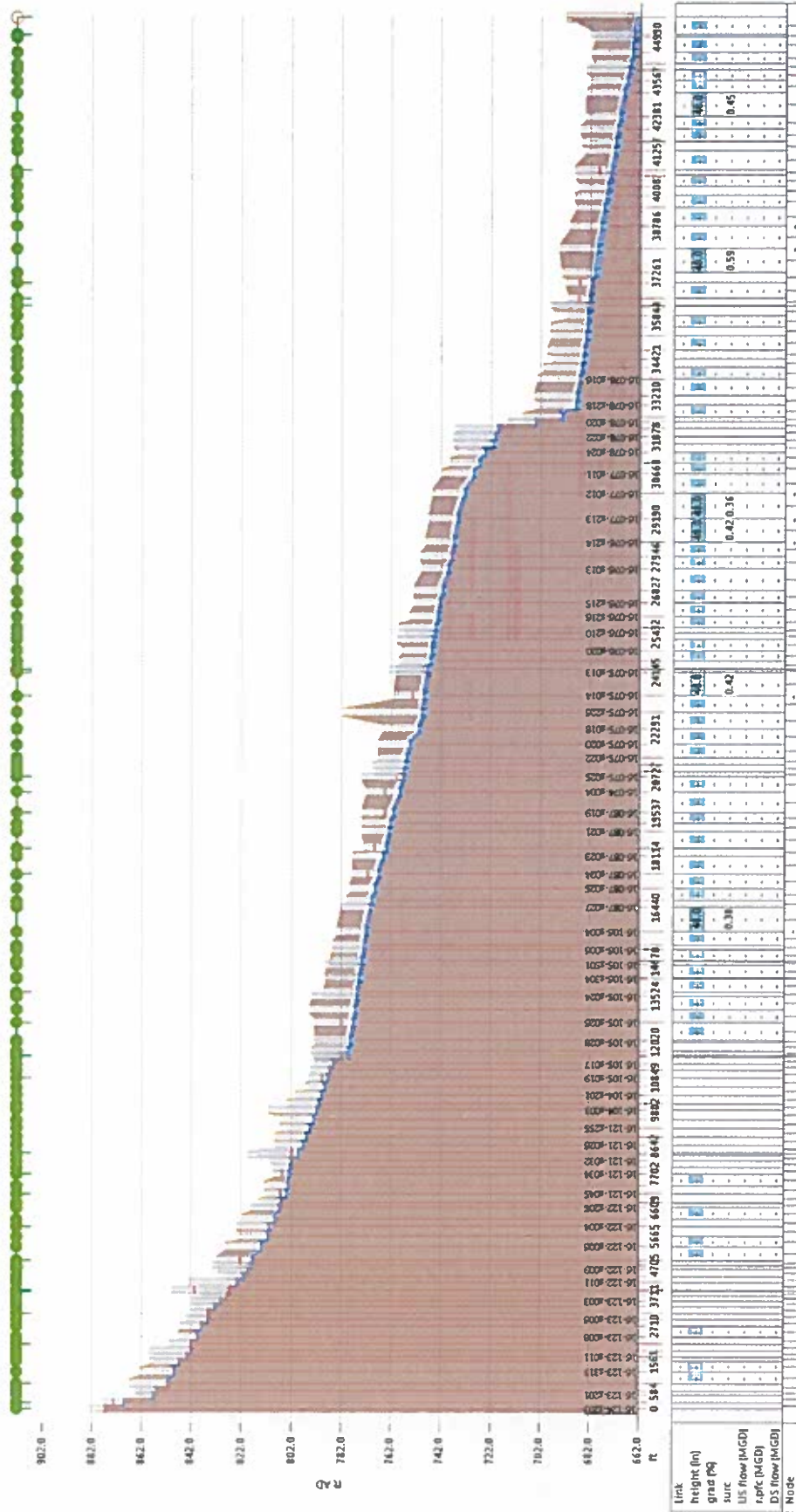
## Section 4

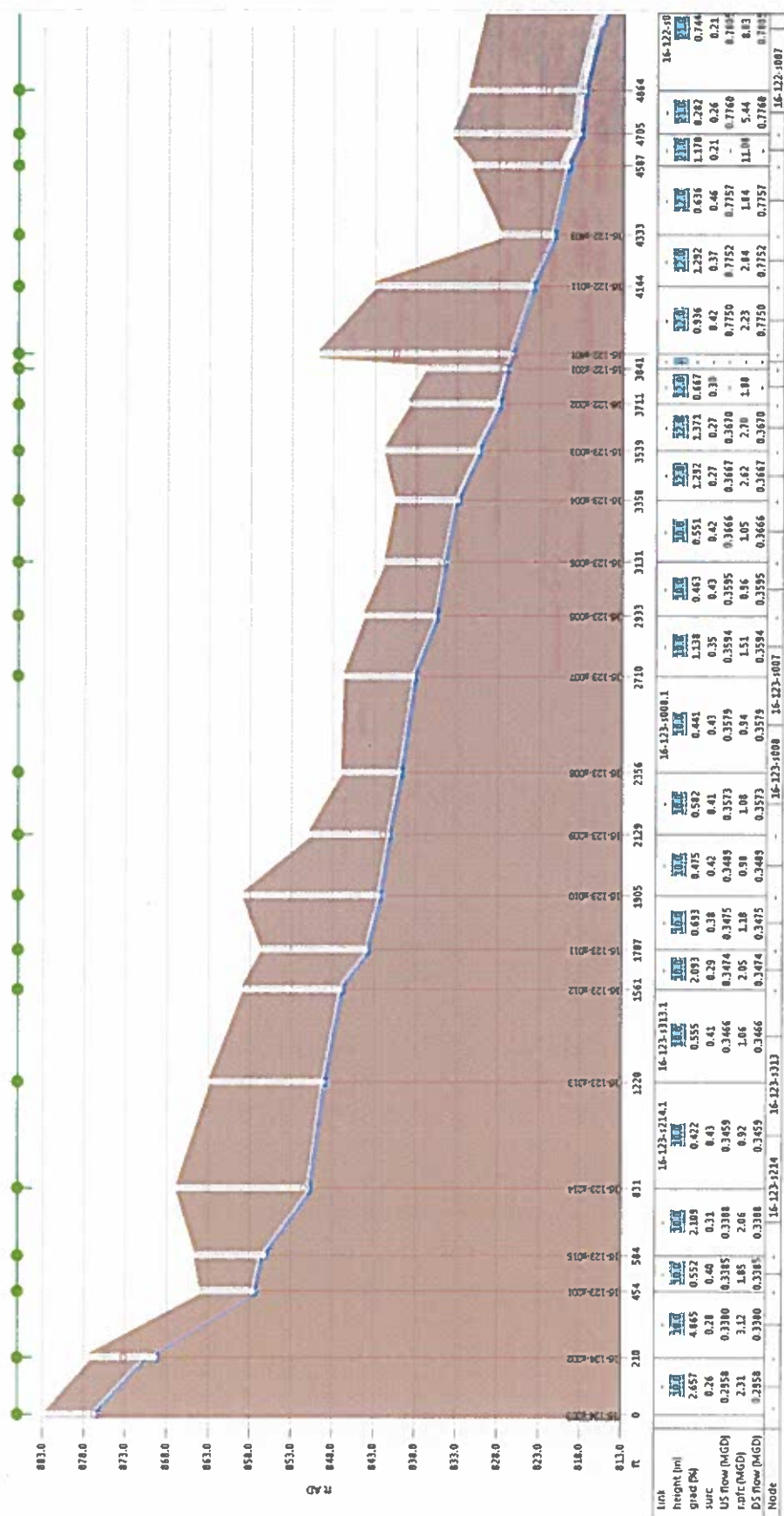




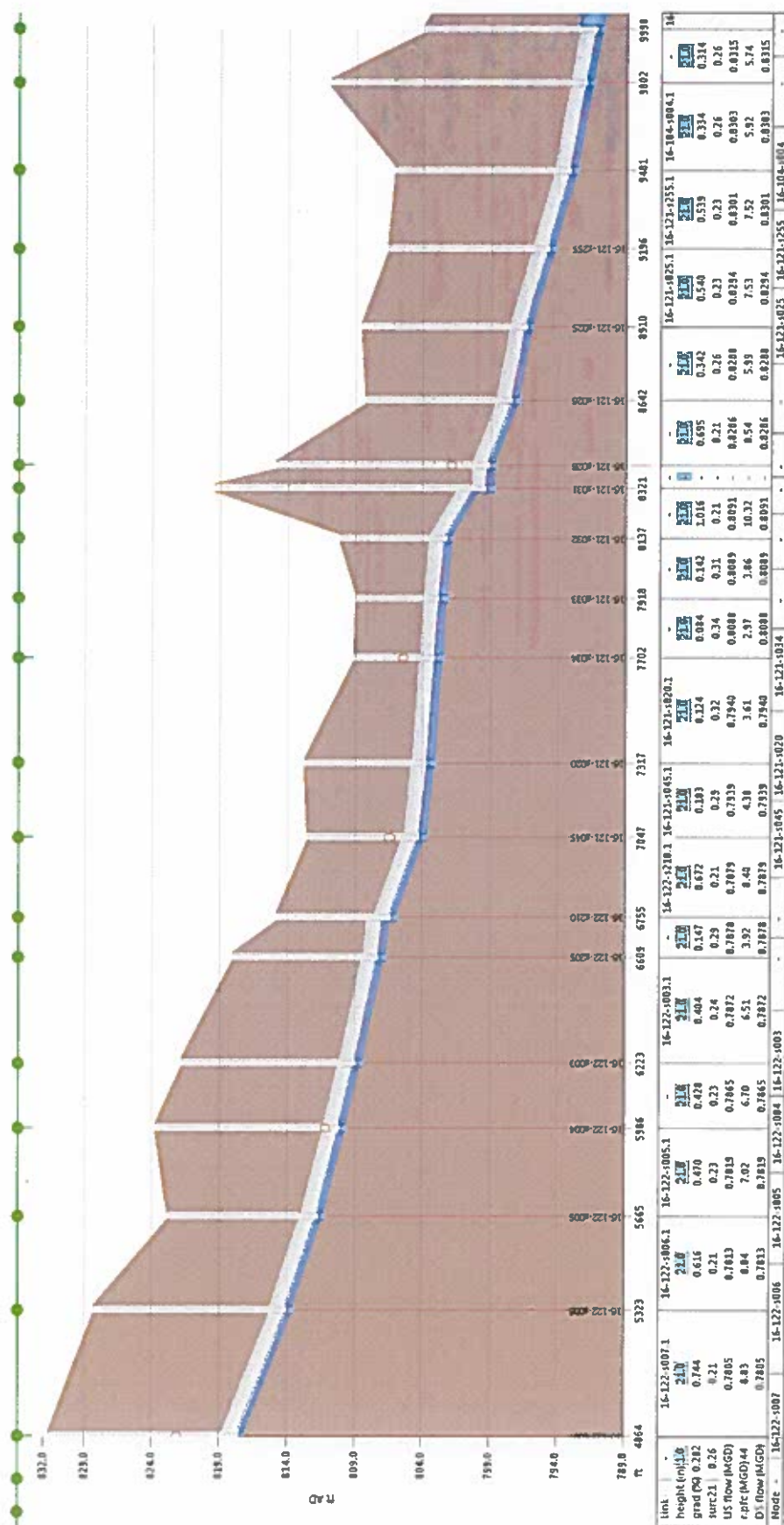
2261 S Stone Mountain Lithonia Rd – December 2017 Model MMADF Run Version 80 – 2020 Scenario





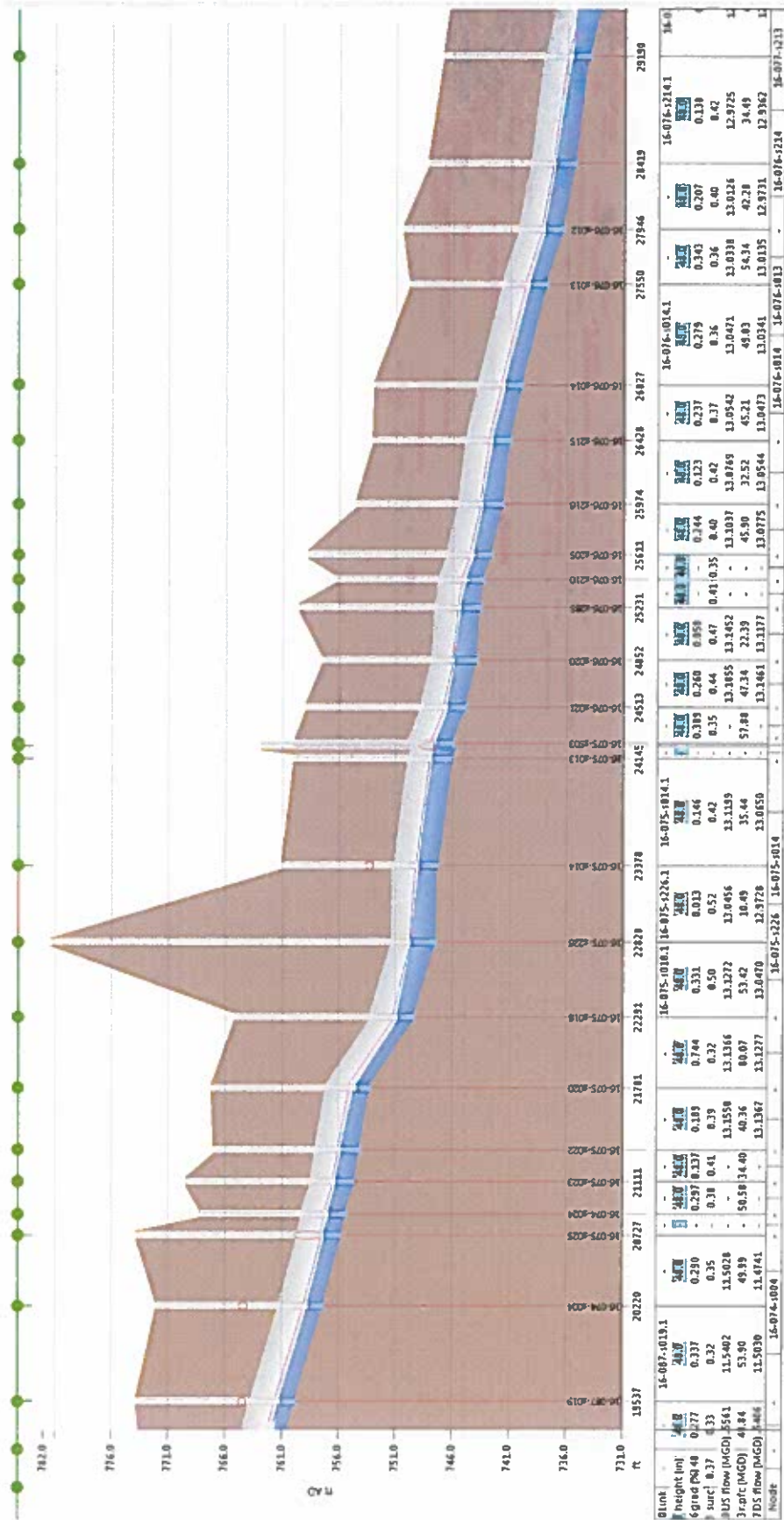


## Section 1

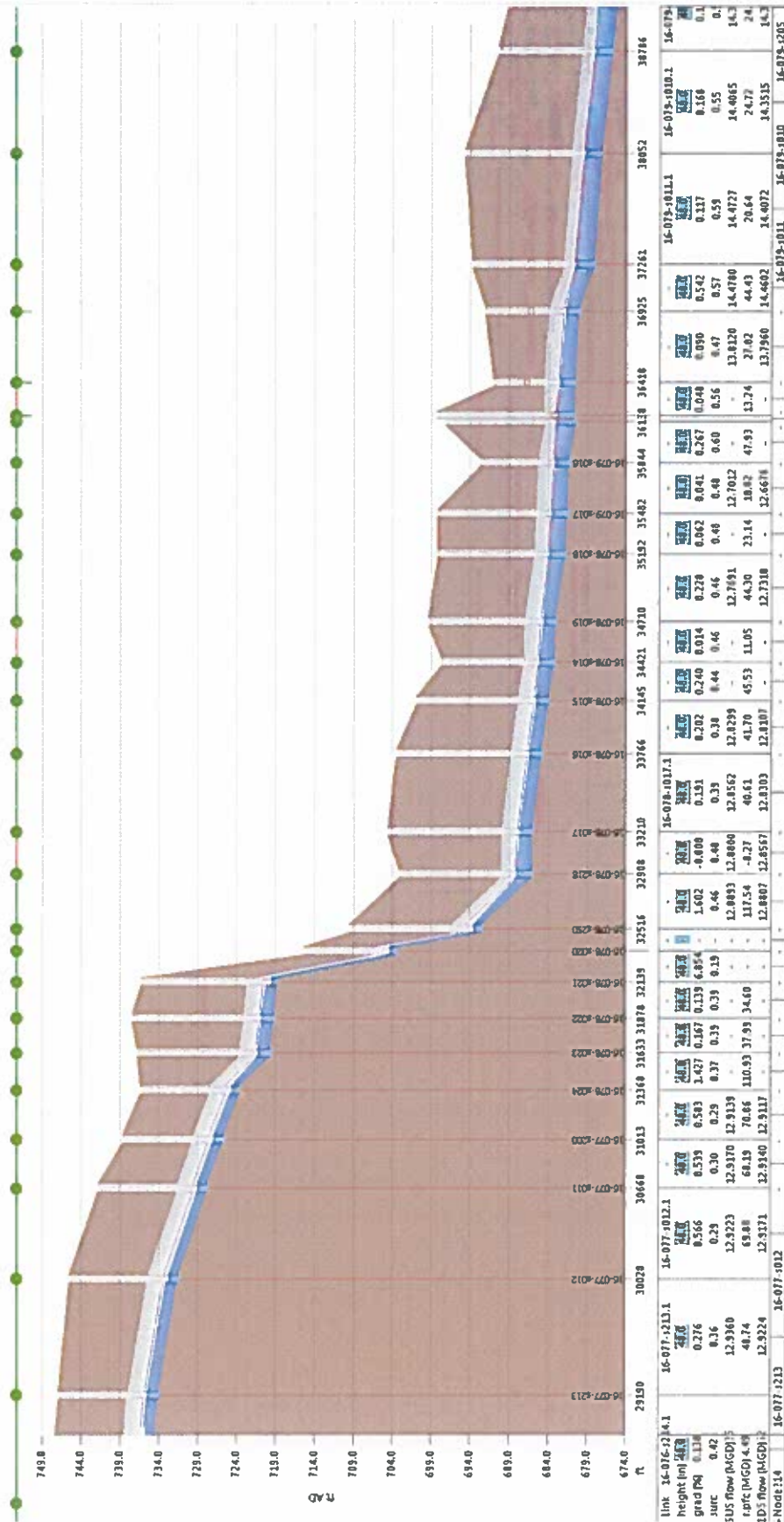


## Section 2





Section 4



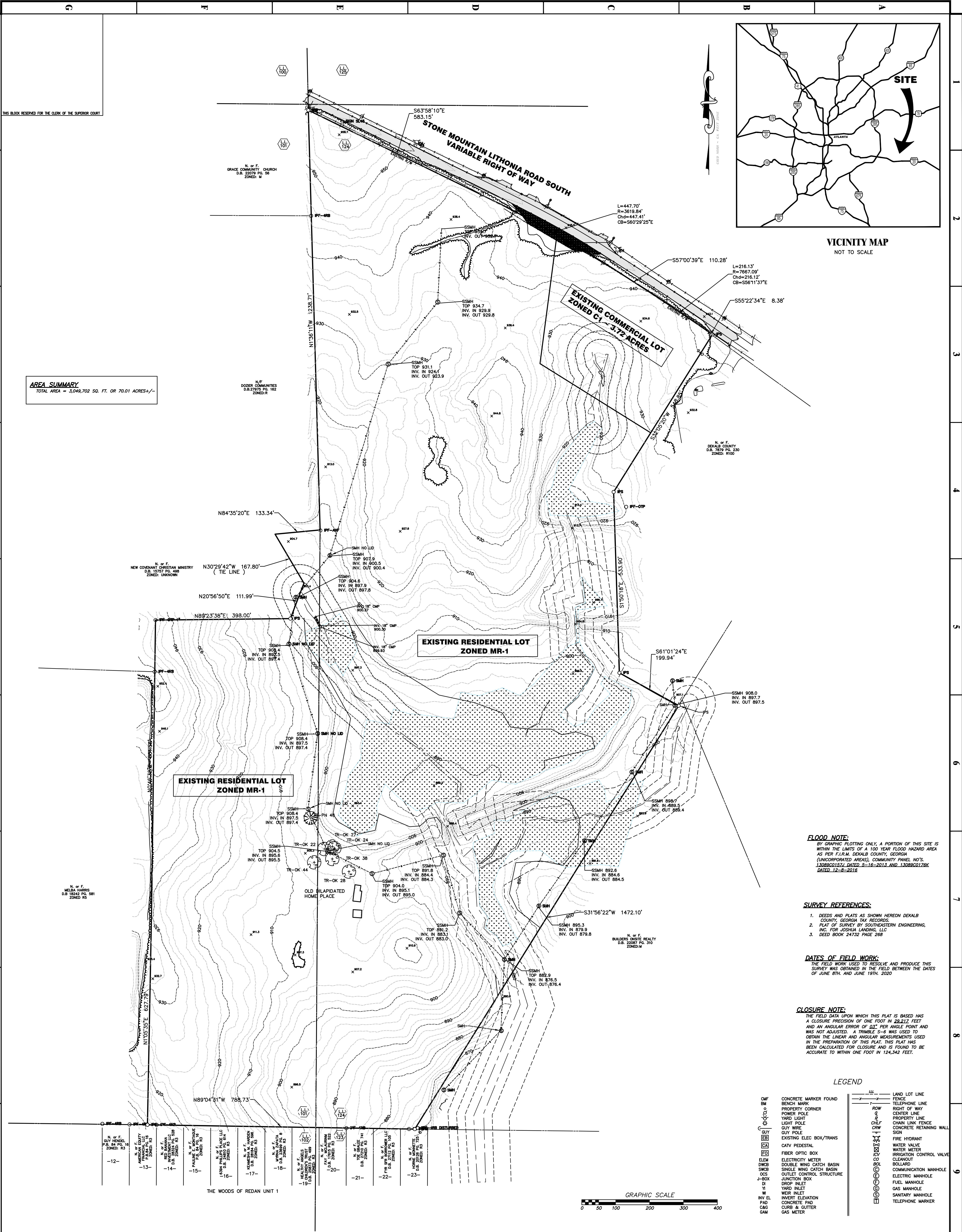
Section 5



The Maximum Monthly Average Daily flow at Polebridge IPS Plant Capacity is 20 MGD

#### **Attachment 4: Site Plan Exhibits**

- 1 - Existing Zoning Boundaries
- 2 - Proposed Zoning Boundaries
- 3 - Blow up of Commercial Area
  - 4 - Overall Site Plan
  - 5 - Phase 1 Site Plan



DRAWING DATE	DRAWN BY
06/16/2020	JRE
DRAWING SCALE	DESIGNED BY
1" = 100'	MB
PROJECT NUMBER	CHECKED BY
1445-0002	MB
DRAWING NUMBER	
EXHIBIT 1	
NOT ISSUED FOR CONSTRUCTION	

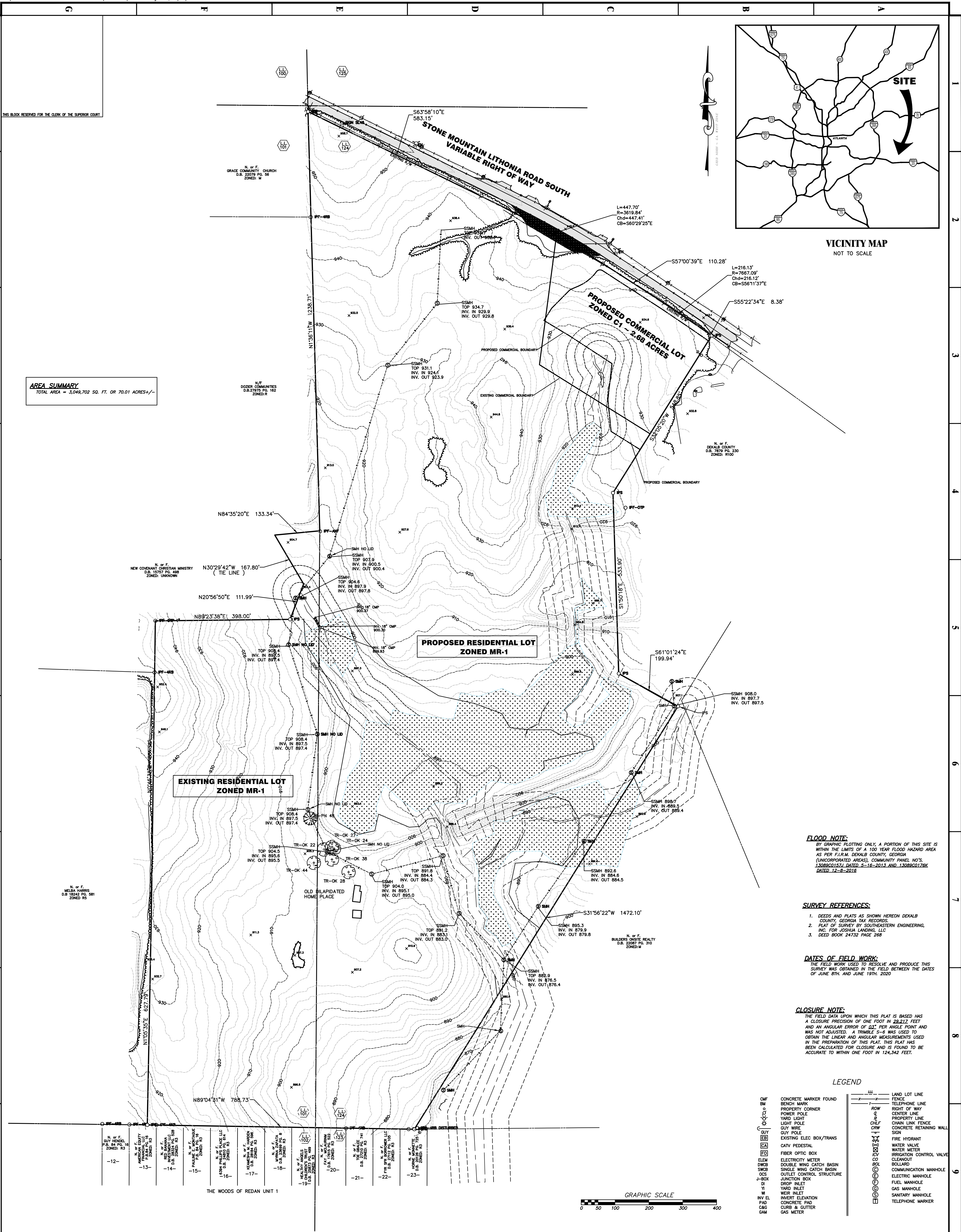
DRAWING TITLE
EXISTING ZONING PLAN

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SEAL
DATE:

PROJECT:
PROPOSED SUBDIVISION
LAND LOTS 101 & 124, 16TH DISTRICT
DEKALB COUNTY, GEORGIA
PREPARED FOR:
CRAFT HOMES, LLC

PRIME ENGINEERING INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTH CREEK, SUITE 200
ATLANTA, GEORGIA 30327
404-425-7100



DRAWING DATE	DRAWN BY
06/16/2020	JRE
DRAWING SCALE	DESIGNED BY
1" = 100'	MB
PROJECT NUMBER	CHECKED BY
1445-0002	MB
DRAWING NUMBER	
EXHIBIT 2	
NOT ISSUED FOR CONSTRUCTION	

DRAWING TITLE
PROPOSED CONCEPT PLAN

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SEAL
DATE:

PROJECT:
PROPOSED SUBDIVISION
LAND LOTS 101 & 124, 16TH DISTRICT
DEKALB COUNTY, GEORGIA
PREPARED FOR:
CRAFT HOMES, LLC

PRIME ENGINEERING INCORPORATED
3715 NORTHSIDE PARKWAY NW
300 NORTH CREEK, SUITE 200
ATLANTA, GEORGIA 30327
404-425-7100

COUNTY NOTES:

SANITARY SEWER AND WATER SERVICE TO BE PROVIDED BY DEKALB COUNTY

A 75' TRIBUTARY BUFFER WILL BE MAINTAINED ON ALL STATE WATERS THAT ARE NOT APPROVED FOR A BUFFER ENCROACHMENT VARIANCE BY DEKALB COUNTY OR GA. E.P.D.

SKETCH PLAT APPROVAL DOES NOT CONSTITUTE APPROVAL OF THE STORM DRAINAGE AND SANITARY SEWER SYSTEMS. NO CONSTRUCTION SHALL BEGIN BEFORE CONSTRUCTION PLANS ARE APPROVED AND A DEVELOPMENT PERMIT IS OBTAINED.

THE OWNER OF THE PROPERTY IS RESPONSIBLE FOR COMPLIANCE WITH THE CORPS OF ENGINEERS REQUIREMENTS REGARDING WETLANDS.

NECESSARY BARRICADES, SUFFICIENT LIGHTS, SIGNS AND OTHER TRAFFIC CONTROL METHODS AS MAY BE NECESSARY FOR THE PROTECTION AND SAFETY OF THE PUBLIC SHALL BE PROVIDED AND MAINTAINED THROUGHOUT THE WIDENING OF AND CONSTRUCTION OF DEKALB COUNTY ROADS.

EXISTING SEPTIC TANK(S) WILL BE REMOVED AS PER DEKALB COUNTY ENVIRONMENTAL HEALTH DEPARTMENT REQUIREMENTS.

TO THE BEST OF OUR KNOWLEDGE, NO INERT WASTE BURY PITS EXIST ON SITE.

A HYDROLOGY REPORT WILL BE SUBMITTED WITH THE LAND DISTURBANCE PERMIT PROVING DETENTION IS NOT REQUIRED AS PER DEKALB COUNTY REQUIREMENTS.

WATER QUALITY WILL BE TREATED ON SITE BY SNOUT RETROFITS IN THE STORM DRAINAGE SYSTEM AND INDIVIDUAL WATER QUALITY TRENCHES WILL BE PROVIDED ON A LOT PER LOT BASIS.

SITE DISCHARGES TO CLARKS CREEK (±300') AND THEN TO SOUTH RIVER.

ALL CUL-DE-SACS REQUIRE A ISLAND WITH MOUNTABLE CURB.

ALL INTERSECTIONS REQUIRE ADA HANDICAP WHEELCHAIR RAMPS.

ADDRESSES OR NUMBERS MUST BE LOCATED ON STRUCTURE PLAINLY VISIBLE FROM THE STREET OR ROADWAY.

TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO HISTORIC RESOURCES LOCATED ON SITE.

TOPOGRAPHIC INFORMATION PROVIDED BY US

ELECTRICAL SERVICE WILL BE UNDERGROUND.

A FENCE WILL BE REQUIRED IF PROPOSED PONDS ARE IN EQUAL OR GREATER THAN 4' DEEP.

BOUNDARY SURVEY PREPARED BY PRIME ENGINEERING, DATED 5-27-03.

NATURAL FEATURES INCLUDE THE EXISTING LAKE WITH ASSOCIATED BUFFERS, STATE WATERS WITH ASSOCIATED BUFFERS AND EXISTING STRUCTURES AS SHOWN ON PLAN. TO THE BEST OF OUR KNOWLEDGE; THERE ARE NO CEMETARIES, WETLANDS, ARCHEOLOGICAL RESOURCES OR ROCK OUTCROPPINGS LOCATED ON SITE.

ALL WORK SHALL COMPLY WITH APPLICABLE STATE, FEDERAL AND LOCAL CODES.

ALL MATERIALS AND CONSTRUCTION METHODS TO BE IN ACCORDANCE WITH THE DEKALB COUNTY STANDARDS AND THE GEORGIA DEPARTMENT OF TRANSPORTATION, AS APPLICABLE.

DEVIATION FROM THESE PLANS AND SPECIFICATIONS WITHOUT THE PRIOR WRITTEN CONSENT OF THE ENGINEER MAY CAUSE THE WORK TO BE UNACCEPTABLE.

THERE MAY BE ADDITIONAL UTILITIES OTHER THAN THOSE SHOWN ON THESE PLANS. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR LOCATIONS SHOWN AND IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATIONS AND NECESSARY INVERTS OF ALL UTILITIES WITHIN THE LIMITS OF CONSTRUCTION.

PRIOR TO ANY CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE APPROPRIATE DEPARTMENT OF THE UTILITY COMPANIES. THE CONTRACTOR IS RESPONSIBLE FOR THE NOTIFICATIONS AND LIAISON WITH UTILITY COMPANIES IN THE PROCESS OF LOCATING, RELOCATING AND TIE-IN TO THE PUBLIC UTILITIES.

IF CONTRACTOR DAMAGES ANY EXISTING UTILITIES DURING CONSTRUCTION, HE SHALL, AT HIS OWN EXPENSE, REPLACE OR REPAIR THE UTILITIES TO ORIGINAL CONDITION AND QUALITY, AS APPROVED BY THE ENGINEER AND REPRESENTATIVE OF THE APPROPRIATE UTILITY COMPANY.

THE CONTRACTOR SHALL TELEPHONE TOLL FREE 1-800-282-7411 A MINIMUM OF 48 HOURS PRIOR TO THE START OF ANY EXCAVATION AS SHOWN AND NOTED ON THE PLANS FOR A UTILITY LOCATION SERVICE. IN THE CASE OF UNFORESEEN OBSTRUCTIONS OR DISCREPANCIES, THE CONTRACTOR IS TO NOTIFY THE OWNER'S REPRESENTATIVE AND ENGINEER. LAND DISTURBANCE PERMIT TO BE DISPLAYED ON SITE AT ALL TIMES DURING CONSTRUCTION.

CONSTRUCTION EQUIPMENT SHALL NOT BE PARKED IN RIGHT-OF-WAY AND MUST BE STORED WITHIN SITE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING A MARKED-UP SET OF DESIGN DRAWINGS SHOWING ALL "AS-BUILT" CONDITIONS.

THESE "RECORD DRAWINGS" SHALL BE MADE AVAILABLE TO THE DESIGNER AND/OR THE COUNTY INSPECTOR UPON REQUEST.

THE MARKUPS SHALL BE AT THE SITE AT ALL TIMES AND SHALL BE UTILIZED BY THE CONTRACTOR TO DEVELOP FINAL RECORD DRAWINGS.

STUMPS AND CONSTRUCTION DEBRIS SHALL BE DEPOSITED IN A PROPERLY PERMITTED LANDFILL.

NO BURY PITS ALLOWED ON THIS SITE.

ALL DIMENSIONS ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED. ALL SPOT ELEVATIONS ARE TO THE BOTTOM FACE CURB AND/OR PAVEMENT. A FINAL INSPECTION WILL BE MADE BASED ON THE APPROVED PLANS.

ALL CHANGES TO THE APPROVED PLANS MUST BE MADE IN WRITING SO THAT THESE CHANGES MAY BE REVIEWED BEFORE APPROVAL.

THE OWNER OF THE PROPERTY IS RESPONSIBLE FOR COMPLIANCE WITH THE CORPS OF ENGINEERS REQUIREMENTS REGARDING WETLANDS. EXISTING SEPTIC TANK(S) WILL BE REMOVED AS PER DEKALB COUNTY ENVIRONMENTAL HEALTH DEPARTMENT REQUIREMENTS. TO THE BEST OF OUR KNOWLEDGE,

NO INERT WASTE BURY PITS EXIST ON SITE.

WATER QUALITY WILL BE TREATED ON SITE BY SNOUT RETROFITS IN THE STORM DRAINAGE SYSTEM AND INDIVIDUAL WATER QUALITY TRENCHES WILL BE PROVIDED ON EACH LOT.

ALL STREET INTERSECTIONS REQUIRE ADA HANDICAP WHEELCHAIR RAMPS.

SUBDIVISION WILL BE SUBJECT TO PRIVATE COVENANTS AND A MANDATORY HOMEOWNER'S ASSOCIATION.

NECESSARY BARRICADES, SUFFICIENT LIGHTS, SIGNS AND OTHER TRAFFIC CONTROL METHODS AS MAY BE NECESSARY FOR THE PROTECTION AND SAFETY OF THE PUBLIC SHALL BE PROVIDED AND MAINTAINED THROUGHOUT THE WIDENING OF AND CONSTRUCTION OF DEKALB COUNTY ROADS.

PRELIMINARY PLAT  
FOR  
STONECREST ESTATES  
PHASE 1  
LAND LOT 101 & 124, 16th DISTRICT  
CITY OF STONECREST  
TAX PARCEL ID: 16 124 02 001  
ZONING: C-1 AND RM-100 (COND.)  
(CASE# CZ04056)

VICINITY MAP

OWNER / DEVELOPER:  
CRAFT HOMEBUILDERS

ADDRESS:  
1230 PEACHTREE ST, NE,  
PROMENADE, SUITE 800 ATLANTA, GA  
30341

24HOUR CONTACT:  
ANTHONY L. DUNCAN  
(770)271-1554

CIVIL ENGINEER & SURVEYOR:  
PRIME ENGINEERING, INC.  
3715 NORTHSIDE PARKWAY  
300 NORTHCREEK, SUITE 200  
ATLANTA, GEORGIA 30318  
CONTACT: ROBERT R. MACPHERSON  
PHONE: (404) 425-7100

SURVEY REFERENCES:  
1. DEEDS AND PLATS AS SHOWN HEREON DEKALB COUNTY, GEORGIA TAX RECORDS.  
2. PLAT OF SURVEY BY SOUTHEASTERN ENGINEERING, INC. FOR JOSHUA LANDING, LLC  
3. DEED BOOK 24732 PAGE 268

DATES OF FIELD WORK:  
THE FIELD WORK USED TO RESOLVE AND PRODUCE THIS SURVEY WAS OBTAINED IN THE FIELD BETWEEN THE DATES OF JUNE 8TH. AND JUNE 19TH. 2020

CLOSURE NOTE:  
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 29,217 FEET AND AN ANGULAR ERROR OF 03" PER ANGLE POINT AND WAS NOT ADJUSTED. A TRIMBLE S-6 WAS USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE TO WITHIN ONE FOOT IN 124,342 FEET.

LEGEND  
CONCRETE MARKER FOUND  
BENCH MARK  
PROPERTY CORNER  
POWER POLE  
YARD LIGHT  
LIGHT POLE  
GUY WIRE  
GUY POLE  
EXISTING ELEC BOX/TRANS  
CATV PEDESTAL  
FIBER OPTIC BOX  
ELECTRICITY METER  
DOUBLE WING CATCH BASIN  
SINGLE WING CATCH BASIN  
OUTLET CONTROL STRUCTURE  
JUNCTION BOX  
DROP INLET  
WEIR INLET  
INVERT ELEVATION  
CONCRETE PAD  
CURB & GUTTER  
GAS METER  
LAND LOT LINE  
FENCE  
TELEPHONE LINE  
RIGHT OF WAY  
CENTER LINE  
PROPERTY LINE  
CHAIN LINK FENCE  
CONCRETE RETAINING WALL  
SIGN  
FIRE HYDRANT  
WATER VALVE  
WATER METER  
IRRIGATION CONTROL VALVE  
CLEANOUT  
BOLLARD  
COMMUNICATION MANHOLE  
ELECTRIC MANHOLE  
FUEL MANHOLE  
GAS MANHOLE  
SANITARY MANHOLE  
TELEPHONE MARKER

FLOOD NOTE:  
BY GRAPHIC PLOTTING ONLY, A PORTION OF THIS SITE IS WITHIN THE LIMITS OF A 100 YEAR FLOOD HAZARD AREA AS PER F.I.R.M. DEKALB COUNTY, GEORGIA (UNINCORPORATED AREAS), COMMUNITY PANEL NO'S. 13089C0157J DATED 5-16-2013 AND 13089C0176K DATED 12-8-2016

DEPARTMENT OF PLANNING  
THIS SKETCH PLAT HAS BEEN SUBMITTED TO AND APPROVED BY THE PLANNING COMMISSION OF DEKALB COUNTY, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021  
(DIRECTOR) PLANNING COMMISSION CHAIRMAN  
DEKALB COUNTY, GEORGIA


SURVEYORS CERTIFICATION  
This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION. AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

DATED:

SITE NOTES  
TOTAL AREA OF PROPERTY 70.03 ACRES  
TOTAL AREA OF EXISTING COMMERCIAL 3.73 ACRES  
TOTAL AREA OF PROPOSED COMMERCIAL 2.35 ACRES  
TOTAL AREA OF EXISTING RESIDENTIAL 66.30 ACRES  
TOTAL AREA OF PROPOSED RESIDENTIAL 67.68 ACRES  
# OF SINGLE FAMILY - ATTACHED (20'x48') 57  
# OF SINGLE FAMILY - ATTACHED (25'x48') 74  
# OF SINGLE FAMILY - DETACHED 198  
TOTAL # OF UNITS 330  
SIZE OF SINGLE FAMILY - DETACHED 30' x 48' - 1440sf  
LOT SIZE - SINGLE FAMILY - DETACHED 40' x 88'-100'  
FRONT setback 20'  
SIDE setback 5'  
BACKYARD 20'  
DENSITY 4.93 UNITS/ ACRE  
OPEN SPACE 20.86 ACRES  
OPEN SPACE % 29.8%

AREA SUMMARY  
TOTAL AREA PHASE 1= 1,409,995 SQ. FT. OR 32.37 ACRES  
TOTAL OPEN SPACES AREA PHASE 1= 14.09 ACRES

DRAWING TITLE		DRAWN BY JMK	
PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1		DESIGNED BY MB	
LOCATED IN: LAND LOT 101 & 1024, 16TH DISTRICT CITY OF STONECREST DEKALB COUNTY GA.		CHECKED BY MB	
SHEET 1 OF 5		PROJECT NUMBER 1445-0002	
DRAWING NUMBER			

DRAWING DATE 09/07/2021		DRAWING SCALE 1" = 40'	
PROJECT: STONECREST ESTATES PHASE 1		PREPARED FOR: CRAFT HOMES, LLC	
SEAL 		DATE: 9/07/21	
© 2013 PRIME ENGINEERING, INC. Seals, as stated herein, are valid on the original drawing the dimensions of which are 24 by 36 inches. These seals, after they are changed by the registered professional engineer or land surveyor, shall show the date of the print to corresponding dimensions of the original drawing. This drawing is the property of PRIME ENGINEERING, INCORPORATED and is not to be reproduced or copied in whole or in part. It is only to be used for the project and site specifically identified herein and is not to be used on any other project. It is to be returned upon request.			

PRIME  
ENGINEERING  
INCORPORATED®

3715 NORTHSIDE PARKWAY NW  
300 NORTHCREEK, SUITE 200  
404-425-7100

NOT ISSUED FOR CONSTRUCTION

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	<div>DeKalb County Planning &amp; Development Department 330 Ponce De Leon Avenue, Suite 500 Decatur, GA 30030 (404)371-2155 or (404)371-2813 (Fax)</div> <div><b>ZONING ANALYSIS</b> Case No: <u>207-13333</u> Agenda #: <u>N-27</u> Location / Address: On the south side of Stone Mountain Commission District 5 Super District 7 Lithonia Road east of its intersection with South DeShon Road. Parcel - ID: 16-124-02-001 Request: To modify conditions of zoning from RM-100 (cond.) to RM-100 (cond.) to allow the development of the property with a new site plan. Property Owner: Benchmark Group C/O The Battle Law Group Applicant / Agent: Benchmark Group C/O The Battle Law Group Acreage: 70.71 Existing Land Use: The subject property is undeveloped and supports a stand of hardwood and pine forest. Surrounding Properties: The subject property is bounded on the north by commercial uses that include a gas station/convenience store, the south and west by single family residential zoned and on the east by industrial and commercial land uses. Adjacent Zoning: North: C-2 South: R-100 East: M West: R-A8 North-East: M North-West: South-East: South-West: R-100 Comprehensive Plan: LMR <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent Proposed Density / Acre: 5 units/acre Existing Density / Acre: NA Proposed Units / Square Ft: 335 units Existing Units / Square Ft: NA <b>Zoning History</b> The subject parcel was included in zoning application <u>C2-04056</u>. The applicant applied for a change in the zoning map from R-100 &amp; C-1 (conditional) to RM-100 (conditional) PD-Approval with conditions P.C. Approval with conditions, <u>800-4-Nov-22, 2004: Approved with Conditions</u> <b>Planning and Development Department Recommendation</b> DENIAL: Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning Ordinance. Zoning case #C2-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinances. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condos any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveway, accessed from a public street. To allow for single family detached residential units in a condos, product on the project site access via a private drive, would be contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed multi-family project (single family detached condos) differently than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on the individual lots and located on a public street, and has to go through the sketch plan process. <b>LAND USE PLAN CONSISTENCY</b> 09/22/2021 Prepared By Page 2 207-13333 / N-27</div>														
B															
C															
D															
E	<div>Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinances. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condos any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveway, accessed from a public street. To allow for single family detached residential units in a condos, product on the project site access via a private drive, would be contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed multi-family project (single family detached condos) differently than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on the individual lots and located on a public street, and has to go through the sketch plan process. Therefore, it is the recommendation of the Planning and Development Department that the modification be Denied.</div> <div><b>ATTACHMENTS:</b> Zoning Analysis Letter of Intent Site Plan Zoning Map Land Use Map Pictureary</div> <div>09/22/2021 Prepared By Page 6 207-13333 / N-27</div>														
F															
G															
H															
I															
J															
K															

DEKALB COUNTY PUBLIC WORKS DEPARTMENT

TRAFFIC:  
Category:  
Street Name:  
Trips Generated: Existing Zoning: TPD Proposed Zoning: TPD  
WATER:  
Size of main serving property:  
SEWER:  
Outfall Serving Project:  
Is Sewer adjacent to this property  
Treatment Plant:  
WASTE GENERATION IF RESIDENTIAL:  
Capacity: MGPD Current Flow: MGPD  
DRAINAGE:  
COUNTY DEPARTMENT DIVISION COMMENTS OR RECOMMENDATIONS  
DIVISION OF ENVIRONMENTAL HEALTH  
No information was submitted at the writing of the staff analysis.

DEKALB COUNTY BOARD OF EDUCATION  
SCHOOL:  
Name of School: High School Middle School Elementary School

Section 27-832 of the Zoning Ordinance, "Standards and factors governing review of proposed amendments to official zoning map" states that the following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the zoning map:  
A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.  
Based on the submitted information, it appears that the zoning proposal would be in conformity with the policy and intent of the comprehensive plan.  
B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties.  
Based on the submitted information, it appears that the zoning proposal would permit a use that is suitable in view of the uses and development of adjacent and nearby properties.  
C. Whether the property to be affected by zoning proposal has a reasonable economics use as currently zoned:  
Based on the submitted information, it does not appear possible for the zoning analysis staff to determine whether the property has a reasonable economics use as currently zoned.  
D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property:  
Based on the submitted information it does not appear that the zoning proposal would adversely affect the existing use or usability of adjacent or nearby property. The proposed change in the conditions of case C2-04056 would reduce the number of units and the proposed density than the site plan that was approved in 2004.  
E. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.  
See "C" above.  
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 zoning proposal.  
There does not appear to be other existing or changing conditions affecting the use and development of the property, which give supporting grounds for approval of the zoning proposal.  
G. Whether the zoning proposal will adversely affect historic building, sites, districts, or archaeological resources.  
Based on the submitted information it does not appear that the project proposal would adversely affect historic buildings, sites, or archaeological resources.  
H. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.  
Based on the submitted information, it does not appear that the zoning proposal would result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.  
**PLANNING AND DEVELOPMENT DEPARTMENT RECOMMENDATION**  
DENIAL: Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning Ordinance. Zoning case #C2-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinances. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condos any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on the individual lots and located on a public street, and has to go through the sketch plan process. Therefore, it is the recommendation of the Planning and Development Department that the modification be Denied.

09/22/2021 Prepared By Page 5 207-13333 / N-27

EXHIBIT A  
OWNER INFORMATION

Parcels / Address: 16 124 02 001  
2261 Stone Mountain Lithonia Road, Lithonia  
30058  
16 101 03 011  
0 Phillips Road, Lithonia 30058  
Owner: Joshua Landing, LLC  
Patrick Frohling  
6165 Riverside Dr NW  
Atlanta, Georgia 30328-3621  
770.231.6141  
frohling@bellsouth.net  
Applicant: Benchmark Group  
Bucky Davis  
611 Peachtree Dunwoody Road  
Building F, Suite 102  
Atlanta, Ga 30328  
770.393.3984  
Buckdavis1@comcast.net  
Contact Information:

DeKalb County Planning & Development Department  
Vernon Jones  
Chief Executive Officer  
Patrick Eljae  
Director

REZONE APPLICATION AUTHORIZATION  
Completion of this form is required if the individual making the request is not the owner of the property.  
DATE: 3/7/07  
CHECK TYPE OF APPLICATION:  
( ) LAND USE PLAN  
( ) REZONE  
( ) MINOR MODIFICATION  
TO WHOM IT MAY CONCERN:  
(1) (we) Joshua Landing, LLC, Patrick Frohling, Mr. R  
(Name of owner(s))  
being (owner) (owners) of the property described below or attached hereby delegate authority to  
Benchmark  
(Name of Applicant or Representative)  
to file an application on (my) (our) behalf.  
Notary Public: Sharon M. ... Owner  
Notary Public: ... Owner  
Notary Public: ... Owner  
330 West Peachtree Street, Suite 100, Decatur, GA 30030-1212  
Voice (404) 371-2155 Fax (404) 371-2813  
www.dekalbcountyga.gov

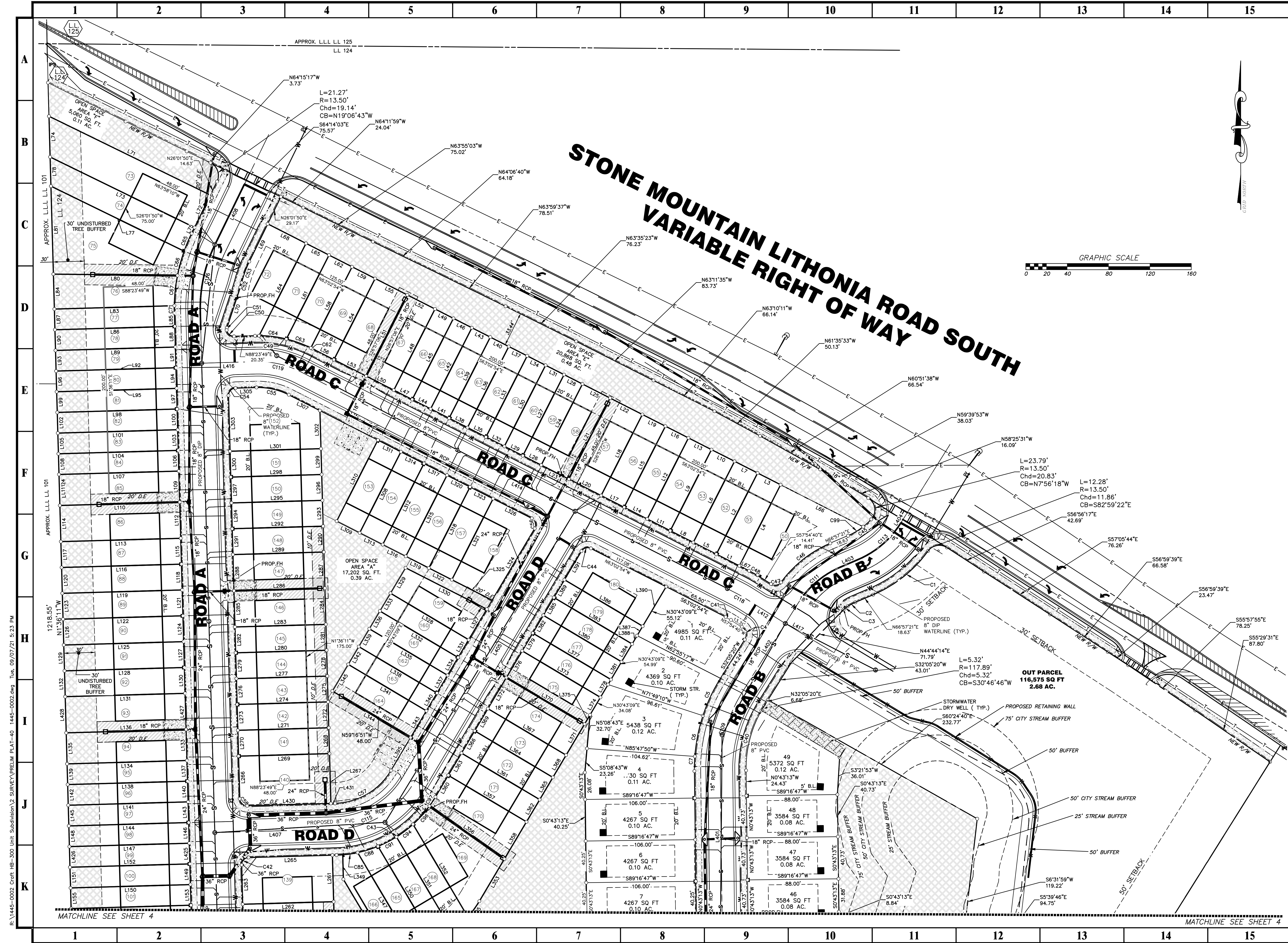
PRIME  
ENGINEERING  
INCORPORATED  
3715 NORTHSIDE PARKWAY NW  
300 NORTHCREK SUITE 200  
404-425-7100

PROJECT:  
STONECREST ESTATES  
PHASE 1  
PREPARED FOR:  
CRAFT HOMES, LLC

SEAL  
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DATE: 9/07/21

DRAWING TITLE  
PRELIMINARY PLAT  
FOR  
STONECREST ESTATES PHASE 1  
LOCATED IN:  
LAND LOT 101 & 1024,  
16TH DISTRICT  
CITY OF STONECREST  
DEKALB COUNTY GA.

DRAWING DATE  
09/07/2021  
DRAWN BY  
JMK  
DRAWING SCALE  
1" = 40'  
DESIGNED BY  
MB  
PROJECT NUMBER  
1445-0002  
CHECKED BY  
MB  
DRAWING NUMBER  
SHEET 2 OF 5  
NOT ISSUED FOR CONSTRUCTION



PRIME  
ENGINEERING  
INCORPORATED

3715 NORTHSIDE PARKWAY NW  
300 NORTH CREEK SUITE 200  
404-425-7100

PROJECT:

STONECREST ESTATES  
PHASE 1

PREPARED FOR:

CRAFT HOMES, LLC

SEAL

ORGANIZATION  
NO. 2988  
MICHAEL D. BAKER  
REGISTERED PROFESSIONAL ENGINEER  
LAND SURVEYING

DATE:

9/07/21

DRAWING TITLE

PRELIMINARY PLAT  
FOR  
STONECREST ESTATES PHASE 1

LOCATED IN:  
LAND LOT 101 & 102A,  
16TH DISTRICT  
CITY OF STONECREST  
DEKALB COUNTY GA.

DRAWN BY  
JMK

DESIGNED BY  
MB

CHECKED BY  
MB

DRAWING NUMBER  
1445-0002

DRAWING SCALE  
1" = 40'

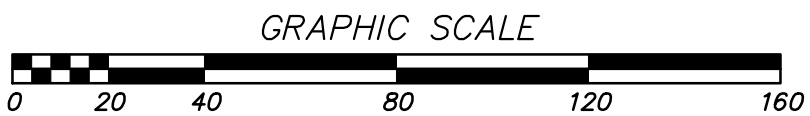
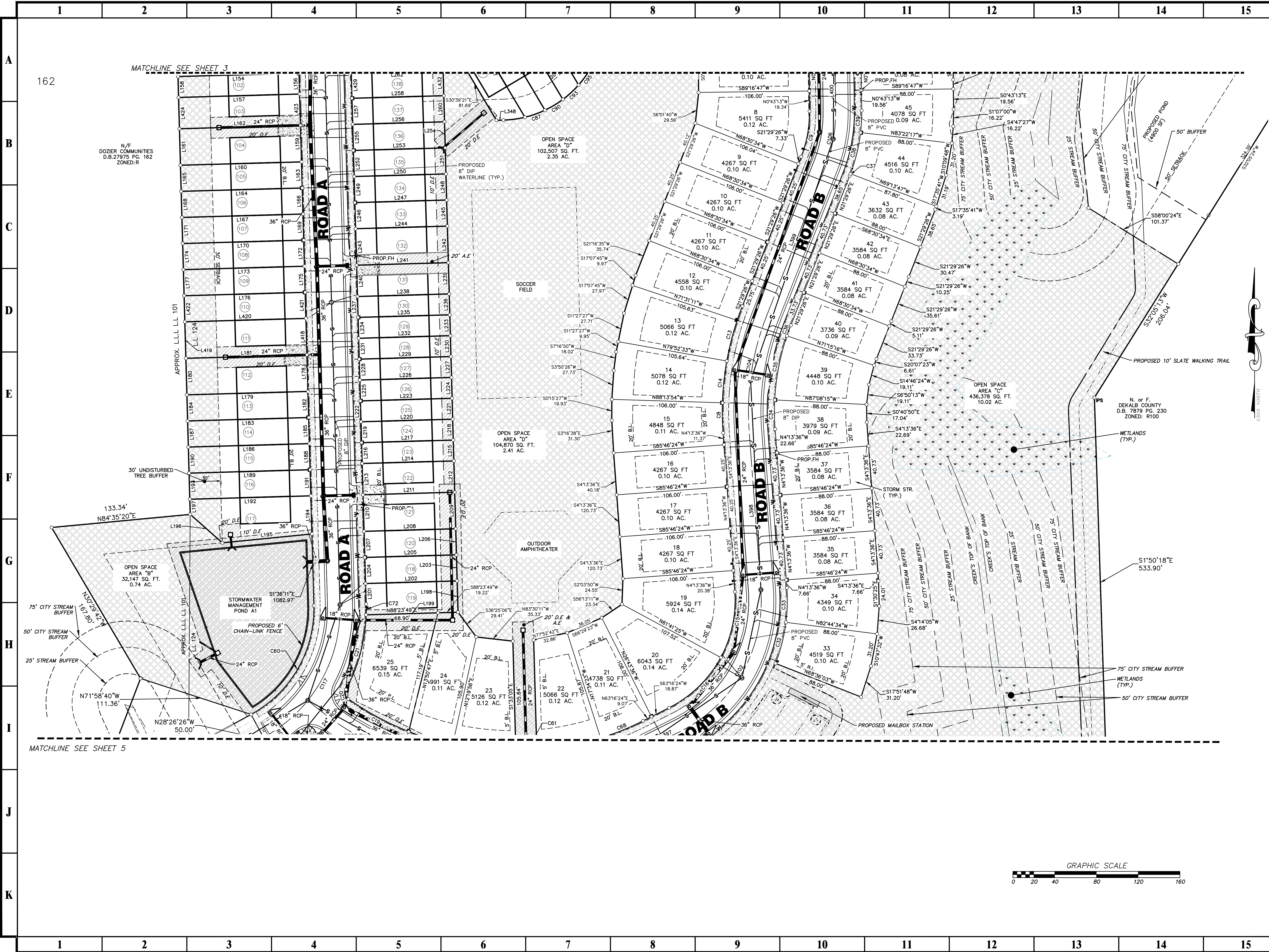
DRAWING DATE  
09/07/2021

SHEET 3 OF 5

NOT ISSUED FOR CONSTRUCTION

R:\1445-0002 Draft 1B-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-40 1445-0002.dwg Tue, 09/07/21 5:23 PM

R:\1445-0002 Draft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-40 1445-0002.dwg Tue, 09/07/21 5:23 PM



<b>PRIME ENGINEERING INCORPORATED</b> 3715 NORTHSIDE PARKWAY NW 300 NORTH CREEK SUITE 200 404-425-7100	
<b>PROJECT:</b> STONECREST ESTATES PHASE 1	
<b>PREPARED FOR:</b> CRAFT HOMES, LLC	
<b>DATE:</b> 9/07/21	
<b>SEAL</b> REGISTERED PROFESSIONAL ENGINEER NO. 2858 STATE OF ALABAMA MICHAEL D. BAY	
<b>DRAWING TITLE</b> PRELIMINARY PLAT FOR STONECREST ESTATES PHASE 1 LOCATED IN: LAND LOT 101 & 102A, 16TH DISTRICT CITY OF STONECREST DEKALB COUNTY GA.	
<b>DRAWING DATE</b> 09/07/2021	<b>DRAWN BY</b> JMK
<b>DRAWING SCALE</b> 1" = 40'	<b>DESIGNED BY</b> MB
<b>PROJECT NUMBER</b> 1445-0002	<b>CHECKED BY</b> MB
<b>DRAWING NUMBER</b>	<b>SHEET 4 OF 5</b>
<b>NOT ISSUED FOR CONSTRUCTION</b>	

R:\1445-0002 Draft HB-300 Unit Subdivision\2 SURVEY\PRELIM PLAT-40 1445-0002.dwg Tue, 09/07/21 4:14 PM



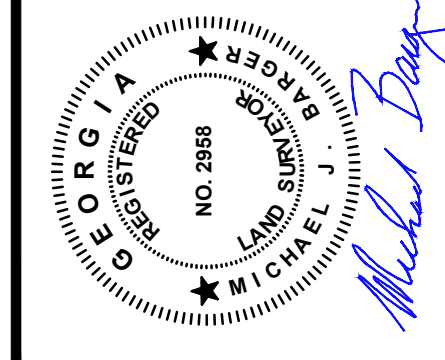
**PRIME  
ENGINEERING  
INCORPORATED**

3715 NORTHSIDE PARKWAY NW  
300 NORTHCREEK SUITE 200  
404-425-7100

**PROJECT:**  
**STONECREST ESTATES  
PHASE 1**

**PREPARED FOR:**  
**CRAFT HOMES, LLC**

**SEAL**



**DATE:** 9/07/21

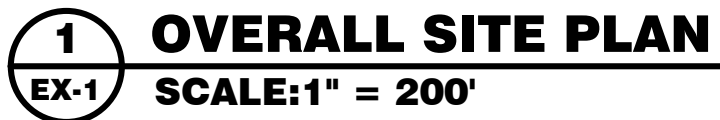
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Scales, as stated hereon, are valid on the original drawing; the dimensions of which are 24 by 36 inches. These scales, which are hereby changed by the ratio of the overall sheet dimensions of the print to corresponding dimensions of the original drawing. This drawing is the property of PRIME ENGINEERING, INCORPORATED and is not to be reproduced or copied in whole or in part. It is only to be used for the project and site specifically identified herein and is not to be used on any other project. It is to be returned upon request.

**DRAWING TITLE**  
**PRELIMINARY PLAT  
FOR  
STONECREST ESTATES PHASE 1**  
**LOCATED IN:**  
**LAND LOT 101 & 1024,  
16TH DISTRICT  
CITY OF STONECREST  
DEKALB COUNTY GA.**

<b>DRAWING DATE</b> 09/07/2021	<b>DRAWN BY</b> JMK
<b>DRAWING SCALE</b> 1" = 40'	<b>DESIGNED BY</b> MB
<b>PROJECT NUMBER</b> 1445-0002	<b>CHECKED BY</b> MB
<b>DRAWING NUMBER</b>	

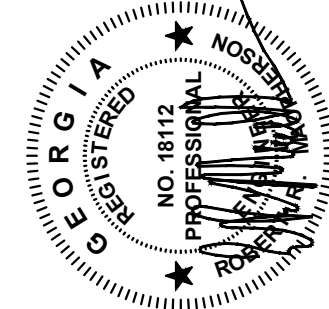
**SHEET 5 OF 5**

**NOT ISSUED FOR CONSTRUCTION**



# OVERALL SITE PLAN

© 2020 PRIME ENGINEERING, INC. Scales, as stated herein, are valid on the original drawing; the dimensions of which are 22 by 34 inches. These scales, noted herein, are hereby changed by the ratio of the overall sheet dimensions of the print to corresponding dimensions of the original drawing. This drawing is the property of PRIME ENGINEERING, INC. INCORPORATED and is not to be reproduced or copied in whole or in part. It is only to be used for the project and site specifically identified herein and is not to be used on any other project. It is to be returned upon request.



DATE: 03/16/21

**STONECREST  
ESTATES PHASE I**

**PREPARED FOR:**

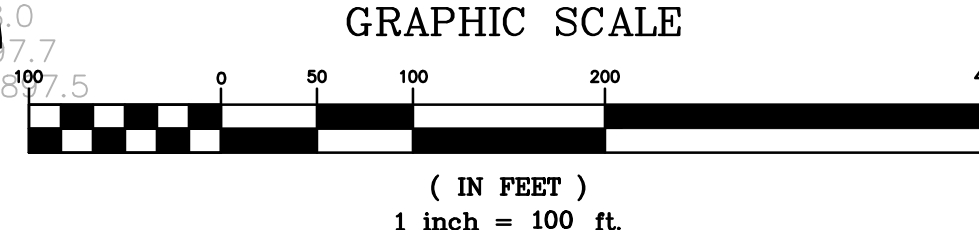
**CRAFT HOMES, LLC**

**PRIME  
ENGINEERING  
INCORPORATED**

3715 NORTHSIDE PARKWAY NW

300 NORTHCREEK, SUITE 200

NOT ISSUED FOR CONSTRUCTION



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**PRIME  
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ATLANTA, GEORGIA 30327  
404-425-7100

**STONECREST  
ESTATES PHASE I**

**PREPARED FOR:**  
**CRAFT HOMES, LLC**

Attachment 5: DeKalb County Rezoning Case File - Z-07-13333

## DEKALB COUNTY

ITEM NO.

## BOARD OF COMMISSIONERS

## ZONING AGENDA / MINUTES

MEETING DATE: July 24, 2007

HEARING TYPE  
PUBLIC HEARINGACTION TYPE  
ORDINANCESUBJECT: **Rezone** – Benchmark Group c/o The Battle Law Group

COMMISSION DISTRICTS: 5 &amp; 7

DEPARTMENT: Planning

PUBLIC HEARING: YES ☒ NOATTACHMENT: ☒ YES ☐ No

INFORMATION CONTACT: Patrick Ejike/Kevin Hunter

PAGES: 23

PHONE NUMBER: (404) 371-2155

Deferred from 5/22/07, 6/12/07, 6/26/07 &amp; 7/24/07 for decision only.

**PURPOSE:****Z-07-13333**

Application of Benchmark Group c/o The Battle Law Group to modify conditions of zoning from RM-100 (cond.) to RM-100 (cond.). The property is located on the southwest side of South Stone Mountain Lithonia Road, approximately 1,556 feet southeast of South Deshon Road. The property has frontage of 1,347 feet and contains 70.6 acres.

Subject Property: 16-124-02-001

**RECOMMENDATION(S):****PLANNING DEPARTMENT:**

**Denial.** Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning. Zoning case #CZ-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented to during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinance. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condo's any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street. To allow for single family detached residential units in a condo's, product on the project site access via a private drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed project (multi-family project containing single family detached condos) differently than we do single family residential dwelling units located on individual lots accessed via public street, and has to go through the sketch plat process. This type of development would be treated as a multi-family development project on a large tract of land, and would not have to go through the Sketch Plat process. Therefore, it is the recommendation of the Planning and Development Department that the modification be **"Denied"**

**PLANNING COMMISSION:**

Approval.

**COMMUNITY COUNCIL:**

No recommendation.

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**FOR USE BY COMMISSION OFFICE/CLERK ONLY**


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**ACTION: H20**

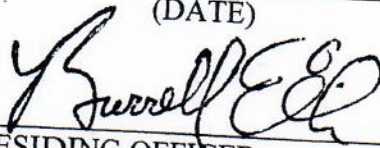
MOTION was made by Commissioner May, seconded by Commissioner Stokes, and passed 6-0-0-1, to approve with conditions, and additional conditions submitted by Commissioner May, the rezoning application of Benchmark Group c/o The Battle Law Group. Commissioner Boyer was absent and not voting.

1300 Commerce Dr.  
The clerk's office

ADOPTED: JUL 24 2007

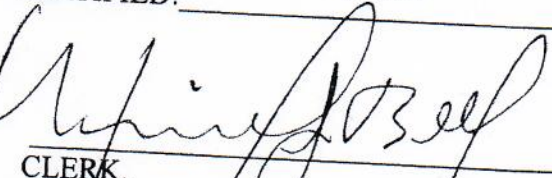
(DATE)

(DATE)



PRESIDING OFFICER

DEKALB COUNTY BOARD OF COMMISSIONERS

CERTIFIED: JUL 24 2007


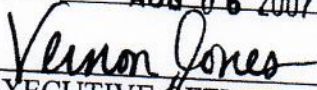
CLERK,

DEKALB COUNTY BOARD  
OF COMMISSIONERS

---

**FOR USE BY CHIEF EXECUTIVE OFFICER ONLY**


---

APPROVED: AUG 06 2007

CHIEF EXECUTIVE OFFICER  
DEKALB COUNTY

VETOED: \_\_\_\_\_

CHIEF EXECUTIVE OFFICER  
DEKALB COUNTY

VETO STATEMENT ATTACHED: \_\_\_\_\_

**MINUTES:**

Michele Battle, 999 Peachtree Street, N.E., Atlanta, Ga. 30309, spoke in support of the application.

No one spoke in opposition of the application.

	FOR	AGAINST	ABSTAIN	ABSENT
DISTRICT 1 - ELAINE BOYER				
DISTRICT 2 - JEFF RADER				
DISTRICT 3 - LARRY JOHNSON	X			X
DISTRICT 4 - BURRELL ELLIS	X			
DISTRICT 5 - LEE MAY	X			
DISTRICT 6 - KATHIE GANNON	X			
DISTRICT 7 - CONNIE STOKES	X			



The Honorable Vernon Jones  
Chief Executive Officer

## DeKalb County Planning & Development Department

330 Ponce De Leon Avenue, Suite 500

Decatur, GA 30030

(404)371-2155 or (404)371-2813 (Fax)



Patrick Ejike  
Director

### ZONING ANALYSIS

Case No: **Z-07-13333** Agenda #: N-27

Location / Address: On the south side of Stone Mountain Commission District 5 Super District 7  
Lithonia Road east of its intersection with  
South DeShon Road.

Parcel - ID: 16-124-02-001

Request: To modify conditions of zoning from RM-100 (cond) to RM-100 (cond.) to allow the development of the property with a new site plan.

Property Owner: Benchmark Group C/O The Battle Law Group

Applicant / Agent: Benchmark Group C/O The Battle Law Group

Acreage: 70.71

Existing Land Use: The subject property is undeveloped and supports a stand of hardwood and pine forest.

Surrounding Properties: The subject property is bounded on the north by commercial uses that include a gas station/convenience store; the south and west by single family residential uses; and on the east by industrial and commercial land uses.

Adjacent Zoning: North: C-2 South: R-100 East: M West: R-A8  
North-East: M North-West: South-East: South-West: R-100

Comprehensive Plan: LMR ☒ Consistent ☐ Inconsistent

Proposed Density / Acre: 5 units / acre

Existing Density / Acre: NA

Proposed Units / Square ft: 335 units

Existing Units / Square ft: NA

#### Zoning History

The subject parcel was included in zoning application **CZ-04056**. The applicant applied for a change in the zoning map from R-100 & C-1 (conditional) to **RM-100 (conditional)** PD-Approval with conditions P.C. Approval with conditions; **BOC-Nov 22, 2004- Approved with Conditions**

#### Planning and Development Department Recommendation:

**DENIAL:** Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning. Zoning case #CZ-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of Commissioners, on **November 22, 2004**, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented to during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinance. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government

cannot treat condo's any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street.

To allow for single family detached residential units in a condo's, product on the project site access via a privated drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed project (multi-family project containing single family detached condo's) differently than we do single family residential dwelling units located on individual lots accessed via public street, and has to go through the sketch plat process. This type of development would be treated as a multi-family development project on a large tract of land, and would not have to go through the Sketch Plat process.. Therefore, it is the recommendation of the Planning and Development Department that the modification be Denied.

#### SITE ANALYSIS

The project site is located in an area of unincorporated DeKalb County that has a mix of zoning districts and land uses. The surrounding area has witnessed an increase in housing types. Single family detached and multi-family residential on both large and small lots predominate in this area. The surrounding area appears to be transitioning from commercial and industrial uses to residential uses.

#### PROJECT ANALYSIS

The project applicant is requesting an Amendment to Official Zoning Map pursuant to Section 27-821 of the DeKalb County Zoning Ordinance, to amend the Official Zoning Map designation from the RM-100 conditional (Multi-Family Residential) District to the RM-100 conditional (Multi-Family Residential) District in order to remove the condition of zoning imposed by the Board of Commissioners on November 22, 2004. Zoning case File CZ-04056 was approved based upon a site plan entitled "Joshua's Landing" prepared by Martin Riley Associates, Architects, PC dated August 27, 2004 and marked received October 5, 2004. The applicant for this petition seeks to have this condition of zoning removed in order to develop the property under a new site plan. The applicant seeks to develop the property for use as a multi-family residential community with a total of 335 residential units at a density of 4.88 units per acre. The approved site plan proposed a total number of 489 units at a density of 7.13 units per acre. The applicant is proposing that the entire development be a condominium community with both detached and attached units. The applicant states that the approved site plan was not drawn to scale and illustrated a configuration that was unachievable based on site conditions. According to the applicant, the new site plan is based on the site conditions and offers a more marketable product type and mix.

#### CONDITIONS REQUESTED BY APPLICANT

The appliant is seeking the removal of conditions which were imposed in zoning case CZ-04

#### ZONING ANALYSIS

The project applicant is requesting to modify the existing site plan containing townhomes, single family detached residential dwellings on individual lots, and a senior living facility, to allow for a single family detached condominium form of ownership. The Condominium Act states that local government cannot treat condo's any different than fee simple products. It should be noted that in DeKalb County, single family detached dwelling unit are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street.

To allow for single family detached residential units in a condo's, product on the project site access via a privated drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed multi-family project (single family detached condo's) differently than we do single family residential dwelling units located on the individual lots and located on a public street, and has to go through the sketch plat process.

#### LAND USE PLAN CONSISTENCY

ACCESS AND CIRCULATION

Access to the South Stone Mountain Lithonia Road from the project site is proposed to be via private drives. It should be noted that the DeKalb County Zoning Ordinance only allows single family detached residential dwellings to be located on a public street. Therefore, access and circulation impacts relating to the proposed project would be significant.

DEVELOPMENT ANALYSIS

Zoning Case CZ-04056 was approved on November 22, 2004. The applicant must adhere to the conditions of zoning that apply to the access, circulation and infrastructure improvements for the proposed development. The applicant must install such traffic improvements as are recommended by the traffic study entitled "Traffic Impact Study, Stone Mountain-Lithonia, Mixed Use development" prepared by URS and dated July 23, 2004 subject to the approval and modification of the DeKalb County Department of Planning and Development and the Department of Public Works.

DEKALB COUNTY PUBLIC WORKS DEPARTMENTTRAFFIC:

Category:

Street Name:

Trips Generated: Existing Zoning:

TPD

Proposed Zoning:

TPD

WATER:

Size of main serving property:

SEWER:

Outfall Serving Project:

Is Sewer adjacent to this property

Treatment Plant:

WASTE GENERATION IF RESIDENTIAL:

Capacity:

MGPD

Current Flow:

MGPD

DRAINAGE:COUNTY DEPARTMENT DIVISION COMMENTS OR RECOMMENDATIONSDIVISION OF ENVIRONMENTAL HEALTH:

No information was submitted at the writing of the staff analysis.

DEKALB COUNTY BOARD OF EDUCATIONSCHOOL:

High School

Middle School

Elementary School

Name of School:

Section 27-832 of the Zoning Ordinance, "Standards and factors governing review of proposed amendments to official zoning map" states that the following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the zoning maps:

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

Based on the submitted information, it appears that the zoning proposal would be in conformity with the policy and intent of the comprehensive plan.

B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties:

Based on the submitted information, it appears that the zoning proposal would permit a use that is suitable in view of the uses and development of adjacent and nearby properties.

C. Whether the property to be affected by zoning proposal has a reasonable economics use as currently zoned:

Based on the submitted information, it does not appear possible for the zoning analysis staff to determine whether the property has a reasonable economics use as currently zoned.

D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property:

Based on the submitted information it does not appear that the zoning proposal would adversely affect the existing use or usability of adjacent or nearby property. The proposed change in the conditions of case CZ-04056 would reduce the number of units and the proposed density than the site plan that was approved in 2004.

E. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

See "C" above.

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 zoning proposal

There does not appear to be other existing or changing conditions affecting the use and development of the property, which give supporting grounds for approval of the zoning proposal.

G. Whether the zoning proposal will adversely affect historic building, sites, districts, or archaeological resources

Based on the submitted information it does not appear that the project proposal would adversely affect historic buildings, sites, or archaeological resources.

H. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

Based on the submitted information, it does not appear that the zoning proposal could result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

**PLANNING AND DEVELOPMENT DEPARTMENT RECOMMENDATION:**

**DENIAL:** Based on the submitted plan and information, the proposed modification does not meet the requirements of the DeKalb County Zoning. Zoning case #CZ-04056 was presented to the Planning Department, Community Council, Planning Commission and the Board of Commissioners during 2004. After the required public review and input process, the Board of

Commissioners, on November 22, 2004, approved the zoning petition with four conditions. The decision to approve the zoning petition was based on the site plan that was presented to during the zoning review cycle. The applicant now seeks to make major revisions to the approved site plan. Additionally, the applicant is introducing a residential building type that is not currently addressed in our Code of Ordinance. The applicant proposes to develop single family detached condominium units. The Zoning Ordinance does not allow for such a residential product type. The Condominium Act states that local government cannot treat condo's any different than fee simple products. It should be noted that in DeKalk County, single family detached dwelling units are located on an individual lot that meets the minimum lot area and width, with an individual driveways, accessed from a public street.

To allow for single family detached residential units in a condo's, product on the project site access via a privated drive, would contrary to the Condominium Act, the Zoning Ordinance, and would be treating the proposed project (multi-family project containing single family detached condo's) differently than we do single family residential dwelling units located on individual lots accessed via public street, and has to go through the sketch plat process. This type of development would be treated as a multi-family development project on a large tract of land, and would not have to go through the Sketch Plat process..

Therefore, it is the recommendation of the Planning and Development Department that the modification be Denied.

ATTACHMENTS:

Zoning Analysis

Letter of Intent

Site Plan

Zoning Map

Land Use Map

Pictometry



## DeKalb County Planning &amp; Development Department

Vernon Jones  
Chief Executive Officer

Patrick Ejike  
Director

Z-07-13333

APPLICATION TO AMEND OFFICIAL ZONING MAP  
OF DEKALB COUNTY, GEORGIA

Z/CZ No. \_\_\_\_\_  
Filing Fee: \_\_\_\_\_

Date Received: \_\_\_\_\_ Application No.: \_\_\_\_\_

Applicant: Benchmark Group E-Mail: \_\_\_\_\_  
c/o The Battle Law Group, PC  
Applicant Mailing Address:  
68 N. Avondale Road, Suite D, Avondale Estates, Ga 30002

Applicant Phone: 404.299.6960 Fax: 404.299.6114

Owner(s): See Exhibit A E-Mail: battlelaw@aol.com  
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address: \_\_\_\_\_

Owner(s) Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address/Location of Subject Property: 2261 Stone Mountain Lithonia Road  
0 Phillips Road

District(s): 16 Land Lot(s): 124, 101 Block: 02, 03 Parcel(s): 16 124 02 101  
16 101 03 011

Acreage: ~~6.07~~ 70.71 Commission District(s): 5, 7

Present Zoning Category: RM-100 (cond.) Proposed Zoning Category: RM-100 (cond.)

Present Land Use Category: MDR

**PLEASE READ THE FOLLOWING BEFORE SIGNING**

This form must be completed in its entirety before the Planning Department accepts it. It must include the attachments and filing fees identified on the attachments. An application, which lacks any of the required attachments, shall be determined as incomplete and shall not be accepted.

**Disclosure of Campaign Contributions**

In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:

Have you the applicant made \$250 or more in campaign contributions to a local government official within two years immediately preceding the filing of this application? \_\_\_\_\_ Yes ☒ No

If the answer is yes, you must file a disclosure report with the governing authority of DeKalb County showing:

1. The name and official position of the local government official to whom the campaign contribution was made.
2. The dollar amount and description of each campaign contribution made during the two years immediately preceding the filing of this application and the date of each such contribution.

The disclosure must be filed within 10 days after the application is first filed and must be submitted to the C.E.O. and the Board of Commissioners, DeKalb County, 1300 Commerce Drive, Decatur, Ga. 30030.

NOTARY

SIGNATURE OF APPLICANT / DATE

EXPIRATION DATE / SEAL

Check One: Owner \_\_\_\_\_ Agent \_\_\_\_\_

330 West Ponce de Leon Ave, Suite 500, Decatur, GA 30030-3221  
Voice (404) 371-2155 Fax (404) 371-2813  
[www.co.dekalb.ga.us/planning](http://www.co.dekalb.ga.us/planning)

**EXHIBIT A  
OWNER INFORMATION**

**Parcels/ Address:** 16 124 02 001  
2261 Stone Mountain Lithonia Road, Lithonia  
30058  
16 101 03 011  
0 Phillips Road, Lithonia 30058

**Owner:** Joshua Landing, LLC  
Patrick Frohling  
6165 Riverside Dr NW  
Atlanta, Georgia 30328-3621  
770.231.6141  
frohlin@bellsouth.net

**Applicant:** Benchmark Group  
Bucky Davis  
6111 Peachtree Dunwoody Road  
Building F, Suite 102  
Atlanta, Ga 30328

**Contact Information:** 770.393.3984  
Buckdavis1@comcast.net



# DeKalb County Planning & Development Department

Vernon Jones  
Chief Executive Officer

Patrick Ejike  
Director

## REZONE APPLICATION AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: 3/7/07

### CHECK TYPE OF APPLICATION:

- ( ) LAND USE PLAN  
( ) REZONE  
( ) MINOR MODIFICATION

### TO WHOM IT MAY CONCERN:

(1) / (WE) Joshua Landing, LLC: Patrick Frohling - Mgr  
[Name of owner(s)]

being (owner)/(owners) of the property described below or attached hereby delegate authority to

Benchmark  
[Name of Applicant or Representative]

to file an application on (my) / (our) behalf.

<u>Jonene M. Fine</u> Notary Public	<u>[Signature]</u> Owner
<u>[Signature]</u> Notary Public	<u>[Signature]</u> Owner
<u>[Signature]</u> Notary Public	<u>[Signature]</u> Owner



## ZONING AMENDMENT TO CHANGE CONDITIONS LETTER OF INTENT

### Project Description

The Applicant, Benchmark Group, is seeking to develop a 70.71 acre tract of land located on Stone-Mountain Lithonia which was zoned C-1 and RM-100 pursuant to zoning case CZ-04056. The project, known as Joshua's Landing, was rezoned in 2005 by Pat Frohling the current owner of the Project subject to, amongst other things, a conceptual site plan entitled "Joshua's Landing" prepared by Martin Riley Associates, Architects, PC dated August 27, 2004 and marked received October 5, 2004. The Conceptual Site Plan was not drawn to scale and showed a configuration of units for the townhome product which was unachievable based upon the number of units proposed and the amount of area designated. Additionally, due to site conditions necessitating the relocation of many of the proposed units, as well as a desire to group product types in a more marketable pattern, the Applicant was compelled to submit this Zoning Amendment for Change of Conditions Application seeking a modification of condition 1 of CZ-04056, by proposing to substitute the Revised Site Plan submitted with this Application for the Conceptual Site Plan approved in Condition 1 of CZ-04056.

The Applicant's desire is to create an integrated condominium community with a mixture of product types. The Revised Site Plan which the Applicant is seeking to substitute for the Conceptual Site Plan contains the following changes:

1. Because the Project will be a condominium community, all of the proposed public streets have been converted to private driveways.
2. The driveway layout has been modified to provide for better circulation for ingress and egress to and from the Project, with two points of access.
3. The townhomes scattered throughout the site have been grouped along the northern and western boundary lines of the project
4. The single-family detached product has been reconfigured to line the driveway into the project, and then grouped into one phase at the rear of the project.
5. Most importantly, the density of the project has been reduced from 489 units at 7.13 units per acre to 335 units at a density of 4.88 units per acre.

It is the Applicant's intent to develop the entire site as a condominium community, including the single-family detached product and the senior housing component of the project. The condominium association will maintain the common areas and will help to insure the overall maintenance and up keep of the Joshua's Landing community.

Based upon the foregoing, the Applicant is respectfully requesting the approval of this Application.

**JOSHUA'S LANDING****DENSITY CALCULATIONS**

## Approved Site Plan Information

**Total Acreage:** 68.52 (to be utilized solely for non-commercial usage)

<u>Unit Type</u>	<u>Maximum No. of Units</u>
------------------	-----------------------------

Single-Family Attached	169
------------------------	-----

Single-Family Detached	100
------------------------	-----

Multi-Family (Senior Living)	220
------------------------------	-----

<b>Total No. of Units</b>	489
---------------------------	-----

**Density** 7.130 units per acre

## Proposed Site Plan Information

**Total Acreage:** 68.52 (to be utilized solely for non-commercial usage)

<u>Unit Type</u>	<u>Maximum No. of Units</u>
------------------	-----------------------------

Single-Family Attached	153
------------------------	-----

Single-Family Detached	138
------------------------	-----

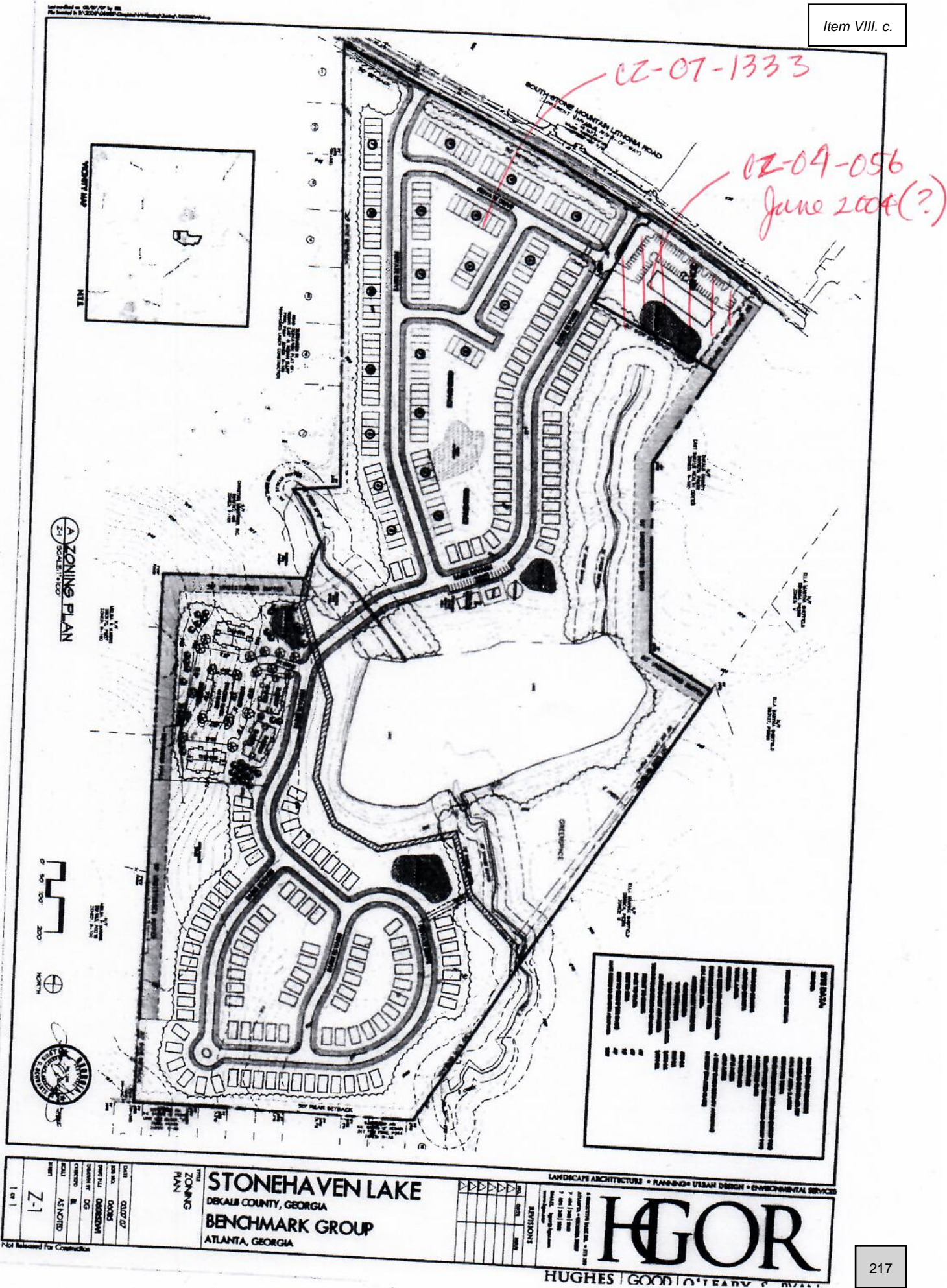
Multi-Family (Senior Living)	44
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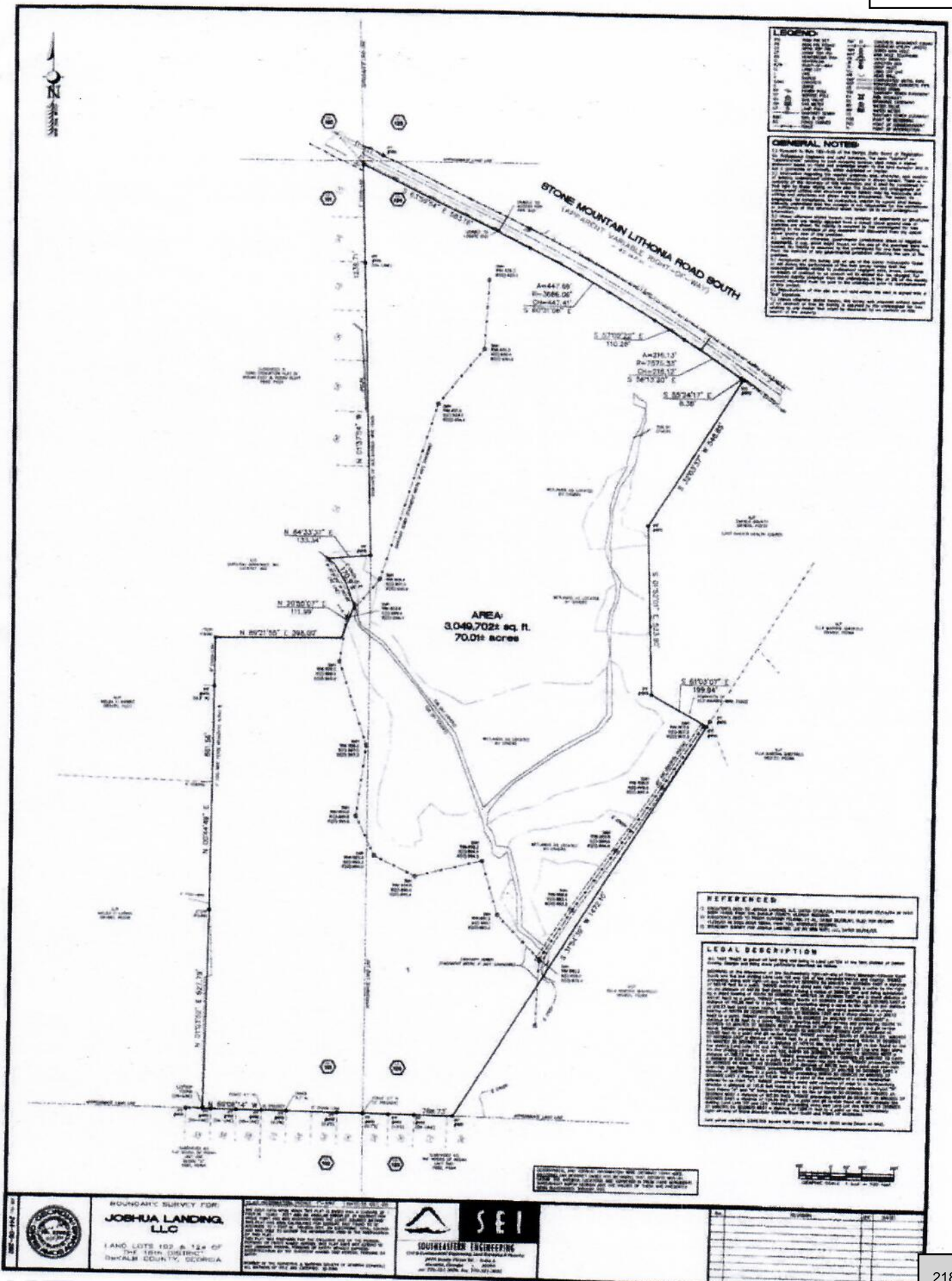
<b>Total No. of Units</b>	335
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**Density** 4.88 units per acre

# **BREAKDOWN PER PHASE FOR ENTIRE 70.71 ACRE SITE**

<u>PHASE</u>	<u>APPROVED SITE PLAN</u>	<u>PROPOSED SITE PLAN</u>
Phase I & II – Single Family Attached	126	153
Phase III – Single-Family Detached	37	47
Phase IV – Multi-Family Senior Living	220	44
Phase V – Single-Family Attached	43	Greenspace
Phase VI – Single-Family Detached	45	91
Phase VII – Single Family Detached	18	Greenspace
Phase VIII – Neighborhood Retail	18,000 sq. ft.	16,800 sq. ft.
Amenities	Clubhouse, Pool, Walking Trails, Picnic Pavilion	Clubhouse, Pool, Walking Trails, Picnic Pavilion





## LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in Land Lot 124 of the 16th District of DeKalb County, Georgia and being more particularly described as follows:

BEGINNING at the intersection of the Southwesterly right-of-way of Stone Mountain-Lithonia Road South and the line dividing Land Lots 101 and 124 of the aforesaid District and County; THENCE proceeding along said right-of-way SOUTH 63 DEGREES 59 MINUTES 54 SECONDS EAST a distance of 583.16 feet to a point; THENCE continuing along said right-of-way along a curve to the right an arc distance of 447.69 feet (said curve having a radius of 3686.06 feet and being subtended by a chord bearing of SOUTH 60 DEGREES 31 MINUTES 08 SECONDS EAST and a chord distance of 447.41 feet) to a point; THENCE proceeding SOUTH 57 DEGREES 02 MINUTES 22 SECONDS EAST a distance of 110.28 feet to a point; THENCE proceeding along a curve to the right an arc distance of 216.13 feet (said curve having a radius of 7575.33 feet and being subtended by a chord bearing of SOUTH 56 DEGREES 13 MINUTES 20 SECONDS EAST and a chord distance of 216.12 feet) to a point; THENCE proceeding SOUTH 55 DEGREES 24 MINUTES 17 SECONDS EAST a distance of 8.38 feet to a point; THENCE departing said right-of-way and proceeding SOUTH 32 DEGREES 03 MINUTES 37 SECONDS WEST a distance of 548.85 feet to a point and #4 re-bar found; THENCE proceeding SOUTH 01 DEGREES 52 MINUTES 01 SECONDS EAST a distance of 533.90 feet to a point and #4 re-bar found; THENCE proceeding SOUTH 61 DEGREES 03 MINUTES 07 SECONDS EAST a distance of 199.94 feet to a point; THENCE proceeding SOUTH 31 DEGREES 54 MINUTES 39 SECONDS WEST a distance of 1472.10 feet to a point and #4 re-bar found on the line dividing Land Lots 123 and 124; THENCE proceeding along said Land Lot Line and then along the line dividing Land Lots 101 and 102, NORTH 89 DEGREES 06 MINUTES 14 SECONDS WEST a distance of 788.73 feet to a point; THENCE proceeding NORTH 01 DEGREES 03 MINUTES 52 SECONDS EAST a distance of 627.79 feet to a point and 2-inch open-top pipe found; THENCE proceeding NORTH 00 DEGREES 44 MINUTES 49 SECONDS EAST a distance of 861.56 feet to a point and one-inch open-top pipe found; THENCE proceeding NORTH 89 DEGREES 21 MINUTES 55 SECONDS EAST a distance of 398.00 feet to a point; THENCE proceeding NORTH 20 DEGREES 55 MINUTES 07 SECONDS EAST a distance of 111.99 feet to a point in the centerline of a creek hereinafter referred to as Point "A"; THENCE proceeding along said centerline of creek in a Northwesterly direction a distance of 170.9 feet more or less to a point hereinafter referred to as Point "B" (Said Points "A" and "B" being subtended by a tie line of NORTH 30 DEGREES 31 MINUTES 25 SECONDS WEST a distance of 167.80 feet); THENCE proceeding NORTH 84 DEGREES 33 MINUTES 37 SECONDS EAST a distance of 133.34 feet to a point and #4 re-bar found on the aforesaid line dividing Land Lots 101 and 124; THENCE proceeding along said Land Lot Line NORTH 01 DEGREES 37 MINUTES 54 SECONDS WEST a distance of 1238.71 feet to a point on the Southwesterly right-of-way of Stone Mountain-Lithonia Road South and POINT OF BEGINNING.

Said parcel contains 3,049,702 square feet (more or less) or 70.01 acres (more or less).



# IMPACT ANALYSIS

LAND LOT: 124 and 101 DISTRICT: 16<sup>th</sup>

ADDRESS: 2261 Stone Mountain Lithonia Road  
0 Phillips Road  
Tax Parcel No.: 16 124 02 001  
16 101 03 011

CHANGE OF CONDITION: C-1 and RM-100 (cond.) to C-1 and RM-100 (cond.)

APPLICANT: Benchmark Group

CONTACT PERSON: Michèle L. Battle, Esq.  
The Battle Law Group, P.C.  
68 N. Avondale Road, Suite D  
Avondale Estates, Georgia 30002  
Phone: (404) 299-6960

- 
- (a) Suitability of use: The change of condition will permit a use that is suitable in view of the uses and developments adjacent and nearby the subject property.
  - (b) Effect on adjacent property: The uses of the subject property as contemplated in this Application will have no adverse impact on the adjacent property owners.
  - (c) Economic use of current zoning: The subject property can be utilized as currently zoned.
  - (d) Effect on public facilities: The approval of this change of conditions application will not have any adverse impact on the public facilities in the area.
  - (e) Effect on historic building, sites, etc. The approval of this change of conditions application will not have any adverse impact on any historic buildings, sites, districts or archaeological resources in the area.
  - (f) Environmental Impact. The approval of this change of conditions application will not result in any adverse environmental impact.
  - (e) Conformity with Comprehensive Plan or Land Use Plan: The Subject Property as currently zoned is in conformity with the comprehensive land use plan for the area.

- (f) Others: The following constitutional allegations are given in order to preserve the rights of the Applicant to appeal any adverse decisions that may be rendered by DeKalb County with respect to this Application:

## CONSTITUTIONAL ALLEGATIONS

The portions of the Zoning Resolution of DeKalb County as applied to the subject Property which classify or may classify the Property so as to prohibit its development as proposed 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 I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I 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 Zoning Resolution of DeKalb County to the Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses 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.

A denial of this Application would constitute an arbitrary and capricious act by the DeKalb County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I 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 DeKalb County Board of Commissioners to approve the proposed change of condition to the Zoning Ordinance as proposed by the Applicant 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 subject to conditions which are different from the conditions requested by the Applicant, to 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 State and Federal Constitutions set forth hereinabove.



# DEKALB COUNTY PLANNING DEPARTMENT

1300 Commerce Drive, Suite 400, Decatur, Georgia 30030-3221

Phone: (404)371-2155

Fax: (404)371-2813

DeKalb County

Board of Commissioners November 22, 2004

The Honorable Vernon Jones  
Chief Executive Officer

## REZONE ACTIONS

Shari R.C. Strickland  
Acting Planning Director

### Deferred

D-1 LP-04044

Commission Districts: 5 and 7

Parcel-ID: 16-101 16-124

Application of Infinity Development to amend the land use plan on property located on the southwest side of South Stone Mountain Lithonia Road, approximately 1,556 feet southeast of South Deshon Road, from LDR to MDR and LIC. The property has frontage of 1,347 feet and contains 70.6 acres.

Community Council Recommendation: Denial. (12-0-2): DENIAL DUE TO INFRASTRUCTURE AND TRAFFIC TROUBLES, AND THE ZONING NEEDS TO STAY AT R-100; Denial - too dense and too much of the same already there

### Planning Department Recommendation:

Approval of MDR and LIC. A proposed change in the land use would help to establish positive developmental trends in the community and in the nearby vicinity. The proposed plan for a mixed-use development of some limited commercial and residential usage with considerable open-space preservation is a positive approach to development for this region. As a result, staff issues a recommendation of approval.

### Planning Commission Decision:

Approval per staff.

Board of Commission Decision: Approved - November 22, 2004



## CITY COUNCIL AGENDA ITEM

**SUBJECT: TMOD-21-008, Administration**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☒ OLD BUSINESS  
☐ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** 10/25/21 - Click or tap to enter a date.

**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To conduct a public hearing and take action on TMOD-21-008, Administration

**FACTS:** See staff report.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approval

### ATTACHMENTS:

- (1) Attachment 1 - TMOD-21-008 Staff Report
- (2) Attachment 2 - Proposed changes to Article 7 - Administration
- (3) Attachment 3 - Click or tap here to enter text.
- (4) Attachment 4 - Click or tap here to enter text.
- (5) Attachment 5 - Click or tap here to enter text.



## PLANNING & ZONING STAFF REPORT

MEETING DATE: November 22, 2021

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### GENERAL INFORMATION

**Petition Number:** TMOD 21-008

**Applicant:** Stonecrest Planning and Zoning Department

**Project Location:** City-Wide

**Proposed amendment:** Amendments to Stonecrest Zoning Ordinance, Chapter 27 Article 7 – Administration regarding application procedures, training requirements for commission and board members, and public notification of the rezoning and building activity.

### FACTS AND ISSUES:

The draft Zoning Ordinance presented to the City Council in March 2020 and prepared by The Collaborative Firm, included amendments to application procedures and two new provisions related to public notification. These amendments were later presented to the City Council with some modifications on August 13, 2021 at their Special Called Work Session, and some minor modifications were made based on feedback.

**PLANNING COMMISSION RECOMMENDATION:** On September 7, 2021, the Planning Commission recommended deferral to the City Council, and to consider a provision of stipends for board and commission members.

**PREVIOUS ACTION:** These additional provisions for a stipend were presented to the City Council on October 25, 2021 at their regular meeting, and the case was deferred to their next meeting. On November 8, the case was presented again for discussion at a City Council Work Session, and the members of the City Council continued to express concerns over the addition of a stipend. The draft presented here for action does not include the stipend provisions.

**STAFF RECOMMENDATION:** Approval

## Attachment 1: Proposed Changes to Article 7 – Administration

### ARTICLE 7. - ADMINISTRATION

#### Sec. 7.1.2. – Governing Bodies

##### B. Training and Education of Boards and Commissions

1. Members of the Planning Commission and Zoning Board of Appeals shall attend by the 365th day of their term of appointment or re-appointment one (1) or more courses, seminars, or other opportunities of training and education on matters pertaining to the operations, activities, or duties of their respective board or commission (Sec 2.6.17.b).

2. Education and training opportunities include, but are not limited to, any organized training or educational activities that in the opinion of the Planning and Zoning Director are relevant to the activities, operations, and duties of said board or commission. (Sec. 2.6.17.e)

#### Sec. 7.2.2. - Applications.

B. *Processing of said applications.* The processing of said applications shall be based upon an annual calendar adopted by the city council. This calendar shall be made available to the public in the offices of the planning department.

1. The director of planning shall be authorized to establish application submittal requirements necessary to obtain sufficient information to allow for a compliance review of the application as well as forms and instructions for each application type or petition.

~~2. Any application that is found to be incomplete during the review for completeness shall be rejected from processing and returned to the applicant. Return of the rejected application shall constitute notice of the rejection to the applicant.~~

2. No application shall be processed by the planning and zoning director unless it complies with the procedural requirements of this division and is found to be a complete application.

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#### Sec. 7.2.4. - Public hearings.

C. *Zoning decisions, appeals to the zoning board of appeals, variances, extensions of special land use permits, and major modifications of conditions initiated by a party other than the city.* For any zoning decision, appeal to the zoning board of appeals, variance, extension of special land use permits, or major modification of conditions initiated by a party other than the city, notice of the public hearing shall be provided as follows:

1. Written notice of each public hearing shall state the nature of the proposed change, and the date, time, and place of the public hearing before either the planning commission, zoning board of appeals or the city council and shall be mailed by first class mail by the director of planning to all owners of property within ~~250 feet~~ one thousand (1000) of the boundaries adjoining the subject property, as such property owners are listed on the records of DeKalb tax commissioner, at least 15 days and not more than 45 days prior to said public hearing.

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Sec. 7.2.5 Community Impact NotificationA. Applicability

1. Any development or building project with an aggregate of 12,000 square feet or more of new buildings or a site consisting of two acres or more must meet the Community Impact Notification requirements.
2. This includes any development or building project with an aggregate of 12,000 square feet of construction, or other similar work requiring a building permit within the next 24 months.

B. Requirements

1. Council notification. The Chief Building Official shall provide notification to the pertinent district councilmember.
2. Posted notice. Applicant shall place one or more signs in a conspicuous location on the property. At least one sign shall be posted along each street on which the subject property has frontage. One additional sign shall be posted for each additional 500 feet of frontage. Each sign shall contain the location and nature of the proposed project and web address to access and view plans.
2. Written notice. Written notice shall be mailed by first class mail by the Applicant to all owners of property within 1,000 feet of the boundaries of the subject property. The notice shall state the location and nature of the proposed project.



## CITY COUNCIL AGENDA ITEM

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**SUBJECT: TMOD-21-009, Special Events, Late-night establishments, and similar uses**

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**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

---

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

---

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

---

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** Click or tap to enter a date. -

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**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To hold a public hearing and take action on TMOD-21-009, Special Events, Late-night establishments, and similar uses.

**FACTS:** See staff report.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer

**RECOMMENDED ACTION:** Approval

**ATTACHMENTS:**

- (1) Attachment 1 - TMOD-21-008 Staff Report
- (2) Attachment 2 - Proposed changes to Article 4 – Alcoholic Beverages and Chapter 27 – Zoning Ordinance
- (3) Attachment 3 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(4) Attachment 4 - Click or tap here to enter text.

(5) Attachment 5 - Click or tap here to enter text.

## TMOD-21-009 Attachment 1 - Staff Report



TMOD-21-009

## PLANNING & ZONING STAFF REPORT

MEETING DATE: November 22, 2021

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### GENERAL INFORMATION

**Petition Number:** TMOD 21-009

**Applicant:** Stonecrest Planning and Zoning Department

**Project Location:** City-Wide

**Proposed amendment:** Amendment to the Stonecrest Code of Ordinance, Chapter 4 – Alcoholic Beverages, and Chapter 27 – Zoning Ordinance to further define and regulate special events, temporary outdoor events, late-night establishments, and similar uses.

### FACTS AND ISSUES:

- Currently staff is spending an inordinate amount of time processing applications for temporary special outdoor events.
- In particular, certain locations are applying for special event permits, or what the Zoning Ordinance refers to as Special Administrative Permits, on a regular basis, with very little lead time for staff to review and coordinate with DeKalb County
- Proper coordination for Special Outdoor Events with the DeKalb Fire Marshall, Police, Sanitation, and Health Departments takes 30 to 45 days.
- Many establishments get a business license for a certain use, but really operate as another. Definitions of such uses needs to be improved, and closely coordinated with Finance Department who administers business licenses.
- Late night hours for alcohol sales are the latest in the county, 3:55 AM M-F, 2:55 AM Sat and Sun.



## PLANNING & ZONING STAFF REPORT

### GOAL OF THE PROPOSED CHANGES

To more clearly define the types of entertainment related businesses and the requirements governing their operation.

**RECOMMENDED ACTION:** In agreement with Staff recommendations the Planning Commission Recommend Approval to the City Council on October 5, 2021.

## TMOD-21-009 - Attachment 2 - Proposed Changes

# TMOD-21-009

## STONECREST ZONING CODE UPDATE

### REVISIONS and NEW ORDINANCES

#### Removal of Sec. 4.2.5. – Temporary Permits

Proposal: Delete the provisions for Temporary Alcohol licenses in Chapter 4 -Alcoholic Beverages. This would require a location to already have a license or to hire a caterer, which is allowed in Sec. 4.2.6.

#### Track changes version of proposed changes.

#### ~~Sec. 4.2.5. Temporary permits.~~

~~Any nonprofit civic organization may be issued temporary alcoholic beverage permits for events. Such permits shall have the effect of a license issued pursuant to the provisions of this article and shall authorize sale by the drink of such alcoholic beverages as are specified in the permit. The nonprofit civic organization must make application and pay a fee in the amount established by action of the city council, a copy of which is on file with the clerk of the city. Such civic organizations shall comply with all the general ordinances and the licensing and regulations for a consumption on the premises establishment, apart from having a full service kitchen.~~

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#### Revise the definitions of entertainment related uses

Proposal: To clarify the terms and definitions used to describe entertainment related uses found in Article 9, Definitions, Sec 9.1.3 Defined terms.

#### A. Revise the term “restaurant” and add term for eating and drinking establishments

*Restaurant* means an eating and drinking establishment where food and drink are prepared, served, and consumed primarily within the principal building.

Eating and drinking establishments mean those establishments whose primary purpose is to derive income from the sale of food and drink, including malt beverages, wine and/or distilled spirits consumed primarily within the principal building, and without a drive-in or drive-thru component where such establishment is open for use by patrons beyond 12:30 a.m. Entertainment shall be incidental thereto.

#### B. Revise definition of Nightclub

*Nightclub* means ~~a commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing and musical entertainment is allowed, where music~~

may be live, disc-jockey, karaoke, and/or non-acoustic. a place of entertainment open at night serving food and/or liquor with all booths and tables unobstructed and open to view, dispensing alcoholic beverages and in which music, dancing or entertainment is conducted with or without a floor show. The principal business of a nightclub shall be entertaining, and the serving of alcoholic beverages shall be incidental thereto.

**C. Revise definition of special events facility by adding the terms small and large**

*Special events facility* means a building and/or premises used as a customary meeting or gathering place for personal social engagements or activities, where people assemble for parties, weddings, wedding receptions, reunions, birthday celebrations, other business purposes, or similar such uses for profit, in which food and beverages may be served to guests.

1. The term "special events facility" shall not include places of worship.
2. Small Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity of no more than 100 persons.
3. Large Special Event Facility shall mean assembly and entertainment uses with a seating or occupant capacity of more than 100 persons

**D. Add definition of Smoking Lounge**

Smoking Lounge means an establishment which sells tobacco and/or promotes the smoking of tobacco products or other any other substance on its premises. The term "smoking lounge" includes but, is not limited to cigar lounges, hookah cafes, tobacco lounges, tobacco clubs, or tobacco bars.

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**Revise Supplemental use criteria regarding entertainment related uses.**

**A. Revise regulations regarding Temporary Outdoor Events.**

**Sec. 4.3.5. - Temporary outdoor events.**

Temporary outdoor events may include temporary art shows, carnival rides, special outdoor social or religious event, entertainment, athletic events, rodeos, horseshows, and other events of community interest.

A. Use regulations. Temporary outdoor events shall be governed by the following regulations:

1. Site conditions.
  - a. Employees shall be uniformed and identified.
  - b. Security or off-duty police officers shall be on-site during operating hours.
  - c. Portable toilets or access to bathrooms shall be provided.
  - d. Approval from the property owner
  - e. Traffic Control Plan must be approved by the fire marshal's office

2. If the temporary outdoor event involves structures that require issuance of a building permit, a site plan of the event shall be included with the building permit application. The site plan submittal required by article 7 of this chapter shall indicate compliance with all zoning ordinance requirements.

B. Lot and parcel restrictions. Temporary outdoor event activities shall be set back at least 100 feet from any residential district or use.

C. Temporary sites for worship. The establishment of sites and tents for temporary worship conducted on a site not designated as a place of worship requires the grant of a special administrative permit by the director of planning.

## **B. Edit Table 4.3 (Sec. 4.3.2) to eliminate 2/year regulation for temporary outdoor events**

### **Sec. 4.3.2. Duration, frequency and hours of operation of temporary outdoor uses.**

The maximum duration, frequency and hours of operation for temporary outdoor uses shall be limited as shown in Table 4.3, below:

Table 4.3. Temporary Outdoor Uses Operational Requirements

Operational requirement maximums for temporary outdoor uses				
Temporary Use	Duration	Frequency	Hours of Operation	Special Administrative Permit Required?
Christmas tree sales	Nov. 15 through Jan. 1		Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Pumpkin and Halloween sales	Sept. 15 through Oct. 31		Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Charitable/non-profit event	7 consecutive days	4 times/calendar year	Daylight hours only	Yes
Temporary Produce stand	One full year	Year round	Daylight hours only	Yes
All other seasonal sales	3 consecutive days	4 times/calendar year	Daylight hours only	Yes
Temporary outdoor retail sales display	30 consecutive days	4 times/calendar year	Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Temporary outdoor event	14 consecutive days	<del>2 times/calendar year</del>	Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes
Yard sales	3 consecutive days	Once/6 months	Daylight hours only	No
Farmer's Markets	Year Round	3 consecutive days per month or one day per week	Cease at 9:00 p.m. Mon.—Thurs. and Sun; 10:00 p.m. Fri. and Sat.	Yes

**C. Add New Section 4.2.59 - Eating and Drinking Establishments – supplemental use provision**

Sec. 4.2.59 – Eating and Drinking Establishment that also operate another use

Any establishment that serves food and drink, but which also operates as another use under Chapter 4 (the Alcohol Code) with separate parking regulations shall follow the parking regulations in Chapter 27 applicable to that use.

**D. Add New Section 4.2.60- Smoking Lounges – supplemental use provision**

Sec. 4.2.60 – Smoking Lounges

Smoking Lounges shall be subject to the following restrictions:

- A. Smoking of hookah in any establishment that serves alcohol or food shall be prohibited.
- B. Hours of operation shall not extend past 11:00 p.m.
- C. Shall not serve patrons under the age of 19 or as restricted by Georgia statute.



## CITY COUNCIL AGENDA ITEM

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**SUBJECT: TMOD-21-010, Prohibited Uses Citywide and uses allowed in the Industrial Zoning Districts**

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**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

---

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

---

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

---

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** Click or tap to enter a date. -

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**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To conduct a public hearing and take action on TMOD-21-010, Prohibited uses citywide and uses allowed in the industrial zoning districts.

**FACTS:** See staff report.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer

**RECOMMENDED ACTION:** Approval

**ATTACHMENTS:**

- (1) Attachment 1 - TMOD-21-010 Staff Report
- (2) Attachment 2 - Proposed changes to Chapter 27 – Zoning Ordinance, Sec 4.1.3 Use Table
- (3) Attachment 3 - Click or tap here to enter text.
- (4) Attachment 4 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(5) Attachment 5 - Click or tap here to enter text.



TMOD-21-010

## PLANNING & ZONING STAFF REPORT

MEETING DATE: November 22, 2021

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### GENERAL INFORMATION

**Petition Number:** TMOD 21-010

**Applicant:** Stonecrest Planning and Zoning Department

**Project Location:** City-Wide

**Proposed amendment:** Amendment to Stonecrest Zoning Ordinance, Chapter 27 to clarify and update the land uses allowed in the industrial zoning districts and those prohibited citywide.

### FACTS AND ISSUES:

- There are many uses included in the permitted table that should be universally prohibited and that do not fit the vision for city as outlined the comprehensive plan, such as glue manufacture, paper mills, fat rendering, and explosive manufacturing. This text amendment lists those prohibited uses.
- In addition, there are a number of uses currently allowed in the industrial zoning districts that increase the potential of conflict between industrial and residential uses. This text amendment revises the permitted use table help mitigate those future impacts.

**RECOMMENDED ACTION:** Based on staff recommendation, the Planning Commission **Recommend Approval** to the City Council of prohibited use list and restrictions on residential uses in industrial areas at their October 5, 2021 meeting.

TMOD-21-010 Use Table Revisions

Sec. 4.1.3. Use table.

Table 4.1 indicates the permitted uses within the base zoning districts. Even though a use is listed as an allowable use within a particular base zoning district, additional use restrictions may apply based on the applicable overlay zoning district requirements specified in article 3 of this chapter, overlay districts.

- A. The uses listed in Table 4.1 shall be permitted only within the zoning districts identified, and no use shall be established and no structure associated with such use shall be erected, structurally altered or enlarged unless the use is permitted as:

1. A permitted use (P);

2. A special use (SP) subject to the special land use permit application procedures specified in article 7 of this chapter;

3. An administratively approved use (SA) subject to the special administrative permit procedures specified in article 7 of this chapter;

4. An accessory use (PA) as regulated by this article 4 of this chapter. Table 4.1 does not list all accessory uses but clarifies uses acceptable as accessory, though not typically considered principal uses for the zoning classification.

5. Uses lawfully established prior to the effective date of this zoning ordinance.
- B. Any use not listed in Table 4.1, below, or interpreted to be allowed by the director of planning pursuant to section 4.1.2 is prohibited. Any applicant denied a permit to allow a use of property in a zoning district other than as provided in this section may file an appeal before the zoning board of appeals as provided in article 7 of this chapter.
- C. If there is a conflict between Table 4.1 and the text of this chapter, the text shall prevail.
- D. Prohibited Uses. The following uses are considered contrary to the vision and intent of the City’s Comprehensive Plan, and would be detrimental to the city’s continuing effort to adhere to that vision, and are prohibited city wide.

1. Distillation of bones or glue manufacture

2. Dry Cleaning Plant

3. Dye Works

4. Explosive Manufacture or storage

5. Fat rendering or fertilizer manufacture

6. Fuel Manufacture

7. Incineration of garbage or refuse

8. Landfills

9. Paper or Pulp Manufacture

10. Petroleum or inflammable liquids production/refining

11. Radioactive materials storage and processing

12. Rubber or plastics manufacture

13. Solid waste disposal of hazardous/toxic materials, including the application of thermal treatment technology

14. Smelting copper, iron, zinc or ore

15. Sugar refineries

16. Tire retreading or recapping
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Table 4.1. Use Table

	KEY: P - Permitted use Pa - Permitted as an accessory use										SA - Special administrative permit from Community Development Director SP - Special land use permit (SLUP)														
Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
AGRICULTURAL																									
Agriculture and Forestry																									
Commercial greenhouse or plant nursery	P														P	P	P		P	P	P				✓
Temporary or portable sawmill	P																		P	P					✓
Urban, community garden, up to 5 ac.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓
Urban, community garden, over 5 ac.	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	
Animal Oriented Agriculture																									
Dairy	P																		P	P					✓
Keeping of livestock	P	P	P	P	P							P							P						✓
Keeping of poultry/pigeons	P	P	P	P	P							P							P						✓
Livestock sales pavilion	P																			P					✓
Riding academies or stables	P	P	P	P	P																				✓
RESIDENTIAL																									
Dwellings																									
Dwelling, cottage home						P	P	P	P	P		P													✓
Dwelling, mobile home											P								Pa	Pa					✓
Dwelling, multi-family								P	P	P			P						SP	SP	P	P	P	P	
Dwelling, townhouse							P	P	P	P		P		P							P	P	P	P	✓
Dwelling, urban single-family							P	P	P	P		P		P							P	P	P	P	✓
High-rise apartment										P			SP										P	P	
Dwelling, single-family (attached)							P	P	P	P				P							P	P	P	P	
Dwelling, single-family (detached)	P	P	P	P	P	P	P	P	P	P	P	P									P	P	P		
Dwelling, three-family							P	P	P	P		P									P	P	P	P	
Dwelling, two-family							P	P	P	P		P									P	P	P	P	
Dwelling, single-family, accessory (guesthouse, in-law suite)	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa												Pa	Pa	Pa	Pa	✓
Home occupation, no customer contact	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA									SA	SA	SA	SA	✓
Home occupation, with customer contact	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP									SP	SP	SP	SP	✓
Live/work unit								P	P	P			P	P		P	P		Pa	Pa	P	P	P	P	✓
Mobile home park											P														
Accessory uses or structures	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	✓
Housing and Lodging																									
Bed and breakfast	SP	SP	SP				SP	SP	SP	SP			P	P		P	P					P	P	P	✓
Bed and breakfast, home stay	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP													✓
Boarding/Rooming house								SP	P	P															

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Child caring home,-5 or less	SP	SP	SP	SP	SP	SP	SP					SP	P	P	P	P	P				SP	SP	SP	SP	✓
Child caring facility, 6 or more													P	P	SP	P	P				SP	SP	SP	SP	✓
Child day care center													P	P	P	P	P				P	P	P	P	
Convents or monasteries	SP	SP	SP	SP	SP	SP	SP	SP	SP				P	P								P	P	P	✓
Dormitory													Pa	Pa		Pa	Pa	Pa	Pa		Pa	Pa	Pa	Pa	
Extended stay hotel/motel													SP			SP	SP					SP	SP	SP	✓
Fraternity house or sorority house								SP	P	P			SP									P	P		
Hotel/Motel													P			P	P	P				P	P	P	
Nursing care facility or hospice								P	P				P	P		P	P				P	P	P	P	
Senior housing	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP							SP	SP	SP	SP	✓
Personal care home,-7 or more							SP	SP	SP	SP			P	SP	SP	P	P	P			SP	SP	SP	SP	✓
Personal care home, 6 or less	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	SP	P	SP	SP	P	P				P	P	P	P	✓
Shelter for homeless persons, 7—20									SP	SP			SP	SP		P	P								✓
Shelter for homeless persons for no more than six (6) persons								SP	SP	SP			SP	SP		SP									✓
Short Term Vacation Rental	SP	SP	SP					SP													SP	SP			
Transitional housing facilities, 7—20								SP	SP	SP			SP	SP		P	P								✓
INSTITUTIONAL/PUBLIC																									
Community Facilities																									
Cemetery, columbarium, mausoleum	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP			P	P				P							✓
Club, order or lodge, fraternal, non-commercial													P	P		P	P	P	P		P	P	P	P	
Coliseum or stadium/not associated with church or school																P	P	P					SP	P	✓
Cultural facilities								SP	SP	SP			SP	SP		SP	SP	SP	SP		SP	SP	SP	SP	
Funeral home, mortuary													P	P		P	P				P	P	P	P	
Golf course or clubhouse, public or private	P	P	P	P	P	P	P				P		P	P			P	P	P						✓
Government facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Hospital or accessory ambulance service													P	P					P				P	P	
Library or museum								P	P	P			P	P	P	P	P	P			P	P	P	P	
Neighborhood or subdivision clubhouse or amenities	P	P	P	P	P	P	P	P	P	P	P	P	P	P							P	P	P	P	✓
Recreation club	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP						P						SP	✓
Places of worship	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP	P	P	P	P	P	P	P	P	P	P	P	P	✓
Recreation, outdoor																	P	P	P	P					✓
Swimming pools, commercial	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P		P	P	P	P			Pa	Pa	Pa	✓
Tennis courts, swimming pools, play or recreation areas, community,	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	P	P		P	P	P	P			Pa	Pa	Pa	✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Education																									
Colleges, universities, research and training facilities													P	P		P	P	P	P		P	P	P	P	
Private educational services, home occupation	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa		Pa						P			Pa	Pa			✓
Private kindergarten, elementary, middle or high schools	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	P	P		P	P	P				SP	SP	SP	✓
Specialized schools													P	P		P	P	P	SP	SP	P	P	P	P	✓
Vocational schools								SP	SP	SP			P	P	P	P	P	P	SP	SP	P	P	P	P	✓
COMMERCIAL																									
Automobile, boat and trailer sales and service																									
Automobile brokerage																P	P		P	P					✓
Automobile or truck rental or leasing facilities													P	P		P	P		P			P	P	P	✓
Auto recovery, storage																			P	P					✓
Automobile sales or truck sales																P	P		P	P					✓
Automobile service stations															SP	SP	SP		P	P					✓
Automobile upholstery shop																	P		P	P					
Automobile wash/wax service																P	P		P						✓
Boat sale																P	P		P						✓
Automobile repair, major																	P		P	P					✓
Automobile repair or maintenance, minor																P	P		P	P					✓
Retail automobile parts or tire store																P	P		P						✓
Service area, outdoor																	Pa		Pa	Pa					✓
Trailer or RV salesroom and lots																P	P		P						✓
Office																									
Accounting office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Building or construction office,								Pa	Pa	Pa			P	P		P	P	P	P	P					✓
Building, landscape, heavy construction contractor office (material, equipment, storage)																	P	P	P	P					✓
Engineering or architecture office								Pa	Pa	Pa			P	P	P	P	P	P	P	P	P	P	P	P	
Finance office or banking								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
General business office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Insurance office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Legal office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Medical office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Real estate office								Pa	Pa	Pa			P	P	P	P	P	P			P	P	P	P	
Recreation and Entertainment																									
Sexually Oriented Business																				P					✓
Drive-in theater																	P		P	P					✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Fairground or amusement park																	P		P	P					✓
Indoor recreation (bowling alleys, movie theatres and other activities conducted wholly indoors)															P	P	P	P	P	P	P	P	P	P	
Nightclub or Late night establishments													Pa		SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	✓
Outdoor recreation (miniature golf, batting cages, tennis, Go-cart and other outdoor activities)	SP																P	P	SP						✓
Special events facility	SP												P	P		P	P	P	P		P	P	P	P	
Theaters with live performance, assembly or concert halls, or similar entertainment within enclosed building													P	P		P	P						P	P	
Retail																									
Alcohol outlet-package store, primary																SP	SP	P	P		SP	SP	SP	SP	✓
Alcohol outlet- beer and/or wine store, beer growler, primary															SP	SP	SP	P	P		SP	SP	SP	SP	✓
Alcohol outlet-beer and wine, accessory to retail less than 12,000 sf (see also 4.1.3 (F))															SP	SP	SP	P	P		SP	SP	SP	SP	✓
Apparel or accessories store															P	P	P				P	P	P	P	
Art gallery								Pa	Pa	Pa					P	P	P	P			P	P	P	P	
Book, greeting card, or stationery store															P	P	P	P			P	P	P	P	
Camera or photography															P	P	P	P			P	P	P	P	
Commercial greenhouse or plant nursery															P	P	P		P		P				✓
Computer or computer software store															P	P	P	P			P	P	P	P	
Convenience store (see alcohol outlet or fuel pumps accessory)															P	P	P	P	P	P	P	P	P	P	✓
Drive-through facilities													P		P	P	P	P	P		SP	SP	SP	SP	✓
Farm or garden supply store	P														P	P	P	P	P		P	P			
Farmer's market, permanent													P	P	P	P	P	P	P	P	P	P	P	P	✓
Farmer's market, temporary/seasonal	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Florist													Pa		P	P	P	P			P	P	P	P	
Specialty food stores (e.g., coffee, ice cream) (see alcohol outlet)													Pa		P	P	P	P			P	P	P	P	

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Fuel dealers, manufacturers or wholesalers																	P		P	P					
Fuel pumps													SP	SP	SP	SP	SP	SP	SP	SP					✓
Fuel pumps, accessory to large scale retail w/in 1000 feet of interstate highway interchange measured from RW to property line																Pa	Pa	Pa	Pa						✓
Gift, novelty, or souvenir store													Pa		P	P	P	P			P	P	P	P	
Gold buying, precious metals																Pa	P	P							
Grocery stores (see alcohol outlet)								Pa	Pa	Pa					P	P	P	P			P	P	P	P	
Hardware store or other building materials store															P	P	P	P	P	P	P	P	P	P	
Hobby, toy or game store															P	P	P	P			P	P	P	P	
Jewelry store															P	P	P	P			P	P	P	P	
Music or music equipment store (retail)															P	P	P	P			P	P	P	P	
Liquor store (see alcohol outlet)													Pa		SP	SP	SP	P	P						✓
News dealer or news store													P	P	P	P	P	P	P	P	P	P	P	P	
Office supplies and equipment store															P	P	P	P	P		P	P	P	P	
Pawn shop, title loan																	P	P	P						✓
Pet supply store															P	P	P	P	P		P	P			
Pharmacy or drug store (see alcohol outlet)								Pa	Pa	Pa		Pa	Pa	Pa	P	P	P	P			P	P	P	P	
Radio, television or consumer electronics store																P	P	P			P	P	P	P	
Retail, 5,000 sf or less								Pa	Pa	Pa			Pa	Pa	P	P	P	P	P	P	P	P	P	P	
Retail, over 5,000 sf (see also shopping center)															P	P	P	P			P	P	P	P	
Retail warehouses/wholesales providing sales of merchandise with no outdoor storage																P	P	P	P		P	P	P	P	
Shopping center															P	P	P	P			P	P	P	P	
Specialty store															P	P	P	P			P	P	P	P	
Sporting goods or bicycle sale															P	P	P	P			P	P	P	P	
Thrift, secondhand, antique store																P	P		P						
Trade shops: electrical, plumbing, heating/cooling, roofing/siding, with no outside storage													P	P		P	P	P	P	P					
Variety store													Pa		P	P	P	P			P	P	P	P	

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Temporary Commercial Uses																									
Temporary outdoor sales, seasonal	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary produce stand	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary outdoor retail sales	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary outdoor events	SA	SA	SA	SA	SA	SA	SA						SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Temporary trailer, as home sales office or construction trailer	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓
Restaurant/Food Eating and Drinking establishments																									
Brewpub/Beer Growler															P	P	P		P		P	P	P	P	
Catering establishments													P	P		P	P		P		P	P	P	P	
Restaurants (acc. to hotel/motel)													P			P	P	P				P	P	P	
Restaurants (non-drive-thru)								Pa	Pa	Pa		Pa	Pa	Pa	P	P	P		P		P	P	P	P	
Restaurants with a drive-thru configuration													P	P		SP	SP		SP						✓
Transportation and Storage																									
Bus or rail stations or terminals for passengers																SP	SP		SP	SP	SP	SP	SP	SP	
Heliport													SP			SP	SP	SP	P	P			SP	SP	✓
Parking, commercial lot													Pa			P	P	P	P	P	P	P	P	P	✓
Parking, commercial garage													Pa			P	P	P	P		P	P	P	P	
Taxi, ambulance or limousine service, dispatching or storage.																	P	P	P	P					✓
Taxi stand													P	P	P	P	P	P	P	P	P	P	P	P	
Services																									
Adult day care center—7 or more								P	P	P	P		P	P	P	P	P	P	P			P	P	P	✓
Adult day care facility—Up to 6	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP			P	P	P	P			P	P	P	P	✓
Animal hospitals, veterinary clinic															P	P	P	P	P	P	P	P			✓
Animal shelter/rescue center	SP																P	P	P	P					✓
Banks, credit unions or other similar financial institutions								Pa	Pa	Pa			P	P	P	P	P		P		P	P	P	P	
Barber shop/beauty salon or similar establishments								Pa	Pa	Pa			Pa	P	P	P	P	P	P		P	P	P	P	
Check cashing establishment, primary																	P		P						✓
Check cashing establishment, accessory																P	P		P	P	P	P	P	P	✓
Child day care center (Kindergarten)—7 or more								P	P	P	P		P	P	P	P	P	P	P		P	P	P	P	✓

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2	
Child day care facility—Up to 6	SP	SP	SP	SP	SP	SP	SP	P	P	P		SP	P	P	P	P	P	P				P	P	P	✓	
Coin laundry								Pa	Pa	Pa		Pa			P	P	P					P	P	P		
Dog day care								SP	SP	SP						P	P		P	P	P	SP	SP	SP	✓	
Dog grooming								Pa	Pa	Pa						P	P		P	P	P	P	P	P	✓	
Dry cleaning agencies, pressing establishments, or laundry pick-up stations								Pa	Pa	Pa			P	P	P	P	P		P	P	P	P	P	P		
Fitness center	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa		P	P	P	P	P		P	P	P	P	P	P		
Kennel, breeding or boarding	SP														Pa	Pa	P		P	P					✓	
Kennel, commercial	SP															P	P		P	P						
Kennel, noncommercial	P	SP	SP	SP	SP																					
Landscape business																P	P		P	P						
Mini-warehouse														SP		P	P	P	P	P					✓	
Outdoor storage, commercial																	P		P	P					✓	
Personal services establishment								Pa	Pa	P		Pa	Pa	Pa	P	P	P		P		P	P	P	P		
Photoengraving, typesetting, electrotyping																	P		P	P	P	P				
Photographic studios													P	P	P	P	P		P		P	P	P	P		
Plumbing, HV/AC equipment establishments with no outdoor storage																P	P		P	P						
Publishing or printing establishments													P	P			P		P	P						
Quick copy printing store													P	P	P	P	P		P	P	P	P	P	P		
Services, Medical and Health																										
Ambulance service or emergency medical services, private																P	P		P							
Health services clinic													P	P	P	P	P	P	P		P	P	P	P		
Home healthcare service													P	P		P	P		P		P	P	P	P		
Kidney dialysis center													P	P		P	P		P		P	P	P	P		
Medical or dental laboratories													P	P		P	P		P	P			SA	SA		
Services, Repair																										
Furniture upholstery or repair; home appliance repair or service																P	P		P	P						
Personal service, repair (watch, shoes, jewelry)								Pa	Pa	Pa			P	P	P	P	P		P SA		P	P	P	P		
Service area, outdoor																	Pa		Pa	P					✓	
INDUSTRIAL																										
Alcohol or alcoholic beverage manufacturing																			P	P						
Alternative energy production																		SP	P	P						
Automobile/truck manufacturing																				P						
Brick, clay, tile, or concrete products terra cotta manufacturing																				P						

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Building materials or lumber supply establishment																	P		P						
Cement, lime, gypsum, or plaster of Paris manufacturing																				P					
Compressed gas fuel station																	SP		P	P					
Chemical manufacture, organic or inorganic																				P					
Contractor, general (See also Building or Construction Office)																	P		P	P		P	P		✓
Contractor, heavy construction, outside storage																	P		P	P					✓
Contractor, special trade																	P		P	P					
Crematoriums													SP			SP	SP		P	P					✓
<del>Distillation of bones or glue manufacture</del>																				P					
<del>Dry cleaning plant</del>																			P	P					
<del>Dye works</del>																				P					
<del>Explosive manufacture or storage</del>																				P					
Fabricated metal manufacture, no EDP permit required																			P	P					
Fabricated metal manufacture, EPD permit required																			SP	SP					
<del>Fat rendering or fertilizer manufacture</del>																				P					
Fuel dealers, <del>manufactures</del> or wholesalers																			P	P					
General aviation airport																			SP	SP					✓
Heavy equipment repair service or trade																	P		P	P					
Ice manufacturing plant																			P	P					
Incidental retail sales of goods produced or processed on the premises																			Pa	Pa					
<del>Incineration of garbage or refuse when conducted within an enclosed plant</del>																				P					
Industrial, heavy																				P					
Industrial, light																			P	P					
Intermodal freight terminal, bus or rail freight or passenger terminal, or truck terminal																				P					
Leather manufacturing or processing																				P					
Light malt beverage manufacturer (See also Brewpub)															Pa	Pa	Pa		P	P	Pa	Pa	Pa	Pa	

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Light manufacturing																			P	P					
Manufacturing, heavy																				P					✓
Manufacturing operations not housed within a building																				P					✓
Mines or mining operations, quarries, asphalt plants, gravel pits or soil pits																				P					✓
Mines or mining operations, Asphalt Plant																			SP	SP					
Outdoor storage, industrial																			P	P					✓
–Paper or pulp manufacture																				P					✓
–Petroleum or inflammable liquids production, refining																				P					✓
–Radioactive materials: utilization, manufacture, processing or emission																				P					✓
Railroad car classification yards or team truck yards																			P	P					✓
Recovered materials facility wholly within a building																			P	P					✓
Recovered materials processing wholly within a building																			P	P					✓
Recycling collection													Pa		Pa	Pa	Pa		P	P					
Recycling plant																			P	P					
Repair/manufacture of clocks, watches, toys, electrical appliances, electronic																			P	P					
Research, experimental or testing laboratories																			P	P					
–Rubber or plastics manufacture																			P	P					
Salvage yard (Junkyard)																				P					✓
Solid waste: general disposal, landfill, private industry disposal, handling facility, thermal treatment technology or hazardous/toxic materials including radioactive materials																				P					✓
–Smelting: copper, iron, zinc, or ore																				P					
Storage yard, except vehicle																				P					✓
Storage yard for damaged or confiscated vehicles																				P					✓
–Sugar refineries																				P					
–Tire retreading or recapping																			P	P					
Towing or wreckage service																			P	P					
Transportation equipment manufacture																				P					

Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2	
Transportation equipment storage or maintenance (vehicle)																			P	P					✓	
Truck stop or terminal																			P	P						
Vehicle storage yard																			P	P						
Warehousing or Storage																		P	P	P						
COMMUNICATION—UTILITY																										
Amateur radio service or antenna	SP	SP	SP	SP	SP	SP	SP				SP														✓	
Electric transformer station, gas regulator station or telephone exchange																				P						
Radio or television broadcasting studio													P				P		P	P	P	P	P	P		
Radio or television broadcasting transmission facility													Pa				P		P	P						
Satellite television antennae	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	✓	
WIRELESS TELECOMMUNICATION (cell tower)																										
New support structure from 51 feet to 150 feet in or near residential uses	SP	SP	SP	SP	SP	SP	SP							SP	SP										✓	
New support structure from 50 feet up to 199 feet away from residential uses													SA			SA	SA	SA	SA	SA					✓	
Carrier on Wheels (non-emergency or event, no more than 120 days)	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓	
Carrier on Wheels (declared emergency)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓	
Attached wireless telecommunication facility, used for non-residential purposes (prohibited if used as residential)	SA	SA	SA	SA	SA	SA	SA																			
Attached wireless telecommunication facility								P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	✓	
Small cell installations (new support structures or collocation) on private property or ROW	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	SA	✓	



## CITY COUNCIL AGENDA ITEM

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**SUBJECT: TMOD-21-011, Restriction on Residential Conversion in the Industrial Zoning Districts**

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**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

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**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

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**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

---

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** Click or tap to enter a date. -

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**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To conduct a public hearing and take action on TMOD-21-011, Restrictions on Residential Conversion in the industrial zoning districts.

**FACTS:** See staff report.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:**

- (1) Attachment 1 - TMOD-21-011 Staff Report
- (2) Attachment 2 - Proposed changes to Chapter 27 – Zoning Ordinance
- (3) Attachment 3 - Click or tap here to enter text.
- (4) Attachment 4 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(5) Attachment 5 - Click or tap here to enter text.

## TMDO-21-011 Attachment 1 - Staff Report



TMOD-21-011

## PLANNING & ZONING STAFF REPORT

MEETING DATE: November 22, 2021

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### GENERAL INFORMATION

**Petition Number:** TMOD 21-011

**Applicant:** Stonecrest Planning and Zoning Department

**Project Location:** City-Wide

**Proposed amendment:** Amendment to Stonecrest Zoning Ordinance, Chapter 27 to remove language encouraging residential conversion of industrial buildings.

### FACTS AND ISSUES:

- Stonecrest has a long industrial history, the county had allowed residential encroachment through rezoning decisions over the years that has led to land use conflicts.
- Steps need to be taken to mitigate potential impacts between residential and industrial uses and discourage residential encroachment into industrial areas.
- An important step in this process is to remove language in the code that encourages conversion of industrial districts for residential uses.
- Additional text amendments will be addressing other aspects of how to mitigate potential conflicts will be presented but this text amendment plays an important role in supporting those other amendments and making them more legally defensible.

**RECOMMENDED ACTION:** The Planning Commission deferred recommendation on this text amendment to City Council at their October 5, 2021 meeting. Staff recommends Approval.

## TMOD-21-011 Attachment 2 - Proposed Changes

# TMOD-21-011

## STONECREST ZONING CODE UPDATE

### REVISIONS and NEW ORDINANCES

Reason for Proposed Changes: Allowing conversion of industrial buildings to residential uses is an unnecessary encroachment into industrial areas. It would create potential future land use conflicts. Moreover, it is doubtful that there are any older industrial buildings in the Stonecrest in the Industrial Districts that would be eligible for conversion.

#### **Revision to Sec. 2.31.1. – Statement of purpose and intent of the M (Light Industrial District.**

Proposal: Delete current Subsection G., which says a purpose and intent of the M (Light Industrial) District is to allow for converting certain industrial buildings in the M district to multifamily dwellings.

#### **Track changes version of proposed changes.**

#### **Sec. 2.31.1. - Statement of purpose and intent.**

The purpose and intent of the City Council in establishing the M (Light Industrial) District is as follows:

- A. To provide areas for the establishment of businesses engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment and the sale and distribution of such goods, merchandise or equipment in locations so designated in the comprehensive plan;
- B. To provide an environment for light industrial uses that produces no appreciable impact on adjacent properties and preserve the appeal and appearance of residential and commercial areas;
- C. To ensure that all establishments located within the M (Light Industrial) District operate in compliance with the noise standards contained in this chapter and that any negative noise impact resulting from the use of land within the M (Light Industrial) District is contained within the boundaries of said district and does not create noise problems for adjoining residential, office or commercial districts;
- D. To provide an area within City of Stonecrest for recycling and green businesses to locate;
- E. To generate employment opportunities and economic development;

F. To ensure that M (Light Industrial) Districts are so located that transportation access to thoroughfares and freeways is available;

~~G. To allow for the conversion of industrial buildings which are 50 years of age or older to multifamily dwellings so as to promote living and working space as well as historic preservation;~~

~~H.G.~~ To implement the future development map of the city's most current comprehensive plan.

### **Revision to Sec. 2.31.5. – Conversion of buildings to residential prohibited.**

**[Revision; formerly “Multifamily use provisions for industrial conversion”.]**

Proposal: The section currently specifies criteria for converting buildings in the M (Light Industrial) District to residential. The proposed revision prohibits such conversions.

### **Track changes version of proposed changes.**

Sec. 2.31.5. – Conversion of buildings to residential prohibited. ~~Multifamily use provisions for industrial conversion.~~

~~A.~~ The conversion of ~~industrial~~ buildings in the M (Light Industrial) District to residential use is prohibited. ~~shall be permitted by a special land use permit. The following shall be considered:~~

- ~~1. Whether the building is located on the interior or periphery of an established industrial park or area;~~
- ~~2. Whether the building or area should no longer be used for industrial uses;~~
- ~~3. Adequate parking is provided in accordance with article 6 of this chapter, for multifamily or live-work.~~

### **Revision to Sec. 2.32.1. – Statement of purpose and intent of the M-2 Heavy Industrial District.**

Proposal: Revise the section by limiting the statement of purpose and intent in Subsection D. The subsection currently says that “any” negative noise impact from using land in the M-2 Heavy Industrial District should be contained in that District and not “create noise

problems” for adjoining districts. The revision would simplify the statement and refer to the adopted noise standards in the ordinance.

Reason for proposal: The current statement is too broad and too strict. The revision would substitute a more reasonable standard.

### **Track changes version of proposed changes.**

#### **Sec. 2.32.1. - Statement of purpose and intent.**

The purpose and intent of the City Council in establishing the M-2 (Heavy Industrial) District is as follows:

- A. To provide areas for manufacturing, warehousing and distribution facilities at locations so designated in the comprehensive plan;
- B. To provide for a location for intense industrial uses that do not require and may not be appropriate for a nuisance free environment;
- C. To provide for a location that allows nuisances such as noise, vibration and other impacts which cannot be contained on-site;
- D. To ensure that all businesses located within the M-2 (Heavy Industrial) District operate in compliance with the noise standards contained in this chapter; ~~and that negative noise impact resulting from the use of land within the M-2 (Heavy Industrial) District is contained within the boundaries of said district and does not create unreasonable noise problems for adjoining residential, office or commercial districts;~~
- E. To ensure that industrial districts are so located that transportation access to thoroughfares and freeways is available;
- F. To implement the future development map of the city's most current comprehensive plan.

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#### **Add New Sec. 2.32.6 – Conversion of buildings to residential use prohibited.**

Proposal: This new section would prohibit conversion of buildings in the M-2 (Heavy Industrial) district to residential use.

### **Track changes version of proposed changes.**

#### **Sec. 2.32.6. – Conversion of buildings to residential use prohibited.**

The conversion of buildings in the M-2 (Heavy Industrial) District to residential use is prohibited.



## CITY COUNCIL AGENDA ITEM

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**SUBJECT: TMOD-21-012, Gravel Parking**

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**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

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**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: [Click or tap here to enter text.](#)

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**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

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**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:** [Click or tap to enter a date.](#)

**Current Council Meeting:** Monday, November 22, 2021

**Previously Heard Date(s):** [Click or tap to enter a date.](#) -

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**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To conduct a public hearing and take action on TMOD-21-012, Gravel Parking

**FACTS:** See staff report.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer NA

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:**

- (1) Attachment 1 - TMOD-21-012 Staff Report
- (2) Attachment 2 - Proposed changes to Chapter 27 – Zoning Ordinance
- (3) Attachment 3 - [Click or tap here to enter text.](#)
- (4) Attachment 4 - [Click or tap here to enter text.](#)
- (5) Attachment 5 - [Click or tap here to enter text.](#)

## TMOD-21-012 - Attachment 1 - Staff Report



## PLANNING & ZONING STAFF REPORT

MEETING DATE: November 22, 2021

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### GENERAL INFORMATION

**Petition Number:** TMOD 21-012

**Applicant:** Stonecrest Planning and Zoning Department

**Project Location:** City-Wide

**Proposed amendment:** Amendment to Stonecrest Zoning Ordinance, Chapter 27, Article 6 - Parking to amend the parking regulations concerning gravel truck parking lots.

### FACTS AND ISSUES:

- The 2018 revision of Section 6.1.3. to allow parking on gravel has succeeded in encouraging creation of new standalone truck parking lots, but the appearance of the lots from the public right of way needs improvement.
- The street frontage fencing and landscaping of S & W Automotive Parts and Encore Recycling were installed to a higher standard which should be observed by new standalone truck parking lots, and current lots should be retrofitted to the new standard.
- Monitoring of the existing gravel lots has been strain on code enforcement and site inspection staff. Steps should be put in place to require pre-approved third party inspections of these sites at the cost of the parking lot operator.

### PROPOSAL:

- Revise Subsection B.10. to improve the appearance of parking lots. Fences along street frontage would be upgraded to the standard of fences which are currently in place along the LIB and Chapman Road frontages of S & W Automotive Parts and Encore Recycling. Frontage fences of new parking lots could not be made of corrugated metal fencing.
- Vegetation between streets and fences would have to be 100% evergreen trees at least six feet high and/or two-inch caliper, and would have to be mulched, watered, and maintained, and replaced where necessary. All



## PLANNING & ZONING STAFF REPORT

existing parking lots would have to upgrade to this new standard no later than at the time of business license renewal in 2023.

- Issuance of a Business License for such a gravel parking lot is dependent on submittal of site inspection report approved by the Building Department showing that the gravel lot pervious and impervious surface conditions, as well as onsite storm water facilities meet the requirements of the City Code of Ordinances.
- Removal of the 2-year exemption from this ordinance that granted in 2018, as the exemption has expired.

**RECOMMENDED ACTION:** Based on staff recommendations, the Planning Commission recommend **Approval** to the City Council at their meeting on October 5, 2021 as shown in Attachment 2, with the exception of the third party site inspection report and the removal of grandfathered exemption from this ordinance which was added by staff based on recommendations received at the Zoning Summit participants on October 14, 2021.

## TMOD-21-012 - Attachment 2 - Proposed Changes

## TMOD-21-012

### STONECREST ZONING CODE UPDATE

#### REVISIONS and NEW ORDINANCES

#### Revision to Sec. 6.1.3. – Parking regulations, off-street parking spaces

##### Proposal:

- Revise Subsection B.10. to improve the appearance of parking lots. Fences along street frontage would be upgraded to the standard of fences which are currently in place along the LIB and Chapman Road frontages of S & W Automotive Parts and Encore Recycling. Frontage fences of new parking lots will be made of corrugated metal, and must be ten feet high.
- Revise Subsection B.10, to improve vegetated buffer between streets and fences. Vegetated buffers have to be 100% evergreen trees at least six feet high and/or two-inch caliper, and would have to be mulched, watered, and maintained, and replaced where necessary. All existing parking lots would have to upgrade to this new standard no later than time for business license renewal in 2023.
- Remove the 2 year exemption from these requirements for grandfathered uses as granted with the adoption of the 2018 gravel parking ordinance, Ordinance 2018-07-02, signed on July 16, 2018, as the compliance period for this exemption as already expired.

##### *Photos illustrating the recommended fencing type for Gravel Parking*



##### Reason for proposal:

The 2018 revision of Section 6.1.3. to allow parking on gravel has succeeded in encouraging creation of new standalone truck parking lots, but the appearance of the lots from the public right of way needs improvement. The street frontage fencing and landscaping of S & W

Automotive Parts and Encore Recycling were installed to a higher standard which should be observed by new standalone truck parking lots, and current lots should be retrofitted to the new standard as of the beginning of 2025.

### **Track changes version of proposed changes.**

#### **Sec. 6.1.3. - Parking regulations, off-street parking spaces.**

Off-street parking spaces shall be provided in accordance with the following requirements:

- A. Each application for a development permit or building permit, other than for a detached single-family residence, shall be accompanied by a parking plan showing all required off-street parking spaces, driveways, and the internal circulation system for each such parking lot.
- B. All parking lots and spaces shall conform to the following requirements:
  - 1. All vehicles shall be parked on a paved surface that is connected to and has continuous paved access to a public or private street, except as otherwise allowed in this section.
  - 2. Each parking space, except those located on a single-family residential lot, shall comply with the minimum dimensions established in Table 6.1. Each parking lot shall have adequate space for each car to park and exit every parking space and space for internal circulation within said parking lot.
  - 3. Each parking lot, except those parking spaces located on property used for single-family residential purposes, shall comply with section 5.4.4, site and parking area landscaping.
  - 4. All parking lots and parking spaces, except those located on property used for single-family residential purposes, shall conform to the geometric design standards of the Institute of Traffic Engineers.
  - 5. Parking and loading shall not be permitted within the front yard in any MR, HR, O-I, or O-I-T zoning district, except for required handicapped parking. Notwithstanding the previous sentence, parking and loading shall be permitted within the front yard where provision of adequate parking spaces within the rear is impractical and upon issuance of a variance pursuant to article 7 of this chapter.
  - 6. Parking shall not be permitted within the front yard of any property used for single-family residential purposes, except within a driveway, or in a roofed carport or enclosed garage. Within any single-family residential district, not more than 35 percent of the total area between the street right-of-way line and the front of the principal building shall be paved.

7. No parking space, driveway or parking lot shall be used for the sale, repair, dismantling, servicing, or long-term storage of any vehicle or equipment, unless located within a zoning district which otherwise permits such use.
8. The parking of business vehicles on private property located within residential zoning districts is prohibited. This section shall not prohibit:
  - (1) Typical passenger vehicles, with or without logos, including automobiles, pickup trucks, passenger vans, and dually trucks;
  - (2) Vehicles engaged in active farming, construction activities or contractor services on the private property, or the temporary parking (12 hours or less) of vehicles for the purpose of loading/unloading within residential zoning districts; nor
  - (3) The parking of vehicles on property located in residential zoning districts, where such property is used for an authorized nonresidential use such as a church.

Vehicles used in law enforcement are exempt from the restrictions of this subsection.

9. All parking lots shall conform to the requirements of section 6.1.7.

Table 6.1. Minimum Parking Space Dimensions

Minimum Parking Space Dimensions			
Parking Angle	Minimum Stall Width	Minimum Stall Depth	Minimum Parking Aisle Width
Regular-sized vehicles			
90 degrees	9'	18'	24'
75 degrees	9'	19'	21'
60 degrees	9'	17'	14'
45 degrees	9'	15'	11'
Compact vehicles			
90 degrees	8.5'	15'	22'
75 degrees	8.5'	16	20'

60 degrees	8.5'	15'	14'
45 degrees	8.5'	14'	10'

10. Notwithstanding any other provisions of chapter 27 or chapter 14, parking areas and/or parking on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage, without services provided, shall be permitted as a principal use on parcels zoned M or M-2, provided that:
- The parking area shall be screened from view of the public street with an opaque corrugated metal fence or wall minimum of ~~six~~ ten feet in height. Chain link and wooden fences along street frontage are prohibited.
  - The parking area shall be at least 25 feet from the street right-of-way.
  - A ten-foot-wide evergreen landscape buffer shall be planted around the perimeter of the fence along the public street with at least two rows of trees. All trees shall be a least six feet in height and/or two inches caliber, and shall be regularly maintained and watered as necessary. Dead or dying trees shall be promptly replaced. All surfaces between trees shall be mulched. ~~75 percent evergreens and at least two rows of plants.~~
  - The soil erosion, sedimentation and pollution requirements of chapter 14, article V of the Code of the City of Stonecrest, Georgia are met;
  - Minimum standards of the Georgia Stormwater Management Manual are met in terms of stormwater runoff and water quality; and
  - The parking lot has a minimum of one acre.
  - All parking areas and/or parking on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage without services provided which are permitted as a principal use on parcels zoned M or M-2 shall be upgraded to the standards of this Sec. 6.1.3.B.10. no later than at the time of business license renewal in 2023.
11. Unpaved parking areas within the M and M-2 zones permitted under subsection B.10. of this section shall comply with the following specifications:
- The parking area shall be at least 150 feet from the boundaries of a residentially zoned parcel;
  - The parking area subgrade must meet a minimum compaction of 95 percent as certified by a registered professional engineer;
  - The parking area surface shall be composed of at least eight inches of compacted Graded Aggregate Base;

- d. The Graded Aggregate Base shall be stabilized and treated to control dust through approved means, which may include but is not limited to, the effective design and operation of the facility, the periodic application of dust suppressant materials such as calcium chloride, magnesium chloride, or lignin sulfonate, reduced operating speeds on unpaved surfaces, or the periodic replenishment of gravel surfaces;
- e. Parking areas shall be inspected by the City of Stonecrest or a third-party inspector approved by the City of Stonecrest every year ~~two years~~ to ensure continued compliance with the above specifications. Proof of inspection and compliance with the Stonecrest Code of Ordinances is required at time of annual business license renewal, and this inspection report must be approved by the Building Department prior to issuance or renewal of a business license. Additional maintenance such as grading, Graded Aggregate Base, or surface treatment may be required;
- f. ~~Parking areas on unpaved surfaces for transportation equipment and storage or maintenance (vehicle) storage with existing unpaved areas shall be considered a nonconforming use under section 8.1.5 exempt from the requirements of subsections B.10. and 11 of this section. if the underlying use of the parcel was issued a business license or Motor Carrier Number valid on December 31, 2017;~~
- g. ~~All other parcels with existing unpaved areas shall have two years to comply with these specifications with a one time extension up to 12 months.~~



## CITY COUNCIL AGENDA ITEM

**SUBJECT: Abandonment of Lyons Road**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☒ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☐ NEW BUSINESS    ☐ OTHER, PLEASE STATE:

**CATEGORY:** *(check all that apply)*

☐ ORDINANCE    ☒ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE:

**ACTION REQUESTED:** ☒ DECISION    ☐ DISCUSSION,    ☐ REVIEW, or    ☐ UPDATE ONLY

**Previously Heard Date(s):**

**Current Work Session:**

**Current Council Meeting:** Monday, November 22, 2021

**SUBMITTED BY:** CITY ATTORNEY'S OFFICE

**PRESENTER:** [Click or tap here to enter text.](#)

**PURPOSE:** To hold a public hearing to receive public input on and consider whether a portion of Lyons Road should be abandoned and removed from the municipal road system because it has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it or that its removal from the municipal road system is otherwise in the best interest of the the public.

**FACTS:** On September 9, 2021, Battle Law submitted a request for abandonment on behalf of her client, D.R. Horton, Inc., which is developing Phase 4 of the Flat Rock Hills Subdivision. The request asks the City of Stonecrest to abandon a portion of Lyons Road. The specific portion of Lyons Road for which abandonment is being considered is that portion beginning north of said road's intersection with Evans Mill Road and ending approximately 400 feet south of said road's intersection with Browns Mill Road (GA Hwy 212). See supporting documentation for plat and further description of the road.

Under Georgia Law (O.C.G.A. § 32-7-2(c)), when it is determined that a section of the municipal street system has for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it or



## CITY COUNCIL AGENDA ITEM

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that its removal from the municipal street system is otherwise in the best public interest, the municipality, by certification recorded in its minutes, accompanied by a plat or sketch, and after notice to property owners located thereon, may declare that section of the municipal street system abandoned. Thereafter, that section of road shall no longer be a part of the municipal street system and the rights of the public in and to that section of street as a public road shall cease. The property may be disposed of by the municipality as provided in O.C.G.A. § 32-7-4.

If the road is abandoned by the City, D.R. Horton will have a right of acquisition under O.C.G.A. § 32-7-4(a) as the abutting property owner. They have agreed to pay the fair market value of the portion of Lyons Road to be abandoned as determined by an appraisal, which will be performed by an appraiser of the City's selection. Upon approval of the resolution and upon receipt of payment from D.R. Horton, in the amount of the appraised fair market value of the property, the City Attorney will prepare a Quitclaim Deed and other appropriate documents to effectuate the abandonment authorized by resolution.

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** After public hearing and consideration of the abandonment request, if the City Council finds that the subject portion of Lyons Road has (1) for any reason ceased to be used by the public to the extent that no substantial public purpose is served by it; OR (2) its removal from the municipal road system is otherwise in the best interest of the public, then the City Council should adopt Resolution No. 2021-\_\_\_\_, which will certify such findings and abandon/remove the subject portion of Lyons Road from the municipal road system.

**ATTACHMENTS:**

- (1) Attachment 1 - Abandonment Request
- (2) Attachment 2 - Resolution No. 2021-\_\_\_\_\_

STATE OF GEORGIA  
COUNTY OF DEKALB  
CITY OF STONECREST

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA CERTIFYING THE ABANDONMENT AND REMOVAL FROM THE MUNICIPAL ROAD SYSTEM A PORTION OF LYONS ROAD CONSISTING OF APPROXIMATELY 1.01 ACRES; AUTHORIZING D.R. HORTON INC., TO PURCHASE SAID ABANDONED ROAD FROM THE CITY AT FAIR MARKET VALUE; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.**

**WHEREAS,** the City of Stonecrest, Georgia (the “City”) is a municipal corporation created under the laws of the State of Georgia; and

**WHEREAS,** the duly elected governing authority of the City is the Mayor and Council thereof; and

**WHEREAS,** the City has received a formal request from D.R. Horton, Inc. (“Applicant”), the owner of abutting property, to abandon a portion of Lyons Road, beginning north of said road’s intersection with Evans Mill Road and ending approximately 400 feet south of said road’s intersection with Browns Mill Road (GA Hwy 212), consisting of approximately 1.01 acres and more specifically described on Exhibit A and B attached hereto and incorporated herein; and

**WHEREAS,** Applicant has paid a fee of \$2,500 for the costs of advertisement of the abandonment and conducting an appraisal of the abandoned road; and

**WHEREAS,** in accordance with the legal requirements of O.C.G.A. § 32-7-2 and city procedures, the City Council has given proper notices and held a public hearing on said matter; and

**WHEREAS,** the City Council has determined that the portion of the aforesaid City Road has ceased to be used by the public to the extent that no substantial public purpose is served by it or that its removal from the municipal road system is otherwise in the best public interest.

**THEREFORE,** be it and it is hereby resolved by the Mayor and City Council of the City of Stonecrest, Georgia that:

**Section 1.** The City Council hereby certifies that the portion of the aforesaid City-road described on Exhibit A and B is hereby abandoned and shall no longer be a part of the municipal road system of the City of Stonecrest, Georgia.

**Section 2.** D.R. Horton, Inc., the abutting property owner, has agreed to pay the fair market value of the portion of Lyons Road to be abandoned as determined by an appraisal for the said portion of the road as described in the attached exhibits.

**Section 3.** Upon purchase at fair market value, the abandoned portion of Lyons Road will become a part of the D.R. Horton's private property, and it will be such owner's responsibility to maintain, operate, and provide all services and utilities; and

**Section 4.** Any and all reservations for existing public or private utility easements shall remain in effect for the purpose of entering the property to operate, maintain, or replace said utility facilities until such easements are abandoned, removed, or relocated.

**Section 5.** The Acting City Manager is hereby directed to order an appraisal to determine the fair market value of the right-of-way to be abandoned.

**Section 6.** Upon approval of this resolution and upon receipt of payment from the abutting property owner in the amount of the appraised fair market value of the property, the City Attorney is hereby directed to prepare a Quitclaim Deed and other appropriate documents to effectuate the abandonment authorized by this resolution.

**Section 7.** The Acting City Manager, or her designee, is hereby authorized to execute the Quitclaim Deed and any other documents prepared by the City Attorney to effectuate the abandonment authorized by this resolution.

**Section 8.** The preamble of this resolution shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 9.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this resolution are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this resolution is severable from every other section, paragraph, sentence, clause or phrase of this resolution. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Resolution.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of this Resolution and that, to the greatest extent allowed by law, all remaining phrases,

STATE OF GEORGIA  
COUNTY OF DEKALB  
CITY OF STONECREST

Item VIII. i.

RESOLUTION NO. \_\_\_\_\_

89 clauses, sentences, paragraphs and sections of this Resolution shall remain valid,  
90 constitutional, enforceable, and of full force and effect.  
91

92 **Section 10.** All resolutions and parts of resolutions in conflict herewith are hereby expressly  
93 repealed to the extent of the conflict only.  
94

95 **Section 11.** The effective date of this Resolution shall be the date of its adoption unless  
96 otherwise stated herein.  
97

98 **Section 12.** The Resolution shall be codified in a manner consistent with the laws of the State  
99 of Georgia and the City of Stonecrest.  
100  
101

SO ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF STONECREST, GEORGIA

\_\_\_\_\_  
GEORGE TURNER, Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
SONYA ISOM, Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## Battle Law

September 9, 2021

VIA EMAIL

Danielle Marticardi, Esq.  
Fincher Denmark  
100 Hartsfield Centre Parkway  
Suite 400  
Atlanta, GA 30354

Re: Right of Way Abandonment Request for Lyons Road in the City of Stonecrest, GA

Dear Danielle,

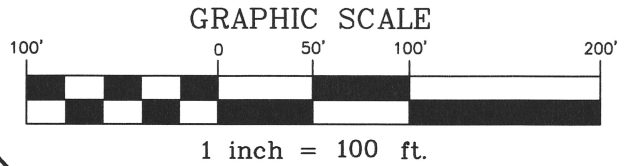
As outside counsel for D. R. Horton, Inc., I am hereby submitting on their behalf, this Right of Way Abandonment Request for Lyons Road, located in the City of Stonecrest as shown on the enclosed Right of Way Abandonment Plat. In connection with this request, I am hereby submitted the attached documents:

1. Right of Way Abandonment Plat;
2. Legal Description of Area to be Abandoned;
3. List of All Abutting Property Owners;
4. An Owner's Affidavit from Each Abutting Property Owner;
5. A check in the amount of \$2,500 made payable to the City of Stonecrest; and
6. A copy of the Vesting Deed for each abutting property owner.

Please contact me should you have any questions regarding this submission.

Michèle L. Battle, Esq.  
President

INFORMATION SHOWN WAS TAKEN FROM AN ALTA BOUNDARY SURVEY FOR D.R. HORTON, INC. DATE FEBRUARY 24, 2005 BY METRO ENGINEERING AND SURVEYING CO., INC.



POINT OF COMMENCEMENT  
ABANDONMENT TRACT

FENCE  
& GATE

ASPHALT PAVEMENT

OVERHEAD  
TELE. AND  
POWER

GRAVEL DR.

N/F  
GCTV SUB 2 CORPORATION  
PARCEL 16 050 02 002  
D.B. 8434, PG. 605

ASPH. DR.

N/F  
FLAT ROCK HILLS  
ASSOCIATION, INC.  
D.B. 28271, PG. 199

N/F  
D.R. HORTON, INC.  
D.B. 18293, PG. 74

POINT OF BEGINNING  
ABANDONMENT TRACT

N89°48'55"E  
40.00'

393.68'

TO REMAIN OPEN

TO BE ABANDONED

MATCHLINE

SHEET 1

SHEET 2

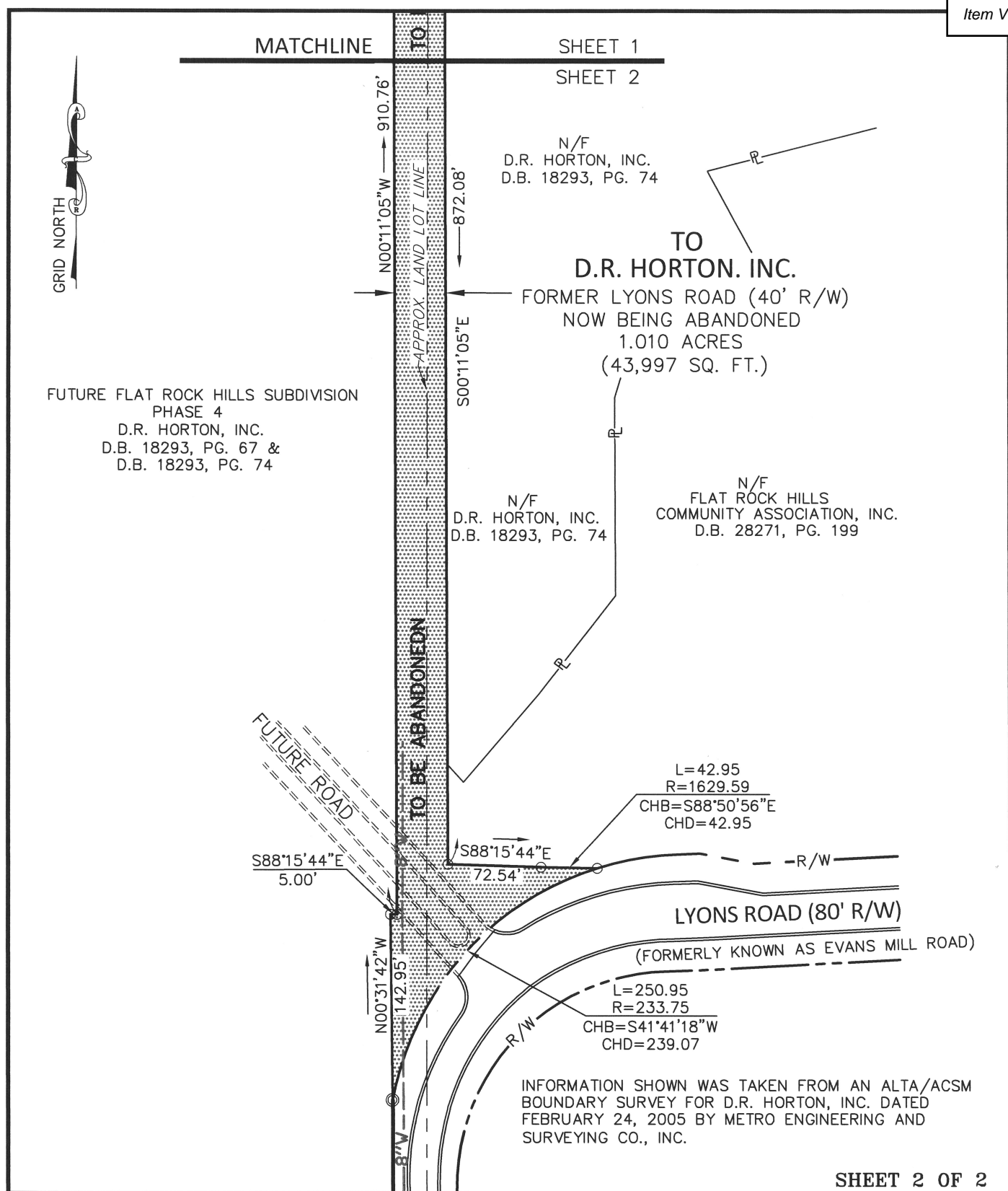
SHEET 1 OF 2

Revision/Issue		
1	November 25, 2019	TH
2	July 14, 2021	TH

# ROAD ABANDONMENT EXHIBIT FOR A PORTION OF LYONS ROAD

LAND LOTS 47 AND 50, 16TH DISTRICT  
CITY OF STONECREST  
DEKALB COUNTY, GEORGIA

**ACR Engineering, inc.**  
ATLANTA COMMERCIAL & RESIDENTIAL ENGINEERING  
800 PINNACLE COURT  
SUITE 685  
NORCROSS, GA 30071  
TEL: (678) 291-0000  
FAX: (678) 291-6887



	Revision/Issue	
1	November 25, 2019	TH
2	July 14, 2021	TH

**ROAD ABANDONMENT EXHIBIT**  
FOR A PORTION OF  
**LYONS ROAD**

LAND LOTS 47 AND 50, 16TH DISTRICT  
CITY OF STONECREST  
DEKALB COUNTY, GEORGIA



**Engineering, inc.**

ATLANTA COMMERCIAL & RESIDENTIAL ENGINEERING  
600 PINNACLE COURT  
SUITE 685  
NORCROSS, GA 30071  
TEL: (678) 291-0000  
FAX: (678) 291-6887

LYONS ROAD PARTIAL ABANDONMENT  
TRACT DESCRIPTION

FROM: **DEKALB COUNTY, GEORGIA**  
TO: **D.R. HORTON, INC.**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 47 AND 50 OF THE 16<sup>th</sup> LAND DISTRICT, CITY OF STONECREST, DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE FROM THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF LYONS ROAD (HAVING A 40 FOOT WIDE RIGHT-OF-WAY) AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF BROWNS MILL ROAD (ALSO KNOWN AS GEORGIA HIGHWAY NUMBER 212 AND HAVING A 100 FOOT WIDE RIGHT-OF-WAY) AND ALONG THE SAID WESTERLY RIGHT-OF-WAY LINE OF LYONS ROAD SOUTH 00 DEGREES 11 MINUTES 05 SECONDS EAST A DISTANCE OF 393.68 FEET TO THE POINT OF BEGINNING; THENCE FROM THE **POINT OF BEGINNING** AS THUS ESTABLISHED AND DEPARTING THE SAID WESTERLY RIGHT-OF-WAY LINE OF LYONS ROAD NORTH 89 DEGREES 48 MINUTES 55 SECONDS EAST A DISTANCE OF 40.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID LYONS ROAD; THENCE ALONG THE EASTERLY AND BECOMING THE NORTHERLY RIGHT-OF-WAY LINE OF SAID LYONS ROAD THE FOLLOWING THREE COURSES AND DISTANCES: SOUTH 00 DEGREES 11 MINUTES 05 SECONDS EAST A DISTANCE OF 872.08 TO A POINT; THENCE SOUTH 88 DEGREES 15 MINUTES 44 SECONDS EAST A DISTANCE OF 72.54 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1629.59 FEET, AN ARC LENGTH OF 42.95 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 88 DEGREES 50 MINUTES 56 SECONDS EAST AND A CHORD DISTANCE OF 42.95 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE NEWER ALIGNMENT OF LYONS ROAD (FORMERLY KNOWN AS EVANS MILL ROAD AND HAVING A VARIABLE WIDTH RIGHT-OF-WAY AT THIS POINT); THENCE ALONG THE SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF THE NEWER ALIGNMENT OF LYONS ROAD AND ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 233.75 FEET, AN ARC LENGTH OF 250.95 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 41 DEGREES 41 MINUTES 18 SECONDS WEST AND A CHORD DISTANCE OF 239.07 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF THE LYONS ROAD ABANDONMENT TRACT; THENCE DEPARTING THE SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF THE NEWER ALIGNMENT OF LYONS ROAD AND ALONG THE WESTERLY RIGHT-OF-WAY LINE OF THE LYONS ROAD ABANDONMENT TRACT THE FOLLOWING THREE COURSES AND DISTANCES: NORTH 00 DEGREES 31 MINUTES 42 SECONDS WEST A DISTANCE OF 142.95 FEET TO A POINT; THENCE SOUTH 88 DEGREES 15 MINUTES 44 SECONDS EAST A DISTANCE OF 5.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 11 MINUTES 05 SECONDS WEST A DISTANCE OF 910.76 FEET TO THE **POINT OF BEGINNING**;

SAID TRACT OR PARCEL OF LAND CONTAINS 1.010 ACRES (BEING 43,997 SQUARE FEET)

**LIST OF ABUTTING PROPERTY OWNERS AND COPY OF VESTING DEEDS**

Tax Parcel No: 16 050 02 003 4114 Lyons Road  
Tax Parcel No: 16 047 03 001 4163 Lyons Road  
Tax Parcel No: 16 047 03 014 5627 Browns Mill Road

Deed Book 18293, Page 74, DeKalb County, Georgia real property records

**D.R. Horton, Inc.**  
**8200 ROBERTS DR # 100**  
**ATLANTA GA 30350-4150**

Tax Parcel No: 16 050 02 001 5658 Browns Mill Road Deed Book 28271 Page 199, aforesaid records

**Flat Rock Hills Community Association, Inc.**  
**2120 HIGHWAY 81**  
**LOGANVILLE GA 30052**

## CERTIFICATE OF INTENT

I, Shamyl Maher, as the Vice President of **D R. Horton, Inc.**, do hereby certify to the City of Stonecrest, GA, that D.R. Horton is the owner of 5627 Browns Mill Road, 4163 Lyons Road, and 4114 Lyons Road and the qualified Petitioner for the abandonment of the portion of Lyons Road identified in Exhibit "A" attached hereto and that D. R. Horton intends to acquire the entirety of the portion of the street to be abandoned at fair market value as a conditions of consideration of the abandonment. D. R. Horton hereby acknowledges that if they fail to acquire title and complete the transfer after the abandonment, the City of Stonecrest may place a lien upon the property in an amount equivalent to the fair market value of the acquired Right-of-Way.

**D. R. Horton, Inc.**

By: Shamyl Maher

Name: SHAMYL MAHER

Title: Vice President

Deed Book 18293 Pg 74  
 Filed and Recorded Jan-06-2006 12:34pm  
 2006-0002746  
 Real Estate Transfer Tax \$0.00  
 Linda Carter  
 Clerk of Superior Court  
 DeKalb County, Georgia

----- [Space Above This Line For Recording Data] -----

**GREENFIELD, ROBT & KLIROS, P.C.**

Alex C. Kliros, Esq.

990 Hammond Drive, Suite 650

Atlanta, Georgia 30328

AFTER RECORDING RETURN TO  
 GEORGE C. CALLOWAY, ESQ.  
 SPECIALIZED TITLE SERVICES, INC.  
 6133 PEACHTREE DUNWOODY ROAD NE  
 ATLANTA, GEORGIA 30328  
 (770) 394-7000 STS FILE NO. 1165.392

### QUITCLAIM DEED

STATE OF GEORGIA  
 COUNTY OF FULTON

THIS INDENTURE, made the 3rd day of January, 2006, between **SCT HOLDINGS, LLC**, a Georgia limited liability company, as party or parties of the first part, hereinafter called the Grantor, and **D.R. HORTON, INC.**, a Delaware corporation, party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of one dollar (\$1.00) and other valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, by these presents does hereby remise, convey and forever QUITCLAIM unto the said Grantee the property more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 47, 50 and 79, 16th District, DeKalb County, Georgia, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

This deed is made for the sole purpose of conveying the same property conveyed by Grantor to Grantee pursuant to that certain Limited Warranty Deed of even date herewith and to be recorded on or about the day hereof in the DeKalb County, Georgia records, and is given to convey any gaps or gores that may exist between the tract of land described in said Limited Warranty Deed and the metes and bounds description of the same property based on a current survey of the property and described on Exhibit "A" attached hereto.

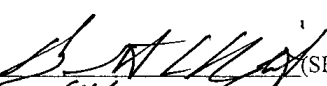

TO HAVE AND TO HOLD the said described premises to Grantee, so that neither Grantor nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

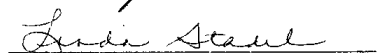
IN WITNESS WHEREOF, Grantors have signed and sealed this deed, the day and year first above written.

Signed, sealed and delivered  
in the presence of:

SCT HOLDINGS, LLC, a Georgia  
limited liability company

  
Witness

By:  (SEAL)  
Its: 

  
Notary Public  
My Commission Expires: 12/11/2007  
[NOTARY SEAL]



**EXHIBIT "A"****Tract "1"**

All that tract or parcel of land lying and being in Land Lot 47 of the 16th District, Dekalb County, Georgia containing 79.603 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the Westerly right of way line of Browns Mill Road (100 foot right of way) and the Western right of way line of Lyons Road (40 foot right of way); thence along said Western right of way line of Lyons Road South 00°11'05" East a distance of 1300.07 feet to a 1/2" rebar set; thence North 88°15'44" West a distance of 5.00 feet to a 1/2" rebar set; thence South 00°10'54" East a distance of 799.81 feet to a 1 1/2" open top pipe found; leaving said right of way line, thence North 88°57'28" West a distance of 1476.97 feet to a 1/2" rebar found; thence North 00°08'07" East a distance of 2374.95 feet to a 1/2" rebar found; thence South 89°14'01" East, a distance of 1189.83 feet to a 1/2" rebar found on the westerly right of way of Browns Mill Road; thence along the Westerly right of way line of Browns Mill Road along a curve to the right having an arc distance of 400.61 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING., said curve having a radius of 2,389.56 feet and being subtended by a chord bearing of South 44°20'36" East and a distance of 400.14 feet.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

**Tract "2"**

All that tract or parcel of land lying and being in Land Lots 47 and 50 of the 16th District, Dekalb County, Georgia containing 47.266 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the Easterly right of way line of Browns Mill Road (100 foot right of way) and the Northern right of way line of Evans Mill Road (80 foot right of way); thence along the Easterly right of way line of Browns Mill Road along a curve to the right having an arc distance of 351.45 feet to a point, said curve having a radius of 2,137.58 feet and being subtended by a chord bearing of North 27°29'24" West and a distance of 351.06 feet; thence along a curve to the left having an arc distance of 409.25 feet to a point, said curve having a radius of 1,551.39 feet and being subtended by a chord bearing of North 33°23'32" West and a distance of 408.06 feet; thence North 41°39'00" West a distance of 751.42 feet to a point; thence along a curve to the left having an arc distance of 225.09 feet to a 1/2" rebar found, said curve having

a radius of 3254.06 feet and being subtended by a chord bearing of North 44°21'28" West and a distance of 225.04 feet; leaving said right of way line, thence South 89°13'08" East at a distance of 159.06 feet to a 1/2" rebar found on the West Land Lot Line of Land Lot 50; thence along said Land Lot Line, North 00°06'53" West a distance of 566.09 feet to a Buggy Axle on the Land Lot Corner common to Land Lots 46,47,50 and 51; thence along the North Land Lot Line of Land Lot 50 South 89°19'17" East at a distance of 1374.21 feet to a 1/2" rebar set on the intersection of said Land Lot Line and the West right of way line of Crossvale Road ( 80 foot right of way ); thence along said right of way line of Crossvale Road along a curve to the right having an arc distance of 230.17 feet to a point, said curve having a radius of 991.58 feet and being subtended by a chord bearing of South 06°12'19" East and a distance of 229.65 feet; thence South 00°50'41" West at a distance of 1549.27 feet to a 1/2" rebar set; thence South 40°24'23" West at a distance of 40.68 feet to a 1/2" rebar set on the mitered intersection of the Westerly right of way of Crossvale Road and the Northerly right of way of Evans Mill Road; thence along North right of way line of Evans Mill Road South 76°13'57" West at a distance of 478.03 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

### **Tract "3"**

All that tract or parcel of land lying and being in Land Lot 50 of the 16th District, Dekalb County, Georgia containing 11.595 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the Westerly right of way line of Browns Mill Road (100 foot right of way) and the North right of way line of Evans Mill Road (80 foot right of way); thence along the North right of way line of Evans Mill Road along a curve to the left having an arc distance of 188.26 feet to a point, said curve having a radius of 1,051.70 feet and being subtended by a chord bearing of South 66°52'07" West and a distance of 188.00 feet; thence South 65°34'13" West at a distance of 74.20 feet to a point; thence along a curve to the right having an arc distance of 184.18 feet to a point, said curve having a radius of 525.88 feet and being subtended by a chord bearing of South 79°14'43" West and a distance of 183.24 feet; thence South 86°58'51" West at a distance of 114.77 feet to a point; thence along a curve to the right having an arc distance of 162.57 feet to a point, said curve having a radius of 1629.59 feet and being subtended by a chord bearing of South 89°02'54" West and a distance of 162.50 feet; thence South 88°15'44" West at a distance of 72.54 feet to a 1/2" rebar set; leaving said right of way line, thence along the East right of way line of Lyons Road ( 40 foot right of way ) North 00°12'03" West a distance of 865.78 feet to a 1/2" rebar found; leaving said right of way line, thence North 78°58'47" East a

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distance of 153.09 feet to a 1/2" rebar found; thence North 59°52'29" East at a distance of 105.79 feet to a 1/2" rebar found on the West right of way line of Browns Mill Road ( 100 foot right of way ); thence along said right of way line of Browns Mill Road South 41°39'04" East at a distance of 255.12 feet to a point; thence along a curve to the right having an arc distance of 382.87 feet to a point, said curve having a radius of 1,451.39 feet and being subtended by a chord bearing of South 33°23'32" East and a distance of 381.76 feet; thence along a curve to the left having an arc distance of 330.83 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING, said curve having a radius of 1,797.62 feet and being subtended by a chord bearing of South 27°19'42" East and a distance of 330.36 feet.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

#### Tract "4"

All that tract or parcel of land lying and being in Land Lot 50 of the 16th District, Dekalb County, Georgia containing 16.289 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the Westerly right of way line of Browns Mill Road (100 foot right of way) and the South right of way line of Evans Mill Road (80 foot right of way); thence along the Westerly right of way line of Browns Mill Road South 33°54'45" East at a distance of 161.05 feet to a point; thence along a curve to the left having an arc distance of 312.50 feet to a point, said curve having a radius of 2,428.69 feet and being subtended by a chord bearing of South 36°21'26" East and a distance of 312.29 feet; thence South 38°19'37" East at a distance of 172.79 feet to a 1/2" rebar set; leaving said right of way line, thence North 88°19'51" West at a distance of 450.46 feet to a 1" open top pipe found; thence South 00°36'43" West at a distance of 417.39 feet to a 1" flat iron; thence North 89°00'51" West at a distance of 730.80 feet to a 1/2" rebar found on the East right of way line of Lyons Road ( 50' right of way ), thence along said right of way line North 00°10'54" West at a distance of 757.87 feet to a 1/2" rebar set at the intersection of the East right of way line of Lyons Road and the South right of way line of Evans Mill Road; thence along the South right of way line of Evans Mill Road South 88°15'45" East at a distance of 64.56 feet to a point; thence along a curve to the left having an arc distance of 170.55 feet to a point, said curve having a radius of 1,709.59 feet and being subtended by a chord bearing of North 89°02'54" East and a distance of 170.48 feet; thence North 86°57'07" East at a distance of 110.49 feet to a point; thence along a curve to the left having an arc distance of 212.14 feet to a point, said curve having a radius of 606.88 feet and being subtended by a chord bearing of North 79°14'43" East and a distance of 211.06 feet; thence North 65°33'35" East at a distance of 84.65 feet to a point; thence along a curve to the right having an arc distance of

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190.93 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING, said curve having a radius of 971.70 feet and being subtended by a chord bearing of North 67°22'11" East and a distance of 190.62 feet.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

#### **Tract "5"**

All that tract or parcel of land lying and being in Land Lot 50 of the 16th District, DeKalb County, Georgia containing 3.620 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the Easterly right of way line of Browns Mill Road (100 foot right of way) and the South right of way line of Evans Mill Road (80 foot right of way); thence along the South right of way line of Evans Mill Road North 76°13'57" East at a distance of 432.92 feet to a 1/2" rebar set at the mitered right of way intersection of the South right of way of Evans Mill Road and the West right of way of Crossvale Road ( 80 foot right of way ) ; thence South 53°39'40" East at a distance of 32.09 feet to a 1/2" rebar set; leaving said right of way line, thence along the West right of way line of Crossvale Road South 00°50'41" West at a distance of 633.80 feet to a 1/2" rebar set at the mitered right of way intersection of the West right of way of Crossvale Road and the East right of way of Browns Mill Road ; thence South 79°31'15" West at a distance of 25.46 feet to a 1/2" rebar set; leaving said right of way line, thence along the East right of way line of Browns Mill Road North 37°50'05" West at a distance of 264.50 feet to a point; thence along a curve to the right having an arc distance of 299.64 feet to a point, said curve having a radius of 2,328.69 feet and being subtended by a chord bearing of North 36°21'26" West and a distance of 299.43 feet; thence North 34°41'24" West at a distance of 126.86 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

#### **Tract "6"**

All that tract or parcel of land lying and being in Land Lot 50 of the 16th District, DeKalb County, Georgia containing 29.676 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar set at the intersection of the East right of way line of Crossvale Road (80 foot right of way) and the Northeasterly right of way line of

Deed Book 18293 Pg 79

Browns Mill Road (100 foot right of way); thence along the East right of way line of Crossvale Road, a curve to the left having an arc distance of 89.62 feet to a point, said curve having a radius of 130.95 feet and being subtended by a chord bearing of North 20°27'07" East and a distance of 87.89 feet; thence North 00°50'41" East at a distance of 671.35 feet to a 1/2" rebar set on the mitered right of way intersection of the East right of way line of Crossvale Road and the South right of way line of Evans Mill Road ( 80 foot right of way ); thence North 33°09'34" East at a distance of 37.11 feet to a 1/2" rebar set; leaving said right of way line, thence along the South right of way line of Evans Mill Road, a curve to the left having an arc distance of 260.02 feet to a point, said curve having a radius of 1,469.21 feet and being subtended by a chord bearing of North 65°00'50" East and a distance of 259.68 feet; thence North 57°21'43" East at a distance of 164.90 feet to a point; thence along a curve to the right having an arc distance of 444.72 feet to a point, said curve having a radius of 21,428.03 feet and being subtended by a chord bearing of North 55°43'12" East and a distance of 444.71 feet; thence North 56°52'20" East at a distance of 220.69 feet to a 1/2" rebar set; thence South 09°21'28" East at a distance of 10.70 feet to a 1/2" rebar set; thence South 21°24'02" East at a distance of 223.04 feet to a 1/2" rebar set; thence South 83°05'02" West at a distance of 207.45 feet to a 2" open top pipe found; thence South 03°08'22" West at a distance of 211.39 feet to a angle iron found; thence North 82°02'42" East at a distance of 205.33 feet to a buggy axle found; thence South 11°10'51" West at a distance of 98.38 feet to a 1/2" rebar found; thence South 02°01'08" East at a distance of 277.90 feet to a 3/8" rebar found; thence South 01°59'58" East at a distance of 276.72 feet to a property corner rock found; thence South 00°10'20" West at a distance of 354.17 feet to a property corner rock found; thence South 41°17'04" East at a distance of 329.88 feet to a 1/2" rebar found; thence North 89°13'55" West at a distance of 631.56 feet to a 5/8" rebar found; thence North 37°54'03" West at a distance of 199.79 feet to a 5/8" rebar found; thence North 89°14'51" West at a distance of 400.36 feet to a 5/8" rebar found on the Northeasterly right of way of Browns Mill Road, thence along said right of way line North 37°50'05" West at a distance of 193.62 feet to a 1/2" rebar set and THE TRUE POINT OF BEGINNING.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

#### Tract "7"

All that tract or parcel of land lying and being in Land Lots 50 and 79 of the 16th District, Dekalb County, Georgia containing 16.199 acres, and being more particularly described as follows:

Beginning at a 1/2" rebar found at the Land Lot corner common to Land Lot Lines 50, 51, 78 and 79, thence South 36°00'49" East at a distance of 474.46 feet to a 36" Popular tree; thence South 18°13'56" West at a distance of 21.25 feet to

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a 1/2" rebar found; thence South 25°31'28" West at a distance of 658.29 feet to a 1/2" rebar found on the North right of way line of Evans Mill Road (80 foot right of way ); thence along said right of way line, South 78°00'19" West at a distance of 91.73 feet to a point; thence along a curve to the left having an arc distance of 233.67 feet to a point, said curve having a radius of 595.51 feet and being subtended by a chord bearing of South 68°02'46" West and a distance of 232.17 feet; thence South 56°52'03" West at a distance of 168.05 feet to a point; thence South 56°21'12" West at a distance of 92.06 feet to a 1/2" rebar set; leaving said right of way line, thence North 02°06'45" West at a distance of 443.61 feet to a 1/2" rebar set; thence South 89°25'24" East at a distance of 91.47 feet to a 1" flat iron found; thence North 07°45'45" West at a distance of 198.99 feet to a point; thence North 06°15'31" West at a distance of 621.43 feet to a 1/2" rebar found on the South Land Lot Line of Land Lot 51; thence along said Land Lot Line, South 88°54'30" East at a distance of 553.38 feet to a 1/2" rebar found and THE TRUE POINT OF BEGINNING.

As shown on that survey prepared by Chester M. Smith, Georgia Registered Land Surveyor, dated February 24, 2005, last revised July 20, 2005.

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Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

## OWNER'S STATEMENT

After consulting with D R Horton regarding their improvement plans for the City of Stonecrest's Public Right-of-Way property, I, Cynthia Mussel as the HOA President of **Flat Rock Hills Community Association, Inc.** ("Owner"), the owner of record of 5658 Browns Mill Road, Lithonia, GA 30038, hereby certify to the City of Stonecrest, GA that Owner is in favor of the Request for Abandonment of Public Right-of-Way and hereby requests the City of Stonecrest to grant D. R. Horton's request. Owner has no interest in acquiring any portion of the Right of Way to be abandoned.

Flat Rock Hills Community Association, Inc.

By: Cynthia Mussel

Name: Cynthia Mussel

Its: HOA PRESIDENT

Parcel No.: p/o 16 050 02 001

Upon recording return to:  
Rachel E. Conrad  
Dorough & Dorough, LLC  
Attorneys At Law  
160 Clairemont Avenue, Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

---

**QUITCLAIM DEED**

**THIS INDENTURE**, made this 23rd day of April, 2020, by and between **D.R. HORTON, INC.**, a Delaware corporation (hereinafter referred to as "Grantor") and **FLAT ROCK HILLS COMMUNITY ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Grantee"). (The words "Grantor" and "Grantee" to include their respective successors and assigns, where the context requires or permits.)

**W I T N E S S E T H:**

**WHEREAS**, Grantor is the owner of certain real property in Flat Rock Hills, a planned unit development located in DeKalb County, Georgia; and

**WHEREAS**, Grantor desires to convey the herein described property subject to all of the covenants, conditions, restrictions and easements contained in that certain Declaration of Covenants, Conditions, and Restrictions for Flat Rock Hills, recorded on October 20, 2015 in Deed Book 25219, page 645, *et seq.*, of the DeKalb County, Georgia land records, as amended, restated and/or supplemented from time to time to be and constitute "Common Area" as provided therein;

**NOW THEREFORE**, Grantor, for and in consideration of the sum of **TEN AND NO/100 (\$10.00) DOLLARS** and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and quitclaimed, and by these presents does grant, bargain, sell, alien, convey and QUITCLAIM unto the said Grantee all that tract or parcel of land lying and being in Land Lot 50 of the 16th District, DeKalb County, Georgia, and being


more particularly described on Exhibit "A" attached hereto and depicted on Exhibit "A-1" attached hereto and by this reference incorporated herein.

**TO HAVE AND TO HOLD** the said described premises to Grantee, so that neither Grantor nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

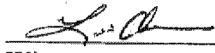
**IN WITNESS WHEREOF**, the Grantor has caused this Quitclaim Deed to be executed under seal as of the day, month and year first above written.

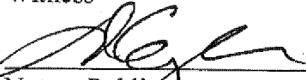
GRANTOR: **D.R. HORTON, INC.**, a Delaware corporation

By:  
Print Name:  
Title:

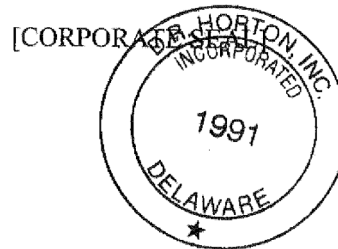
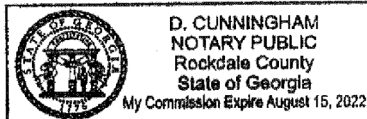
  
SHARYL MAHER  
VICE PRESIDENT

Signed, sealed, and delivered  
in the presence of:

  
Witness

  
Notary Public

[Notary Seal]



P:\Clients\4941\Flat Rock Hills\QCD.Common Area.Flat Rock Hills.Amenity Area.docx

**FLAT ROCK HILLS AMENITY AREA  
TRACT DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 50 OF THE 16TH DISTRICT, CITY OF STONECREST, DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE FROM THE INTERSECTION OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF BROWNS MILL ROAD (HAVING A VARIABLE WIDTH RIGHT OF WAY) AND THE NORTHERLY RIGHT OF WAY LINE OF LYONS ROAD (NEW ALIGNMENT) (HAVING A VARIABLE WIDTH RIGHT OF WAY); THENCE FROM THE **POINT OF BEGINNING** AS THUS ESTABLISHED AND ALONG THE SAID SOUTHWESTERLY RIGHT OF WAY LINE OF BROWNS MILL ROAD THE FOLLOWING THREE COURSES AND DISTANCES: ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1,797.13, AN ARC LENGTH OF 330.74 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 27 DEGREES 19 MINUTES 01 SECONDS WEST AND A CHORD DISTANCE OF 330.27 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1,450.99 FEET, AN ARC LENGTH OF 382.76 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 33 DEGREES 22 MINUTES 51 SECONDS WEST AND A CHORD DISTANCE OF 381.65 FEET TO A POINT; THENCE NORTH 41 DEGREES 38 MINUTES 24 SECONDS WEST A DISTANCE OF 255.05 FEET TO A POINT; THENCE DEPARTING THE SAID SOUTHWESTERLY RIGHT OF WAY LINE OF BROWNS MILL ROAD SOUTH 59 DEGREES 53 MINUTES 09 SECONDS WEST A DISTANCE OF 105.77 FEET TO A POINT; THENCE SOUTH 78 DEGREES 59 MINUTES 28 SECONDS WEST A DISTANCE OF 152.79 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF LYONS ROAD (OLD ALIGNMENT) (HAVING A 50 FOOT WIDE RIGHT OF WAY); THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF LYONS ROAD (OLD ALIGNMENT) SOUTH 00 DEGREES 10 MINUTES 24 SECONDS EAST A DISTANCE OF 54.77 FEET TO A POINT; THENCE DEPARTING THE SAID EASTERLY RIGHT OF WAY LINE OF LYONS ROAD (OLD ALIGNMENT) NORTH 89 DEGREES 49 MINUTES 15 SECONDS EAST A DISTANCE OF 82.95 FEET TO A POINT; THENCE NORTH 79 DEGREES 41 MINUTES 00 SECONDS EAST A DISTANCE OF 66.03 FEET TO A POINT; THENCE SOUTH 86 DEGREES 31 MINUTES 19 SECONDS EAST A DISTANCE OF 108.21 FEET TO A POINT; THENCE SOUTH 42 DEGREES 38 MINUTES 47 SECONDS EAST A DISTANCE OF 151.87 FEET TO A POINT; THENCE SOUTH 75 DEGREES 40 MINUTES 56 SECONDS WEST A DISTANCE OF 135.00 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 50 FEET, AN ARC LENGTH OF 65.63 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 23 DEGREES 17 MINUTES 08 SECONDS WEST A DISTANCE OF 61.02 FEET TO A POINT; THENCE SOUTH 29 DEGREES 06 MINUTES 40 SECONDS EAST A DISTANCE OF 134.39 FEET TO A POINT; THENCE SOUTH 89 DEGREES 49 MINUTES 15 SECONDS WEST A DISTANCE OF 120.34 FEET TO A POINT; THENCE SOUTH 17 DEGREES 08 MINUTES 22 SECONDS WEST A DISTANCE OF 58.79 FEET TO A POINT; THENCE SOUTH 00

DEGREES 10 MINUTES 45 SECONDS EAST A DISTANCE OF 233.00 FEET TO A POINT; THENCE SOUTH 37 DEGREES 30 MINUTES 40 SECONDS WEST A DISTANCE OF 96.29 FEET TO A POINT; THENCE SOUTH 40 DEGREES 45 MINUTES 06 SECONDS WEST A DISTANCE OF 90.21 FEET TO A POINT; THENCE NORTH 42 DEGREES 29 MINUTES 40 SECONDS WEST A DISTANCE OF 18.64 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF LYONS ROAD (OLD ALIGNMENT) (HAVING A 50 FOOT RIGHT OF WAY); THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF LYONS ROAD SOUTH 00 DEGREES 10 MINUTES 24 SECONDS EAST A DISTANCE OF 77.26 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE NEW ALIGNMENT OF LYONS ROAD (HAVING A VARIABLE WIDTH RIGHT OF WAY); THENCE DEPARTING THE SAID EASTERLY RIGHT OF WAY LINE OF LYONS ROAD (OLD ALIGNMENT) AND ALONG THE SAID NORTHERLY RIGHT OF WAY LINE OF THE NEW ALIGNMENT OF LYONS ROAD THE FOLLOWING SIX COURSES AND DISTANCES: SOUTH 88 DEGREES 15 MINUTES 03 SECONDS EAST A DISTANCE OF 72.51 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1,629.14 FEET, AN ARC LENGTH OF 162.52 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 89 DEGREES 03 MINUTES 35 SECONDS EAST AND A CHORD DISTANCE OF 162.45 FEET TO A POINT; THENCE NORTH 86 DEGREES 59 MINUTES 31 SECONDS EAST A DISTANCE OF 114.74 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 526.73 FEET, AN ARC LENGTH OF 184.13 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 79 DEGREES 15 MINUTES 23 SECONDS EAST AND A CHORD DISTANCE OF 183.19 FEET TO A POINT; THENCE NORTH 65 DEGREES 34 MINUTES 53 SECONDS EAST A DISTANCE OF 74.18 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1,051.41 FEET, AN ARC LENGTH OF 188.20 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 66 DEGREES 52 MINUTES 48 SECONDS EAST AND A CHORD DISTANCE OF 187.95 FEET TO THE **POINT OF BEGINNING**.

SAID TRACT OR PARCEL OF LAND CONTAINS 8.53 ACRES (BEING 371,665 SQUARE FEET), BEING DESCRIBED IN THE "EXHIBIT OF AMENITY AREA FOR FLAT ROCK HILLS" DATED APRIL 14, 2020, A COPY OF WHICH IS ATTACHED HERETO AT "EXHIBIT A-1" AND MADE A PART HEREOF BY REFERENCE.

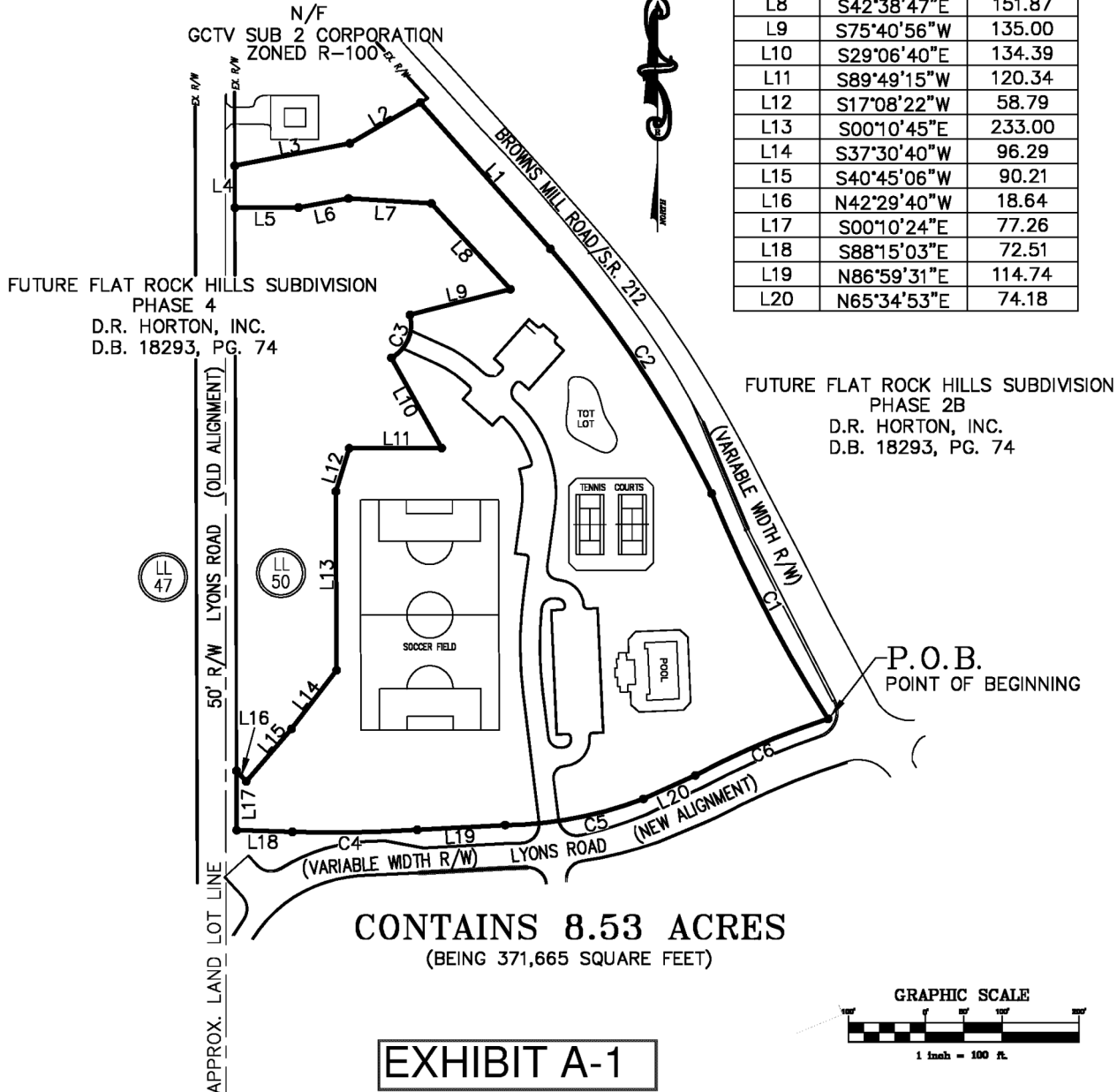
## EXHIBIT A-1

Debra DeBerry  
Clerk of Superior Court

DeKalb County, Georgia

CURVE TABLE				
CURVE	RADIUS	LENGTH	CHD.BRG.	CHD. DIST.
C1	1797.13	330.74	N27°19'01"W	330.27
C2	1450.99	382.76	N33°22'51"W	381.65
C3	50.00	65.63	S23°17'08"W	61.02
C4	1629.14	162.52	N89°03'35"E	162.45
C5	526.73	184.13	N79°15'23"E	183.19
C6	1051.41	188.20	N66°52'48"E	187.95

LINE	BEARING	DISTANCE
L1	N41°38'24"W	255.05
L2	S59°53'09"W	105.77
L3	S78°59'28"W	152.79
L4	S00°10'24"E	54.77
L5	N89°49'15"E	82.95
L6	N79°41'00"E	66.03
L7	S86°31'19"E	108.21
L8	S42°38'47"E	151.87
L9	S75°40'56"W	135.00
L10	S29°06'40"E	134.39
L11	S89°49'15"W	120.34
L12	S17°08'22"W	58.79
L13	S00°10'45"E	233.00
L14	S37°30'40"W	96.29
L15	S40°45'06"W	90.21
L16	N42°29'40"W	18.64
L17	S00°10'24"E	77.26
L18	S88°15'03"E	72.51
L19	N86°59'31"E	114.74
L20	N65°34'53"E	74.18



DATE:	APRIL 14, 2020		
LAND LOT:	50		
DISTRICT:	16TH		
CITY:	STONECREST		
COUNTY:	DEKALB		
STATE:	GEORGIA		
DRAWN:	TH		
ACR JOB:	14021		
NO.	REVISION/ISSUE		BY

# EXHIBIT OF AMENITY AREA FOR FLAT ROCK HILLS

LAND LOT 50 - 16TH DISTRICT  
DEKALB COUNTY, GEORGIA

**ACR ENGINEERING, INC.**  
ATLANTA COMMERCIAL & RESIDENTIAL ENGINEERING  
600 PINNACLE COURT  
SUITE 685  
NORCROSS, GA 30071  
TEL: (678) 291-0000  
FAX: (678) 291-6887



## CITY COUNCIL AGENDA ITEM

**SUBJECT: Tree Protection Ordinance Amendment (2<sup>nd</sup> Read)**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☐ PUBLIC HEARING    ☐ CONSENT AGENDA    ☒ OLD BUSINESS  
☐ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**ACTION REQUESTED:** ☒ DECISION    ☐ DISCUSSION,    ☐ REVIEW, or    ☐ UPDATE ONLY

**Previously Heard Date(s):** 09/13/21 & 10/25/21

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**SUBMITTED BY:** Gia Scruggs

**PRESENTER:** Gia Scruggs

**PURPOSE:** The City of Stonecrest has a Tree Protection Ordinance and the amendment would provide for the establishment of a tree bank to accept and disburse funds.

**FACTS:** The current Ordinance did not allow for the establishment of a separate fund to accept tree bank funds. The Tree Protection Ordinance will be amended to include Tree Protection Administration to allow for the receipt and disbursement of funds.

**OPTIONS:** Approve, Deny, Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:**

- (1) Attachment 1 - Tree Protection Ordinance Amendment
- (2) Attachment 2 - Click or tap here to enter text.
- (3) Attachment 3 - Click or tap here to enter text.
- (4) Attachment 4 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(5) Attachment 5 - Click or tap here to enter text.

1 AN ORDINANCE TO AMEND CHAPTER 14 (LAND DEVELOPMENT), ARTICLE VI  
2 (TREE PROTECTION) OF THE CITY OF STONECREST CODE OF ORDINANCES TO  
3 PROVIDE FOR THE ESTABLISHMENT OF A TREE BANK TO ACCEPT AND  
4 DISBURSE FUNDS COLLECTED PURSUANT TO ARTICLE VI OF THE CITY OF  
5 STONECREST CODE OF ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO  
6 REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO  
7 PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL  
8 PURPOSES.

9 WHEREAS, the City of Stonecrest, Georgia (the “City”) is a municipal corporation created  
10 under the laws of the State of Georgia; and  
11

12 WHEREAS, the duly elected governing authority of the City is the Mayor and Council thereof;  
13 and  
14

15 WHEREAS, in 2018 the City adopted a Land Development Ordinance that was codified as  
16 Chapter 14 of the City of Stonecrest Code of Ordinances (the “Code”); and  
17

18 WHEREAS, Article VI (Tree Protection) of the Land Development Ordinance (the “Tree  
19 Protection Ordinance”) established the procedures for preservation and/or  
20 replacement of trees as a part of land development in the City; and

21 WHEREAS, the Tree Protection Ordinance does not include procedures to accept and disburse  
22 funds received pursuant to the terms of the Tree Protection Ordinance; and  
23

24 WHEREAS, after due consideration, the duly elected governing authority desires to amend the  
25 Tree Protection Ordinance to create a Tree Fund that will accept and disburse funds  
26 collected under the provisions of the Tree Protection Ordinance; and  
27

28 WHEREAS, the City Council finds that it is necessary to amend Chapter 14, Article VI of the  
29 Code to create a Tree Fund.  
30

31 THEREFORE, the Mayor and City Council of the City of Stonecrest, Georgia, hereby ordain as  
32 follows:  
33

34 **Section 1.** The Code of Ordinances, City of Stonecrest, Georgia is hereby amended by revising  
35 Chapter 14 (Land Development), Article VI (Tree Protection) by adding the  
36 following section to be read and codified as follows:  
37

38 “Sec. 14-530. – Establishment of Tree Bank.  
39

40 (a) There is hereby established a City of Stonecrest Tree Bank (the “Tree  
41 Bank”) for the acceptance, maintenance and disbursement of funds  
42 required to be paid pursuant to the terms of this Article.  
43

(b) Notwithstanding anything in this Article to the contrary, the Tree Bank may also accept funds donated for the purposes of preservation and/or replacement of the trees of the City of Stonecrest.

(c) The Director of the Planning and Zoning Department (the “Director”), or the Director’s designee, shall have the authority to disburse funds from the Tree Bank, as directed by the Stonecrest City Council, for the purposes of preservation and/or replacement of the trees of the City of Stonecrest.”

**Section 2.** The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 3.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

**Section 4.** All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed to the extent of the conflict only.

**Section 5.** The effective date of this Ordinance shall be the date of its adoption by the Mayor and Council unless otherwise stated herein.

**Section 6.** The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Stonecrest.

STATE OF GEORGIA  
COUNTY OF DEKALB  
CITY OF STONECREST

Item XII. a.

ORDINANCE NO. \_\_\_\_\_

**Section 7.** It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Stonecrest, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

**SO ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF STONECREST, GEORGIA**

\_\_\_\_\_  
**JASON LARY**, Mayor

**ATTEST:**

\_\_\_\_\_  
**SONYA ISOM**, Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



## CITY COUNCIL AGENDA ITEM

**SUBJECT: Decorum Ordinance (2<sup>nd</sup> Read)**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☐ PUBLIC HEARING    ☐ CONSENT AGENDA    ☒ OLD BUSINESS  
☐ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☒ ORDINANCE    ☐ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**ACTION REQUESTED:** ☒ DECISION    ☐ DISCUSSION,    ☐ REVIEW, or    ☐ UPDATE ONLY

**Previously Heard Date(s):** Click or tap to enter a date. & Click or tap to enter a date.

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Click or tap to enter a date.

**SUBMITTED BY:** Janice Allen Jackson, Acting City Manager and Winston Denmark, City Attorney

**PRESENTER:** Janice Allen Jackson and Winston Denmark

**PURPOSE:** The purpose of this item is to to establish conduct and decorum guidelines for all elected and appointed officials within the City of Stonecrest.

**FACTS:** The City Council seeks to establish policy to ensure that all elected and appointed officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of City government.

**OPTIONS:** Approve, Deny, Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:**

- (1) Attachment 1 - Stonecrest Decorum Ordinance
- (2) Attachment 2 - Click or tap here to enter text.
- (3) Attachment 3 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(4) Attachment 4 - Click or tap here to enter text.

(5) Attachment 5 - Click or tap here to enter text.

1    **AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF STONECREST,**  
2    **GEORGIA BY AMENDING ARTICLE IX (RULES AND PROCEDURES FOR CITY**  
3    **COUNCIL MEETINGS AND PUBLIC HEARINGS FOR THE CITY OF STONECREST,**  
4    **GEORGIA) WITHIN CHAPTER 2 (ADMINISTRATION); TO PROVIDE FOR**  
5    **CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING**  
6    **ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE**  
7    **DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.**

8    **WHEREAS,** the City of Stonecrest, Georgia (the “City”) is a municipal corporation created  
9                                    under the laws of the State of Georgia; and

10   **WHEREAS,** the duly elected governing authority of the City is the Mayor and Council thereof;  
11                                    and

12   **WHEREAS,** the City Council desires to adopt decorum guidelines to ensure that all elected and  
13                                    appointed officials, while exercising their office, conduct themselves in a manner  
14                                    that will instill public confidence and trust in the fair operation and integrity of City  
15                                    government; and

16   **WHEREAS,** the City Council finds that it is within the best interests of the City and the public  
17                                    to adopt such standards by which all current and future members of Stonecrest  
18                                    leadership interact with each other and the public at large.

19   **THE CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA, HEREBY**  
20        **ORDAINS, AS FOLLOWS:**

**Section 1.** The Code of Ordinances of the City of Stonecrest is hereby amended by adopting and replacing Sec. 2-346. (Decorum.) in Article IX (Rules and Procedures for City Council Meetings And Public Hearings For The City Of Stonecrest, Georgia) within Chapter 2 (Administration) set forth in Exhibit A and inserting new provisions Sec. 2-346. (Conduct And Decorum Guidelines for Elected and Appointed Officials City of Stonecrest) set forth in Exhibit B.

**Section 2.** (a) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance.

(b) It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance and that, to the greatest extent allowed by law, all remaining phrases,

STATE OF GEORGIA  
COUNTY OF DEKALB  
CITY OF STONECREST

Item XII. b.

ORDINANCE NO. \_\_\_\_\_

clauses, sentences, paragraphs and sections of this Ordinance shall remain valid,  
constitutional, enforceable, and of full force and effect.

**Section 3.** All ordinances and parts of ordinances in conflict herewith are hereby expressly  
repealed.

**Section 4.** The effective date of this Ordinance shall be the date of its adoption by the Mayor  
and Council unless otherwise stated herein.

**Section 5.** The Ordinance shall be codified in a manner consistent with the laws of the State  
of Georgia and the City of Stonecrest.

**Section 6.** It is the intention of the governing body, and it is hereby ordained that the  
provisions of this Ordinance shall become and be made part of the Code of  
Ordinances, City of Stonecrest, Georgia.

**SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_ 2021.**

**CITY OF STONECREST, GEORGIA**

\_\_\_\_\_  
**JASON LARY, Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**APPROVED AS TO FORM:**

78  
79  
80  
81

\_\_\_\_\_  
City Attorney

## **EXHIBIT A**

### **Sec. 2-346. -- Decorum. -----**

~~All Councilmembers shall conduct themselves in a professional and respectful manner. All remarks shall be directed to the Mayor and not to individual Councilmembers, staff or citizens in attendance. Personal remarks are inappropriate and may be ruled out of order. A Councilmember may not speak at a meeting until he has been recognized by the Mayor. All comments made by a Councilmember shall address the motion that is being discussed. The Mayor shall enforce these rules of decorum. If a Councilmember believes that a rule has been broken, he may raise a point of order. A second is not required. The Mayor may rule on the question or may allow the City Council to debate the issue and decide by a Majority Vote.~~

## **EXHIBIT B**

### **Chapter 2 (Administration)**

### **Article IX (Rules and Procedures for City Council Meetings And Public Hearings For The City Of Stonecrest, Georgia)**

#### **Sec. 2-346. Conduct And Decorum Guidelines for Elected and Appointed Officials City of Stonecrest**

##### **1. Elected and Appointed Officials' Conduct with Each Other in Public Meetings**

Elected and appointed officials are community leaders from a wide variety of backgrounds, with diverse personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office to protect and enhance the present and future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

**(a) Respect the role of chair while maintaining order.** It is the responsibility of the chair to conduct meetings in an orderly and effective manner. All members present at a public meeting have a duty to respect the role of chair and provide the support needed for the furtherance of matters on the agenda for each meeting. In the event of a discrepancy with an agenda item or an action taken by the chair, members at the meeting shall address their concerns in a polite and rational way, following procedures outlined in parliamentary procedure.

**(b) Practice civility and decorum in discussions and debate.** It is the duty of elected and appointed officials to ask and answer difficult questions, challenge positions, take and receive criticism and offer up healthy debate. However, during the course of discussion and debate it is not accepted or tolerated for any member to provide crude, inappropriate, vulgar or offensive comments.

**(c) Avoid personal comments that could offend other members.** A "Point of Personal Privilege" should be used by a member active in a public meeting to challenge remarks made by another member that they find personally offensive. Members are encouraged to share feedback in private.

**(d) Demonstrate effective problem-solving approaches.** It's the responsibility of members to work together to find common ground and seek a compromise that benefits the community, regardless of their varying points of view. Meeting decorum is governed by the behavior of members.

##### **2. Elected and Appointed Officials' Conduct with the Public in Public Meetings**

It is the responsibility of elected and appointed officials to make constituents feel welcome to participate in each public forum. No signs of partiality, prejudice or disrespect should exist to

members of the public. Every effort should be made to be fair and impartial in listening to public testimony.

**(a) Listening to the public.** Listen to public speakers and be responsive to their concerns and comments exercising an appropriate level of care.

**(b) Speaking limits.** Adhere to public meeting laws to govern time and of individual speakers. The chair will announce and moderate the limits on speakers at the start of each public meeting.

**(c) Practice active listening.** Members attending public meetings shall provide the appropriate level of attentiveness towards speakers, presenters and fellow members. They should be conscious of facial expressions, avoiding the urge to look disinterested, sleepy, angry or bored. Members will always be polite and respectful and focus on taking next steps to address the issue at hand.

**(d) Maintain an open mind.** Elected and appointed officials should maintain an open mind and remain receptive to ideas and opinions of the public.

**(e) Ask for clarification but avoid debate and argument with the public.** Only the chair, not individual members, can interrupt a speaker during a presentation. Members can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

**(f) Non-partisan comments and actions.** Elected and appointed officials serve in roles that are non-partisan in nature. As such, any comment, action or direction given by councilmembers while serving in their official capacities as City leaders should not reflect views of a partisan opinion. Views made by councilmembers should be in line with goals and objectives of their roles as public officials serving the City and its constituents. The City Charter will act as a guide to understanding the overall needs of the City. Partisan political comments or opinions can and should always be expressed as a private citizen away from sanctioned City of Stonecrest meetings and events.

**(g) Be Respectful of Colleagues' time and City Staff.** Members of City Council and appointed officials will be respectful of their colleagues' time and efforts needed to efficiently prepare materials in advance of all meetings.

3. **Elected and Appointed Officials' Conduct with City Staff**

The governance of a City relies on the cooperative efforts of elected officials who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- (a) **Treat all staff as professionals.** All City staff should be treated with dignity and respect. Poor behavior towards staff is not acceptable.
- (b) **Never publicly criticize or ridicule a City employee.** Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager or the Mayor.
- (c) **Do not get involved in administrative functions.** Elected and appointed officials acting in their individual capacity must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.
- (d) **Do not solicit political support from staff.** Elected and appointed officials should not solicit any form of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff have a constitutional right as private citizens to support political candidates, they may do so, but all forms of support must be done away from the workplace.
- (e) **No Attorney-Client Relationship.** Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her staff and attorneys contracted to work on behalf of the City, for matters outside of the scope of said members' official duties.

4. **Council Conduct with Boards, Committees and Commissions**

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- (a) **Attendance at Board, Committee and Commission meetings.** Elected and appointed officials are a welcomed presence at city board, committee or commission meetings of which they are non-members. While attending, the opinions expressed by such officials are their own and not a representation of the feelings of the City Council or the official's respective board, committee, or commission as a whole. Officials should be careful that their participation is not viewed as unfairly influencing the process.
- (b) **Limit contact with Board, Committee and Commission members to questions of clarification.** It is inappropriate for an elected or appointed official to contact a member of a board, committee or commission, of which they are non-members, to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for elected or

appointed officials to contact such board, committee or commission members in order to clarify a position taken by the board, committee or commission.

(c) **Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers or Elected Officials.** The City Council appoints individuals to serve on boards, committees and commissions, and it is the responsibility of boards, committees and commissions to follow policy established by the City Council. But board, committee and commission members do not report to individual councilmembers, nor should councilmembers feel they have the power or right to threaten board, committee and commission members with removal if they disagree about an issue. Appointment and re-appointment to a board, committee or commission membership should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A board, committee or commission appointment should not be used as a political "reward."

(d) **Be respectful of diverse opinions.** Boards, committees and commissions are established to provide a complete outlook on the subject matter, manner and activities of a particular body. Councilmembers may have a closer working relationship with some individuals serving on boards, committees and commissions, but must be fair and respectful of all citizens serving on boards, committees and commissions.

(e) **Keep political support away from public forums.** During a public forum or while conducting official duties board, committee and commission members may not offer political support to a Councilmember.

(f) **Communicate accurately and be timely with administrative responsibilities.** All elected and appointed officials will strive to communicate in terms that accurately reflect the issues they are addressing; and will timely and accurately submit required administrative reports (expense reports, campaign finance reports, etc.).

5. **Penalties**

(a) **Any person found guilty of violating section 2-346 shall be punished as follows:**

- i. First and Second Offense – A censure by the Stonecrest City Council
- ii. Third Offense – Removal from Office



## CITY COUNCIL AGENDA ITEM

**SUBJECT: RZ-21-005, WITHDRAWAL**

**AGENDA SECTION:** *(check all that apply)*

- ☐ PRESENTATION      ☐ PUBLIC HEARING      ☐ CONSENT AGENDA      ☒ OLD BUSINESS
- ☐ NEW BUSINESS      ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

- ☐ ORDINANCE ☐ RESOLUTION ☐ CONTRACT ☐ POLICY ☐ STATUS REPORT
- ☒ OTHER, PLEASE STATE: Acceptance of Rezoning Withdrawl Request

**ACTION REQUESTED:**    ☒ DECISION    ☐ DISCUSSION ONLY

**Date Submitted:** Thursday, November 11, 2021

**Current Work Session:**

**Current Council Meeting: Monday, November 22, 2021**

**Previously Heard Date(s): 10/25/21** - Click or tap to enter a date.

**SUBMITTED BY:** Jim Summerbell, AICP – Planning & Zoning Director

**PRESENTER:** Jim Summerbell

**PURPOSE:** To accept without prejudice the withdrawal of RZ-21-005, a rezoning request by WSM Associates LLC to rezone 6.07 acres of land at 6301 Browns Mills Road from R-100 to RSM within the Arabia Mountain Conservation Overlay District.

**FACTS:** See staff report

**OPTIONS:** Choose an item. N/A, Discussion Only

**RECOMMENDED ACTION:** None at this time.

**ATTACHMENTS:**

- (1) Attachment 1 - RZ-21-005, 6301 Browns Mill Staff Report
- (2) Attachment 2 - RZ-21-005 Withdrawal Request dated November 3, 2021
- (3) Attachment 3 - Click or tap here to enter text.



## CITY COUNCIL AGENDA ITEM

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(4) Attachment 4 - Click or tap here to enter text.

(5) Attachment 5 - Click or tap here to enter text.



## PLANNING & ZONING STAFF REPORT

RZ-21-005

City Council Regular Meeting, November 22, 2021

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### GENERAL INFORMATION

<b>Petition Number:</b>	RZ-21-005 - WITHDRAWAL
<b>Applicant:</b>	WSM Associates, LLC c/o Battle Law, P.C.
<b>Owner:</b>	Donna Oliver, 6301 Browns Mill Rd
<b>Project Location:</b>	6301 Browns Mill Road, Parcel ID 16 081 01 004
<b>Council District:</b>	District 5 – Tammy Grimes
<b>Acreage:</b>	Approximately 6.07 acres
<b>Existing Zoning:</b>	R-100 (Residential Med Lot) District, Arabia Mountain Conservation Overlay
<b>Proposed Zoning:</b>	RSM (Small Lot Residential Mix), Arabia Mountain Conservation Overlay
<b>Comprehensive Plan Character Area Designation:</b>	Suburban Neighborhood
<b>Proposed Development/Request:</b>	The applicant is requesting the withdrawal without prejudice of RZ-21-005, a rezoning request for the subject property within the Arabia Mountain Conservation Overlay from R-100 (Residential Med Lot) to RSM (Small Lot Residential Mix) for the development of a 20 single family detached house community.
<b>Previous Action:</b>	Following a public hearing on this case on October 25, 2021, the City Council deferred action to the next regular City Council Meeting.
<b>Staff Recommendations:</b>	Acceptance of the Withdrawal Request without Prejudice



## Battle Law

November 3, 2021

VIA EMAIL (jsummerbell@stonecrestga.gov)

Jim Summerbell, Planning Director  
Stonecrest Planning and Zoning Department  
3120 Stonecrest Boulevard, Suite 190  
Lithonia, GA 30038

**Re: RZ-21-005 / 6301 Browns Mill Road being Tax Parcel No. 160 081 02 004**

Mr. Summerbell,

On behalf of WSM Associates, LLC., I am hereby requesting that the above-referenced rezoning application be withdrawn without prejudice. Upon reviewing Stonecrest Zoning Code with Planning Staff, we have come to the conclusion that a rezoning is not necessary, in that the Arabia Mountain Overlay District Regulations take precedence over the underlying zoning regulations. The AMOD allows for a minimum lot size of 7,500sf. For this reason, we request that this matter be moved to the conceptual review process. Thank you.

Sincerely,

*Danielle Blumenthal*

Danielle Blumenthal



## CITY COUNCIL AGENDA ITEM

**SUBJECT: 2022 DMO Contract**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☐ PUBLIC HEARING    ☐ CONSENT AGENDA    ☐ OLD BUSINESS  
☒ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☐ ORDINANCE    ☐ RESOLUTION    ☒ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**ACTION REQUESTED:** ☒ DECISION    ☐ DISCUSSION,    ☐ REVIEW, or    ☐ UPDATE ONLY

**Previously Heard Date(s):** Click or tap to enter a date. & Click or tap to enter a date.

**Current Work Session:** Monday, November 8, 2021

**Current Council Meeting:** Monday, November 22, 2021

**SUBMITTED BY:** Jonathan Bartlett, Economic Development Director

**PRESENTER:** Jonathan Bartlett

**PURPOSE:** To extend the City's contract with Discover Dekalb through December 31, 2022.

**FACTS:** Discover Dekalb has been contracted to serve as the City's Destination Marketing Organization (DMO) through the end of 2021. Council has the option to enter a new annual or longer-term agreement with Discover Dekalb, or to consider alternative solutions.

**OPTIONS:** Approve, Approve with Modifications, Table, Deny, or Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approval

**ATTACHMENTS:**

- (1) Attachment 1 - Proposed Discover Dekalb Contract
- (2) Attachment 2 - DMO Benchmark Presentation
- (3) Attachment 3 - Click or tap here to enter text.
- (4) Attachment 4 - Click or tap here to enter text.
- (5) Attachment 5 - Click or tap here to enter text.

**AGREEMENT BETWEEN  
CITY OF STONECREST, GEORGIA, AND  
DEKALB CONVENTION AND VISITORS BUREAU, INC.**

THE AGREEMENT made by and between the City of Stonecrest, Georgia, a municipal corporation incorporated under the laws of Georgia, acting by and through its Acting City Manager and City Council (“**City**”), and the DeKalb Convention and Visitors Bureau, Inc., a non-profit corporation, chartered in the State of Georgia, acting by and through its duly elected Board of Directors (“**DMO**”), (collectively referred to as “**Parties**”), witnesseth:

**WHEREAS**, the City wishes to promote tourism, conventions, and trade shows and wishes to advertise, promote, and encourage the use of all facilities and businesses relating to conventions, trade shows, and tourism, both public and private, within the City, thereby increasing the City’s revenue and creating employment opportunities within the City; and

**WHEREAS**, the DMO is a nonprofit organization under the Georgia Nonprofit Corporation Code and has been recognized as exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. Through its activities, it is anticipated that the DMO will plan, conduct, or participate in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows to and within the City; and

**WHEREAS**, O.C.G.A. § 48-13-51(b) authorizes municipalities to impose, levy, and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value; and

**WHEREAS**, the Georgia General Assembly authorized the City of Stonecrest to levy such taxes at a rate not to exceed eight percent (8%) pursuant to O.C.G.A. § 48-13-51(b) and Ga. L. 2019, p. 3791; and

**WHEREAS**, Chapter 24, Article VIII of the Code of Ordinances for the City provides for the imposition of a hotel occupancy tax of eight percent (8%) of lodging charges on hotels and motels within the City (the “Tax”); and

**WHEREAS**, the provisions of O.C.G.A. § 48-13-51(b)(3) require that an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent ~~the amount of the Tax in excess of 3%~~ (the “Expenditures”) be expended for certain purposes stated therein, including but not limited to, promoting tourism, conventions, and trade shows; and

**WHEREAS**, the Parties desire to make Expenditures in strict compliance with the provisions of O.C.G.A. § 48-13-50, *et seq.*, and for the purpose of promoting conventions, tourism, and trade shows within the City; and

**WHEREAS**, the provisions of O.C.G.A. § 48-13-51(b)(3) further require that the expenditure of the Expenditures be made only through a contract or contracts with certain entities stated therein, including, but not limited to, a private sector nonprofit organization; and

**WHEREAS**, the DMO is a private sector nonprofit organization as defined in O.C.G.A. § 48-13-50.2(3) and satisfies all other requirements for an appropriate entity to contract with to make expenditures of the Expenditures; and

**WHEREAS**, the DMO has covenanted and agreed that it shall make expenditures of the Expenditures in accordance with an established budget for those funds (the “Budgeted Funds”) which budget and any amendments or modifications thereof shall be subject to the prior approval of the City.

**NOW, THEREFORE**, for and in consideration of the mutual obligations herein assumed, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DESCRIPTION OF SERVICES:** The DMO shall provide services to the City as detailed in **Exhibit A**, which is attached hereto and incorporated by reference herein. In any conflict between the terms of Exhibit A and this Agreement, this Agreement shall control.
2. **DMO’S OBLIGATIONS AND DUTIES:**
  - (a) The DMO shall make expenditures of the Tax in the amounts approved by the City as Budgeted Funds, and DMO hereby agrees to receive and make expenditures of the Tax in accordance with the terms and conditions set forth herein. Specifically, the Parties agree that the Hotel/Motel tax funds when received by the DMO will not be taxable income under either the IRS Code or the Income Tax Code of the State of Georgia. The DMO shall notify the IRS and the Georgia Revenue Department (if necessary) of this Agreement and seek confirmation of this understanding. If necessary, the Parties agree to amend and modify

this Agreement in order to preserve the tax-exempt status of the DMO and the tax-exempt status of the funds covered by this Agreement.

- (b) DMO shall submit a budget acceptable to the City showing the planned expenditure of all Expenditures to be received from the City and maintain accurate records of the Expenditures and disposition of such funds, such records to be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of O.C.G.A. § 48-13-51(a)(9). The DMO shall make available to the City all such records for inspection and audit by the City, upon City's written request.
- (c) The DMO shall expend the funds received from the City, as a result of the collection of taxes levied pursuant to O.C.G.A. § 48-13-51, *et seq.*, to plan, conduct, or participate in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.
- (d) DMO shall furnish the following to the City:
- A. Certificates of insurance from companies doing business in Georgia and acceptable to the City covering:
    1. Statutory Workers' Compensation Insurance, or proof that DMO is not required to provide such coverage under state law.
    2. Comprehensive Liability Insurance covering all operations and automobiles:
      - a. With limits of \$300,000 for each occurrence of bodily injury – general liability coverage, and with limits of \$100,000 for each person and \$300,000 for each occurrence – automobile liability coverage.
      - b. With limits of \$100,000 for each occurrence of property damage – general liability coverage and automobile liability coverage.
      - c. "Umbrella" or "Excess" coverage cannot be used to reach the limits stated in subparagraphs a and b above.
  - B. Certificates of Insurance must be executed in accordance with the following provisions:
    1. Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with the agreement;
    2. Certificates to contain the locations and operations to which the insurance applies;
    3. Certificates to contain Corporation's protective coverage for any subcontractor's operations;
    4. Certificates to contain Corporation's contractual insurance coverage;
    5. Certificates are to be issued to, or list as an additional insured:
 

City of Stonecrest, Georgia  
3120 Stonecrest Blvd. Suite 190  
Stonecrest, GA 30038
    6. Copies of certificates referred to in subparagraph 5 above must be mailed to:
 

City of Stonecrest, Georgia  
3120 Stonecrest Blvd. Suite 190

Stonecrest, GA 30038

- C. DMO shall be wholly responsible for obtaining certificates of insurance showing coverage as set forth above for all subcontractors who are engaged in work covered by this Agreement.
- D. DMO agrees to carry statutory Workers' Compensation Insurance and to have all subcontractors likewise carry statutory Workers' Compensation Insurance, or provide proof that such coverage is not required under state law.

**3. CITY'S OBLIGATIONS AND DUTIES:**

- (a) The City hereby designates the DMO as the City's destination marketing organization for the purposes of O.C.G.A. § 48-13-51(b)(3).
- (b) The City shall pay to the DMO the agreed upon portion of revenues necessary to be spent by the DMO pursuant to Ga. L. 2019, p. 3791; O.C.G.A. § 48-13-15(b)(3), as amended; and under any City ordinance.
- (c) City shall pay DMO within fifteen (15) calendar days following the end of the month in which the money is collected. ~~The City will retain an administrative charge of three percent (3%) of each total monthly payment.~~
- (d) Any penalties assessed against hotel-motels for late payment of the Tax will be retained by the City.
- (e) The City designates the Acting City Manager as its point of contact, coordinator, and liaison person with DMO in the execution of the terms of this Agreement.

**4. TERM AND TERMINATION OF AGREEMENT:**

- (a) The Effective date of this Agreement is May 15, 2021. This Agreement shall terminate absolutely and without further obligation on the part of Parties at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, if renewed.
- (b) This Agreement will be automatically renewed unless either Party elects to terminate the contract on the day of the close of the calendar year in which this Agreement is executed or within ninety (90) days after the close of the day of the calendar year in which this Agreement is executed, or renewed, if renewed.
- (c) The Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the City under the Agreement in accordance with O.C.G.A. § 36-60-13.
- (d) This Agreement is not deemed to create a debt of the City for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

- (e) Except to the extent specifically agreed upon by the Parties, any modification or termination of this Agreement in the manner set forth above or any other modification or termination of this Agreement for whatever cause or under whatever circumstances, shall not relieve or impair the obligations of either party arising prior to the effective date of any such modification or termination. DMO shall continue to be obligated to devote any and all non-expended Expenditures funds received from the City, and not returned to the City in accordance with the provisions of this Agreement.
- (f) This Agreement may be terminated, with or without cause, by either party hereto by the giving of ninety (90) days prior written notice of such termination.
- (g) A material breach of this Agreement shall be cured within sixty (60) business days (“Cure Period”) after a party notifies the other of the breach. In the event the material breach has not been cured within the Cure Period, the non-breaching party can terminate this Agreement by providing the other party with a thirty (30) business days’ notice.

## 5. **RELATIONSHIP OF PARTIES:**

- (a) Independent Contractors. Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between the City and DMO. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between the City and DMO. It is expressly agreed that DMO is acting as an independent contractor and not as an employee in providing the Services under this Agreement.
- (b) Employee Benefits. DMO shall not be eligible for any benefit available to employees of the City including, but not limited to, workers’ compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.
- (c) Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to DMO under this Agreement. DMO shall be responsible for all FICA, federal and state withholding taxes and workers’ compensation coverage for any individuals assigned to perform the Services for the City.

- 6. **CONFIDENTIALITY:** The City will not for any purpose inconsistent with this Agreement disclose to any third party or use any confidential or proprietary non-public information it has obtained during the term of this Agreement about Corporation’s business, including the terms of this Agreement, operations, financial condition, technology, systems, know-how, products, services, suppliers, clients, marketing data, plans, models, and personnel. DMO shall not for any purpose inconsistent with this Agreement or its privacy policy in effect from time to time disclose to any third party or

use any confidential information it received in connection with its performance of the services.

**7. INDEMNIFICATION:**

- (a) The DMO agrees to the fullest extent permitted by law, to indemnify and hold harmless the City and its governing officials, agents, employees, and attorneys (collectively, the “City Indemnitees”) from and against all third-party liabilities, demands, losses, damages, costs or expenses (including reasonable attorney’s fees and costs), incurred by any City Indemnatee as a result or arising out of (i) the willful misconduct or negligence of DMO in performing the Services or (ii) a material breach by DMO of its covenants.
- (b) DMO shall be responsible from the Effective date, for all injury or damage of any kind resulting from its work or the work of any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them, to persons or property, including employees and property of the City.
- (c) In accordance with subsection (a), DMO shall exonerate, indemnify, and save harmless the City from and against all claims or actions, and all expenses incidental to the defense of any such claims or actions, based upon or arising out of damage or injury (including death) to person or property caused by or sustained in connection with DMO’s performance of this Agreement or the work of DMO or by conditions created thereby or arising out of or in any way connected with work performed under this Agreement and shall assume and pay for, without cost to the City, the defense of any and all claims and actions based on, or arising out of, an act or omission of DMO, or any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. The DMO expressly agrees to defend against any claims brought or actions filed against the City where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

**8. FORCE MAJEURE:**

DMO will be excused from performing the services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Corporation’s reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer “hacker” attacks, global pandemic, and/or delays of common carrier.

- 9. DISPUTES:** Pending resolution of any dispute hereunder, the DMO shall proceed diligently with the performance of work in accordance with the City’s direction. The

Parties do not agree to arbitration or mediation as a method of dispute resolution and reserve the right to a jury trial in case of a dispute arising from this contractual Agreement.

**10. GOVERNING LAW AND CONSENT TO JURISDICTION:**

This Agreement is made and entered into in the State of Georgia and this Agreement and the rights and obligations of the Parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The jurisdiction for resolution of any disputes arising from this Agreement shall be in the State Courts of DeKalb County, Georgia.

**11. NOTICES:** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally or sent by United States certified or registered mail addressed to the DMO or the City, as the case may be, with postage thereon fully prepaid. The effective time shall be at the time of mailing.

DMO

DeKalb Convention and Visitors  
Bureau, Inc.  
1990 Lakeside Parkway, Suite 170  
Tucker, Georgia 30084

CITY

City of Stonecrest  
Attn: City Manager  
3120 Stonecrest Blvd., Suite 190  
Stonecrest, Georgia 30038

**12. ATTORNEYS' FEES:** The DMO shall pay reasonable attorneys' fees to the City should the City be required to incur attorneys' fees in enforcing the provisions of this Agreement or in the collection of any monies herein required to be paid by the DMO to the City.

**13. STANDARDS OF PERFORMANCE AND COMPLIANCE WITH APPLICABLE LAWS:**

- (a) DMO warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. DMO agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the services required by this Agreement.
- (b) DMO warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by DMO hereunder or which in any manner affect this Agreement.
- (c) Except as expressly set forth in this Agreement, DMO disclaims all other representations or warranties, express or implied, made to the City or any other person, including without limitation, any warranties regarding quality, suitability,

merchantability, fitness for a particular purpose or otherwise of any services or any good provided incidental to the services provided under this Agreement.

**14. WAIVER OF BREACH:**

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

**15. SEVERABILITY:**

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

**16. INTERPRETATION:**

It is the intent of the Parties that no portion of this Agreement shall be interpreted more harshly against either of the Parties as the drafter.

**17. AMENDMENT OF AGREEMENT:**

Modification or changes in this Agreement must be in writing and signed by the Parties to this Agreement.

**18. COUNTERPARTS:**

This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures. This Agreement shall be executed in an original and two (2) copies, any one of which may be used for any purpose for which the original may be used.

**19. ENTIRE AGREEMENT:**

This Agreement which includes the exhibits hereto contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

(Signatures on Following Page)

The Parties hereto have affixed their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**DEKALB CONVENTION &  
VISITORS BUREAU**

**CITY OF STONECREST**

\_\_\_\_\_  
JAMES TSISMANAKIS  
Executive Director & CEO

\_\_\_\_\_  
GEORGE TURNER  
Mayor Pro Tem

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Clerk

(SEAL)

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT A  
STATEMENT OF SERVICES

DMO agrees to operate a convention and visitors bureau which will enable Stonecrest, Georgia, and the hotels and motels located therein to market the City as a destination for specific inbound groups, increase the occupancy rate of hotel and motel rooms, and promote the development of facilities designed to enhance the growth of the convention, trade show, and tourism industry. DMO shall also perform the following:

1. DMO will hire and direct staff members whose duties will include the following:
  - a. Develop and implement marketing plans for convention, trade show, and tourism sales.
  - b. Produce and distribute publications in support of facilities and attractions in the City, DeKalb County, and its other cities.
  - c. Implement a tourism program to increase tourist visitation and spending in the City, DeKalb County, and its other cities.
  - d. Make contact with meeting planners and other groups to provide them with information about facilities located in the City, DeKalb County, and its other cities that are available to host their events and make appropriate referrals of such groups to such facilities.
2. DMO will require and assure performance of its Annual Marketing Plan, which is on file with the DMO and which is incorporated herein by this reference.
3. DMO will (a) submit monthly programmatic and financial progress reports indicating its accomplishment of the Program to the City not later than the 15<sup>th</sup> day of each month for the preceding month and (b) report its accomplishment of the above in the Corporation's annual report and provide copies of all such publications to designated City personnel and to the City Council.
4. DMO will use its best efforts to ensure that all funds received under this Agreement are expended for the purposes set forth in this Agreement.



**Stonecrest DMO Analysis**  
**HMT Benchmarking - Selected Regional Cities**  
**22-Nov-21**

County	City	2019 HMT Revenue(1)	2020 Population (2)	\$/POP	DMO Partner
Fulton	Alpharetta	\$9,051,332	65,818	\$138	Alpharetta CVB
Dekalb	Brookhaven	\$3,753,577	55,161	\$68	Explore Brookhaven
Cobb	Marietta	\$3,210,076	60,972	\$53	Marietta CVB
Dekalb	Chamblee	\$1,529,559	30,164	\$51	Discover Dekalb
Cobb	Smyrna	\$1,520,066	55,663	\$27	Travel Cobb
Rockdale	Conyers	\$1,281,824	17,305	\$74	Conyers CVB
Dekalb	Tucker	\$1,159,842	37,005	\$31	Discover Dekalb
Newton	Covington	\$890,658	14,192	\$63	Covington CVB
Dekalb	Decatur	\$802,873	24,928	\$32	Visit Decatur
<b>Dekalb</b>	<b>Stonecrest</b>	<b>\$704,989</b>	<b>59,194</b>	<b>\$12</b>	<b>Discover Dekalb</b>
Henry	Stockbridge	\$472,110	28,973	\$16	Visit Henry County
Gwinnett	Snellville	\$278,879	20,573	\$14	Gwinnett CVB
Dekalb	Doraville	\$56,303	10,623	\$5	Discover Dekalb
Dekalb	Stone Mountain	\$14,485	6,703	\$2	Discover Dekalb
Fulton	College Park	\$11,833,857	13,930	\$850	ATL Airport District CVB
Fulton	East Point	\$5,250,434	38,358	\$137	ATL Airport District CVB
Fulton	Hapeville	\$3,636,830	6,553	\$555	ATL Airport District CVB
Fulton	Union City	\$307,715	26,830	\$11	ATL Airport District CVB
Fulton	Atlanta	\$85,201,268	498,715	\$171	Atlanta CVB

[\(1\) Georgia Department of Community Affairs](#)

(2) 2020 Census



## CITY COUNCIL AGENDA ITEM

**SUBJECT: Employee Retirement Program**

**AGENDA SECTION:** *(check all that apply)*

☐ PRESENTATION    ☐ PUBLIC HEARING    ☐ CONSENT AGENDA    ☒ OLD BUSINESS  
☐ NEW BUSINESS    ☐ OTHER, PLEASE STATE: Click or tap here to enter text.

**CATEGORY:** *(check all that apply)*

☐ ORDINANCE    ☒ RESOLUTION    ☐ CONTRACT    ☐ POLICY    ☐ STATUS REPORT  
☒ OTHER, PLEASE STATE: Adoption Agreement

**ACTION REQUESTED:** ☒ DECISION    ☐ DISCUSSION,    ☐ REVIEW, or    ☐ UPDATE ONLY

**Previously Heard Date(s):** 10/25/21 & Click or tap to enter a date.

**Current Work Session:** Click or tap to enter a date.

**Current Council Meeting:** Monday, November 22, 2021

**SUBMITTED BY:** Steven McClure

**PRESENTER:** Steven McClure

**PURPOSE:** The purpose of this action is to present the finalized 401(a) Defined Contribution Plan Resolution and Adoption Agreement as completed by the Georgia Municipal Association and to authorize the execution of these documents by the City Council. By executing these documents, the City of Stonecrest will become members in the Georgia Municipal Association 401a Defined Contribution Plan, including a 457b plan, effective December 1, 2021.

**FACTS:** On October 25, the City Council approved the Resolution and Adoption Agreement for the City to participate in the GMA Retirement Program. During the presentation, the Acting Director of Human Resources stated that the official documents would be created by GMA and presented back to City Council for execution. GMA has compiled the official documents and we are presenting them for execution.

**OPTIONS:** Approve, Deny, Defer Click or tap here to enter text.

**RECOMMENDED ACTION:** Approve



## CITY COUNCIL AGENDA ITEM

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### ATTACHMENTS:

- (1) Attachment 1 - 401a Defined Contribution Resolution and Adoption Agreement (Action Item)
- (2) Attachment 2 - 457b Deferred Compensation Plan Resolution & Adoption Agreement (Action Item)
- (3) Attachment 3 - Roth 457(b) Deferred Compensation Plan Adoption Agreement (Action Item)
- (4) Attachment 4 - 401(a) DC Master Plan
- (5) Attachment 5 - 401(a) DC Trust Agreement
- (6) Attachment 6 - Stonecrest Cover Letter
- (7) Attachment 7 - 457 Trust Agreement
- (8) Attachment 8 - 457(b) conformed copy with 3 31 2021 amendments

**THE GEORGIA MUNICIPAL ASSOCIATION, INC.**  
**401(a) DEFINED CONTRIBUTION PLAN**

**Amended and Restated  
As of January 1, 2018**

**RESOLUTION AND  
ADOPTION AGREEMENT**

**City of Stonecrest, Georgia**

**Administered by:  
Georgia Municipal Association, Inc.  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 678-686-6289**

## RESOLUTION

WHEREAS, the City of Stonecrest, Georgia, (hereinafter referred to as the "Participating Employer") has determined that in the interest of attracting and retaining qualified employees, it wishes to offer a defined contribution plan, funded by employer contributions;

WHEREAS, the Participating Employer has also determined that it wishes to encourage employees' saving for retirement by offering ☒ matching and/or ☒ non-matching contributions;

WHEREAS, the Participating Employer has reviewed the Georgia Municipal Association, Inc. ("GMA") Defined Contribution Plan, as amended and restated effective as of January 1, 2017 ("Plan");

WHEREAS, the Participating Employer wishes to ☒ participate or ☐ continue participating in the Plan to provide certain benefits to its employees, reduce overall administrative costs, and afford attractive investment opportunities;

WHEREAS, the Participating Employer is an Employer as defined in the Plan;

WHEREAS, the Participating Employer has executed an Adoption Agreement (and, if applicable, an Addendum) for the Plan; and

WHEREAS, the Mayor and Council of the City of Stonecrest, Georgia ("Governing Authority") is authorized by law to adopt this resolution approving the Adoption Agreement (and, if applicable, Addendum) on behalf of the Participating Employer;

Therefore, the Governing Authority of the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and the Trust Agreement ("Trust") for the Plan for its Employees.

Section 2. The Participating Employer acknowledges that the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Plan ("Trustees") are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.

Section 3.

(a) The Participating Employer hereby adopts the terms of the Adoption Agreement and any Addendum, which is attached hereto and made a part of this resolution. The Adoption Agreement (and, if applicable, the Addendum) sets forth the Employees to be covered by the Plan, the benefits to be provided by the Participating Employer under the Plan, and any conditions imposed by the Participating Employer with respect to, but not inconsistent with, the Plan. The Participating Employer reserves the right to amend its elections under the Adoption Agreement and any Addendum, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Trustees of the Plan. The

Participating Employer acknowledges that it is solely responsible for submitting Employer Contributions in accordance with the terms of this Adoption Agreement, including submitting said Employer Contributions as scheduled based on its Payroll Period or the end of the Plan Year, as applicable.

(b) The Participating Employer acknowledges that it may not be able to rely on the opinion letter if it makes certain elections under the Adoption Agreement or the Addendum, and that the failure to properly complete the Adoption Agreement may result in a failure of the Participating Employer's Plan to be a qualified plan.

Section 4. The Participating Employer hereby authorizes Georgia Municipal Association, Inc. ("GMA"), the Provider who sponsors the Plan on behalf of the Trustees, to amend the Plan on its behalf as provided under Revenue Procedures 2017-41, 2011-49, and 2007-44. The Participating Employer understands that the implementing amendment reads as follows:

GMA will maintain a record of the Participating Employers, and GMA will make reasonable and diligent efforts to ensure that Participating Employers have actually received and are aware of all Plan amendments and that such Participating Employers adopt new documents when necessary. The provisions of this subsection shall supersede other provisions of the Plan to the extent those other provisions are inconsistent.

The Trustees or GMA, as directed by the Trustees, hereby reserves the right to terminate the Plan without consent of the Participating Employers or of Participants (or any Beneficiaries thereof) and, likewise, to amend the Plan without consent of the Participating Employers or of Participants (or any Beneficiaries thereof) to make desired changes in the design of the Plan. A true copy of the resolution of the Trustees approving such amendment shall be delivered to the Administrator and the Participating Employers. The Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Employees, Participants, Beneficiaries, the Administrator, and all others having any interest under the Plan shall be bound thereby.

On and after February 17, 2005, GMA shall have the authority to advise and prepare amendments to the Plan, for approval by the Trustees, on behalf of all Participating Employers, including those Participating Employers who have adopted the Plan prior to the January 1, 2018, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Participating Employers. Any amendment prepared by the Provider and approved by the Trustees will be provided by the Administrator to Participating Employers. Notwithstanding the foregoing paragraphs, effective on or after June 27, 2016, for any Participating Employer as of either:

- the date the Internal Revenue Service requires the Participating Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Participating Employer to incorporate a type of Plan not allowable in a pre-approved plan, as described in Revenue Procedure 2017-41; or
- as of the date of the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments,

such Participating Employer shall execute a resolution to adopt any amendments that are approved by the Trustees after the date under subparagraph (1) or (2) above, as applicable, within the earlier of (i) ninety (90) days after such Trustees' approval, or (ii) if applicable, the remedial amendment period under Code Section 401(b) as applicable to governmental plans. If the Participating Employer is required to obtain a determination letter for any reason in order to maintain reliance on the opinion letter, GMA's authority to amend the Plan on behalf of the Participating Employer is conditioned on the Plan receiving a favorable determination letter. The Participating Employer further understands that, if it does not give its authorization hereunder or, in the alternative, adopt another pre-approved plan, its Plan will become an individually designed plan and will not be able to rely on the pre-approved plan opinion letter.

#### Section 5.

(a) The Participating Employer shall abide by the terms of the Plan and the Trust, including amendments to the Plan made under Section 4 and to the Trust made by the Trustees of the Plan, all investment, administrative, and other service agreements of the Plan and the Trust, and all applicable provisions of the Internal Revenue Code and other applicable law.

(b) The Participating Employer accepts the administrative services to be provided by GMA and any services provided by a Service Manager as delegated by the Trustees. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees may be deducted from the Participants' Accounts.

#### Section 6.

(a) The Participating Employer may terminate its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

- (i) A resolution must be adopted terminating its participation in the Plan.
- (ii) The resolution must specify when the participation will end.

The Trustees shall determine whether the resolution complies with the Plan, and all applicable federal and state laws, shall determine an appropriate effective date, and shall provide appropriate forms to terminate ongoing participation. However, distributions under the Plan of existing accounts to Participants will be made in accordance with the Plan.

(b) The Participating Employer acknowledges that the Plan contains provisions for involuntary Plan termination.

Section 7. The Participating Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Trustees to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Participating Employer to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

Section 8. This resolution and the Adoption Agreement (and any Addendum) shall be submitted to the Trustees for their approval. The Trustees shall determine whether the resolution complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. The Trustees may refuse to approve an Adoption Agreement (and any Addendum) by an Employer that does not have legal authority to participate in the Plan. The Governing Authority hereby acknowledges that it is responsible to assure that this resolution and the Adoption Agreement (and any Addendum) are adopted and executed in accordance with the requirements of applicable law.

Section 9. As provided in Revenue Procedure 2017-41, the Participating Employer may relay on the Plan's Opinion Letter, provided that the Participating Employer's Plan is identical to the GMA Plan, and the Participating Employer has not amended or made any modifications to the Plan other than to choose the options permitted under the Plan and Adoption Agreement.

Adopted by the Governing Authority on \_\_\_\_\_, \_\_\_\_\_, in  
accordance with applicable law.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

**[Governing Authority should assure that applicable law is followed in the adoption and  
execution of this resolution.]**

# GMA 401(a) DEFINED CONTRIBUTION PLAN ADOPTION AGREEMENT

## ADMINISTRATOR

Georgia Municipal Association, Inc.  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 678-686-6289

## PARTICIPATING EMPLOYER

Name: **City of Stonecrest, Georgia**

## GOVERNING AUTHORITY

Name: **Mayor and Council of the City of Stonecrest, Georgia**  
Address: **3120 Stonecrest Blvd., Suite 190, Stonecrest, GA 30038**  
Phone: **(770) 224-0200**  
Facsimile: **(470) 299-4214**  
Title of Person Authorized to receive Official Notices from the Plan or  
GMA: **Director of Human Resources**

## DISCLOSURE OF OTHER 401(a) PLAN(S)

This Participating Employer ☐ does or ☒ does not have an existing defined contribution plan(s). If the Participating Employer does have one or more defined contribution plans, the Governing Authority must provide the plan name, name of the plan's provider, and such other information requested by the Administrator.

## TYPE OF ADOPTION AND EFFECTIVE DATE

**NOTE:** This Adoption Agreement, with the accompanying Master Plan Document, is designed to comply with Internal Revenue Code Section 401(a), as applicable to a governmental qualified defined contribution plan, and is part of the GMA Defined Contribution and Deferred Compensation Program. Plan provisions designed to comply with applicable provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2017-37 (the 2017 Cumulative List) are effective as of the applicable effective dates set forth in the Adoption Agreement and Master Plan Document. By adopting

this Adoption Agreement, with its accompanying Master Plan Document, the Participating Employer is adopting a plan document intended to comply with Internal Revenue Code Section 401(a) and the 2017 Cumulative List with the applicable effective dates.

This Adoption Agreement is for the following purpose (**check one**):

- ☒ This is a new defined contribution plan adopted by the Participating Employer for its Employees effective **December 1, 2021** (**insert effective date of this Adoption Agreement but not earlier than the beginning of the plan year in which the plan is adopted**), with respect to Contributions as approved by the Board of Trustees below.
- ☐ Check this box if any non-conforming provisions will be included in Plan provisions. An Addendum must be requested from GMA to be completed as part of the Adoption Agreement.
- ☐ This is an amendment and restatement of the current GMA 401(a) Defined Contribution Plan or other defined contribution plan of the Participating Employer, the effective date of which shall be \_\_\_\_\_, \_\_\_\_\_ (**insert effective date of this Adoption Agreement but not earlier than the first day of the plan year in which the plan is restated or the beginning of the plan year in which the plan is adopted**). This Adoption Agreement is intended to replace and serve as an amendment and restatement of the Employer's preexisting plan, which became effective on \_\_\_\_\_, \_\_\_\_\_ (**insert original effective date of preexisting plan**).
- ☐ Check this box if (i) any preexisting plan provisions will be preserved from a superseded non-GMA plan or (ii) any non-conforming provisions will be included in Plan provisions. An Addendum must be completed as part of the Adoption Agreement.
- ☐ This is an amendment to be effective as of \_\_\_\_\_, \_\_\_\_\_, (**insert effective date of this Adoption Agreement but not earlier than then beginning of the remedial amendment period for such amendment**) of the current GMA 401(a) Defined Contribution Plan previously adopted by the Participating Employer, which was originally effective \_\_\_\_\_, \_\_\_\_\_, as follows (**must specify elective provisions in this Adoption Agreement**):
- ☐ \_\_\_\_\_
- ☐ Check this box if any non-conforming provisions will be included in Plan provisions. An Addendum must be completed as part of the Adoption Agreement.

## PLAN YEAR

Plan Year means the Participating Employer's Fiscal Year. For purposes of the limitations under Code Section 415(c) set forth in Article V of the Master Plan Document, the limitation year means the calendar year.

The Employer's Fiscal Year starts on: **January 1** (insert month and day e.g., July 1).

## COVERED DEPARTMENTS

A Participating Employer may cover all of its departments in the Plan or only those listed (check one):

- ☒ All Departments
- ☐ Covered Departments (**must specify**): \_\_\_\_\_

## ELIGIBLE EMPLOYEES

Only Employees as defined in the Plan may be covered by the Adoption Agreement. Independent contractors may not participate in the Plan. Subject to other conditions in the Plan and this Adoption Agreement, the following Employees of the Covered Departments are eligible to participate in the Plan, provided that they satisfy any additional eligibility requirements specified under "Other Eligibility Requirements" below (**check one**):

- ☒ All
- ☐ All with the following exclusions:
- ☐ Municipal Legal Officer
  - ☐ Elected or appointed officials
  - ☐ Other<sup>1</sup> (**must specify and clearly define the ineligible classification of employees**): \_\_\_\_\_
- ☐ Only employees in any eligible 457(b) plan of the Employer. Note: Please check this box if the sole purpose of this Plan is to provide Employer contributions to match Employee contributions to any eligible 457(b) Plan of the Employer.
- ☐ Only employees in the Employer's GMA 457(b) plan. Note: Please check this box if the sole purpose of this Plan is to provide Employer contributions to match Employee contributions to the Employer's GMA 457(b) Plan.

<sup>1</sup> Do not specify the inclusion or exclusion of a participant by using the name of the employee.

- ☐ Other<sup>1</sup> (must specify and clearly define the classification of Eligible Employees; Eligible Employees shall not include non-governmental employees, independent contractors, or any other ineligible individuals):

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No employee may be excluded based on the attainment of a maximum age.

The Employer shall provide the Administrator with the name, address, Social Security Number, and date of birth for each Eligible Employee, as defined by the Adoption Agreement.

## OTHER ELIGIBILITY REQUIREMENTS

**Minimum Hours Per Week** -- A Participating Employer may prescribe a minimum number of hours that an Employee must be scheduled and normally work in order to be an Eligible Employee under the Plan. The Employer hereby elects the following (elect either “No Minimum Hours Required” or “Minimum Hours Required” below. If you elect to have a minimum hour requirement you must specify the number of hours required in the space provided below). The Minimum Hour Requirement below only applies to common law Employees of the Employer and does not apply to elected or appointed officials.

- ☐ **No Minimum Number of Hours Required**
- ☒ **Minimum Hours Required Per Week (regularly scheduled):**
- ☒ **40 (must not exceed 40 hours/week)**
- ☐ **Other Minimum Hour Requirement (must specify):**\_\_\_\_\_.

**Exceptions:** If a different minimum hour requirement applies to a particular class or classes of Eligible Employees, please specify below the classes to whom the different requirement applies and indicate the minimum hour requirement applicable to them.

Class(es) of Eligible Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Minimum hour requirement applicable to excepted Eligible Employees:

- ☐ **No Minimum Number of Hours Required**
- ☐ **Minimum Hours Required Per Week (regularly scheduled):**
- ☐ \_\_\_\_\_ (**must not exceed 40 hours/week**)
- ☐ **Other Minimum Hour Requirement (must specify):**\_\_\_\_\_.

If any Eligible Employee ceases to meet the Minimum Hour Requirement (if any), he or

she becomes ineligible for additional contributions until he or she once again meets the requirement. It is the Participating Employer's responsibility to monitor this requirement and to report to the Administrator a change in employee eligibility.

**Waiting Period** -- A Participating Employer may establish a waiting period before an Eligible Employee may become a Participant in the Plan. The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

☒ **No waiting period.** An Eligible Employee may become a Participant immediately upon meeting the eligibility conditions of the Plan.

☐ **A waiting period described under one of the following options (check one):**

☐ **Minimum Period of Service (please complete items below):**

The waiting period for participation in the Plan shall be \_\_\_\_\_ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the Plan is adopted  
☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Different periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

☐ **Minimum Period of Contributions to 457(b) Plan (please complete items below):**

The waiting period for participation in the Plan shall be \_\_\_\_\_ (not to exceed 12 months) of the Eligible Employee's making contributions to the Employer's eligible 457(b) plan(s).

Eligible Employees who are employed on the date the Plan is adopted  
☐ will be ☐ will not be given credit for prior contributions made to the eligible 457(b) plan(s) for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the eligible 457(b) plan(s) ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Different periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

**Exceptions:** If a different waiting period requirement applies to a particular class or classes of Eligible Employees, please specify below the classes to whom the different requirement applies and indicate the waiting period requirement applicable to them.

Class(es) of Eligible Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Waiting period requirement applicable to excepted Eligible Employees:

- ☐ **No waiting period.** An Eligible Employee may become a Participant immediately upon meeting the eligibility conditions of the Plan.
- ☐ **A waiting period described under one of the following options (check one):**

- ☐ **Minimum Period of Service (please complete items below):**

The waiting period for participation in the Plan shall be \_\_\_\_\_ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the Plan is adopted  
☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Different periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

- ☐ **Minimum Period of Contributions to 457(b) Plan (please complete items below):**

The waiting period for participation in the Plan shall be \_\_\_\_\_ (not to exceed 12 months) of the Eligible Employee's making contributions to the Employer's eligible 457(b) plan(s).

Eligible Employees who are employed on the date the Plan is adopted  
☐ will be ☐ will not be given credit for prior contributions made to the eligible 457(b) plan(s) for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the eligible 457(b) plan(s) ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Different periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

## EMPLOYER CONTRIBUTIONS

A Participating Employer may make Matching Contributions **and/or** Non-Matching Contributions as specified below. Matching Contributions and Non-Matching Contributions that are tied to Payroll Periods (as defined in this Adoption Agreement) must be remitted to the Administrator no later than 15 business days after the end of the Payroll Period. Annual Contributions must be remitted to the Administrator no later than 15 days after the end of the Plan Year. A Participating Employer may establish one or more classes of employees for contribution purposes in this Adoption Agreement. However, no employee may be excluded from contributions based on the attainment of a maximum age.

The Participating Employer hereby elects to make contributions as follows (**check matching, non-matching, or both as applicable**):

☒ **Matching Contributions**

Employer Contributions shall be made to match all or a portion of a Participant's contribution to an eligible 457(b) deferred compensation plan, including but not limited to the GMA Deferred Compensation Plan. The Employer must identify the class or classes of Participants for whom contributions will be made and the contribution formula:

**Class A Matching Contributions** will be made on the following basis for Class A Participants:

**Class A** Participants are (**check one**):

- ☒ All Eligible Employees  
☐ Other (**must specify; specific positions are permissible; must be Eligible Employees; specific individuals may not be named**):
- 

The Employer elects the following matching contribution formula for Class A Participants (**check and complete "Percentage Match," "Flat Dollar Match," or "Other Formula" below**):

- ☒ **Percentage Match**: For each Payroll Period in which the Participant contributed to the **GMA 457(b) Deferred Compensation Plan** (insert plan name), an eligible 457(b) Plan of the Employer, the Employer will contribute **100%** (insert percentage) of the dollar amount contributed to the 457(b) Plan. (For example, if an Employer elects a 50% match, then for every \$10 the Participant contributes to an eligible 457(b) Plan, the Employer will contribute \$5 to this Plan).

**Cap on Percentage Match** - The Employer may wish to establish a cap on its matching contributions, so that the percentage (%) match amount indicated above cannot exceed a certain amount per Payroll Period. The Employer hereby elects the following cap on its percentage matching contribution (**check and fill in \$ or % of compensation limit to apply below, or check "no cap" below**):

- ☐ **Flat Dollar Cap:** In no event will Matching Contributions made on behalf of a Participant exceed a flat dollar amount equal to **(complete as applicable)**:

\$\_\_\_\_\_ per weekly Payroll Period  
 \$\_\_\_\_\_ per bi-weekly Payroll Period  
 \$\_\_\_\_\_ per semi-monthly Payroll Period  
 \$\_\_\_\_\_ per monthly Payroll Period

**[Note: If the Employer has more than one Payroll Period, you should indicate dollar cap that will apply with respect to each Payroll Period e.g., \$100 per weekly Payroll Period, and \$200 per bi-weekly Payroll Period].**

- ☒ **Cap Equal to Percentage of Total Compensation:** In no event will Matching Contributions made on behalf of a Participant exceed **4%** of the Participant's §457(e)(5) includable compensation (gross income from the Employer) per Payroll Period.

☐ **No Cap**

- ☐ **Flat Dollar Match:** For each Payroll Period in which the Participant contributed at least \$\_\_\_\_\_ (**may be \$1 to \$25**) to an eligible 457(b) Plan of the Employer, the Participating Employer will contribute a flat dollar amount as shown below **(complete as applicable)**:

\$\_\_\_\_\_ per weekly Payroll Period  
 \$\_\_\_\_\_ per bi-weekly Payroll Period  
 \$\_\_\_\_\_ per semi-monthly Payroll Period  
 \$\_\_\_\_\_ per monthly Payroll Period

- ☐ **Other Formula for Calculating Matching Contributions (must specify formula that complies with definitely determinable requirements of Treasury Regulations Section 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415):**

\_\_\_\_\_  
 \_\_\_\_\_

**[Do not complete following section on Class B Matching Contributions if all Eligible Employees are included in Class A above].**

**Class B Matching Contributions** will be made on the following basis for Class B Participants:

AA-8

**Class B** Participants are (must specify; specific positions are permissible; must be Eligible Employees; specific individuals may not be named):

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The Employer elects the following matching contribution formula for Class B Participants (check and complete "Percentage Match," "Flat Dollar Match," or "Other Formula" below):

- ☐ **Percentage Match:** For each Payroll Period in which the Participant contributed to \_\_\_\_\_ (insert plan name), an eligible 457(b) Plan of the Employer, the Employer will contribute \_\_\_\_\_% (insert percentage) of the dollar amount contributed to the 457(b) Plan. (For example, if an Employer elects a 50% match, then for every \$10 the Participant contributes to an eligible 457(b) Plan, the Employer will contribute \$5 to this Plan).

**Cap on Percentage Match** - The Employer may wish to establish a cap on its matching contributions, so that the percentage (%) match amount indicated above cannot exceed a certain amount per Payroll Period. The Employer hereby elects the following cap on its percentage matching contribution (check and fill in \$ or % of compensation limit to apply below, or check "no cap" below):

- ☐ **Flat Dollar Cap:** In no event will Matching Contributions made on behalf of a Participant exceed a flat dollar amount equal to (complete as applicable):

\$ \_\_\_\_\_ per weekly Payroll Period  
 \$ \_\_\_\_\_ per bi-weekly Payroll Period  
 \$ \_\_\_\_\_ per semi-monthly Payroll Period  
 \$ \_\_\_\_\_ per monthly Payroll Period

[Note: If the Employer has more than one Payroll Period, you should indicate dollar cap that will apply with respect to each Payroll Period e.g., \$100 per weekly Payroll Period, and \$200 per bi-weekly Payroll Period].

- ☐ **Cap Equal to Percentage of Total Compensation:** In no event will Matching Contributions made on behalf of a Participant exceed \_\_\_\_\_% of the Participant's §457(e)(5) includable compensation (gross income from the Employer) per Payroll Period.

☐ **No Cap**

- ☐ **Flat Dollar Match:** For each Payroll Period in which the Participant contributed at least \$ \_\_\_\_\_ (may be \$1 to \$25) to an eligible 457(b) Plan of the Employer,

the Participating Employer will contribute a flat dollar amount as shown below  
(complete as applicable):

\$\_\_\_\_\_ per weekly Payroll Period  
 \$\_\_\_\_\_ per bi-weekly Payroll Period  
 \$\_\_\_\_\_ per semi-monthly Payroll Period  
 \$\_\_\_\_\_ per monthly Payroll Period

- ☐ **Other Formula for Calculating Matching Contributions (must specify formula that complies with definitely determinable requirements of Treasury Regulations Section 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415):**

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**[Skip to "Payroll Period" below if Employer is not going to make Non-Matching Contributions]**

☒ **Non-Matching Contributions**

The Employer hereby elects to make contributions to the Plan without regard to a Participant's contribution to an eligible 457(b) plan(s). The Employer must identify the class or classes of Participants for whom these contributions will be made and the contribution formula:

**Non-Matching Contributions** shall be made on the following basis for Class C Participants:

**Class C** Participants are (check one):

- ☒ All Eligible Employees  
☐ Other (must specify; specific positions are permissible; must be Eligible Employees; specific individuals may not be named):

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The Employer elects the following contribution formula for Class C Participants (check one):

- ☐ Year-End Contributions: A one-time Plan Year-end contribution of \$\_\_\_\_\_ or \_\_\_\_\_% of Compensation per Participant.  
☐ **11**% of Compensation per Participant for each Payroll Period.

- ☐ A flat dollar amount per Payroll Period as shown below (**complete as applicable**):

\$\_\_\_\_\_ per weekly Payroll Period  
 \$\_\_\_\_\_ per bi-weekly Payroll Period  
 \$\_\_\_\_\_ per semi-monthly Payroll Period  
 \$\_\_\_\_\_ per monthly Payroll Period

- ☐ Other Formula for Calculating Non-Matching Contributions (must specify formula that complies with definitely determinable requirements of Treasury Regulations Section 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415):

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**[Do not complete the following section on Class D Non-Matching Contributions if all Eligible Employees are included in Class C above].**

**Non-Matching Contributions** shall be made on the following basis for Class D Participants:

**Class D** Participants are (**must specify; specific positions are permissible; must be Eligible Employees; specific individuals may not be named**):

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The Employer elects the following contribution formula for Class D Participants (**check one**):

- ☐ Year-End Contributions: A one-time Plan Year-end contribution of \$\_\_\_\_\_ or \_\_\_\_\_% of Compensation per Participant.
- ☐ \_\_\_\_\_% of Compensation per Participant for each Payroll Period.
- ☐ A flat dollar amount per Pay Period as shown below (**complete as applicable**):
- \$\_\_\_\_\_ per weekly Payroll Period  
 \$\_\_\_\_\_ per bi-weekly Payroll Period  
 \$\_\_\_\_\_ per semi-monthly Payroll Period  
 \$\_\_\_\_\_ per monthly Payroll Period
- ☐ Other Formula for Calculating Non-Matching Contributions (must specify formula that complies with definitely determinable requirements of Treasury Regulations Section 1.401-1(b)(1)(i) and does not violate

**limits applicable to governmental plans under Code Sections 401(a)(17) and 415):**

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For purposes of computing non-matching contributions, "Compensation" is defined in the Plan, subject to the limits imposed by Georgia Code Section 47-1-13(b) and Internal Revenue Code Section 401(a)(17), as adjusted for cost-of-living increases under Internal Revenue Code Section 401(a)(17)(B).

The Participating Employer must monitor contributions to the Plan on behalf of a Participant to this Plan and any other 401(a) plan maintained by the Participating Employer to confirm compliance with Internal Revenue Code Section 415 and Article 5 of the Master Plan. To the extent an amendment to this Adoption Agreement is needed to satisfy the Internal Revenue Code Section 415 limit that could not otherwise be provided for in the above Sections, please complete as applicable:

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## COMPENSATION

**Compensation Paid After Severance From Employment** -- A Participating Employer may elect to include certain post-severance payments in Compensation for purposes of computing contributions under the Plan, but only if these amounts are paid no later than 2½ months after severance from employment or, if later, the end of the calendar year that includes a Participant's severance from employment, and only if it is a payment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. The Participating Employer makes the following election with respect to including post-severance payments in Compensation (Note: if the following is not completed, no post-severance payments will be included in Compensation by default):

- ☐ No post-severance payments will be included in Compensation for purposes of computing contributions under the Plan (if this box is checked, skip to "Payroll Period" below).
- ☒ For purposes of calculating contributions under the Plan, the following post-severance payments will be included in Compensation, as long as: 1) they are paid no later than 2½ months after severance from employment or, if later, the end of the calendar year that includes the Participant's severance from employment; and 2) absent a severance from employment, they would have been paid to the

Participant while the Participant continued in employment with the Participating Employer (check all that apply):

- ☒ regular compensation paid after severance from employment for services rendered prior to severance during the Participant's regular working hours
- ☒ compensation paid after severance from employment for services rendered prior to severance outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments
- ☒ post-severance payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued

☐ Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## VESTING FOR EMPLOYER CONTRIBUTIONS

A Participating Employer may establish a vesting schedule for Employer Contributions. This means that if the Participant leaves the Participating Employer's employment prior to completing a specified period of service (not to exceed 5 years), the Participant forfeits all or part of the Employer's Contributions. However, upon Death or Disability or the termination of the Plan, the Participant is 100% vested in the Participant's Employer Contributions, notwithstanding any vesting schedule. If a vesting schedule is established, it is the Employer's responsibility to calculate the Eligible Employee's service and report it to the Administrator. Unless otherwise specified below, for purposes of vesting, service means the number of years and complete months of service of a Participant as an Eligible Employee of the Employer and the Participant's service begins with the first day of employment as an Eligible Employee. The Employer hereby elects the following (check one):

- ☐ **Immediate Vesting.** No vesting schedule. Employer Contributions are 100% vested from the time credited to the Participant's Account (**if this option is elected, do not complete the rest of this section**).
- ☐ **Cliff Vesting.** Employer Contributions are 100% vested after a Participant has been employed as an Eligible Employee for \_\_\_\_ years (**not to exceed 5 years**) (the "Vesting Period"). Matching contributions remain 0% vested until the Participant satisfies the full Vesting Period.
- ☒ **Graduated Vesting Schedule.** Employer Contributions are vested on the following graduated scale (**insert vesting % for each completed year of service as an Eligible Employee. Note: Maximum waiting period for 100% vesting may not exceed 5 years**):

<u>Completed Years of Service as Eligible Employee</u>	<u>Vested %</u>
1 year	<u>20%</u>
2 years	<u>40%</u>
3 years	<u>60%</u>
4 years	<u>80%</u>
5 years	<u>100 %</u>

**Complete the following items if Employer has elected Cliff Vesting or Graduated Vesting:**

In determining the Participant's total years of service for vesting purposes, Eligible Employees who are employed on the date the Plan is adopted by the Employer (**check one**): ☒ will be ☐ will not be given credit for prior service as an Eligible Employee.

In determining the Participant's total years of service for vesting purposes, different periods of employment as an Eligible Employee (**check one**): ☒ will be added together ☐ will not be added together ☐ will be added together if the Participant is reemployed with the Employer before completing a period of separation of \_\_\_\_\_ years (not to exceed 5 years).

## **TREATMENT OF FORFEITURES**

If a Participant separates from service, the Participant's non-vested Employer Contributions shall be forfeited as of the date of the Participant's Separation from Service. Amounts forfeited during a Plan Year shall be held unallocated until they are used to reduce or otherwise supplement Employer Contributions as of the earliest possible date such contributions are required to be made to the Plan. If there are no future Employer Contributions (as in the case of a frozen plan), forfeitures shall be used for administrative expenses; after which, any remaining forfeitures shall be allocated to Participants' Accounts.

## **MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT**

If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement (or any Addendum), the Governing Authority by official action must adopt an amended Adoption Agreement (and any Addendum, if applicable) and forward the amended Adoption Agreement (and any Addendum) to the Trustees for approval. The amended Adoption Agreement (and Addendum) is not effective until approved by the Trustees and other procedures required by the Plan have been implemented.

The Administrator will inform the Participating Employer of any amendments made by the Trustees to the Plan. If there are no future Employer Contributions (as in the case of a frozen plan), forfeitures shall be used for administrative expenses, and, if forfeitures remain, shall be allocated to Participants' accounts.

## TERMINATION OF THE ADOPTION AGREEMENT

This Adoption Agreement (and any Addendum) may be terminated only in accordance with the Plan.

The Administrator will inform the Participating Employer of the discontinuance or abandonment of the Plan by the Trustees.

## EXECUTION BY EMPLOYER

This Adoption Agreement (and any Addendum) may only be used in conjunction with the Georgia Municipal Association 401(a) Defined Contribution Plan Master Plan Document approved by the Internal Revenue Service under an opinion letter Q702380a dated June 30, 2020.

The failure to properly complete this Adoption Agreement (or any Addendum), or to operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement (and any Addendum), Master Plan Document and Trust, may result in disqualification of the Plan under the Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS opinion letter should be directed to the Administrator. The Administrator is the Georgia Municipal Association, Inc., with its primary business offices located at: 201 Pryor Street, SW, Atlanta, Georgia 30303. The business telephone number is: (404) 688-0472. The primary person to contact is GMA General Counsel or Deputy Executive Director, Risk Management and Employee Benefits.

The foregoing Adoption Agreement is hereby adopted and approved on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the Mayor and Council of the City of Stonecrest, Georgia.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Plan.

**[Complete the following if the purpose of this Adoption Agreement is to establish a new defined contribution plan or to restate a preexisting defined contribution plan of the Participating Employer (other than a GMA 401(a) Defined Contribution Plan).]**

Contributions shall first be remitted as follows:

- ☐ within 15 business days after the Payroll Period ending \_\_\_\_\_, \_\_\_\_\_.
- ☐ On the following prospective date (**specify a specific date**): \_\_\_\_\_.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
on behalf of the Board of Trustees

**THE GEORGIA MUNICIPAL ASSOCIATION  
457(b) DEFERRED COMPENSATION PLAN**

**RESOLUTION AND  
ADOPTION AGREEMENT**

**City of Stonecrest, Georgia**

**Administered by:  
Georgia Municipal Association  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663**

## RESOLUTION

WHEREAS, the City of Stonecrest, Georgia, (hereinafter referred to as the "Participating Employer") has determined that in the interest of attracting and retaining qualified employees, it wishes to offer a deferred compensation plan;

WHEREAS, the Participating Employer has also determined that it wishes to encourage employees' saving for retirement by offering salary reduction contributions;

WHEREAS, the Participating Employer has reviewed the Georgia Municipal Association ("GMA") Deferred Compensation Plan ("Plan");

WHEREAS, the Participating Employer wishes to participate in the Plan to provide certain benefits to its employees, reduce overall administrative costs, and afford attractive investment opportunities;

WHEREAS, the Participating Employer is an Employer as defined in the Plan;

WHEREAS, the Participating Employer has executed an Adoption Agreement for the Plan; and

WHEREAS, the Mayor and Council of the City of Stonecrest, Georgia ("Governing Authority") is authorized by law to adopt this resolution approving the Adoption Agreement on behalf of the Participating Employer;

Therefore, the Governing Authority of the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and the Trust Agreement ("Trust") for the Plan for its Employees.

Section 2. The Participating Employer acknowledges that the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Plan ("Trustees") are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.

Section 3. The Participating Employer hereby adopts the terms of the Adoption Agreement, which is attached hereto and made a part of this resolution. The Adoption Agreement sets forth the Employees to be covered by the Plan, the benefits to be provided by the Participating Employer under the Plan, and any conditions imposed by the Participating Employer with respect to, but not inconsistent with, the Plan. The Participating Employer reserves the right to amend its elections under the Adoption Agreement, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Trustees of the Plan.

Section 4.

- (a) The Participating Employer shall abide by the terms of the Plan and the Trust, including amendments to the Plan and the Trust made by the Trustees of the Plan, all investment, administrative, and other service agreements of the Plan and the Trust, and all applicable provisions of the Internal Revenue Code and other applicable law.
- (b) The Participating Employer accepts the administrative services to be provided by GMA and any services provided by a Service Manager as delegated by the Trustees. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees may be deducted from the Participants' accounts.

Section 5.

- (a) The Participating Employer may terminate its participation in the Plan, if it takes the following actions:
  - (i) A resolution must be adopted terminating its participation in the Plan.
  - (ii) The resolution must specify when the participation will end.

The Trustees shall determine whether the resolution complies with the Plan, and all applicable federal and state laws, shall determine an appropriate effective date, and shall provide appropriate forms to terminate ongoing participation. However, distributions under the Plan of existing accounts to Participants will be made in accordance with the Plan.

- (b) The Participating Employer acknowledges that the Plan contains provisions for involuntary Plan termination.

Section 6. The Participating Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Trustees to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Participating Employer to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

Section 7. This resolution and the Adoption Agreement shall be submitted to the Trustees for their approval. The Trustees shall determine whether the resolution complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. The Trustees may refuse to approve an Adoption Agreement by an Employer that does not have state statutory authority to participate in the Plan. The Governing Authority hereby acknowledges that it is responsible to assure that this resolution and the Adoption Agreement are adopted and executed in accordance with the requirements of applicable law.

Adopted by the Governing Authority on \_\_\_\_\_, \_\_\_\_\_, in accordance with applicable law.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

**[Governing Authority should assure that applicable law is followed in the adoption and execution of this resolution.]**

# **GMA 457(b) DEFERRED COMPENSATION PLAN ADOPTION AGREEMENT**

## **ADMINISTRATOR**

Georgia Municipal Association  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663

## **PARTICIPATING EMPLOYER**

Name: **City of Stonecrest, Georgia**

## **GOVERNING AUTHORITY**

Name: **Mayor and Council of the City of Stonecrest, Georgia**  
Address: **3120 Stonecrest Blvd., Suite 190, Stonecrest, Georgia 30038**  
Phone: **(770) 224-0200**  
Facsimile: **(470) 299-4214**  
Person Authorized to receive Official Notices from the Plan or GMA:  
**Director of Human Resources**

## **TYPE OF ADOPTION**

This Adoption Agreement is for the following purpose (**check one**):

- ☒ This is a new 457(b) deferred compensation plan adopted by the Participating Employer for its Employees. This plan does not replace or restate an existing deferred compensation plan.
- ☐ This is an amendment and restatement of another 457(b) deferred compensation plan of the Participating Employer.
- ☐ This is an amendment of the GMA 457(b) Adoption Agreement previously adopted by the Participating Employer (**please specify type below**):

- ☐ This is an amendment to change one or more of the Adopting Employer's contribution design elections in the Adoption Agreement.
- ☐ This is an amendment to add a new Department or a new class of Eligible Employees.
- ☐ This is an amendment to discontinue participation in the Plan by one or more Departments or classes of Employees.
- ☐ Other (please specify): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### DISCLOSURE OF OTHER 457(b) PLAN(S)

The Participating Employer ☐ does or ☒ does not have an existing deferred compensation plan(s). If the Participating Employer does have one or more deferred compensation plans, the Governing Authority must provide the plan name and the name of the provider below, and such other relevant information requested by the Administrator.

Plan Name(s) \_\_\_\_\_

\_\_\_\_\_

Plan Provider(s) \_\_\_\_\_

\_\_\_\_\_

**VERY IMPORTANT:** All eligible plans of a Participating Employer are considered to be a single plan for purposes of compliance with Code Section 457(b). Thus, if a Participating Employer has more than one eligible plan (or additional investment options under a 457(b) arrangement with more than one vendor), the Participating Employer is responsible for ensuring that all of its arrangements, treated as a single plan, comply with the 457(b) requirements, including, but not limited to, the requirements listed below. The Participating Employer must carefully review the Master Plan provisions listed below to fulfill its responsibility for monitoring coordination of multiple plans.

- Compliance with the limit on Annual Deferrals to an eligible plan (including the basic limit (Section 6.1), the age 50 catch-up (Section 6.2), and the special 457 catch-up limit (Section 6.3)) (carefully review Article VI of the Master Plan for these rules).
- Compliance with the requirements for special 457 catch-up deferrals limits, including the requirement that a Participant have only one Normal Retirement Age (with respect to the special 457 catch-up limit) under all eligible plans offered by an Employer (carefully review Sections 1.24 and 6.3 of the Master Plan for these rules). (In essence, this means that once a Participant has selected a Normal Retirement Age under any eligible plan offered by an employer, he or

she may not select a different one, and the selection will remain that Participant's Normal Retirement Age under all eligible plans offered by the Employer).

- **Compliance with the requirement to distribute excess deferrals (an excess deferral means the amount of deferrals for a calendar year that is more than the basic limit, the age 50 catch-up limit, and the special 457 catch-up limit) (carefully review Section 6.7 of the Master Plan for these rules). (This means that the Participating Employer will have to tell the ADMINISTRATOR if excess deferrals need to be distributed from this Plan.)**
- **If the Participating Employer has directed a plan-to-plan transfer, then the Participating Employer is responsible for compliance with the plan-to-plan transfer provisions (carefully review Article XVIII of the Master Plan for these rules).**

## PLAN YEAR

Plan Year means the Employer's fiscal year, which begins on the following date: **January 1** (insert month and day, e.g., July 1).

## ELIGIBLE EMPLOYEES

Only Employees (including independent contractors specifically designated by the Employer below) as defined in the Plan may be covered by the Adoption Agreement. Subject to other conditions in the Plan, this Adoption Agreement, and Addendum (if applicable), the following Employees are eligible to participate in the Plan:

- ☒ All Employees (includes elected or appointed members of the Governing Authority)
- ☐ All Employees with the exception of the following (**must specify**): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

The following Independent Contractors may participate in the Plan (**must specify**): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Employers must assure that proper procedures are in place for independent contractors to participate in and make deferrals under the Plan.

The Employer shall provide the Trustees with the name, address, Social Security Number, and date of birth for each Eligible Employee.

## PAYROLL PERIOD

The payroll period of the Participating Employer is:

- |   |  |
|---|--|
| <input type="checkbox"/> Weekly<br><input type="checkbox"/> Bi-Weekly<br><input type="checkbox"/> Other ( must specify):_____ | <input checked="" type="checkbox"/> Semi-Monthly<br><input type="checkbox"/> Monthly |
|---|--|

Deferrals for an Eligible Employee with respect to a payroll period in a calendar month shall only be made if the Eligible Employee has entered into a Participation Agreement before the beginning of such month.

## COMPENSATION

**Compensation Paid After Severance From Employment** – Certain post-severance payments may be included in Compensation for purposes of computing deferrals under the Plan, but only if these amounts are paid no later than 2½ months after severance from employment or, if later, the end of the calendar year that includes a Participant's severance from employment, and only if it is a payment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. The Participating Employer makes the following election with respect to including post-severance payments in Compensation (Note: if the following is not completed, no post-severance payments will be included in Compensation by default):

- ☐ No post-severance payments will be included in Compensation for purposes of computing deferrals under the Plan (if this box is checked, skip to "Modification of the Terms of the Adoption Agreement " below).
- ☒ For purposes of calculating deferrals under the Plan, the following post-severance payments will be included in Compensation, as long as: 1) they are paid no later than 2 ½ months after severance from employment or, if later, the end of the calendar year that includes the Participant's severance from employment; and 2) absent a severance from employment, they would have been paid to the Participant while the Participant continued in employment with the Participating Employer (check all that apply):
  - ☒ regular compensation paid after severance from employment for services rendered prior to severance during the Participant's regular working hours
  - ☒ compensation paid after severance from employment for services rendered prior to severance outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments
  - ☒ post-severance payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued

☐ Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT

If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement, the Governing Authority by official action must adopt a new Adoption Agreement and forward it to the Trustees for approval. The new Adoption Agreement is not effective until approved by the Trustees and other procedures required by the Plan have been implemented.

## TERMINATION OF THE ADOPTION AGREEMENT

This Adoption Agreement may be terminated only in accordance with the Plan.

## EFFECTIVE DATE

The 457(b) Plan will be effective as follows (choose one):

- ☒ **Original Adoption.** The 457(b) Plan will be effective **December 1, 2021** with respect to contributions as approved by the Board of Trustees, below.
- ☐ **Amendment and Restatement.** The amended and restated 457(b) Plan will be effective \_\_\_\_\_, \_\_\_\_\_, with respect to contributions as approved by the Board of Trustees, below. The 457(b) Plan was originally effective \_\_\_\_\_, \_\_\_\_\_.

## EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the Mayor and Council of the City of Stonecrest, Georgia.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## TRUSTEES' APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Plan. Contributions shall first be remitted under this Adoption Agreement as follows:

- ☐ Within 15 business days after the Payroll Period ending \_\_\_\_\_, \_\_\_\_\_.
- ☐ Other (must specify) \_\_\_\_\_.
- ☐ In the case of an amendment, contributions continue on existing schedule unless new employee classes are added, in which case contributions for such new employee classes shall first be remitted \_\_\_\_\_.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
on behalf of the Board of Trustees

## ROTH 457(b) ADDENDUM TO THE GEORGIA MUNICIPAL ASSOCIATION 457(b) DEFERRED COMPENSATION PLAN ADOPTION AGREEMENT

This is an Addendum to the Adoption Agreement completed by the City of Stonecrest, Georgia. It modifies the Adoption Agreement by providing for Roth Contributions to the Plan.

Effective **December 1, 2021**, Eligible Employees under the Employer's GMA 457(b) Deferred Compensation Plan shall be permitted to make Roth Contributions under the Plan and to receive Rollovers of Roth Contributions under the Plan, in accordance with the terms and conditions of the 457(b) Deferred Compensation Plan Master Plan Document.

To make Roth Contributions under the Plan, an Eligible Employee must designate on the Participation Agreement that his or her Annual Deferrals under the Plan are to be treated as after-tax Roth Contributions. If an Eligible Employee fails to designate whether Annual Deferrals are pre-tax Employee Contributions or after-tax Roth Contributions, the Eligible Employee will be deemed to have designated his or her Annual Deferrals as pre-tax Employee Contributions and not as Roth Contributions.

The Employer is responsible for distributing any and all applicable notices to employees regarding establishment of a Roth Contribution Account and an Eligible Employee's rights and responsibilities thereunder. The Employer is responsible for implementing Roth Contributions following an Eligible Employee's election to make Roth Contributions under the Plan, including but not limited to withholding applicable after-tax Roth Contributions, remitting said Roth Contributions to the Service Manager and providing the Service Manager with information necessary to establish accounts for Eligible Employees making Roth Contributions or receiving Rollovers of Roth Contributions pursuant to this Addendum.

### EXECUTION BY EMPLOYER

The foregoing Addendum is hereby adopted and approved on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the \_\_\_\_\_.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## TRUSTEES' APPROVAL

The Addendum is approved by the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Plan.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
on behalf of the Board of Trustees

**THE GEORGIA MUNICIPAL ASSOCIATION, INC.  
401(a) DEFINED CONTRIBUTION PLAN**

**MASTER PLAN DOCUMENT  
Amended and Restated  
As of January 1, 2018**

**Administered by:  
Georgia Municipal Association, Inc.  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 678-686-6289**

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**THE GEORGIA MUNICIPAL ASSOCIATION, INC.  
DEFINED CONTRIBUTION PLAN**

The Georgia Municipal Association, Inc. Defined Contribution Plan ("Plan") is hereby amended and restated, generally effective January 1, 2018, except as otherwise provided herein, pursuant to a resolution of the Board of Trustees of the Georgia Municipal Association, Inc. ("GMA") Defined Contribution and Deferred Compensation Program, adopted September 25, 2020. The Plan is a governmental qualified defined contribution money purchase plan under Sections 401(a) and 414(d) of the Internal Revenue Code and is part of the GMA Defined Contribution and Deferred Compensation Program, as established by resolution of the Board of Directors of GMA.

Plan provisions are intended to comply with Internal Revenue Code Section 401(a) and applicable provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2017-37 (the 2017 Cumulative List) and are effective as of the applicable effective dates set forth in the Plan.

The Plan consists of the provisions set forth in this Master Plan document, along with the provisions set forth in the Adoption Agreement and any Addendum of any Participating Employer, and any amendments to the Master Plan, the Adoption Agreement, and any Addendum.

**ARTICLE I - DEFINITIONS**

**1.01**    **"Account"** means an account maintained for a Participant by the Administrator, which may include the following subaccounts and any other subaccounts established by the Administrator pursuant to Section 6.01: the Employer Contribution Account, the Employer Matching Contribution Account, the Employer Non-Matching Contribution Account, the Rollover Account, and the Transfer Account.

**1.02    "Addendum"** means any Addendum to an Adoption Agreement entered into by an Employer.

**1.03    "Administrator"** means GMA, and includes the Service Manager with regard to functions delegated by the Trustees to the Service Manager.

**1.04    "Applicable Form"** means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

**1.05    "Adoption Agreement"** means the agreement entered into by an Employer to participate in this Plan.

**1.06    "Beneficiary"** means the person or persons designated by a Participant to receive any benefit payable upon the Participant's death.

**1.07    "Code"** means the Internal Revenue Code of 1986, as amended and as applicable to governmental plans as defined in Code Section 414(d). The term also includes the Internal Revenue Code of 1954, as amended and as applicable to governmental plans as defined in Code Section 414(d).

**1.08    "Compensation"** means all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Employee and which is not includable in the gross income

of the Employee by reason of Code Section 125 or 457, and elective amounts that are not includable in the gross income of the Employee by reason of Code Section 132(f)(4). If so elected in the Adoption Agreement, Compensation also includes certain additional amounts if paid no later than 2½ months after severance from employment or the end of the calendar year that includes a Participant's severance from employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. The compensation of each Participant for any Plan Year shall not exceed \$275,000 (for 2017), as adjusted for cost of living increases in accordance with Code Section 401(a)(17)(B).

**1.09    "Deferred Compensation Plan"** means any eligible deferred compensation plan of the Employer under Code Section 457(b), including but not limited to the Georgia Municipal Association Deferred Compensation Plan.

**1.10    "Disability" or "Disabled"** means a total and permanent disability determined as follows: (i) by the Social Security Administration for a Participant who is covered by Social Security; or (ii) by the Employer, for a Participant who is not covered by Social Security. With respect to (ii), an individual shall be considered to be Disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration; provided, however, an individual shall not be considered to be Disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary of the Treasury may require.

**1.11    "Eligible Employee"** means an Employee who by the Adoption Agreement is eligible to participate in the Plan.

**1.12    "Employee"** means any person who is regularly employed in the services of the Employer as an employee and shall include elected or appointed members of the Governing Authority and Municipal Legal Officers if they are included as Eligible Employees in the Adoption Agreement. However, notwithstanding any other provision of the Plan to the contrary, the term "Employee" does not include: (a) an individual who is a nonresident alien and who receives no earned income (within the meaning of Code Section 911(d)(2)) from an Employer which constitutes income from sources within the United States within the meaning of Code Section 861(a)(3); (b) a leased employee; or (c) any person treated in good faith by an Employer as an independent contractor, regardless of whether such person is later determined to be a common law employee for tax purposes.

**1.13    "Employer"** means any municipal corporation, consolidated government, political subdivision, or other governmental instrumentality in the State.

**1.14    "Employer Contribution Account"** means the subaccount maintained by the Administrator to which Employer Contributions pursuant to Article IV, if any, may be credited.

**1.15    "Employer Contributions"** means Matching Contributions and Non-Matching Contributions determined under the Adoption Agreement and made by a Participating Employer to an Account for a Participant.

**1.16    "Employer Matching Contribution Account"** means the subaccount maintained by the Administrator to which Employer Matching Contributions pursuant to Article IV, if any, may be credited.

**1.17    "Employer Non-Matching Contribution Account"** means the subaccount maintained by the Administrator to which Employer Non-Matching Contributions pursuant to Article IV, if any, may be credited.

**1.18 "Governing Authority"** means the entity authorized by law to act for the Employer and adopt this Plan through the Adoption Agreement.

**1.19 "Investment Fund"** means an investment fund which forms part of the Trust Fund as established by the Trustees.

**1.20 "Matching Contribution"** means the Participating Employer matching contributions as determined under the Adoption Agreement and made pursuant to Article IV.

**1.21 "Non-Matching Contribution"** means the Participating Employer non-matching contributions as determined under the Adoption Agreement and made pursuant to Article IV.

**1.22 "Normal Retirement Age"** means the date a Participant attains age sixty-five (65).

**1.23 "Participant"** means an Eligible Employee who participates under this Plan by enrolling (including a default enrollment) and maintaining an Account balance.

**1.24 "Participating Employer"** means any Employer who elects to participate in the Plan pursuant to Article II with respect to the Eligible Employees of one (1) or more departments.

**1.25 "Payroll Period"** means the period during which payroll is determined by the Participating Employer.

**1.26 "Plan Year"** means the plan year as determined by a Participating Employer in the Adoption Agreement.

**1.27 "Provider"** means Georgia Municipal Association, Inc., who is the Provider sponsoring the Plan on behalf of the Trustees.

**1.28    "Rollover Account"** means the subaccount maintained by the Administrator to which rollovers pursuant to Article XIV will be credited. The Administrator may establish one or more rollover subaccounts for a Participant.

**1.29    "Separation from Service"** means severance of a Participant's employment with the Participating Employer for any reason, including retirement. A Participant shall be deemed to have Separated from Service with the Participating Employer for purposes of the Plan when, in accordance with the established personnel practices of the Participating Employer, the employment relationship is considered actually terminated. If a Participant has not been terminated, but the Participant has not performed services for the Participating Employer for a period of six (6) consecutive months and the Participant is not on a paid leave of absence, the Participant shall be deemed Separated from Service for purposes of this Plan at the end of the six (6) month period.

**1.30    "Service Manager"** means the person or organization appointed by the Trustees to perform service and administrative functions delegated by the Trustees.

**1.31    "State"** means the State of Georgia.

**1.32    "Transfer Account"** means the subaccount maintained by the Administrator to which transfers to the Plan pursuant to Article XV will be credited. The Administrator may establish one or more transfer subaccounts for a Participant.

**1.33    "Trust"** means the trust established by the Trustees pursuant to a written agreement that constitutes a valid trust under the law of Georgia.

**1.34    "Trustees"** means the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Program.

**1.35 "Rules of Construction"** words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

## **ARTICLE II - PARTICIPATION BY EMPLOYERS**

**2.01 Participating Employer.** An Employer may make the Plan available to its Employees if it takes the following actions:

- (a) The Governing Authority of the Employer must pass a resolution formally adopting this Plan for its Employees and approving the Adoption Agreement.
- (b) The resolution must indicate the date of adoption.
- (c) The resolution must commit to the terms of an Adoption Agreement as completed by the Employer.
- (d) the resolution must specify that the Employer shall abide by the terms of the Plan and the Trust, including all investment, administrative, and service agreements of the Plan, and all applicable provisions of the Code and other applicable law.
- (e) The resolution must acknowledge that the Trustees are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Employer.
- (f) Employers whose Employees are participating in a defined contribution plan under Code Section 401(a) and 414(d) as of the effective date of the Adoption Agreement must inform the Administrator of the name of and the provider of that plan and must provide any other information requested by the Administrator.

The Trustees shall determine whether the resolution complies with this section. If it does, and provided the other requirements of the Plan and Trust are met, the Trustees shall execute the Adoption Agreement and provide appropriate forms for the Employer to implement its participation in the Plan.

**2.02 Multiple Employer Plan.** An Employer may include in its Resolution coverage for additional employers, such that the Plan will cover multiple employers, who will be treated as Participating Employers. These additional employers shall be governed by the terms of the Plan as adopted in the Adoption Agreement.

### **ARTICLE III - ELIGIBLE EMPLOYEE PARTICIPATION**

**3.01 Participation Procedure.** Only Eligible Employees as defined by the Adoption Agreement may be Participants in the Plan. The Administrator shall prescribe the enrollment form for Eligible Employees to become Participants.

**3.02 Cessation of Plan Participation.** An Eligible Employee shall cease to be a Participant on the distribution and/or forfeiture of the Participant's entire interest in the Plan.

### **ARTICLE IV - CONTRIBUTIONS**

**4.01 Contributions.** Contributions shall be made to the Plan in accordance with this Article, the Adoption Agreement, and subject to the limitations under Article V. A Participating Employer shall specify in the Adoption Agreement whether it will make Matching Contributions and/or non-Matching Contributions. Matching Contributions shall be made to match all or a portion of the Participant's contributions to a Deferred Compensation Plan, in accordance with the formula and method specified by the Participating Employer in the Adoption Agreement. Non-Matching Contributions are not tied to Participant contributions to a Deferred Compensation Plan and shall be made in accordance with the formula and method specified by the Participating Employer in the Adoption Agreement.

The Adoption Agreement establishing the amount and method of calculating contributions continues in effect from Plan Year to Plan Year until amended or repealed by the Governing Authority or until the Participating Employer's participation in the Plan is terminated.

**4.02 Matching Contributions.** If the Adoption Agreement provides for Matching Contributions, the Governing Authority shall determine and specify in the Adoption Agreement the formula for calculating the Matching Contributions, which may be all or a specified portion of a Participant's contribution to a Deferred Compensation Plan. In the Adoption Agreement, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Matching Contributions. The Employer may also establish different Matching Contribution amounts or formulas applicable to different classes of Eligible Employees.

**4.03 Eligibility for Matching Contributions.**

(a) If the Adoption Agreement provides for Matching Contributions, a Participant shall be eligible for Matching Contributions for any Payroll Period only if the Participant meets the conditions set forth in the Adoption Agreement.

(b) In no event shall a Participant receive any Matching Contributions for any Payroll Period for which the Participant does not have an effective payroll deferral to a Deferred Compensation Plan for that Payroll Period.

**4.04 Non-Matching Contributions.** If the Adoption Agreement provides for Non-Matching Contributions, the Governing Authority shall determine and specify in the Adoption Agreement the formula for calculating the Non-Matching Contributions, which may be a fixed amount or a specified portion of a Participant's Compensation. In the Adoption Agreement, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Non-Matching Contributions. The Employer may also establish different Non-Matching Contribution amounts or formulas applicable to different classes of Eligible Employees.

**4.05 Eligibility for Non-Matching Contributions.** If the Adoption Agreement provides for Employer Non-Matching Contributions, a Participant shall be eligible for Non-Matching Contributions only if the Participant meets the conditions set forth in the Adoption Agreement.

**4.06 Changes in Employer Contributions.** A Participating Employer may adjust the amount or method of Employer Contributions throughout the Plan Year by adopting a resolution to amend its Adoption Agreement in accordance with Section 20.02. The resolution must be sent to the Administrator. The Trustees must approve or disapprove the amendment and, if approved, establish the effective date of any change to the Employer Contributions.

**4.07 Employee Contributions, Rollovers, and Transfers.** Employee contributions under the Plan are not required or permitted. However, a Participant may rollover eligible rollover distributions to the Participant's Rollover Account, pursuant to Article XIV. In addition, the Plan may accept transfers to a Participant's Transfer Account, pursuant to Article XV.

**4.08 Remittance of Contributions.** The Employer Contributions shall be paid as specified in the Adoption Agreement. All amounts of Employer Contributions under the Plan shall be transferred by the Participating Employers to the Trust within the time limits described in this Section. Contributions shall first be remitted to the Trust only after the Employer's Adoption Agreement is approved by the Trustees. Upon approval of the Adoption Agreement, the Trustees shall specify the date Employer Contributions are to commence. In no event shall contributions under the Plan be transferred by the Participating Employer to the Trust later than fifteen (15) business days after the Payroll Period specified in the Adoption Agreement or after the end of the Plan Year with respect to Employer Contributions made on a Plan Year basis.

**4.09 Delinquent Contributions.** It is the Participating Employer's responsibility to correctly calculate and timely remit the appropriate Employer Contributions. The Administrator reserves the right to give notice to the highest elected official, the designated representative of the Employer and/or the Eligible Employees of the delinquent Participating Employer in the event it comes to the Administrator's attention that Employer Contributions are not being remitted in a timely manner or that Employer Contributions are otherwise not being made in accordance with the terms of the Plan or in accordance with state or federal law or regulation.

Neither GMA, the Trustees, nor the Administrator have any liability for the delinquency of a Participating Employer or for a Participating Employer's failure to make Employer Contributions in accordance with the terms of the Plan or in accordance with state or federal law or regulation.

## **ARTICLE V - LIMITATIONS ON CONTRIBUTIONS**

**5.01 Applicability of Article.** Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and additions to Accounts of Participants shall be limited as provided in Code Section 415 as provided in this Article.

**5.02 Limitation under Code Section 415.** Notwithstanding anything in the Plan to the contrary, the following limitations shall apply:

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition," as defined in this Section for a Participant for any limitation year, exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted for cost of living under Code Section 415(d) (\$55,000 for 2017); or

(2) One hundred percent (100%) of Compensation (as defined in Article I) actually paid or includable in gross income during such limitation year. Compensation also includes certain additional amounts if paid no later than 2½ months after severance

from employment or the end of the calendar year that includes a Participant's severance from employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. Such additional amounts include regular compensation for services during the Participant's regular working hours or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and, payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued. Any payment to a Participant paid by the Participating Employer not described above is not considered compensation if paid after severance from employment, even if it is paid within 2½ months following severance from employment.

An Employee who is in qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) shall be treated as receiving compensation from the Participating Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Participating Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Participating Employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Compensation of each Participant shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the limitation year, as increased for the cost of living adjustment (\$275,000 for 2017). The cost of living adjustment in effect for a limitation year applies to compensation for the Plan Year that begins with or within such limitation year.

(b) The Plan shall be administered so as to comply with the limitations of Code Section 415.

(c) For purposes of this Section, all defined contribution plans of a Participating Employer are to be treated as a single defined contribution plan. However, each Participating Employer is to be considered as a separate employer.

(d) Any corrections required under this Article V may be made pursuant to the IRS Employee Plans Compliance Resolution System. For limitation years prior to July 1, 2007, if the annual addition for a Participant under the Plan, determined without regard to the limitation of paragraph (a), would have been greater than the annual addition for such Participant as limited by paragraph (a), then the excess, if due to a reasonable error in estimating compensation or such other circumstances as found by the Secretary of the Treasury to justify application of this paragraph, shall be reduced, to the extent necessary to satisfy such limitation by holding the excess unallocated in a suspense account and using it to reduce Participating Employer contributions in subsequent Plan Years.

(e) For purposes of this Section, "annual addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of the following amounts

credited to a Participant's accounts for the limitation year under this Plan and any other defined contribution plan maintained by a Participating Employer:

- (1) employer contributions;
  - (2) employee contributions;
  - (3) forfeitures;
  - (4) amounts allocated to an individual medical account, as defined in § 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the employer are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in § 419A(d)(3) of the Code, under a welfare benefit fund, as defined in § 419(e) of the Code, maintained by the employer are treated as annual additions to a defined contribution plan; and
  - (5) allocations under a simplified employee pension.
- (f) For purposes of this Section, limitation year means the calendar year.

**5.03 Participating Employer Responsibility for Contribution Limits.** The Participating Employer must monitor contributions to the Plan on behalf of a Participant to this Plan and any other 401(a) plan maintained by the Participating Employer to determine compliance with this Article. The Participating Employer must cease contributions to avoid exceeding the limits of Section 5.02 and must notify the Administrator if excess annual additions are made. The Participating Employer may amend the Adoption Agreement to the extent necessary to satisfy Code Section 415.

## **ARTICLE VI - ACCOUNTS AND REPORTS**

**6.01 Account.** The Administrator shall maintain applicable Accounts within the Participant's Account with respect to each Participant which may include: the Employer Contribution Account, the Employer Matching Contribution Account, the Employer Non-Matching Contribution Account, the Rollover Account, and the Transfer Account. The Administrator may establish an Employer Matching Contribution Account and an Employer Non-Matching Contribution Account, consistent with the Participating Employer's elections in the Addendum to the Adoption Agreement. If established, the Employer Matching Contribution Account shall be credited with the Participant's Employer Matching Contributions for each Payroll Period, and the Employer Non-Matching Contribution Account shall be credited with the Participant's Employer Non-Matching Contributions for each designated period (pursuant to the Adoption Agreement). If the Administrator does not establish these accounts, Employer Contributions shall be credited to the Employer Contribution Account. The Rollover Account shall be credited with the Participant's rollover contributions, if any, under Article XIV. The Transfer Account shall be credited with the Participant's transfers to the Plan, if any, under Article XV. The balance of the Participant's Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Accounts. All Plan records, including individual account information, that are maintained by the Service Manager shall be the exclusive property of the Administrator. The Administrator may prescribe such minimum deposits to Participant's Accounts and each investment option for the Participant as it deems appropriate.

**6.02 Statements of Account.** A written report of the status of each Participant's Accounts shall be furnished to the Participant by the Administrator within thirty (30) days after

the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Administrator within ninety (90) days after the mailing or distribution of a report to the Participant.

**6.03 Year End Reports.** Within ninety (90) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements, and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator requires. The report shall also contain such information as is necessary to enable the Trustees to prepare their accounting due under the Trust.

## **ARTICLE VII - VALUATION OF ACCOUNTS**

**7.01 Valuation.** The Administrator shall value the investments each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values.

**7.02 Deposits.** In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Administrator.

**7.03 Report from Administrator to Trustees.** The Administrator shall provide a report to the Trustees concerning the valuation of Accounts quarterly.

## **ARTICLE VIII - TRUST**

**8.01 Trust Status.** All assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income

of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. In resolving any conflict between provisions of the Plan and provisions of the Trust Agreement, the provisions of the Plan shall control.

**8.02 Trust Fund.** All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Trustees to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan and the Trust Agreement. All contributions to the Plan must be transferred by the Participating Employers to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

## **ARTICLE IX - INVESTMENT OF ACCOUNTS**

**9.01 Investment Options.** From time to time, the Trustees shall determine the available Investment Funds for Participants (or Beneficiaries upon the death of the Participant). The Participants may direct the investment of their Accounts among the Investment Funds selected by the Trustees. Unless otherwise directed by the Participant (or Beneficiary), in accordance with procedures established by the Service Manager, a Participant's (or Beneficiary's) Rollover Account and Transfer Account shall be invested in the same manner as the Participant's (or Beneficiary's) Employer Contribution Account; if a Participant has both an Employer Matching Contribution Account and Employer Non-Matching Contribution Account with different investment directives, the investment directive of the Matching Contribution Account shall be applied. The Administrator shall follow the Participants' (or Beneficiaries') directions with respect to the investment of the Accounts, except that the Administrator shall direct the

investment of a Participant's (or Beneficiary's) Account to a default investment pursuant to Section 9.02 when there is no valid investment direction on file.

**9.02 Investment Default Option.** In the event that a Participant does not have a valid investment direction on file for any portion of the amount in that Participant's Account, that portion of the Account shall be invested in any default option or options as determined by the Trustees. In such event, the Participant shall be deemed to have directed that option (or options) for investment of such portion of their Account. The Trustees intend to establish one or more default options based upon various factors, including but not limited to, market risk, stability and rate of return. If the Trustees have appropriately exercised their fiduciary duty in selecting a default option(s), they have no liability for any loss sustained by a Participant or Beneficiary whose Account in whole or in part is invested in the default option(s). If an Employer directs the transfer of all assets under a superseded plan to this Plan and any or all of the investment funds under the superseded plan are not available under this Plan, the Trustees will invest the Participant's Account in any default option or options as determined by the Trustees, until the Participant makes a valid change of investment direction for such assets.

## **ARTICLE X - VESTING**

**10.01 Vesting Standards.** The vesting standards for Employer Contributions shall be determined in the Adoption Agreement with the following exceptions:

- (a) The Participant shall be 100% Vested in the Participant's Rollover Account and Transfer Account at all times.
- (b) Upon attainment of Normal Retirement Age, Death or Separation from Service because of Disability, the Participant shall be 100% Vested in all the Participant's Accounts.
- (c) Upon a Participating Employer's voluntary or involuntary termination of the Employer's Participation in the Plan or upon the Trustees' termination of the entire Plan, or upon

the complete discontinuance of the Employer's contributions to the Plan, the Participant shall be 100% Vested in all the Participant's Accounts.

**10.02 Forfeitures.** If a Participant has a Separation from Service, the Participant's non-vested Employer Contributions shall be forfeited as of the date of the Participant's Separation from Service. The Employer is responsible for reporting forfeitures to the Administrator when they occur. Amounts forfeited during a calendar year shall be used to reduce or otherwise supplement Employer Contributions no later than the last day of the second month following the end of the calendar year, or, if there are no Employer Contributions (such as in a frozen plan), shall be used for administrative expenses and, if forfeitures remain, allocated to remaining Participants' Accounts.

## **ARTICLE XI - BENEFITS**

**11.01 Benefit Payments.** Benefits shall be paid from the Trust Fund in accordance with this Article. Benefits payable to a Participant or a Beneficiary (or estate, if applicable) shall be based upon the value of the Participant's Account.

(a) **Separation from Service.** Upon Separation from Service, a Participant may elect to have benefits commence on a date which is no later than the required beginning date under Code Section 401(a)(9), as specified in Article XII. All benefits shall be paid under a payment option under Section 11.02, subject to the restrictions in Article XII.

(b) **Death.** In the event of the Participant's death prior to the commencement of benefits under paragraph (a), the value of the Participant's Account shall be paid to the Beneficiary under a payment option elected by the Beneficiary under Section 11.02, subject to the restrictions in Article XII. Such benefits shall be payable commencing within sixty (60) days after receipt by the Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the spouse of the Participant, then the spouse may elect, within sixty (60) days of

the Participant's death, to defer distribution to a date not later than the Participant's required beginning date as specified in Section 12.06(e). In the event of the Participant's death after commencement of benefits, benefits shall be paid subject to Article XII.

(c) **Disability.** Upon Separation from Service with the Participating Employer because of Disability, a Participant may elect to have benefits commence on a date which is no later than the required beginning date under Code Section 401(a)(9), as specified in Article XII. A Participant who is on leave without pay who becomes Disabled within the first six (6) months of the leave shall be considered to have Separated from Service on account of Disability. The commencement date must meet the required distribution commencement date provisions of Code Section 401(a)(9) as specified in Article XII. All benefits shall be paid under a payment option under Section 11.02, subject to the restrictions in Article XII.

**11.02 Payment Options.** The election of a payment option by a Participant or a Beneficiary under Section 11.01 must be made no later than thirty (30) days before the commencement of such benefits. Subject to restrictions established by the Administrator, the Plan shall permit payment options in the form of lump sums and may permit a Participant to elect payment over the life of the Participant; over the life of the Participant and a designated Beneficiary; over a period certain not extending beyond the life expectancy of the participant; or over a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary. Absent such an election, the Account will be paid in a lump sum.

**11.03 Lump Sum Settlement.** Notwithstanding anything in this Plan to the contrary, if a Participant's Account balance is not greater than \$5,000 (or such other lesser amount as determined by the Trustees with respect to the Plan Years of Participating Employers following

the determination) at the time of Separation from Service, the Administrator may effect a lump sum distribution of the Participant's Account, regardless of a Participant's or Beneficiary's direction. Effective for distributions made on or after March 28, 2005, if a lump sum distribution to be made under this Section is greater than \$1,000 and it is an eligible rollover distribution, and if the recipient of the distribution does not elect to have the distribution paid directly to an eligible retirement plan specified by the recipient in a direct rollover or does not elect to receive the distribution directly, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

#### **11.04 Designated Beneficiary.**

(a) A Participant shall have the right to file with the Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. No Beneficiary designation shall take effect until an Applicable Form is completed by the Participant and received and accepted by the Administrator.

(b) A Participant shall have the right to designate at least one primary and at least one contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (i.e., primary or contingent) will share among each other all benefits in the same proportion as originally designated by the Participant. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary.

(c) If the Participant dies without a valid Beneficiary designation on file for this Plan and he or she is a participant in the GMA Deferred Compensation Plan, the Participant's Beneficiary or Beneficiaries for purposes of the GMA Deferred Compensation Plan, if any, shall

be the Participant's Beneficiary or Beneficiaries under this Plan. If the Participant dies without a valid Beneficiary designation on file for this Plan or for the GMA Deferred Compensation Plan, the benefit payment shall be made to the Participant's surviving spouse, in which case the Participant's surviving spouse shall be the designated Beneficiary under the Plan. If there is no surviving spouse, the benefits shall be paid to the Participant's estate in a lump sum. In the event of the death of a Beneficiary after the Beneficiary has become entitled to receive benefits, the remaining benefits allocable to such Beneficiary shall be paid to the estate of the Beneficiary in a lump sum.

(d) The Beneficiary designation may be changed by the Participant on the Applicable Form at any time prior to the date benefits commence. Only the last designation of a Beneficiary prior to the date benefits commence shall have effect, and any new designation of a Beneficiary invalidates, supersedes, and revokes any prior designation, provided it is made on an Applicable Form completed by the Participant and received and accepted by the Administrator. Notwithstanding any provision to the contrary, a Beneficiary designation for this Plan shall control distribution of benefits payable under this Plan over a subsequent Beneficiary designation for the GMA Deferred Compensation Plan.

## **ARTICLE XII - MINIMUM DISTRIBUTION RULES**

**12.01 Precedence.** The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

**12.02 Requirements of Treasury Regulations.** All distributions required under this Article will be determined and made in accordance with Code Section 401(a)(9) and the Treasury regulations Sections 1.401(a)(9)-2 through 1.401(a)(9)-9 thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G).

**12.03 Time and Manner of Distribution.**

(a) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.

(b) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (age 70½ for distributions required to be made before January 1, 2020, with respect to a Participant who would have attained age 70½ before January 1, 2020), if later.  
**[AMENDED SEPTEMBER 25, 2020]**

(2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary may be made by lump sum, and distribution must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this subsection (b), other than subsection (b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and Section 12.05, unless subsection (b)(4) of this Section applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (b)(4) of this Section applies, distributions are considered to begin on the date the distributions are required to begin to the surviving spouse under subsection (b)(1) of this Section. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(1) of this Section), the date distributions are considered to begin is the date distributions actually commence.

(c) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 12.04 or 12.05. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations. Annuity payments must commence on or before the Participant's Required Beginning Date. The first payment, which must be made on or before the Participant's required beginning date, must be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

(d) Once payments have begun over a period certain, the period certain cannot be changed except in the limited circumstances described in Section 1.401(a)(9)-6, Q&A-13, of the Treasury regulations.

(e) A participant's benefit may be distributed in a lump sum to purchase an annuity from an insurance company. All annuity payments (whether paid over an Participant's life, joint lives, or a period certain) must be either nonincreasing or increase only in accordance with Section 1.401(a)(9)-6, Q&A-14, of the Treasury regulations.

#### **12.04 Required Minimum Distribution During Participant's Lifetime.**

(a) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) Required minimum distributions will be determined under this Section beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

**12.05 Required Minimum Distributions After Participant's Death.****(a) Death on or After Date Distributions Begin.**

(1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death (on or before December 31, 2021) Before Date Distributions Begin.

(1) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (a) of this Section.

(2) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under

Section 12.03(b)(1), this subsection (b) will apply as if the surviving spouse were the Participant.

(c) Death After Required Minimum Distributions Begin. If distributions begin on the Participant's Required Beginning Date and the Participant dies before his or her entire interest has been distributed, the remaining portion of such interest must be distributed at least as rapidly as under the distribution method being used as of the date of the Participant's death.

(d) Required Minimum Distribution After Participant's Death Beginning after December 31, 2021. Notwithstanding the provisions above, if a Participant dies before their entire Account balance is distributed, the Participant's entire interest will be distributed no later than as follows:

(1) If the Designated Beneficiary is not the Participant's surviving spouse, a child of the employee who has not yet reached the age of majority, an individual who is disabled or chronically ill, or an individual who is not more than ten years younger than the employee, distributions after the Participant's death must be distributed no later than the tenth (10<sup>th</sup>) Distribution Calendar Year following the Participant's death.

(2) If the Designated Beneficiary is the Participant's surviving spouse, a child of the employee who has not yet reached the age of majority, an individual who is disabled or chronically ill, or an individual who is not more than ten (10) years younger than the employee, distributions after the Participant's death must be made over a period not to exceed the Designated Beneficiary's life expectancy. Alternatively, the Designated Beneficiary may elect to receive a total distribution of the Participant's Account balance by no later than the tenth (10<sup>th</sup>) Distribution Calendar Year following the Participant's death. [AMENDED SEPTEMBER 25, 2020]

## **12.06 Definitions for this Article.**

(a) "Designated Beneficiary" means the individual who is designated as the Beneficiary under Article XI and is the Designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury regulations.

(b) "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 12.03(b). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(c) "Life Expectancy" means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Treasury regulations.

(d) "Participant's Account Balance" means the Account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the

valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(e) "Required Beginning Date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy-two (72) (age seventy and one-half (70½) for distributions required to be made before January 1, 2020, with respect to a member who would have attained age 70½ before January 1, 2020), or (ii) the calendar year in which the Participant Separates from Service. **[AMENDED SEPTEMBER 25, 2020]**

#### **12.07 TEFRA Section 242(b)(2) Elections.**

(a) Notwithstanding the other requirements of this Article distribution on behalf of any Participant who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(1) The distribution by the Plan is one which would not have disqualified such Plan under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(2) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(3) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(4) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(5) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 12.08 (a)(1) and (5).

(d) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code section 401(a)(9) and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute, by the end of the calendar year following the calendar year in which the revocation occurs, the total amount not yet distributed which would have been required to have been distributed to satisfy Code section 401(a)(9) and the regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does

not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treasury Regulation section 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

**12.08 No Expansion of Payment Options.** Nothing in this Article shall provide any individual entitled to a benefit under this Plan a benefit or payment option to which such individual would not otherwise be entitled pursuant to the provisions of the Plan.

**12.09 2020 Waiver of Required Minimum Distributions**

(a) Effective in 2020, notwithstanding Sections 12.04 and 12.05, a Participant or Designated Beneficiary who would have been required to receive a required minimum distribution for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (2020 required minimum distributions), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 required minimum distributions, or (2) one or more payments (that include the 2020 required minimum distributions) in a series of substantially equal periodic payments made at least annually and expected to last the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years (Extended 2020 required minimum distributions), will receive those distributions is determined in accordance with this Section 12.09(b) below. Notwithstanding Section 12.09(b) below, a Participant or Beneficiary will be given the opportunity to elect whether or not to receive those distributions. In addition, notwithstanding Section 13.01 and solely for purposes of applying the direct

rollover provisions of the Plan, certain additional distributions in 2020 will be treated as eligible rollover distributions.

(b) A Participant or Beneficiary who would have been required to receive a 2020 required minimum distribution will not receive this distribution unless the Participant or Beneficiary chooses to receive the distribution. [AMENDED SEPTEMBER 25, 2020]

### **ARTICLE XIII - ELIGIBLE ROLLOVER FROM THIS PLAN**

#### **13.01 Plan Distributions and Withholding Requirements.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) For purposes of the direct rollover provisions of the Plan, 2020 required minimum distributions will be treated as an Eligible Rollover Distribution in 2020. [AMENDED SEPTEMBER 25, 2020]

#### **13.02 Definitions.** The following definitions shall apply to this Article:

(a) An "Eligible Rollover Distribution" is any distribution under Article XI of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); or (iii) the portion of any distribution that is not includable in gross income, provided that any portion of any distribution

that is not includable in gross income may be an Eligible Rollover Distribution for purposes of a rollover to either (1) a traditional individual retirement account or individual retirement annuity under Code Sections 408(a) or 408(b) or a Roth individual account or annuity described under Code Section 408A or (2) a qualified trust which is part of a plan which is a defined contribution plan under Code Sections 401(a) or 403(b) that will separately account for the distribution, including the taxable and non-taxable portions of the distribution, in a direct trustee-to-trustee transfer.

(b) An "Eligible Retirement Plan" is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a Roth IRA described in section 408A of the Code, an annuity plan described in section 403(a) of the Code, a qualified plan described in section 401(a) of the Code that accepts the distributee's eligible rollover distribution, an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and, effective after December 18, 2015, to a SIMPLE IRA described in Code Section 408(p) that has been established for at least two years. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of an Eligible Retirement Plan for a nonspouse designated beneficiary of a deceased participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Code Section 408(d)(3)(C)).

(c) A "Distributee" includes an employee, former employee, and, effective for Plan Years beginning on or after December 31, 2009, a nonspouse designated beneficiary (as defined in section 401(a)(9)(E) of the Code) of a deceased Participant. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(e) Not fewer than 30 nor more than 180 days before a Plan distribution, the Administrator shall provide the recipient with a written tax explanation as required by Code Section 402(f), if applicable, including an explanation of (i) the direct transfer of benefits, if applicable; (ii) the applicability of withholding taxes; (iii) the availability of direct transfers or rollovers; (iv) the availability of the special forward income averaging of Code Section 402(d); and (v) the applicability of such provisions to an alternate payee under Code Section 402(e). Notwithstanding the preceding sentence, a distribution may begin fewer than 30 days after the notice described in the preceding sentence is given, provided that:

(1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a participant distribution option), and

(2) the Participant, after receiving a notice, affirmatively elects a distribution.

#### **ARTICLE XIV - ELIGIBLE ROLLOVERS TO THIS PLAN**

To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, a Participant may contribute to the Plan in cash as a rollover contribution a qualified

rollover amount from a qualified plan under Code Section 401(a); an annuity plan under Code Section 403(a); an individual retirement account or annuity under Code Sections 408(a) or (b); or an annuity contract under Code Section 403(b); provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. A rollover contribution shall be allocated to the Rollover Account of the Participant as of the date of the contribution. The Participant's Rollover Account shall be available for distribution, under the payment options set forth in Section 11.02, at any time at the direction of the Participant, subject to any applicable penalties or other distribution requirements under the Code (including, but not limited to, Article XII).

#### **ARTICLE XV - TRANSFERS**

To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, a Participant may make a plan-to-plan transfer to this Plan from another qualified plan as provided in this Article. Likewise, to the extent permitted by the applicable provisions of the Code and regulations issued thereunder, and subject to approval by the Trustees, this Plan will accept an Employer directed transfer of a Participant's assets from a qualified plan and trust. Such a Participant-directed or Employer-directed transfer is permitted only if the other plan provides for the direct transfer of the Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer and to confirm that the other plan is a qualified plan as defined in Section 401(a) of the Code. The amount so transferred shall be credited to the Participant's Transfer Account and shall be held, invested, accounted for, administered and otherwise treated in the same manner as a rollover contribution under Article XIV, subject to any applicable distribution requirements or limitations under the Code.

To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, and subject to approval by the Trustees, a Participating Employer may direct the transfer of all the assets under its Plan to a successor qualified plan and trust that agrees to accept such transfer. In the event of such a transfer, each Participant or Beneficiary shall be entitled to receive (if the plan then terminated) a benefit immediately after the transfer which is not less than the benefit the Participant or Beneficiary would have been entitled to receive immediately before the transfer (if the plan had then terminated).

### **ARTICLE XVI - PARTICIPATING EMPLOYER OBLIGATIONS**

Each Participating Employer is required to: (i) remit correct contributions on a timely basis pursuant to Article IV, in the form and manner required by the Administrator; (ii) notify the Administrator of any change in the Adoption Agreement at least thirty (30) days prior to the proposed effective date of the change; (iii) provide and/or distribute any reports, information, or notices as required by the Administrator; and (iv) comply with all requirements of the Plan. The Plan for a Participating Employer who fails to comply with its obligations under the Plan may be terminated by the Trustees in their discretion. A Participating Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

**[AMENDED SEPTEMBER 25, 2020]**

### **ARTICLE XVII - PLAN LOANS**

Plan loans to Participants shall not be permitted.

### **ARTICLE XVIII - ADMINISTRATION OF PLAN**

**18.01 Compliance with Code Section 401(a).** At all times, the Plan shall be administered in accordance with and construed to be consistent with Section 401(a) of the Code and its accompanying regulations, as applicable to governmental plans as defined in Code

Section 414(d). The Plan is a money purchase plan, whereby contributions are determined pursuant to Article IV of the Plan.

**18.02 Trustees' Duties and Powers.** The Trustees shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Trustees shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Trustees to carry out their duties under the Plan. The Trustees also have the powers and duties specified in the Trust Agreement. By way of illustration and not limitation, the Trustees are empowered and authorized:

(1) to establish procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such procedures;

(2) to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

(3) pursuant to Article XI of the Plan, to make payments from the Trust Fund to Participants, their Beneficiaries and other persons as the Trustees may determine;

(4) to contract with one or more Service Managers to perform education, enrollment, and administrative services under this Plan;

(5) to accept service of legal process;

(6) subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.

(b) Any action by the Trustees, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Trustees may take any such action in such manner and to such extent as the Trustees in their sole discretion may deem expedient and the Trustees shall be the sole and final judge of such expediency.

(c) The Trustees may delegate any power or duty to the Administrator except where the Trustees are required to review a determination of the Administrator.

**18.03 Advice.** The Trustees may employ one (1) or more persons to render advice with regard to their responsibilities under the Plan.

**18.04 Delegation by Trustees.** In addition to the powers stated in Section 18.02, the Trustees may delegate to an individual, committee or organization certain of their fiduciary or other responsibilities under the Plan. Any such individual, committee or organization shall remain a fiduciary until the delegation of fiduciary duty is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have power and authority with respect to such delegated fiduciary or other responsibilities as the Trustees have under the Plan.

**18.05 Fiduciary Insurance.** The Trustees may require the purchase of fiduciary liability insurance for any of such fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

**18.06 Payment of Benefits.**

(a) Payments to Minors and Incompetents. Any Participant, Terminated Participant, or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Administrator receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event a guardian of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian and the guardian may take any and all actions with respect to the person's interest under the Plan in accordance with the terms of the appointment, provided that proper proof of appointment is furnished in a form and manner suitable to the Administrator. Any payment so made shall be a complete discharge of liability therefor under the Plan. No person may act as an attorney in fact for an Employee, Participant, Terminated Participant, or Beneficiary (or estate, if applicable) with respect to a matter involving the Plan unless a valid power of attorney document appointing such person and authorizing such action is submitted in a form and manner acceptable to the Administrator. The Administrator shall be entitled to rely upon a power of attorney document which it reasonably determines to be valid, without liability for actions taken by the Administrator at the request of the designated attorney in fact, unless and until the Administrator receives notice that the power of attorney is no longer effective.

(b) Correctness of Actions. The Trustees or Administrator, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal

determination of the benefits to be paid and the persons to receive them. The Trustees or Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions. The Trustees and Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, and the Participating Employers shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

**18.07 Limitation on Recovery.** Participating Employers, Participants, and Beneficiaries (or their estates, if applicable) may not seek recovery against the Trustees, GMA, or any employee or agent of GMA or the Trustees, for any loss sustained by any Participating Employer, Participant, or Beneficiary (or estate, if applicable) due to the nonperformance of their duties, negligence or any other misconduct of the above-named persons. Participants and Beneficiaries (or their estates, if applicable) may not seek recovery against Participating Employers, or any employee or agent of the Participating Employer, due to the non-performance of their duties, negligence, or any other misconduct of the above named persons.

This paragraph shall not, however, excuse fraud or a wrongful taking by any person.

## **ARTICLE XIX - CLAIMS PROCEDURE**

**19.01 Claims Procedure: Service Manager.** Any Participant may present a claim in writing to the Service Manager for any issue involving the Participant's Account investments or record-keeping. In addition, the Administrator may refer such issues to the Service Manager for review and resolution. The Service Manager shall utilize the protocol agreed to with the Administrator. The Service Manager shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Service Manager, the Participant may request in writing a claim review under Section 19.04.

**19.02 Claims Procedure: Employer.** Any Participant may present a claim in writing to the Participant's Employer for any issue involving eligibility or vesting. In addition, the Administrator may refer such issues to the Employer for review and resolution. The Employer shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Employer, the Participant may request in writing a claim review under Section 19.04.

**19.03 Claims Procedure: Administrator.** The Administrator shall have sole discretion to determine, based upon the Issue(s) raised, if a claim should be resolved by the Service Manager, Employer, or the Administrator pursuant to Sections 19.01, 19.02 or 19.03 respectively. A Participant, Beneficiary, or other person claiming benefits under this Plan ("Claimant") may present a claim in writing to the Administrator for any issue not covered by Section 19.01 or 19.02. The Administrator shall resolve any such claim presented to it in accordance with the procedures specified in Section 19.04(b) - (d). If the Claimant is not satisfied with the resolution determined by the Administrator, the Claimant may appeal the Administrator's decision under Section 19.05.

**19.04 Claims Review.**

(a) Within thirty (30) days after the Claimant is notified of a decision under Section 19.01 or 19.02, the Claimant may submit a written request for review of the decision by the Administrator. If such request is not filed within thirty (30) days, the decision of the Service Manager or Employer, as applicable, shall be final and binding. The thirty (30) day period may be waived by the Trustees for good cause shown.

(b) The Administrator shall within ninety (90) days provide adequate notice in writing to any Claimant as to its decision on any review. Such notice shall be written in a

manner calculated to be understood by the Participant. If such claim is denied by the Administrator, in whole or in part, such notice shall set forth:

- (1) the specific reasons for such denial,
  - (2) specific reference to any pertinent provisions of the Plan on which denial is based,
  - (3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary, and
  - (4) an explanation of the appeals procedure for the Plan.
- (c) The Administrator shall act as a fiduciary in making a full and fair review of such claim.
- (d) The Claimant or a duly authorized representative may review any Plan document which is pertinent to the claim and may submit issues and comments to the Administrator in writing at any time prior to the issuance of the Administrator's decision on review.

#### **19.05 Appeals Procedure.**

(a) Within sixty (60) days after receipt by the Claimant of notification of denial under Section 19.03 or 19.04, the Claimant shall have the right to present a written appeal to the Trustees, including submission of any additional written material that is pertinent to the claim. If such appeal is not filed within the sixty (60) day period, the decision of the Administrator shall be final and binding.

(b) A decision by the Trustees shall be made no later than sixty (60) days after their receipt of the appeal. However, if the Trustees decide that a hearing at which the Claimant or a duly authorized representative may be present is necessary and such a hearing is held, such

decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after their receipt of the appeal. Any such decision of the Trustees shall be in writing and shall provide adequate notice to the Claimant setting forth the specific reasons for any denial and written in a manner calculated to be understood by a Participant. Any such decision by the Trustees shall be final and binding.

**19.06 Report to Trustees Concerning Claims and Appeals.** The Administrator shall present a quarterly summary report to the Trustees concerning any claim or appeal under this Article.

## **ARTICLE XX - AMENDMENT OF THE PLAN**

### **20.01 Provider and Amendments.**

(a) It is the intent of the Trustees that the Master Plan, Adoption Agreement form and Addendum form (collectively referred to for purposes of Section 20.01 as "Plan") shall be and remain qualified for tax purposes under the Code. The Provider shall timely submit the Plan for approval under the Code as necessary, and all expenses incident thereto shall be borne by the GMA Investment Fund.

(b) The Administrator will maintain a record of the Participating Employers, and the Administrator will make reasonable and diligent efforts to ensure that Participating Employers have actually received and are aware of all Plan amendments and that such Participating Employers adopt new documents when necessary. The provisions of this subsection shall supersede other provisions of the Plan to the extent those other provisions are inconsistent.

(c) The Trustees or the Provider, as directed by the Trustees, hereby reserves the right to terminate the Plan without consent of the Participating Employers or of Participants (or any beneficiary thereof) and to amend the Plan without consent of the Participating Employers or of Participants (or any Beneficiaries thereof) to make desired changes in the design of the Plan. A

true copy of the resolution of the Trustees approving such amendment shall be delivered to the Administrator and the Participating Employers. The Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Employees, Participants, Beneficiaries, the Administrator, and all others having any interest under the Plan shall be bound thereby.

(d) On and after February 17, 2005, the Provider shall have the authority to advise and prepare amendments to the Plan, for approval by the Trustees, on behalf of all Participating Employers, including those Participating Employers who have adopted the Plan prior to the January 1, 2017, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Participating Employers. Any amendment prepared by the Provider and approved by the Trustees will be provided by the Administrator to Participating Employers.

(e) Notwithstanding the foregoing paragraphs (c) and (d), effective January 1, 2018, for any Participating Employer as of either:

(1) the date the Internal Revenue Service requires the Participating Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Participating Employer to incorporate a type of Plan not allowable in a pre-approved plan, or

(2) as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments,

such Participating Employer shall execute a resolution to adopt any amendments that are approved by the Trustees after the date under subparagraph (1) or (2) above, as applicable, within the earlier of (i) ninety (90) days after such Trustees' approval, or (ii) if applicable, the remedial amendment period under Code Section 401(b) as applicable to governmental plans. If the Participating Employer is required to obtain a determination letter for any reason in order to maintain reliance on the opinion letter, the Provider's authority to amend the Plan on behalf of the Participating Employer is conditioned on the Plan receiving a favorable determination letter.

**20.02 Amendment of Adoption Agreement and/or Addendum by Participating Employer.** The Governing Authority shall have the right at any time to amend, in whole or in part, any or all of its elections under the Adoption Agreement and/or Addendum without the consent of the Participants or any Beneficiaries. Provided, however, that no such amendment shall:

- (a) Deprive any Participant or Beneficiary of any of the benefits to which the Participant or Beneficiary is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment; or
- (b) Authorize or permit any part of the Trust Fund to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries; or
- (c) Become effective until approved by the Trustees. In order to be approved by the Trustees, any amendment must comply with the Master Plan and all applicable state and federal laws, including Code Section 401(a) as applicable to governmental plans. If the Trustees do not approve an amendment, the Trustees and Administrator shall continue to administer the Plan as if such amendment had not been made.

(d) If an amendment limits or otherwise restricts the deferral and distribution rights of the Participants, the amendment shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment to Participants. If the amendment was made by the Trustees, notice shall be deemed given when the amendment is posted in the office of the Administrator and is sent to each Participating Employer. If the amendment was made by the Participating Employer, notice shall be deemed given when the amendment is posted in the office of the Participating Employer and is sent to the Administrator. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment, and

(e) If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

### **ARTICLE XXI - TERMINATION**

**21.01 Plan Termination or Freeze by Participating Employer.** A Participating Employer may terminate or freeze its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

(a) The Governing Authority of the Participating Employer must adopt a resolution terminating its participation or freezing its Employees' rights to participate in the Plan.

(b) The resolution must specify when the Plan will be closed to any additional participation by Eligible Employees, which must be a date at least sixty (60) days after the adoption of the resolution.

(c) The resolution must be submitted to the Trustees.

The Trustees shall determine whether the resolution complies with this section, and all applicable federal and state laws, shall determine an appropriate effective date for the Plan termination or freezing of Employer participation. The Administrator shall provide appropriate forms to the Participating Employer to terminate or freeze ongoing participation. Distributions under the Plan of existing accounts to the Participants and Beneficiaries affected by the termination, or to Participants affected by the freeze are subject to Article XI. However, if the Participating Employer requests a plan-to-plan transfer of Plan assets with respect to the Participating Employer's Employees who are Participants, the Trustees may in their discretion make the transfer.

**21.02 Discontinuance of Contributions.** At the discretion of the Trustees, a Participating Employer who fails to make contributions for a period of one (1) year or who fails to make timely contributions over a period of two (2) years shall be considered to have frozen participation.

**21.03 Effect of Termination or Freeze by Participating Employer.** In the case of the complete or partial termination or freezing of the Plan as to one (1) or more Participating Employers, including a freeze arising from the discontinuance and/or delinquency of contributions, the affected portion of the Trust Fund shall continue to be held pursuant to the direction of the Trustees, for the benefit of affected Participants pursuant to Article XI. The Plan shall remain in full effect with respect to each Participating Employer that does not terminate its participation in the Plan on behalf of its Employees or whose participation is not terminated by the Trustees. In the case of a complete termination of the Plan as to one (1) or more Participating Employers, the Trustees must distribute all assets of the Trust Fund as to such Participating Employer to Participants and Beneficiaries as soon as administratively practicable after the

termination of the Plan, pursuant to benefit options under Article XI. In the case of the establishment of a successor plan, such assets may be transferred to the trust of a successor plan.

**21.04 Termination of the Entire Plan.** This Plan in its entirety may be terminated at any time by official action of the Trustees, with notice to all Participating Employers and Participants. The last date for contributions and earnings to be credited to Participant Accounts must be specified in the Trustees' official action and must be no sooner than ninety (90) days after the adoption of the official action. In the event of a complete Plan termination, the Trustees must distribute all assets of the Trust Fund to the Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan, pursuant to benefit options under Article XI. In the case of the establishment of a successor plan, such assets may be transferred to the trust of a successor plan.

## **ARTICLE XXII - NONASSIGNABILITY**

**22.01 Nonassignment.** No Participant, Beneficiary or designee may commute, sell, assign, transfer, or otherwise convey the right to receive any payment under the Plan.

**22.02 Rights.** The rights of Participants and Beneficiaries under this Plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, except to the extent a benefit distributable under Article XI is subject to a federal tax levy and except as provided in Article XXIII concerning Plan-Approved Domestic Relations Orders.

## **ARTICLE XXIII - DOMESTIC RELATIONS ORDERS**

**23.01 General Provisions.** Domestic relations orders which satisfy the requirements of Code Section 414(p)(A)(i) and 414(p)(1)(B), this Article, and the procedures established by the Administrator or Service Manager for such orders shall be considered Plan-Approved Domestic Relations Orders ("PADROs") and shall be honored by the Plan. The Plan shall not honor any

domestic relations orders issued by a court before January 26, 2004. The Administrator or Service Manager is authorized to establish and amend procedures for the determination of PADROs consistent with the above-referenced Code provisions and this Article.

**23.02 Investment.** During the period that the issue of whether an order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager is under consideration, the investment direction of the Participant with respect to the Participant's Accounts shall remain in effect, subject to a determination by the Administrator or Service Manager that such investment direction would be contrary to a final court order. After a determination has been made that a domestic relations order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager and a separate Plan Account has been established for the alternate payee, the alternate payee shall direct the investment of his or her Plan Account. The Administrator or Service Manager shall direct the investment of an alternate payee's Account to a default investment pursuant to Section 9.02 when there is no valid investment direction on file. The alternate payee's Account shall be assessed administrative fees in the same amount and in the same manner as a Participant's Account. The Service Manager may assess an additional administrative fee to process PADROs.

**23.03 Distributions to Alternate Payees.** Distributions of benefits to the alternate payee shall commence as soon as administratively practicable after (i) a determination is made that the order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager, and (ii) receipt by the Administrator or Service Manager of the Applicable Forms for the election of benefits. In the event of an alternate payee's death,

any remaining benefits shall be payable solely to the alternate payee's estate, via the duly appointed and then-currently serving executor of the alternate payee's estate.

#### **ARTICLE XXIV - MISCELLANEOUS**

**24.01 Federal Taxes.** The Trustees, the Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in this Plan.

**24.02 Contract.** This Plan (i.e. the Master Plan document, along with the provisions set forth in the Adoption Agreement and any Addendum of any Participating Employer), including any properly adopted or executed amendments thereof, shall constitute entirety of the Participating Employer's Plan. No oral statement regarding the Plan may be relied upon by any Participant or other person. No document outside of the Plan shall be construed as creating an agreement or contract between the Participating Employer and any Participant regarding the Plan.

**24.03 Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute a qualified governmental plan under the provisions of Code Sections 401 and 414(d) and the Trust to be exempt from tax under Code Sections 115 and 501, (ii) causes the Plan to comply with all applicable requirements of the Code, and (iii) causes the Plan to comply with all applicable Georgia statutes and rules, shall prevail over any different interpretation.

**24.04 Limitation on Rights.** Neither the establishment or maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

(a) as conferring upon any Participant, Beneficiary (or their estates, if applicable) or any other person a right or claim against the Trust, Trustees, Participating Employers, Administrator, GMA or GMA's employees or agents, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Participating Employers for the validity or effect of the Plan;

(c) as a contract between the Participating Employers and any Participant or other person (or estate, if applicable);

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the Participating Employers or to interfere with the right of the Participating Employers to discharge any Participant or other person at any time.

**24.05 USERRA Compliance.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Code Section 414(u); and Code Section 401(a)(37), as amended from time to time.

For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

A Participant, whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service who timely resumes employment with the Participating Employer in accordance with USERRA, may elect to make-up deferral contributions to a Code Section 457(b) Plan in accordance with Code Section 414(u) reduced by deferral contributions under Code Section 457(b), if any, actually made for the Participant during the period of such interruption or leave. Except to the extent otherwise provided under Code Section 414(u), this right applies for five (5) years following such resumption of employment (or, if shorter, for a period equal to three (3) times the period of the interruption or leave). Such contribution by the Participant may only be made during such period and while the Participant is employed by the Participating Employer.

If such Participant elects to make such make-up contributions, then the Participating Employer shall make-up the related Employer Contributions which would have been required had such contributions actually been made during the period of qualified military service. The make-up contributions by the Participating Employer shall be made as soon as practicable after the Participant makes such make-up contributions.

If the Participant timely resumes employment in accordance with USERRA after a qualified military leave, the Participating Employer shall make any other Employer Contribution that would have been made if the Participant had remained employed during the Participant's qualified military service. Such contributions must be made no later than ninety (90) days after the date of such reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later.

In determining the amount of Employer Contribution, a Participant shall be treated as receiving compensation from the Participating Employer during such period of qualified military

service equal to (i) the compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Participating Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Participating Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

Effective January 1, 2009, a Participant receiving a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as a Participant and the differential wage payment shall be treated as Compensation for purposes of Section 1.08 of the Plan and for purposes of Article V of the Plan. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**24.06 Procedure when Distributee Cannot be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Beneficiary (or an estate, if applicable) entitled to benefits under the Plan. For this purpose, a reasonable attempt means the Administrator has taken the following steps: (a) searched plan and

related plan, sponsor, and publicly-available records or directories for alternative contact information, (b) used a commercial locator service, credit reporting agency, or proprietary internet search tool for locating individuals, as determined by the Administrator, and (c) attempted contact via United States Postal Service ("USPS") certified mail to the last known mailing address shown on the Employer's or the Administrator's records and through appropriate means for any address or contact information (including email addresses and telephone numbers). If the Administrator is unable to locate such a person entitled to benefits hereunder, the payee has not responded within six (6) months, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person. In the event of a Plan termination under Article 21, the benefits due to such person shall be paid in a direct rollover to an individual retirement plan designated by the Administrator.

**24.07 Erroneous Payments.** If the Trustees make any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Trustees may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Trustees, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Trustees may deduct it when making any future payments directly to that Participant.

**24.08 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Participating Employer.

**24.09 Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

**24.10 Liability.** The Administrator and its employees and agents shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**24.11 Governing Laws.** The law of the State of Georgia, except to the extent pre-empted by federal law, shall apply in determining the construction and validity of this Plan.

**24.12 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Trustees and the Administrator. However, the Service Manager is a necessary party for with respect to duties that have been delegated to the Service Manager. The settlement or judgment in any such case in which the Trustees are duly served shall be binding upon the Participating Employer and all affected Employees, Participants, their Beneficiaries, estates and upon all persons claiming by, through or under them.

**24.13 Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**24.14 Supersession.** The terms of the Plan shall supersede any previous Agreement between the parties pertaining to the Plan.

**24.15 Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

**24.16 General Provision.** Trustees may adopt procedures for persons to act on behalf of incompetent Participants and Beneficiaries.

IN WITNESS WHEREOF the Board of Trustees has caused to be affixed the signature of its duly authorized Representatives:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Larry Hanson, Secretary-Treasurer

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**THE GEORGIA  
MUNICIPAL ASSOCIATION  
401(a) DEFINED CONTRIBUTION PLAN  
TRUST AGREEMENT**

**Board of Trustees  
of the  
GMA Defined Contribution  
and Deferred Compensation Program  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663**

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**TRUST AGREEMENT FOR THE  
GEORGIA MUNICIPAL ASSOCIATION  
DEFINED CONTRIBUTION PLAN**

THIS TRUST AGREEMENT is made and entered into effective as of January 1, 2001, by and between the members of the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Program ("Trustees").

**PRELIMINARY INFORMATION**

The Georgia Municipal Association, Inc. ("GMA") has established the Georgia Municipal Association Defined Contribution Plan ("Plan") for the exclusive benefit of Eligible Employees of Participating Employers. The authority to conduct the general investment operation and the general administration of the Plan is vested in the Trustees. The Trustees now desire to formalize the trust ("Trust") pursuant to this trust agreement ("Trust Agreement") to serve as the funding vehicle for the Plan.

GMA is the Administrator of the Plan and the Trust. The Trustees may contract with a Service Manager to perform delegated functions with respect to the Trust. If the Trustees contract with a Service Manager, the term "Administrator" herein includes the Service Manager with respect to those duties delegated to the Service Manager.

The Trustees shall maintain the plan for the exclusive benefit of the Participants. The Trustees intend to establish sound prudent practices designed to provide easy and convenient access to information and transactions for Participants, including transfers from one Investment Fund to another at the Participant's direction. The Trustees intend to establish these practices while maintaining a reasonable cost to the Participants. The Trustees intend to preserve employees' rights to choose freely among a broad range of Investment Funds and to self-direct their investments. Further, the Trustees intend to perform ongoing evaluations and reviews to ensure that the Investment Funds offered remain diversified, competitive and attractive to Participants. It is the Trustees' intent that the Trust be exempt under Sections 501(a) and 115 of the Internal Revenue Code of 1986, as amended.

**ARTICLE I - TRUST ADMINISTRATION**

**I.1 Trust Fund.** The Trustees shall receive and accept for the purposes hereof all property paid to them by or at the direction of the Participating Employers and shall hold, invest, reinvest, manage, administer and distribute property and the increments, proceeds, earnings and income thereof for the exclusive benefit of the Participants and Beneficiaries under the Plan. All assets held by the Trustees in the Trust are referred to herein as the "Trust Fund." The Trustees have authority to invest, in accordance with valid participant instructions, and manage the assets of the Trust Fund.

**I.2 Exclusive Benefit Rule.** No portion of the principal or the income of the Trust Fund shall revert to the Participating Employer, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of Participants in the Plan and persons claiming under or through them pursuant to the Plan and (ii) the payment of reasonable expenses of the Plan and this Trust. The Trustees shall administer the Trust in compliance with Code Section 503(b).

**I.3 Trustee Standard.** The Trustees and any other fiduciary shall discharge duties with respect to the Plan with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose and in accordance with a good-faith interpretation of the law governing the Plan.

**I.4 Investment Policy.** The Trustees shall adopt a statement of investment objectives and policies for the Plan. At least annually, the Trustees shall review the statement and change or reaffirm it.

**I.5 Plan.** All references in the Trust Agreement to the Plan shall mean the Georgia Municipal Association Defined Contribution Plan. The Plan, as amended from time to time, is incorporated herein by reference, and the terms herein shall have the meanings attributed to them in the Plan.

**I.6 Property.** The word "property" used in the Trust Agreement shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general, or in any insurance contract, policy, annuity or other investment media offered by an insurance company.

**I.7 Unclaimed Benefit Payments.** If any check or share certificate in payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Trustees by the Administrator, is returned unclaimed, the Trustees shall notify the Administrator and shall discontinue further payments to such payee until they receive the further instructions of the Administrator, subject to any applicable Unclaimed Property Act provisions.

**I.8 Duty to Furnish Information.** Both the Administrator and the Trustees shall furnish to each other any document, report, return, statement or other information that the other reasonably deems necessary to perform duties imposed under the Plan or the Trust Agreement or otherwise imposed by law.

## **ARTICLE II - DEPOSITS AND DISBURSEMENTS FROM THE TRUST FUND**

**II.1 Trust Deposits.** The Trustees shall delegate to the Administrator the responsibility for accepting deposits to the Trust.

**II.2 Trust Payments.** The Trustees shall delegate to the Administrator the responsibility for making payments from the Trust Fund. Administrator shall make payments from the Trust Fund to Participants, their Beneficiaries and such other persons as the Plan may provide. Such payments shall be made in such manner, in such amounts and for such purposes, including the payment of Plan benefits and the payment of expenses of administration of the Plan, as may be specified in the Plan. The Administrator shall ensure that any payment directed under this Section conforms to the provisions of the Plan, the Trust Agreement, and the provisions of any applicable law. Payments from the Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

**II.3 Allocation of Trust Expenses.** The Trustees shall pay all expenses of the Trust from the Trust Fund. All expenses of the Trust which are allocable to a particular Investment Fund or Account may be allocated and charged to such Investment Fund or Account as determined by the Trustees. All expenses of the Trust which are not allocable to a particular Investment Fund or Account shall be charged to each such Investment Fund or Account in the manner established by the Trustees.

### **ARTICLE III - INVESTMENT FUNDS**

The Trustees, in accordance with provisions of the Plan, may establish one (1) or more investment options within the Trust Fund, each option being hereinafter referred to as an "Investment Fund." The Trustees shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as appropriate. The Trustees shall manage, acquire or dispose of the assets in an Investment Fund in accordance with valid specific investment directions given by the Participants. All income received with respect to, and all proceeds received from, the disposition of property held in an Investment Fund shall be credited to, and reinvested in, such Investment Fund. The Trustees shall establish a default investment option in the absence of valid Participant investment direction.

From time to time, the Trustees may eliminate an Investment Fund, and the proceeds thereof shall be reinvested in another Investment Fund in accordance with the directions of the Trustees.

### **ARTICLE IV - INVESTMENT IN INSURANCE CONTRACTS**

The Trustees may offer one (1) or more Investment Funds pursuant to one (1) or more agreements with insurance companies qualified to do business in the State of Georgia. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance company so selected shall certify the value of the Trust's interest in the property held by it at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Trust Agreement.

## **ARTICLE V - INVESTMENT IN MUTUAL FUNDS**

The Trustees may offer one (1) or more Investment Funds pursuant to one (1) or more agreements with companies offering mutual fund products. Any asset invested pursuant to such an agreement shall be held by the Trustees. Each mutual fund so selected shall certify the value of the Trust's interest in that fund at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Trust Agreement.

## **ARTICLE VI - APPOINTMENT OF INVESTMENT MANAGERS**

**VI.1 Investment Managers.** The Trustees, from time to time, may appoint one (1) or more independent investment managers ("Investment Manager"), pursuant to a written investment management agreement with each, describing the powers and duties of the Investment Manager to manage a particular Investment Fund. The Investment Manager shall have the power to direct the management, acquisition or disposition of any asset held in any Investment Fund for which it is responsible hereunder.

The Trustees shall be responsible for ascertaining that, while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940, as amended; (ii) a bank as defined in that Act; or (iii) an insurance company qualified to perform the services described herein under the laws of more than one state.

(b) The Investment Manager has acknowledged in writing to the Trustees that it is a fiduciary with respect to the Plan.

**VI.2 Investment Manager Duties.** Subject to the approval of the Trustees, each Investment Manager shall establish and carry out an investment policy and method for the Investment Fund subject to its direction and management that is consistent with the objectives of the Fund. At least annually, the Investment Manager shall review its investment policy and method with the Trustees. The Investment Manager shall make investments consistent with its investment policy, any applicable law, and the cash requirements of the Fund, as advised by the Administrator.

Each Investment Manager shall, at the request of the Trustees, certify the value of any security or other property held in any Investment Fund managed by such Investment Manager at least annually. The Trustees shall be entitled to rely conclusively upon such valuation for all purposes under the Trust Agreement.

## **ARTICLE VII - POWERS AND DUTIES OF THE TRUSTEES**

**VII.1 Exercise of Powers and Authority.** Except to the extent that the same has been delegated to an Investment Manager or Insurance Company with respect to an Investment Fund, the Trustees, in administering the Trust, shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to the Trustees, in their sole discretion, subject to the provisions of this Trust Agreement, including the power and authority:

- (a) To serve as trustees and fiduciaries of the Plan;
- (b) To adopt by-laws governing the Trustees' operations and procedures, with the by-laws and amendments to such by-laws being recommended and submitted to the GMA Board of Directors for approval;
- (c) To contract with municipal corporations, political subdivisions and other public entities of this State or of local government and private entities for the provision of Plan services and for the use or furnishing of services and facilities necessary, useful, or incident to providing Plan services;
- (d) To contract with public or private entities for the provision of administrative services;
- (e) To adopt plans, trust agreements, investment guidelines and other documents necessary or desirable for the Plan;
- (f) To charge fees for administrative services in addition to any fees charged by a Service Provider;
- (g) To collect and disburse all funds due or payable under the Plan;
- (h) To provide for and promulgate all rules, regulations, and forms deemed necessary or desirable in contracting with Employers and Participants, in fulfilling the Trustees' purposes of providing Plan benefits, and in maintaining proper records and accounts;
- (i) To expend funds as budgeted by the Board, subject to the approval of the GMA Board of Directors with respect to GMA funds for the purchase of fidelity and surety bonds and liability insurance for the protection and indemnification of the Trustees in the performance of their duties;
- (j) To allocate and pay the reasonable expenses of the Plan and the Trustees while in the performance of their duties as budgeted by the Board subject to the approval of the GMA Board of Directors with respect to GMA funds;
- (k) To employ insurance companies, banks, trust companies, investment brokers, investment advisors, or others as agents for the receipt and disbursement of funds held in trust for Participants in the Plan;
- (l) To participate in a tax exempt group trust that has been determined by the Internal Revenue Service to be a pooled fund arrangement pursuant to Revenue Ruling 81-100, as modified by Revenue Rulings 2004-67 and 2011-1, and in such case a group trust agreement shall be deemed adopted as part of this Trust Agreement without further action by the Board. In any event, no part of the Trust corpus or income may be used for, or diverted to, purposes other than for the exclusive benefit of the Plan Participants and their Beneficiaries or the payment of reasonable expenses of the Plan and this Trust;

- (m) To determine, consistent with the applicable laws, rules or regulations, and the claims procedure under the Plan all questions of law or fact that may arise as to investments and the rights of any person claiming rights under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;
- (n) Subject to and consistent with the Code, to construe and interpret the Trust and to correct any defect, supply any omissions, or reconcile any inconsistency in the Trust;
- (o) To accept or reject a Participating Employer's adoption of or withdrawal from the Plan;
- (p) To contract for, purchase or otherwise procure insurance and investment products;
- (q) To register any Trust asset in the name of the Trust, in the name of its agent or in the name of a nominee or to hold any instrument in bearer form (but the books and records of the Plan shall at all times show that such investments are part of the Trust Fund);
- (r) To consult with and rely on the advice of legal counsel;
- (s) To make, execute, acknowledge and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;
- (t) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust and the Plan; provided, however, the Trustees need not take any action unless in their opinion there are sufficient Trust assets available for the expense thereof.

**[AS AMENDED JUNE 26, 2017; EFFECTIVE AS OF JUNE 26, 2017]**

**VII.2 Authority of Individual Trustees.** Any action to be taken by the Trustees shall be taken only upon the authorization or vote of a majority of such individual trustees. However, the Trustees may delegate a particular function, power or authority to an individual trustee (the "Individual Trustee"). When such delegation occurs, no person dealing with the Individual Trustee shall be required to make inquiry as to the authority of the Individual Trustee to do any act hereunder. Any such person shall be entitled, conclusively, to assume that the Individual Trustee is properly authorized to do any act which he/she purports to do hereunder, and any such person shall be under no liability to any person, whomsoever, for any act done hereunder pursuant to such written direction of the Individual Trustee. When such action is so authorized by the Individual Trustee, any such person may assume conclusively that the Individual Trustee has full power and authority to receive and give receipt for any money or property becoming due and payable to the Trustees, and no such person shall be bound to inquire as to the disposition or application of any money or property paid or delivered to the Individual Trustee, or paid or delivered in accordance with such written direction of the Individual Trustee.

## **ARTICLE VIII - LIMITATIONS OF RESPONSIBILITY**

**VIII.1 Standard of Review.** In evaluating performance of the Trustees or other fiduciary, compliance by the Trustees or other fiduciary with the Trust must be determined in light of the facts and circumstances existing at the time of the Trustees or fiduciary's decision or action and not by hindsight.

**VIII.2 Limitations on Liability.** The Trustees' responsibilities and liabilities shall be subject to the following limitations:

- (a) The Trustees shall have no duties other than those expressly set forth in this Trust Agreement or the Plan and those imposed on the Trustees by applicable laws.
- (b) The Trustees shall be responsible only for money and property actually received by the Trustees, and then to the extent described in this Trust. The Trustees shall not be under any duty to require payment of any contribution to the Trust Fund or to see that any payment made to them is computed in accordance with the provisions of the Plan.
- (c) The Trustees shall not be responsible for the correctness of any determination of payments or disbursements from the Trust Fund.
- (d) The Trustees shall have no liability for the acts or omissions of any predecessor or successor in office.
- (e) The Trustees shall have no liability for (i) the acts or omissions of any Investment Manager or Managers; (ii) the acts or omissions of any Insurance Company; (iii) the acts or omissions of any Mutual Fund; or (iv) following directions that are given to the Trustees by the Participants or the Administrator in accordance with this Trust Agreement or the Plan.

#### **ARTICLE IX - ACCOUNTS OF THE TRUSTEES RECORDKEEPING AND VALUATION**

The Trustees shall maintain or cause to be maintained suitable records, data and information relating to their responsibilities hereunder, in accordance with applicable Georgia law. Individual Participant Accounts shall be maintained by the Administrator pursuant to the Plan.

#### **ARTICLE X - RELIANCE ON COMMUNICATIONS**

The Trustees may rely upon a certification of the Administrator with respect to any instruction, direction, or approval of such Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Trustees. The Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Administrator.

The Trustees shall be protected further in relying upon a written certification from any Investment Manager, insurance company or mutual fund as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager or insurance company and may continue to rely upon such certification until a subsequent written certification is filed with the Trustees.

#### **ARTICLE XI - RESIGNATION AND REMOVAL OF TRUSTEES**

The resignation, removal and appointment of Trustees is governed by applicable Georgia law. Upon such resignation or removal, a successor individual co-trustee shall be appointed by the GMA Board of Directors, and shall have the same powers and duties as those conferred upon the Trustees hereunder.

## **ARTICLE XII - AMENDMENT**

This Trust Agreement may be amended by written agreement between the Trustees at any time and in any manner permitted by applicable law.

## **ARTICLE XIII - TERMINATION**

This Trust Agreement and the Trust created hereby may be terminated at any time by the Trustees with respect to an Employer when the Employer's participation in the Plan is terminated. The Trust Agreement and the Trust may be terminated in its entirety when the Plan is terminated in its entirety. Notwithstanding the foregoing, the Trustees shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustees have received written certification from the Administrator (i) that all provisions of law with respect to such termination have been complied with; and (ii) after the Trustees have made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustees shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

## **ARTICLE XIV - MISCELLANEOUS**

**XIV.1 Construction and Governing Law.** This Trust Agreement shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Georgia.

Words used herein in the masculine gender shall be construed to include the feminine gender, where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. The headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust Agreement.

In resolving any conflict among provisions of this Trust Agreement and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust Agreement, the interpretation that (i) causes the Plan and Trust to satisfy the applicable requirements of Code Sections 401(a) and 414(d) and the Trust to be exempt from tax under Code Sections 115 and 501(a),

and (ii) causes the Plan and Trust to comply with all applicable requirements of state or federal law shall prevail over any different interpretation.

**XIV.2 Duration of Trust.** Unless sooner terminated, the Trust created under the Trust Agreement shall continue for the maximum period of time permitted by the laws of the State of Georgia.

**XIV.3 No Guarantees.** Neither the Administrator nor the Trustees guarantee the Trust Fund from loss or depreciation or the payment of any amount which may become due to any person under the Plan or the Trust Agreement.

**XIV.4 Parties Bound.** This Trust Agreement shall be binding upon the parties hereto, the Participating Employers, all Participants in the Plan and persons claiming under or through them pursuant to the Plan, and, as the case may be, the heirs, executors, administrators, successors and assigns of each of them.

**XIV.5 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Trust Agreement shall include only the Trustees and the Administrator. The settlement or judgment in any such case in which the Trustees are duly served or cited shall be binding upon all Participants in the Plan and their Beneficiaries and estates, and upon all persons claiming by, through or under them.

**XIV.6 Severability.** If any provisions of the Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Trust Agreement shall continue to be fully effective. If any provision of the Trust Agreement is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Plan or Trust.

**XIV.7 Supersession.** The terms of the Trust Agreement shall supersede any previous oral agreement between the parties pertaining to the Trust.

**XIV.8 Acceptance of Trust.** Each trustee hereby accepts the trust under the Trust Agreement.

**XIV.9 Counterparts.** This Trust Agreement may be executed in one (1) or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Board of Trustees has caused to be affixed the signature of its duly authorized Representative:

Board of Trustees of the GMA Defined  
Contribution and Deferred Compensation  
Program

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

**ADMINISTRATOR**

\_\_\_\_\_  
Date

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

RISK MANAGEMENT AND  
EMPLOYEE BENEFIT SERVICES  
BOARD OF TRUSTEES

November 18, 2021

**Chairman**  
Rebecca L. Tydings  
City Attorney, Centerville

**Vice Chairman**  
Marcia Hampton  
City Manager, Douglasville

**Secretary-Treasurer**  
Larry H. Hanson  
Executive Director

**Trustees:**

Shelly Berryhill  
Commissioner, Hawkinsville

Linda Blechinger  
Mayor, Auburn

Meg Kelsey  
City Manager, LaGrange

Sam Norton  
Mayor, Dahlonega

David Nunn  
City Manager, Madison

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Councilmember, Camilla

James F. Palmer  
Mayor, Calhoun

John Reid  
Mayor, Eatonton

Kenneth L. Usry  
Mayor, Thomson

Clemontine Washington  
Mayor Pro Tem, Midway

Donna Whitener  
Mayor, Blue Ridge

Vince Williams  
Mayor, Union City

**TRANSMITTED VIA E-MAIL**  
([smcclure@stonecrestga.gov](mailto:smcclure@stonecrestga.gov))

Mr. Steven McClure  
Director of Human Resources  
City of Stonecrest  
3120 Stonecrest Blvd, Suite 190  
Stonecrest, GA 30038

**RE: City of Stonecrest; New Georgia Municipal Association 457(b) Deferred Compensation Plan and 401(a) Defined Contribution Plan**

Dear Mr. McClure:

Enclosed please find the following documents:

1. A draft Adoption Agreement for the City's new GMA 457(b) Deferred Compensation Plan ("457(b) Plan");
2. A draft Roth 457(b) Plan Addendum for the City's new GMA 457(b) Plan;
3. A draft Adoption Agreement for the City's new GMA 401(a) Defined Contribution Plan ("DC Plan");
4. A conformed copy of the GMA 457(b) Deferred Compensation Plan Master Plan Document;
5. A conformed copy of the GMA DC Plan Master Plan Document;
6. A conformed copy of the GMA 457(b) Deferred Compensation Plan Trust Agreement; and
7. A conformed copy of the GMA DC Plan Trust Agreement.

If approved, the City's 457(b) Plan Adoption Agreement, 457(b) Plan Roth Addendum and DC Plan Adoption Agreement will become effective on December 1, 2021.

**457(b) Plan**

The draft 457(b) Plan Adoption Agreement provides for participation by all employees. Post-severance payments *will be* included in compensation for purposes of computing contributions under the Plan. The draft 457(b) Plan Adoption Agreement incorporates a Roth 457(b) Addendum, which will permit employees to direct after-tax employee contributions to Roth 457(b) accounts, should they choose to do so. Vesting under the 457(b) Plan is immediate. A 457(b) Plan enrollment form for plans offering the Roth feature and the GMA Roth Q&A will be made available to you on the GMA website.

**DC Plan**

The draft DC Plan Adoption Agreement provides for participation by all regular employees who work at least 40 hours a week, as well as elected officials. There is no waiting period to participate in the DC Plan.

The DC Plan provides for non-matching employer contributions in the amount of 11% of a participant's compensation per pay period, as well as matching contributions in the amount of 100% of each participant's contributions made to the GMA 457(b) Plan, up to 4% of the employee's compensation per payroll period. Post-severance payments *will be* included in compensation for purposes of computing contributions under the Plan. Participants will be subject to a graduated vesting schedule of 20% each year for 5 years.

If any provisions in the draft documents do not accurately reflect the City's intent, please let us know before the documents are adopted and executed so that we can revise the documents accordingly. If the documents are acceptable as drafted, please have the designated representatives sign and date each document were indicated (457(b) Plan Adoption Agreement p. 3 and p. AA-5, 457(b) Plan Roth Addendum p. 1, and DC Plan Adoption Agreement p. 4 and AA-15).

Following execution of the documents please scan a copy of each document and email them to Gina Gresham at [rgresham@gacities.com](mailto:rgresham@gacities.com). We will then countersign the documents and return the fully executed documents to you electronically.

Representatives from GMA will contact you soon regarding enrollment meetings and paperwork instructions. Please contact Michelle Warner or Randy Briskin if you have any questions or comments regarding the 457(b) Plan or DC Plan.

Please let us know if you have any questions about, or revisions to, the draft 457(b) Plan Adoption Agreement, 457(b) Roth Addendum or DC Plan Adoption Agreement.

Sincerely,



Caroline Dorsey  
Associate General Counsel

C: Winston Denmark, City Attorney, City of Stonecrest (w/encl.)  
Michelle Warner, Director, Retirement Field Services and DC Program (w/o encl.)  
Gwin Hall, Senior Associate General Counsel (w/o encl.)

**THE GEORGIA  
MUNICIPAL ASSOCIATION  
457(b) DEFERRED COMPENSATION PLAN  
TRUST AGREEMENT**

**Board of Trustees  
of the  
GMA Defined Contribution  
and Deferred Compensation Program  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663**

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**TRUST AGREEMENT FOR THE  
GEORGIA MUNICIPAL ASSOCIATION  
DEFERRED COMPENSATION PLAN**

THIS TRUST AGREEMENT is made and entered into effective as of January 1, 2001, by and between the members of the Board of Trustees of the GMA Defined Contribution Plan and Deferred Compensation Program ("Trustees").

**PRELIMINARY INFORMATION**

The Georgia Municipal Association, Inc. ("GMA") has established the Georgia Municipal Association Deferred Compensation Plan ("Plan") for the exclusive benefit of Eligible Employees of Participating Employers. The authority to conduct the general investment operation and the general administration of the Plan is vested in the Trustees. The Trustees now desire to formalize the trust ("Trust") pursuant to this trust agreement ("Trust Agreement") to serve as the funding vehicle for the Plan.

GMA is the Administrator of the Plan and the Trust. The Trustees may contract with a Service Manager to perform delegated functions with respect to the Trust. If the Trustees contract with a Service Manager, the term "Administrator" herein includes the Service Manager with respect to those duties delegated to the Service Manager.

The Trustees shall maintain the plan for the exclusive benefit of the Participants. The Trustees intend to establish sound prudent practices designed to provide easy and convenient access to information and transactions for Participants, including transfers from one Investment Fund to another at the Participant's direction. The Trustees intend to establish these practices while maintaining a reasonable cost to the Participants. The Trustees intend to preserve employees' rights to choose freely among a broad range of Investment Funds and to self-direct their investments. Further, the Trustees intend to perform ongoing evaluations and reviews to ensure that the Investment Funds offered remain diversified, competitive and attractive to Participants. It is the Trustees' intent that the Trust be exempt under Sections 501(a) and 115 of the Internal Revenue Code of 1986, as amended.

**ARTICLE I - TRUST ADMINISTRATION**

**I.1 Trust Fund.** The Trustees shall receive and accept for the purposes hereof all property paid to them by or at the direction of the Participating Employers and shall hold, invest, reinvest, manage, administer and distribute property and the increments, proceeds, earnings and income thereof for the exclusive benefit of the Participants and Beneficiaries under the Plan. All assets held by the Trustees in the Trust are referred to herein as the "Trust Fund." The Trustees have authority to invest, in accordance with valid participant instructions, and manage the assets of the Trust Fund.

**I.2 Exclusive Benefit Rule.** No portion of the principal or the income of the Trust Fund shall revert to the Participating Employer, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of Participants in the Plan and persons claiming under or through them pursuant to the Plan and (ii) the payment of reasonable expenses of the Plan and this Trust. The Trustees shall administer the Trust in compliance with Code Section 503(b).

**I.3 Trustee Standard.** The Trustees and any other fiduciary shall discharge duties with respect to the Plan with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose and in accordance with a good-faith interpretation of the law governing the Plan.

**I.4 Investment Policy.** The Trustees shall adopt a statement of investment objectives and policies for the Plan. At least annually, the Trustees shall review the statement and change or reaffirm it.

**I.5 Plan.** All references in the Trust Agreement to the Plan shall mean the Georgia Municipal Association Deferred Compensation Plan. The Plan, as amended from time to time, is incorporated herein by reference, and the terms herein shall have the meanings attributed to them in the Plan.

**I.6 Property.** The word "property" used in the Trust Agreement shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general, or in any insurance contract, policy, annuity or other investment media offered by an insurance company.

**I.7 Unclaimed Benefit Payments.** If any check or share certificate in payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Trustees by the Administrator, is returned unclaimed, the Trustees shall notify the Administrator and shall discontinue further payments to such payee until they receive the further instructions of the Administrator, subject to any applicable Unclaimed Property Act provisions.

**I.8 Duty to Furnish Information.** Both the Administrator and the Trustees shall furnish to each other any document, report, return, statement or other information that the other reasonably deems necessary to perform duties imposed under the Plan or the Trust Agreement or otherwise imposed by law.

## **ARTICLE II - DEPOSITS AND DISBURSEMENTS FROM THE TRUST FUND**

**II.1 Trust Deposits.** The Trustees shall delegate to the Administrator the responsibility for accepting deposits to the Trust.

**II.2 Trust Payments.** The Trustees shall delegate to the Administrator the responsibility for making payments from the Trust Fund. Administrator shall make payments from the Trust Fund to Participants, their Beneficiaries and such other persons as the Plan may provide. Such payments shall be made in such manner, in such amounts and for such purposes, including the payment of Plan benefits and the payment of expenses of administration of the Plan, as may be specified in the Plan. The Administrator shall ensure that any payment directed under this Section conforms to the provisions of the Plan, the Trust Agreement, and the provisions of any applicable law. Payments from the Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

**II.3 Allocation of Trust Expenses.** The Trustees shall pay all expenses of the Trust from the Trust Fund. All expenses of the Trust which are allocable to a particular Investment Fund or Account may be allocated and charged to such Investment Fund or Account as determined by the Trustees. All expenses of the Trust which are not allocable to a particular Investment Fund or Account shall be charged to each such Investment Fund or Account in the manner established by the Trustees.

## **ARTICLE III - INVESTMENT FUNDS**

The Trustees, in accordance with provisions of the Plan, may establish one (1) or more investment options within the Trust Fund, each option being hereinafter referred to as an "Investment Fund." The Trustees shall transfer to each such Investment Fund such portion of the assets of the Trust Fund as appropriate. The Trustees shall manage, acquire or dispose of the assets in an Investment Fund in accordance with valid specific investment directions given by the Participants. All income received with respect to, and all proceeds received from, the disposition of property held in an Investment Fund shall be credited to, and reinvested in, such Investment Fund. The Trustees shall establish a default investment option in the absence of valid Participant investment direction.

From time to time, the Trustees may eliminate an Investment Fund, and the proceeds thereof shall be reinvested in another Investment Fund in accordance with the directions of the Trustees.

## **ARTICLE IV - INVESTMENT IN INSURANCE CONTRACTS**

The Trustees may offer one (1) or more Investment Funds pursuant to one (1) or more agreements with insurance companies qualified to do business in the State of Georgia. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance

company so selected shall certify the value of the Trust's interest in the property held by it at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Trust Agreement.

## **ARTICLE V - INVESTMENT IN MUTUAL FUNDS**

The Trustees may offer one (1) or more Investment Funds pursuant to one (1) or more agreements with companies offering mutual fund products. Any asset invested pursuant to such an agreement shall be held by the Trustees. Each mutual fund so selected shall certify the value of the Trust's interest in that fund at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Trust Agreement.

## **ARTICLE VI - APPOINTMENT OF INVESTMENT MANAGERS**

**VI.1 Investment Managers.** The Trustees, from time to time, may appoint one (1) or more independent investment managers ("Investment Manager"), pursuant to a written investment management agreement with each, describing the powers and duties of the Investment Manager to manage a particular Investment Fund. The Investment Manager shall have the power to direct the management, acquisition or disposition of any asset held in any Investment Fund for which it is responsible hereunder.

The Trustees shall be responsible for ascertaining that, while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940, as amended; (ii) a bank as defined in that Act; or (iii) an insurance company qualified to perform the services described herein under the laws of more than one state.

(b) The Investment Manager has acknowledged in writing to the Trustees that it is a fiduciary with respect to the Plan.

**VI.2 Investment Manager Duties.** Subject to the approval of the Trustees, each Investment Manager shall establish and carry out an investment policy and method for the Investment Fund subject to its direction and management that is consistent with the objectives of the Fund. At least annually, the Investment Manager shall review its investment policy and method with the Trustees. The Investment Manager shall make investments consistent with its investment policy, any applicable law, and the cash requirements of the Fund, as advised by the Administrator.

Each Investment Manager shall, at the request of the Trustees, certify the value of any security or other property held in any Investment Fund managed by such Investment Manager at least annually. The Trustees shall be entitled to rely conclusively upon such valuation for all purposes under the Trust Agreement.

## **ARTICLE VII - POWERS AND DUTIES OF THE TRUSTEES**

**VII.1 Exercise of Powers and Authority.** Except to the extent that the same has been delegated to an Investment Manager or Insurance Company with respect to an Investment Fund, the Trustees, in administering the Trust, shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to the Trustees, in their sole discretion, subject to the provisions of this Trust Agreement, including the power and authority:

- (a) To serve as trustees and fiduciaries of the Plan;
- (b) To adopt bylaws governing the Trustees' operations and procedures, with the by-laws and amendments to such by-laws being recommended and submitted to the GMA Board of Directors for approval;
- (c) To contract with municipal corporations, political subdivisions and other public entities of this State or of local government and private entities for the provision of Plan services and for the use or furnishing of services and facilities necessary, useful, or incident to providing Plan services;
- (d) To contract with public or private entities for the provision of administrative services;
- (e) To adopt plans, trust agreements, investment guidelines and other documents necessary or desirable for the Plan;
- (f) To charge fees for administrative services in addition to any fees charged by a Service Provider;
- (g) To collect and disburse all funds due or payable under the Plan;
- (h) To provide for and promulgate all rules, regulations, and forms deemed necessary or desirable in contracting with Employers and Participants, in fulfilling the Trustees' purposes of providing Plan benefits, and in maintaining proper records and accounts;
- (i) To expend funds as budgeted by the Board, subject to the approval of the GMA Board of Directors with respect to GMA funds for the purchase of fidelity and surety bonds and liability insurance for the protection and indemnification of the Trustees in the performance of their duties;
- (j) To allocate and pay the reasonable expenses of the Plan and the Trustees while in the performance of their duties as budgeted by the Board, subject to the approval of the GMA Board of Directors with respect to GMA funds;
- (k) To employ insurance companies, banks, trust companies, investment brokers, investment advisors, or others as agents for the receipt and disbursement of funds held in trust for Participants in the Plan;
- (l) To participate in a tax exempt group trust that has been determined by the Internal Revenue Service to be a pooled fund arrangement pursuant to Revenue Ruling 81-100, as modified by Revenue Rulings 2004-67 and 2011-1, and in such case a group trust agreement shall be deemed adopted as part of this Trust Agreement without further action by the Board. In any event, no part of the Trust corpus or income may be used for, or diverted to, purposes other than for the exclusive benefit of the Plan Participants and their Beneficiaries or the payment of reasonable expenses of the Plan and this Trust.
- (m) To determine, consistent with the applicable laws, rules or regulations, and the claims procedure under the Plan all questions of law or fact that may arise as to investments and the

rights of any person claiming rights under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

(n) Subject to and consistent with the Code, to construe and interpret the Trust and to correct any defect, supply any omissions, or reconcile any inconsistency in the Trust;

(o) To accept or reject a Participating Employer's adoption of or withdrawal from the Plan;

(p) To contract for, purchase or otherwise procure insurance and investment products;

(q) To register any Trust asset in the name of the Trust, in the name of its agent or in the name of a nominee or to hold any instrument in bearer form (but the books and records of the Plan shall at all times show that such investments are part of the Trust Fund);

(r) To consult with and rely on the advice of legal counsel;

(s) To make, execute, acknowledge and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;

(t) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust and the Plan; provided, however, the Trustees need not take any action unless in their opinion there are sufficient Trust assets available for the expense thereof.

**[AS AMENDED JUNE 26, 2017; EFFECTIVE AS OF JUNE 26, 2017]**

**VII.2 Authority of Individual Trustees.** Any action to be taken by the Trustees shall be taken only upon the authorization or vote of a majority of such individual trustees. However, the Trustees may delegate a particular function, power or authority to an individual trustee (the "Individual Trustee"). When such delegation occurs, no person dealing with the Individual Trustee shall be required to make inquiry as to the authority of the Individual Trustee to do any act hereunder. Any such person shall be entitled, conclusively, to assume that the Individual Trustee is properly authorized to do any act which he/she purports to do hereunder, and any such person shall be under no liability to any person, whomsoever, for any act done hereunder pursuant to such written direction of the Individual Trustee. When such action is so authorized by the Individual Trustee, any such person may assume conclusively that the Individual Trustee has full power and authority to receive and give receipt for any money or property becoming due and payable to the Trustees, and no such person shall be bound to inquire as to the disposition or application of any money or property paid or delivered to the Individual Trustee, or paid or delivered in accordance with such written direction of the Individual Trustee.

## **ARTICLE VIII - LIMITATIONS OF RESPONSIBILITY**

**VIII.1 Standard of Review.** In evaluating performance of the Trustees or other fiduciary, compliance by the Trustees or other fiduciary with the Trust must be determined in light of the facts and circumstances existing at the time of the Trustees or fiduciary's decision or action and not by hindsight.

**VIII.2 Limitations on Liability.** The Trustees' responsibilities and liabilities shall be subject to the following limitations:

- (a) The Trustees shall have no duties other than those expressly set forth in this Trust Agreement or the Plan and those imposed on the Trustees by applicable laws.
- (b) The Trustees shall be responsible only for money and property actually received by the Trustees, and then to the extent described in this Trust. The Trustees shall not be under any duty to require payment of any contribution to the Trust Fund or to see that any payment made to them is computed in accordance with the provisions of the Plan.
- (c) The Trustees shall not be responsible for the correctness of any determination of payments or disbursements from the Trust Fund.
- (d) The Trustees shall have no liability for the acts or omissions of any predecessor or successor in office.
- (e) The Trustees shall have no liability for (i) the acts or omissions of any Investment Manager or Managers; (ii) the acts or omissions of any Insurance Company; (iii) the acts or omissions of any Mutual Fund; or (iv) following directions that are given to the Trustees by the Participants or the Administrator in accordance with this Trust Agreement or the Plan.

#### **ARTICLE IX - ACCOUNTS OF THE TRUSTEES - RECORDKEEPING AND VALUATION**

The Trustees shall maintain or cause to be maintained suitable records, data and information relating to their responsibilities hereunder, in accordance with applicable Georgia law. Individual Participant Accounts shall be maintained by the Administrator pursuant to the Plan.

#### **ARTICLE X - RELIANCE ON COMMUNICATIONS**

The Trustees may rely upon a certification of the Administrator with respect to any instruction, direction, or approval of such Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Trustees. The Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Administrator.

The Trustees shall be protected further in relying upon a written certification from any Investment Manager, insurance company or mutual fund as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager or insurance company and may continue to rely upon such certification until a subsequent written certification is filed with the Trustees.

#### **ARTICLE XI - RESIGNATION AND REMOVAL OF TRUSTEES**

The resignation, removal and appointment of Trustees is governed by applicable Georgia law. Upon such resignation or removal, a successor individual co-trustee shall be appointed by the GMA Board of Directors, and shall have the same powers and duties as those conferred upon the Trustees hereunder.

## **ARTICLE XII - AMENDMENT**

This Trust Agreement may be amended by written agreement between the Trustees at any time and in any manner permitted by applicable law.

## **ARTICLE XIII - TERMINATION**

This Trust Agreement and the Trust created hereby may be terminated at any time by the Trustees with respect to an Employer when the Employer's participation in the Plan is terminated. The Trust Agreement and the Trust may be terminated in its entirety when the Plan is terminated in its entirety. Notwithstanding the foregoing, the Trustees shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustees have received written certification from the Administrator (i) that all provisions of law with respect to such termination have been complied with; and (ii) after the Trustees have made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustees shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

## **ARTICLE XIV - MISCELLANEOUS**

**XIV.1 Construction and Governing Law.** This Trust Agreement shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Georgia.

Words used herein in the masculine gender shall be construed to include the feminine gender, where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. The headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust Agreement.

In resolving any conflict among provisions of this Trust Agreement and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust Agreement, the interpretation that (i) causes the Plan and Trust to satisfy the applicable requirements of Code Section 457(b) and the Trust to be exempt from tax under Code Sections 115 and 501(a), and (ii)

causes the Plan and Trust to comply with all applicable requirements of state or federal law shall prevail over any different interpretation.

**XIV.2 Duration of Trust.** Unless sooner terminated, the Trust created under the Trust Agreement shall continue for the maximum period of time permitted by the laws of the State of Georgia.

**XIV.3 No Guarantees.** Neither the Administrator nor the Trustees guarantee the Trust Fund from loss or depreciation or the payment of any amount which may become due to any person under the Plan or the Trust Agreement.

**XIV.4 Parties Bound.** This Trust Agreement shall be binding upon the parties hereto, the Participating Employers, all Participants in the Plan and persons claiming under or through them pursuant to the Plan, and, as the case may be, the heirs, executors, administrators, successors and assigns of each of them.

**XIV.5 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Trust Agreement shall include only the Trustees and the Administrator. The settlement or judgment in any such case in which the Trustees are duly served or cited shall be binding upon all Participants in the Plan and their Beneficiaries and estates, and upon all persons claiming by, through or under them.

**XIV.6 Severability.** If any provisions of the Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Trust Agreement shall continue to be fully effective. If any provision of the Trust Agreement is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Plan or Trust.

**XIV.7 Supersession.** The terms of the Trust Agreement shall supersede any previous oral agreement between the parties pertaining to the Trust.

**XIV.8 Acceptance of Trust.** Each trustee hereby accepts the trust under the Trust Agreement.

**XIV.9 Counterparts.** This Trust Agreement may be executed in one (1) or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Board of Trustees has caused to be affixed the signature of its duly authorized Representative:

Board of Trustees of the GMA Defined  
Contribution and Deferred Compensation  
Program

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

**ADMINISTRATOR**

\_\_\_\_\_  
Date

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE GEORGIA MUNICIPAL ASSOCIATION  
457(b) DEFERRED COMPENSATION PLAN  
MASTER PLAN DOCUMENT**

**ADMINISTERED BY:  
GEORGIA MUNICIPAL ASSOCIATION  
201 PRYOR STREET, SW  
ATLANTA, GEORGIA 30303  
TELEPHONE: 404-688-0472  
FACSIMILE: 678-686-6289**

**Restated Effective January 1, 2009**

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## THE GEORGIA MUNICIPAL ASSOCIATION DEFERRED COMPENSATION PLAN

Effective January 1, 2001, pursuant to a resolution of the Board of Trustees of the Georgia Municipal Association, Inc. ("GMA") Defined Contribution and Deferred Compensation Program, adopted December 4, 2000, the Board of Trustees of the Georgia Municipal Association Defined Contribution and Deferred Compensation Plan hereby establishes the GMA Deferred Compensation Plan ("Plan") under Section 457(b) of the Internal Revenue Code. This Plan is part of the GMA Defined Contribution and Deferred Compensation Program, as established by resolution of the Board of Directors of GMA.

The Trustees last authorized the Plan to be amended and completely restated effective January 1, 2002 in order to provide for employer contributions, to authorize distributions under qualified domestic relations orders, and to incorporate changes in federal law under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and final regulations issued to implement Code Section 457(b).

Effective January 1, 2009 (unless otherwise provided herein), the Trustees have authorized the Plan to be amended and completely restated in order to incorporate changes in federal law under the Pension Protection Act of 2006; Heroes Earnings and Assistance Relief Tax Act of 2008; Worker, Retiree, and Employer Recovery Act of 2008; final regulations issued under Code 415; and, model language promulgated by the Internal Revenue Service.

The Plan consists of the provisions set forth in this Master Plan document, as amended and restated, along with the provisions set forth in an Adoption Agreement of any Participating Employer, and any amendments to the Master Plan and the Adoption Agreement.

### **ARTICLE I - DEFINITIONS**

**1.1. "Account"** means the account maintained for a Participant by the Administrator which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. The Account includes the following subaccounts and any other subaccounts established by the Administrator: the Employee Contribution Account, the Roth Contribution Account the Employer Contribution Account, and the Rollover Account. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

**1.2. "Addendum"** means any Addendum to an Adoption Agreement entered into by an Employer.

**1.3. "Administrator"** means GMA, and includes the Service Manager with regard to functions delegated by the Trustees to the Service Manager.

**1.4. "Adoption Agreement"** means the agreement entered into by an Employer to participate in this Plan.

**1.5. "Annual Deferral"** means the amount of Compensation deferred by a Participant in any year pursuant to Articles IV, V and VI, including Roth Contributions. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.6. "Applicable Form"** means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator may prescribe a verbal, electronic or telephonic instruction in lieu of or in addition to a written form.

**1.7. "Beneficiary"** means the person or persons designated by a Participant to receive any benefit payable upon the Participant's death. ~~or, if none, the Participant's estate.~~ [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.8. "Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**1.9. "Compensation"** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employer's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election by the Participant to defer compensation under Article IV). If so elected in the Adoption Agreement, Compensation also includes certain additional amounts if paid no later than 2½ months after severance from employment or the end of the calendar year that includes a Participant's severance from employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer.

**1.10. "Disability" or "Disabled"** means a total and permanent disability determined as follows: (i) by the Social Security Administration for a Participant who is covered by Social Security; or (ii) by the Employer, for a Participant who is not covered by Social Security. With respect to (ii), the Employer shall use the definition of disability found in Code Section 72(m)(7).

**1.11. "Eligible Employee"** means an Employee who by the Adoption Agreement is eligible to participate in the Plan. In designating Eligible Employees under the Adoption Agreement, the Participating Employer may designate that all Employees (including elected or appointed members of the Governing Authority), may participate, or may designate that all Employees, other than those specifically excluded, may participate. A Participating Employer may also specify that independent contractors may participate in the Plan.

**1.12. "Employee"** means any common law employee of an Employer and includes elected and appointed officials. However, the term does include independent contractors if permitted by the Adoption Agreement.

**1.13. "Employee Contribution"** means the amount of Compensation deferred on a pre-tax basis pursuant to an Employee's Participation Agreement as provided under Article IV. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.14. "Employee Contribution Account"** means the subaccount maintained by the Administrator to which pre-tax deferrals pursuant to Article IV and transfers pursuant to Article XVIII will be credited. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.15. "Employer"** means any municipal corporation, consolidated government, political subdivision, or other governmental instrumentality in the State.

**1.16. "Employer Contribution"** means Matching Contributions and Non-Matching Contributions which may be provided under an Addendum to the Adoption Agreement and made by a Participating Employer to the Employer Contribution Account for a Participant pursuant to Article V.

**1.17. "Employer Contribution Account"** means the subaccount maintained by the Administrator to which Employer Contributions, if any, will be credited.

**1.18. "Forfeiture Account"** means the account maintained by the Administrator to which forfeited amounts under the Plan shall be credited.

**1.19. "Governing Authority"** means the entity authorized by law to act for the Employer and adopt this Plan through the Adoption Agreement.

**1.20. "Includible Compensation"** means an Employee's Compensation within the meaning of Section 415(c)(3) of the Code required to be reported as actual wages in Box 1 of Form W-2 for a year for services to the Employer plus any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article IV) that is actually paid or includable in gross income during the calendar year. Effective January 1, 2008 Compensation also includes certain additional amounts if paid no later than 2½ months after severance from employment or the end of the calendar year that includes a Participant's severance from employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. Such additional amounts include regular compensation for services during the Participant's regular working hours or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and, payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued.

An Employee who is in qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) shall be treated as receiving compensation from the Participating Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Participating Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Participating

Employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Compensation of each Participant shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the limitation year, as increased for the Cost of Living Adjustment (\$245,000 for 2009). The Cost of Living Adjustment in effect for a limitation year applies to compensation for the Plan Year that begins with or within such limitation year.

**1.21. "Investment Fund"** means an investment fund which forms part of the Trust Fund as established by the Trustees at the direction of the Administrator.

**1.22. "Matching Contribution"** means the matching contribution made by the Participating Employer as determined under the Addendum to the Adoption Agreement and made pursuant to Article V.

**1.23. "Non-Matching Contribution"** means the non-matching contribution made by the Participating Employer as determined under the Addendum to the Adoption Agreement and made pursuant to Article V.

**1.24. "Normal Retirement Age"** means the age selected by a Participant that fixes the eligibility period for utilizing the catch-up limitation under Section 6.3. The Normal Retirement Age selected by a Participant may be any age that is on or after the earlier of age sixty-five (65) or the earliest age that the Participant would become eligible to retire and receive unreduced benefits as a member of the defined benefit pension plan of the Participant's Employer, and not later than age seventy and a half (70 ½). A Participant's Normal Retirement Age established for catch-up does not have any bearing on the age at which the Participant actually retires. In the absence of an Employer defined benefit pension plan, Normal Retirement Age shall be at least age 65 but no later than age 70 ½. Provided, that a Participant may not have more than one Normal Retirement Age under all of the eligible deferred compensation plans offered by a Participating Employer.

**1.25. "Participant"** means an Eligible Employee who (i) is currently deferring or has previously deferred Compensation under the Plan by salary reduction, and who has not received a distribution of his entire benefit under the Plan, (ii) is currently receiving or has previously received Employer Contributions pursuant to an Addendum, even if the Employee has not entered into a Participation Agreement to defer Compensation, and has not received a distribution of his entire benefit under the Plan, or (iii) has made a rollover into the Plan, even if the Employee has not entered into a Participation Agreement to defer Compensation, and has not received a distribution of his entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

**1.26. "Participating Employer"** means any Employer who elects to participate in the Plan pursuant to Article II with respect to the Eligible Employees of the Employer.

**1.27. "Participation Agreement"** means the Applicable Form completed by an Employee to participate in the Plan and defer Compensation.

**1.28. "Payroll Period"** is the time period specified by the Participating Employer in the Adoption Agreement. The Participating Employer may specify a payroll period that is weekly, bi-weekly, monthly, semi-monthly, or any other specified period.

**1.29. "Plan Year"** means the fiscal year of the Participating Employer, as specified in the Adoption Agreement.

**1.30. "Rollover Account"** means the subaccount maintained by the Administrator to which rollovers pursuant to Article XVI will be credited, other than any amount rolled over by a Participant under Section 16.3, which will be credited to a Participant's Roth Contribution Account. The Administrator may establish one or more rollover subaccounts. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.31. "Roth Contribution"** means, effective as of July 1, 2016, the amounts contributed to the Plan pursuant to Article IV that have been (i) designated irrevocably by the Participant as a Roth Contribution that is being made in lieu of all or a portion of the Employee Contributions the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such a designation. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JULY 1, 2016]

**1.32. "Roth Contribution Account"** means the account maintained for a Participant that is credited with the Participant's Roth Contributions and any amount rolled over by a Participant under Section 16.3, and any earnings or losses credited thereon. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.33. "Roth Qualified Distribution"** means a distribution from a Roth Contribution Account after the Participant has satisfied a five-year holding period and has attained age 59½, died, or become disabled within the meaning of Code Section 72(m)(7), in accordance with Code Section 402A(d). The five-year holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**1.34. "Service Manager"** means the person or organization appointed by the Trustees to perform service and administrative functions delegated by the Trustees.

**1.35. "Severance from Employment"** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer. A Participant shall be deemed to have severed employment with the Participating Employer for purposes of the Plan when, in accordance with the established personnel practices of the Participating Employer, the employment relationship is considered actually terminated. If a Participant has not been terminated, but the Participant has not performed services for the Participating Employer for a period of six (6) consecutive months and the Participant is not on a paid leave of absence, the Participant shall be deemed Severed from Employment for purposes of this Plan at the end of the six (6) month period.

1.36. "**State**" means the State of Georgia.

1.37. "**Trust**" means the trust established by the Trustees pursuant to a written agreement that constitutes a valid trust under the law of Georgia.

1.38. "**Trustees**" mean the Board of Trustees of the GMA Defined Contribution and Deferred Compensation Program, which Trustees are appointed by the Board of Directors of GMA.

1.39. "**Vesting**" means that a benefit of the Participant is no longer subject to a substantial risk of forfeiture in accordance with Code Section 457.

1.40. **Rules of Construction.** Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

## **ARTICLE II - PARTICIPATION BY EMPLOYERS**

2.1. **Adoption by Employer.** Any Employer may make the Plan available to its Employees if it takes the following actions.

(a) The Governing Authority of the Employer must pass a resolution formally adopting this Plan for its Employees and approving the Adoption Agreement.

(b) The resolution must indicate the date of adoption.

(c) The resolution must commit to the terms of an Adoption Agreement completed by the Employer.

(d) The resolution must specify that the Employer shall abide by the terms of the Plan and the Trust, including all investments, administrative, and service agreements of the Plan, and all applicable provisions of the Code and other applicable law.

(e) The resolution must acknowledge that the Trustees are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Employer that are not part of the GMA Defined Contribution and Deferred Compensation Program.

The Trustees shall determine whether the resolution complies with this Section. If it does, and provided the other requirements of the Plan and Trust are met, the Trustees shall provide appropriate forms for the Employer to implement its participation in the Plan.

2.2. **Other 457(b) Plan Participation.** Employers whose Employees are already participating in a deferred compensation plan under Code Section 457(b) as of the effective date of the Adoption Agreement must inform the Administrator of the name of and the provider of that plan and must provide any other information requested by the Administrator. Upon reasonable request by the Participating Employer, the Administrator shall provide an Employer with information reasonably necessary to comply with the applicable deferral limits under the Plan, as detailed under Article VI.

All eligible plans of a Participating Employer (including all investments offered by vendors through a 457(b) arrangement) are considered to be a single plan for purposes of compliance with Code Section 457(b). The Participating Employer will be responsible for ensuring that all of its arrangements, treated as a single plan, comply with the applicable requirements of Code Section 457 and Regulations, including, but not limited to, the coordination of limitations on Annual Deferrals (including the basic limit, age 50 catch-up limit, and special 457 catch-up limit under Article VI), corrections of excess deferrals (Section 6.7), and plan-to-plan transfers (Article XVIII).

**2.3. Remittance of Contributions.** All amounts of Compensation deferred under the Plan shall be transferred by the Participating Employers to the Trust within a period that is reasonable for the proper administration of the Plan, as described in this Section. Contributions shall first be remitted to the Trust only after the Employer's Adoption Agreement is approved by the Trustees. Upon approval of the Adoption Agreement, the Trustees shall specify the date contributions are to commence. In no event shall contributions under the Plan be transferred by the Participating Employer to the Trust later than fifteen (15) business days after the Payroll Period specified in the Adoption Agreement or after the end of the Plan Year with respect to Employer Contributions made on a Plan Year basis.

**2.4. Delinquent Contributions.** It is the Participating Employer's responsibility to correctly calculate and remit the appropriate contributions. The Administrator reserves the right to give notice to the highest elected official, the designated representative of the Employer and/or the Eligible Employees of the delinquent Participating Employer in the event it comes to the Administrator's attention that contributions are not being remitted in a timely manner.

Neither GMA, the Trustees, nor the Administrator have any liability for the delinquency of a Participating Employer.

### **ARTICLE III - ELIGIBLE EMPLOYEE PARTICIPATION**

**3.1. Participation Procedure.** Only Eligible Employees as defined by the Adoption Agreement may be Participants in the Plan. The Administrator shall prescribe the enrollment form for Eligible Employees to become Participants.

**3.2. Cessation of Plan Participation.** An Eligible Employee shall cease to be a Participant on the distribution and/or forfeiture of the Participant's entire interest in the Plan.

### **ARTICLE IV - ELECTION TO DEFER COMPENSATION**

#### **4.1. Participation and Deferral Election Rules.**

(a) **Generally.** A portion of an Employee's Compensation shall be deferred for any calendar month only if the Employee enters into a Participation Agreement prior to the beginning of the month in which the compensation is paid or made available. Upon signing a Participation Agreement, an Employee agrees to have Compensation for each pay period deferred by the amount specified in the Participation Agreement. Provided, however, a new Employee may defer Compensation payable in the calendar month during which the Participant first becomes an

Employee if the Employee enters into a Participation Agreement providing for the deferral on or before the first day on which the Participant performs services for the Employer.

(b) Election Required for Participation. An Employee may elect to become a Participant by executing a Participation Agreement to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. Effective as of July 1, 2016, if an Employer completes an Addendum to its Adoption Agreement to permit Roth Contributions, a Participant Agreement completed by an Employee must designate whether the amounts are to be contributed as pre-tax Employee Contributions or after-tax Roth Contributions. If the Employee fails to designate whether Annual Deferrals are pre-tax Employee Contributions or after-tax Roth Contributions, the Employee will be deemed to have designated his or her Annual Deferrals as pre-tax Employee Contributions. This participation election shall be made on the Participation Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The participation election (whether on one form or multiple forms) shall also include designation of investment funds and a designation of Beneficiary. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Participation Agreement. Any such election shall remain in effect until a new election is filed. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JULY 1, 2016]**

Automatic Enrollment. Effective as of September 1, 2016, if an Employer has completed an Addendum to its Adoption Agreement to add an automatic enrollment feature, the following provisions shall apply. If an Employee does not otherwise elect to defer a portion of (or none of) his or her Compensation upon his or her first day of employment or, if later, by 10 days prior to the end of the first pay period ending after the date on which he or she is first eligible to participate in the Plan, provided he or she is notified of his or her rights and obligations under these automatic enrollment provisions, he or she shall be deemed to have entered into a Participation Agreement to establish an automatic contribution arrangement with his or her Participating Employer to make pre-tax Employee Contributions in an amount equal to the percentage of his or her Compensation established in the Employer's Addendum to the Adoption Agreement establishing the automatic enrollment feature, effective as of the first payroll period ending on or after the Employee's employment date, or as soon as administratively feasible thereafter. The percentage of Compensation designated in the Addendum to the Adoption Agreement for this purpose shall be no less than 3%. Contributions made pursuant to these automatic enrollment provisions shall be designated as pre-tax Employee Contributions only and shall not constitute after-tax Roth Contributions. The Participating Employer shall provide any notices to Participants in conjunction with such automatic contribution arrangement as may be required. The Administrator shall specify the manner in which a declination to make pre-tax Employee Contributions pursuant to this paragraph may be made.

A Participant may at any time affirmatively elect, in accordance with the provisions of this Section 4.1 governing Participant elections, to make pre-tax Employee Contributions at a different rate, to make after-tax Roth Contributions at a rate designated by the Participant, or both, or to make no pre-tax Employee Contributions or after-tax Roth Contributions. A Participant who makes such an affirmation election shall no longer

be subject to the automatic contribution arrangement. ~~The Participating Employer shall provide any notices to Participants in conjunction with such automatic enrollment as may be required. The Administrator shall specify the manner in which a declination to make pre-tax Employee Contributions pursuant to this paragraph may be made.~~

A Participant who is automatically enrolled in the Plan pursuant to these automatic enrollment provisions may subsequently elect in writing on an Application Form ~~a Participation Agreement~~ to opt out of the Plan and withdraw his or her pre-tax Employee Contributions made to date (adjusted for allocable gains and losses) pursuant to this Section 4.1. Such an election must be made no later than ninety (90) days after the date the first deferral is made and will be effective no later than the earlier of: (i) the pay date for the second payroll period that begins after the date the election is made and (ii) the first pay date that occurs at least thirty (30) days after the election is made. The amount of the withdrawal shall be includible in the Participant's gross income for the taxable year in which the distribution is made. [AS AMENDED JUNE 27, 2016, AND SEPTEMBER 30, 2016]

(c) Deferral of Accumulated Sick Pay, Vacation Pay, or Back Pay. In general, an Employee may make a separate election to defer accumulated sick pay, vacation pay or back pay only if the Employee enters into a Participation Agreement prior to the beginning of the month in which such amounts would otherwise be paid or made available to the Employee and the participant is an Employee in that month. However, if an Eligible Employee is retiring or otherwise having a Severance from Employment during a month, the Eligible Employee may elect to defer accumulated sick pay, vacation pay or back pay if such amounts would otherwise be paid or made available before the Employee has a Severance from Employment and the Employee enters into a Participation Agreement providing for deferral of such amounts prior to the date such amounts would be paid. This paragraph shall apply only to the extent the Participant is entitled to receive a cash payment from the Participating Employer for accumulated sick pay, vacation pay, or back pay. This paragraph shall not be interpreted to establish any entitlement to sick pay, vacation pay, or back pay, not otherwise available under the Participating Employer's policies, rules, and procedures.

**4.2. Amendment of Annual Deferrals Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary, on an Applicable Form in accordance with procedures established by the Administrator. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month in which the compensation is paid or made available or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

**4.3. Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan,

including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).

**4.4. Effective Date of Deferrals.** In all cases, a deferral shall be considered effective as of the date the Employer withholds the Annual Deferral from the Participant's pay.

## **ARTICLE V - EMPLOYER CONTRIBUTIONS**

**5.1. Employer Contributions.** Effective June 1, 2004, a Participating Employer may provide for Employer Matching and/or Non-Matching Contributions to the Plan by completing an Addendum to its Adoption Agreement to implement such contributions. Employer Contributions shall be made to the Plan in accordance with this Article, Article VI, the Adoption Agreement, and said Addendum.

(a) **Additional Eligibility Requirements.** A Participating Employer may prescribe under the Addendum a minimum number of hours that an Employee must be scheduled and normally work in order to receive an allocation of Employer Contributions under the Plan. It is the Participating Employer's responsibility to monitor this requirement and to report to the Administrator a change in Employee eligibility. Additionally, a Participating Employer may establish under the Addendum a waiting period before an Eligible Employee may become eligible to receive an Employer Contribution under the Plan. The waiting period may consist of a minimum period of service (not more than twelve (12) months), and the Employer may choose whether to give credit for service prior to adoption of the Plan and whether to add together different periods of service, or the Employer may specify a different waiting period.

(b) **Designation of Type of Contribution.** A Participating Employer shall specify in the Addendum whether it will make Matching Contributions and/or non-Matching Contributions. Matching Contributions shall be made to match all or a portion of the Participant's Compensation deferred under the Plan, in accordance with the formula and method specified by the Participating Employer in the Addendum. Non-Matching Contributions are not tied to Participant contributions to the Plan and shall be made in accordance with the formula and method specified by the Participating Employer in the Addendum.

(c) **Effective Date of Addendum.** The Addendum establishing the amount and method of calculating contributions continues in effect from Plan Year to Plan Year until amended or repealed by the Governing Authority or until the Participating Employer's participation in the Plan is terminated.

(d) **Investment Options.** Unless otherwise directed by the Participant, in accordance with procedures established by the Service Manager, Employer Matching and/or Non-Matching Contributions shall be invested in the same manner as the Participant's Employee Contribution Account.

**5.2. Matching Contributions.** If the Addendum provides for Matching Contributions, the Governing Authority shall determine and specify in the Addendum the formula for calculating the Matching Contributions, which may be all or a specified portion of a Participant's Compensation, to the extent deferred to the Plan. The Employer may calculate matching contributions based on (i) a percentage of the Compensation deferred by the Employee

to the Plan, with no cap, a flat dollar cap, or a cap equal to a percentage of Compensation, (ii) a flat dollar match per payroll period, or (iii) any other specified formula in the Addendum.

**5.3. Eligibility for Matching Contributions.**

(a) In the Addendum, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Matching Contributions. The Employer may also establish different Matching Contribution amounts or formulas applicable to different classes of Eligible Employees. If the Addendum provides for Matching Contributions, a Participant shall be eligible for Matching Contributions for any Payroll Period only if the Participant meets the conditions set forth in the Adoption Agreement and Addendum.

(b) In no event shall a Participant receive any Matching Contributions for any Payroll Period for which the Participant does not have an effective payroll deferral to the Plan for that Payroll Period.

**5.4. Non-Matching Contributions.** If the Addendum provides for Non-Matching Contributions, the Governing Authority shall determine and specify in the Addendum the formula for calculating the Non-Matching Contributions, which may be a fixed amount or a specified portion of a Participant's Compensation. The Employer may make Non-Matching Contributions as (i) a one-time year end contribution (either a flat dollar amount or percentage of Compensation), (ii) a percentage or flat dollar amount per payroll period, or (iii) any other specified formula in the Addendum.

**5.5. Eligibility for Non-Matching Contributions.** In the Addendum, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Non-Matching Contributions. The Employer may also establish different Non-Matching Contribution amounts or formulas applicable to different classes of Eligible Employees. If the Addendum to the Adoption Agreement provides for Employer Non-Matching Contributions, a Participant shall be eligible for Non-Matching Contributions only if the Participant meets the conditions set forth in the Adoption Agreement and Addendum.

**5.6. Changes in Employer Contributions.** A Participating Employer may adjust the amount or method of Employer Contributions throughout the Plan Year by adopting a resolution to amend its Adoption Agreement and/or Addendum in accordance with Section 21.3. The resolution must be sent to the Administrator. The Trustees must approve or disapprove the amendment and, if approved, establish the effective date of any change to the Employer Contributions.

**ARTICLE VI - LIMITATIONS ON DEFERRALS**

**6.1. Basic Annual Limitation.** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount, or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under Section 457(e)(15) of the Code applicable as set forth below:

For the Following Years:The Applicable Dollar Amount is:

2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000 Adjusted for cost-of-living after 2006 to the extent provided under Section 415(d) of the Code

For purposes of this limit, all eligible 457(b) deferred compensation plans offered by a Participating Employer are treated as a single plan.

**6.2. Age 50 Catch-Up Annual Deferral Contributions.** A Participant who will attain age fifty (50) or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:

For the following years:	The maximum age 50 catch-up dollar amount is:
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006	\$5,000
Thereafter	Adjusted for cost-of-living after 2006 to the extent provided under the Code.

**6.3. Special Section 457 Catch-Up Limitation.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 6.3 exceeds the amount computed under Sections 6.1 and 6.2, then the Annual Deferral limit under this Article V shall be the lesser of:

(a) An amount equal to 2 times the Section 6.1 Applicable Dollar Amount for such year; or

(b) The sum of:

(1) An amount equal to (A) the aggregate Section 6.1 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee under the Plan (determined without regard to

Sections 6.2 and 6.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

#### **6.4. Coordination of Limits.**

(a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article VI. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer for which the Administrator receives from the Employer sufficient information concerning such plan, and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. However, the Participating Employer is responsible for monitoring Annual Deferrals to the Plan and directing the distribution of any excess Annual Deferrals. See Sections 6.5 and 6.7.

(b) Pre-Participation Years. In applying Section 6.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 6.1 or any other plan ceiling required by section 457(b) of the Code.

(c) Pre-2002 Coordination Years. For purposes of Section 5.3(b)(2)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5.3(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.

(d) Current Rule. For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Annual Deferrals under Sections 6.1, 6.2, and 6.3.

(e) Coordination Responsibility. The Participant is responsible for ensuring coordination of and compliance with the individual limit under Code § 457(c), in the case of eligible plans of different employers.

**6.5. Participating Employer Responsibility for Contribution Limits.** The Participating Employer must monitor Annual Deferrals to the Plan on behalf of a Participant to this Plan and any other 457(b) plan maintained by the Participating Employer to determine compliance with the Annual Deferral limitations under this Article. The Participating Employer must cease payroll deferrals to avoid exceeding the Annual Deferral limits and must notify the Administrator if excess deferrals have been made. Upon reasonable request by a Participating Employer, the Administrator will provide a Participating Employer any information reasonably necessary to comply with these Annual Deferral limits. Additionally, upon reasonable request by a Participating Employer, the Administrator shall provide information needed by the Employer for the Employer to complete tax returns for employees.

**6.6. Employer Contribution Limits.** If the Employer agrees to make contributions to the Plan on behalf of a Participant under Article V pursuant to an Addendum to the Employer's Adoption Agreement, the Employer Contributions shall be deemed Annual Deferrals made by the Participant. For purposes of this Article, Employer Contributions shall be processed as payroll deferrals, shall apply toward the maximum Annual Deferral limits in the taxable year that they vest, and must comply with any procedure established by the Administrator.

**6.7. Correction of Excess Deferrals.**

(a) Excess Deferrals with Single Plan. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above (other than the individual limit of Code Section § 457(c)), when this Plan is the only eligible plan offered by a Participating Employer, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

(b) Excess Deferrals with Multiple Plans. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above (other than the individual limit of Code Section § 457(c)) when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code, then the Participating Employer shall instruct the Administrator as to whether the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto) should be distributed from this Plan. If directed by the Employer, the excess deferrals shall be distributed from this Plan even if there would be no excess if only Annual Deferrals to this Plan were taken into account. Upon reasonable request by the Participating Employer, the Administrator will provide the Participating Employer any information reasonably necessary to comply with these responsibilities.

(c) Individual Limit. If Annual Deferrals are in excess of the individual limit of Code Section § 457(c), the Administrator may distribute excess deferrals at the direction of the Participant.

(d) Employee Contributions and Roth Contributions. If a Participant who made both pre-tax Employee Contributions and Roth Contributions for a calendar year has excess amounts for that year, the excess Annual Deferrals will be distributed out of the Roth Contribution Account unless the Participant elects instead to have the excess Annual Deferrals distributed out

of the Employee Contribution Account. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**6.8. Disregard Excess Deferral.** For purposes of Sections 6.1, 6.2, and 6.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 6.7. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

## **ARTICLE VII - VESTING STANDARDS**

**7.1. Employee Contributions.** A Participant shall be 100% Vested in the Participant's Annual Deferrals made pursuant to Article IV, and in the Participant's transferred amounts under Article XVIII, at all times. A Participant shall also be 100% Vested in the Participant's Rollover Account at all times.

**7.2. Employer Contributions.** A Participant shall Vest in the Matching and/or Non-Matching Contributions made pursuant to Article V pursuant to the schedule elected by the Participating Employer in the Addendum to the Adoption Agreement. If a vesting schedule is selected by the Employer, it is the Employer's responsibility to calculate the Eligible Employee's service and report it to the Administrator. Unless otherwise specified in the Addendum, in calculating the vesting period, service means the number of years and complete months of service of a Participant as an Eligible Employee of the Employer, and the Participant's service begins with the first day of employment as a Eligible Employee. A Participating Employer may elect from the following types of vesting schedules, and may elect different vesting schedules for Matching and Non-Matching Contributions.

- (a) Immediate Vesting.
- (b) Cliff Vesting (100% vesting after a specified number of years of service).
- (c) Graduated Vesting (a specified percentage vested for each completed Year of Service, not to exceed five (5) years).

For cliff or graduated vesting, the Participating Employer may elect in the Addendum whether to give credit for service prior to adoption of the Plan and whether to add together different periods of employment.

**7.3. Forfeitures.** If a Participant has a Severance from Employment, the Participant's non-vested Employer Matching Contributions and/or non-vested Employer Non-Matching Contributions shall be forfeited as of the date of the Participant's Severance from Employment. The Employer is responsible for reporting forfeitures to the Administrator when they occur.

## **ARTICLE VIII - ACCOUNTS AND REPORTS**

**8.1. Account.** The Administrator shall maintain applicable Accounts within the Participant's Account with respect to each Participant: the Employee Contribution Account, the Roth Contribution Account, the Employer Contribution Account, and the Rollover Account. The

Employee Contribution Account shall be credited with the Participant's pre-tax Annual Deferrals for each Payroll Period and with amounts that are transferred to the Participant's Account under Article XVIII. The Roth Contribution Account shall be credited with the Participant's Roth Contributions and any amount rolled over by a Participant under Section 16.3. The Administrator may establish an Employer Matching Contribution Account and an Employer Non-Matching Contribution Account, consistent with the Participating Employer's elections in the Addendum to the Adoption Agreement. If established, the Employer Matching Contribution Account shall be credited with the Participant's Employer Matching Contributions for each Payroll Period and the Employer Non-Matching Contribution Account shall be credited with the Participant's Employer Non-Matching Contributions for each designated period (pursuant to the Addendum to the Adoption Agreement). If the Administrator does not establish these accounts, Employer Contributions shall be credited to the Employer Contribution Account. The balance of the Participant's Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Accounts. All Plan records, including individual account information, that are maintained by the Service Manager shall be the exclusive property of the Administrator. The Administrator may prescribe such minimum deposits to Participant's Accounts and each investment option for the Participant as it deems appropriate.

Contributions and withdrawals of Roth Contributions will be credited and debited to the Roth Contribution Account maintained for a Participant. The Plan will maintain a record of the amount of Roth Contributions in each Participant's Account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to a Participant Roth Contribution Account and the Participant's other accounts under the Plan. No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**8.2. Statements of Account.** A written report of the status of each Participant's Account shall be furnished to the Participant by the Administrator within thirty (30) days after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Administrator within ninety (90) days after the mailing or distribution of a report to the Participant.

**8.3. Year End Reports.** Within ninety (90) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator requires. The report shall also contain such information as is necessary to enable the Trustees to prepare their accounting due under the Trust.

## **ARTICLE IX - VALUATION OF ACCOUNTS**

**9.1. Valuation.** The Administrator shall value the investments each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values.

**9.2. Deposits.** In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Administrator.

**9.3. Report from Administrator to Trustees.** The Administrator shall provide a report to the Trustees concerning the valuation of Accounts within forty-five (45) days after the end of each calendar quarter.

## **ARTICLE X - TRUST**

**10.1. Trust Status.** All assets held in connection with the Plan, including all contributions and amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

**10.2. Trust Fund.** To the extent required by Section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan shall be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan and the Trust Agreement. All contributions to the Plan must be transferred by the Participating Employers to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

## **ARTICLE XI - INVESTMENT OF ACCOUNTS**

**11.1. Investment Options.** From time to time, the Trustees shall determine the available Investment Funds for Participants (or Beneficiaries upon the death of the Participant). The Participants may direct the investment of their Accounts among the Investment Funds selected by the Trustees. Unless otherwise directed by the Participant (or Beneficiary), in accordance with procedures established by the Service Manager, a Participant's (or Beneficiary's) Roth Contribution Account, Employer Contribution Account and Rollover Account shall be invested in the same manner as the Participant's (or Beneficiary's) Employee Contribution Account. The Administrator shall follow the Participant's (or Beneficiary's) directions with respect to the investment of each Participant's Account, except that the Administrator shall direct the investment of a Participant's (or Beneficiary's) Account to a default investment pursuant to Section 11.2 when there is no valid investment direction on file. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

**11.2. Investment Default.** In the event that a Participant does not have a valid investment direction on file for any portion of the amount in that Participant's Account, the

Account shall be invested in any default option or options as determined by the Trustees. In such event, the Participant shall be deemed to have directed that option (or options) for investment of their Account. The Trustees intend to establish one or more default options based upon various factors, including but not limited to, market risk, stability and rate of return. If the Trustees have appropriately exercised their fiduciary duty in selecting a default option(s), they have no liability for any loss sustained by a Participant or Beneficiary whose Account is invested in the default option(s).

## **ARTICLE XII - BENEFITS**

**12.1. Benefit Payments.** Benefits shall be paid from the Trust Fund in accordance with this Article following a Participant's Severance from Employment, attainment of age seventy and a half (70 ½), Death, Disability or the occurrence of an unforeseeable emergency, as described in Section 12.5 or becoming qualified for a Roth Qualified Distribution. Benefits payable to a Participant or a Beneficiary (or estate, if applicable) shall be based upon the value of the Participant's Account. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

(a) **Severance from Employment.** Upon Severance from Employment, a Participant is entitled to receive a distribution of his or her Account under any form of distribution permitted under Section 12.2, subject to Article XIV, commencing on a date selected by the Participant which may not be later than the required distribution date of Code Section 401(a)(9), as specified in Article XIV. A Participant may elect to change the commencement date of distribution of the Account to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 12.2, subject to Article XIV.

(b) **Attainment of Age Seventy and One Half (70 ½).** Upon attaining age seventy and one half (70 ½), a Participant may elect to have benefits commence on a date which is no later than the required distribution date of Code Section 401(a)(9), as specified in Article XIV. All benefits shall be paid under a payment option under Section 12.2, subject to Article XIV.

(c) **Death.** In the event of the Participant's death prior to the commencement of benefits under paragraph (a), the value of the Participant's Account shall be paid to the Beneficiary under a payment option selected by the Beneficiary pursuant to ~~under~~ Section 12.2, subject to the restrictions in Article XIV. Such benefits shall be payable commencing within sixty (60) days after receipt by the Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the spouse of the Participant, then the spouse may elect, within sixty (60) days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age 72 (age 70½ for distributions required to be made before January 1, 2020, with respect to a member who would have attained age 70½ before January 1, 2020). In the event of the Participant's death after commencement of benefits, benefits shall be paid subject to Article XIV. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016; AS AMENDED SEPTEMBER 25, 2020]

(d) **Disability.** Upon Severance from Employment with the Participating Employer because of Disability, a Participant may elect to have benefits commence on a date which is no

later than the required beginning date under Code Section 401(a)(9), as specified in Article XIV. A Participant who is on leave without pay who becomes Disabled within the first six (6) months of the leave shall be considered to have separated from service on account of Disability. The commencement date must be no later than the required distribution date of Code Section 401(a)(9). A Participant may change the commencement date of distribution of the Account to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 12.2, subject to the restrictions in Article XIV.

## **12.2. Payment Options.**

(a) The election of a payment option by a Participant or a Beneficiary under Section 12.1 must be made no later than thirty (30) days before the commencement of such benefits. Subject to restrictions established by the Administrator, the Plan shall permit payout options in the form of lump sums, periodic payments of a fixed amount or fixed duration, or life contingent annuities. Absent such an election, the Account will be paid in a lump sum. See Article XV for rollover distribution options.

(b) Participants (or Beneficiaries) may elect whether benefits should be paid from the Rollover Account, the Employee Contribution Account, the Roth Contribution Account or the Employer Contribution Account. In the absence of such an election, a benefit shall be paid first from the Rollover Account, then from the Employee Contribution Account, then from the Employer Contribution Account, and lastly from the Roth Contribution Account. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

(c) **Lump Sum Settlement.** Notwithstanding anything in this Plan to the contrary, if a Participant's Account balance is not greater than \$5,000 (or such other lesser amount as determined by the Trustees with respect to the Plan Years of Participating Employers following the determination) at the time of Severance from Employment, the Administrator may effect a lump sum distribution of a Participant's Account, regardless of a Participant's or Beneficiary's direction. If a lump sum distribution to be made under this Section is greater than \$1,000 and it is an eligible rollover distribution, and if the recipient of the distribution does not elect to have the distribution paid directly to an eligible retirement plan specified by the recipient in a direct rollover or does not elect to receive the distribution directly then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator. [AS AMENDED MARCH 31, 2021; EFFECTIVE AS OF MARCH 31, 2021]

## **12.3. Designated Beneficiary.**

(a) A Participant shall have the right to file with the Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. No Beneficiary designation shall take effect until an Applicable Form is signed by the Participant and received and accepted by the Administrator. ~~If the Participant dies without a valid Beneficiary form on file, the benefit payments shall be made to the Participant's surviving spouse; if there is no surviving spouse, then equally to the~~

~~Participant's surviving children; if there are no surviving children, then to the Participant's estate in a lump sum.~~

(b) A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (i.e., primary or contingent) will share among each other all benefits in the same proportion as originally designated by the Participant. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary.

(c) If the Participant dies without a valid Beneficiary form on file for this Plan and he or she is a participant in the GMA Defined Contribution Plan, the Participant's Beneficiary or Beneficiaries for purposes of the GMA Defined Contribution Plan, if any, shall be the Participant's Beneficiary or Beneficiaries under this Plan. If the Participant dies without a valid Beneficiary form on file for this Plan or for the GMA Defined Contribution Plan, the benefit payments shall be made to the Participant's surviving spouse, in which case the Participant's surviving spouse shall be the designated Beneficiary under the Plan. If there is no surviving spouse, then the benefit shall be paid to the Participant's estate in a lump sum. In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary in a lump sum.

(d) The Beneficiary designation may be changed by the Participant in writing on the Applicable Form at any time prior to Retirement. Only the last designation of a Beneficiary prior to Retirement shall have effect, and any new designation of a Beneficiary invalidates, supersedes, and revokes any prior designation, provided it is made on an Applicable Form signed by the Participant and received and accepted by the Administrator. Notwithstanding any provision to the contrary, a Beneficiary designation for this Plan shall control distribution of benefits payable under this Plan over a subsequent Beneficiary designation for the GMA Defined Contribution Plan. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**12.4. Voluntary In-Service Distribution.** A Participant who is an active employee of a Participating Employer may elect to receive a distribution of the Participant's entire Account under the Plan before a Severance from Employment if the following requirements are met:

(1) The Participant's entire Account balance does not exceed the amount specified in Code Section 411(a)(11) or such other amount as determined by the Administrator on the date of the distribution,

(2) The Participant has not previously received an in-service distribution of the Participant's Account, and

(3) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

This election must be made in accordance with the procedures established by the Administrator.

**12.5. Unforeseeable Emergency Distributions.** Notwithstanding any other provision herein and subject to guidelines and requirements set forth in procedures established by the Administrator, if a Participant or Beneficiary has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined under the Administrator's procedures to be permitted to be distributed under this Section.

(a) Procedures. The Administrator shall establish procedures to review and approve or deny all requests for an unforeseeable emergency distribution. If the application for payment is approved by the Administrator, payment shall be effected as soon as practicable thereafter.

(b) Unforeseeable Emergency Defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 12.5, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) Unforeseeable Emergency Distribution Standard. Effective January 1, 2007, an unforeseeable emergency is defined as a severe financial hardship of the Participant or the Participant's primary beneficiary resulting from: an illness or accident of the Participant or the Participant's primary beneficiary, the Participant's or the Participant's primary beneficiary's spouse or dependent (as defined in Code Section 152 without regard to the Code Sections 152(b)(1), (b)(2), and (d)(1)(B)); loss of the Participant's or the Participant's primary beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's or Participant's primary beneficiary's spouse or dependent (as defined in section 152 of the Code without regard to Code Section 152(b)(1), (b)(2), and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Participant's primary beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Participant's primary beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses for the Participant or the Participant's primary beneficiary, or of the Participant or the Participant's primary beneficiary's spouse or dependent (as defined in section 152 of the Code without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 12.5, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. For purposes of this Section "primary beneficiary" means an individual who is named as a ~~b~~Beneficiary under the Plan and has an

unconditional right to all or a portion of the Participant's Account Balance upon the death of the Participant.

(d) Distribution Necessary to Satisfy Emergency Need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(e) Claim Procedures Applicable. The claim procedures of Article XX apply to the decision of the Administrator concerning financial hardship.

(f) Additional Restrictions. ~~Only the Employee Contribution Account is available for unforeseeable emergency distributions. A Participating Employer may adopt a policy whereby Participants are prohibited from making any deferral under this Plan for a certain period after the Employer is notified by the Plan Administrator that the Participant has received an unforeseeable emergency distribution. The deferral prohibition period shall be determined by the Participating Employer and stated in the policy, but it shall not exceed six (6) months. The policy must be applied by the Participating Employer in a consistent manner to all Participants. A copy of the policy must be provided to the Plan Administrator.~~ [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**12.6. No Plan Loans.** Plan loans to Participants shall not be permitted.

**12.7. Coronavirus-Related Distributions.** Notwithstanding any other provision herein and subject to the applicable provisions of section 2202 of the CARES Act and the guidelines and requirements set forth in procedures established by the Administrator, the following provisions apply with respect to Coronavirus-Related Distributions and repayment thereof.

(a) A "Coronavirus-Affected Individual" means a Participant (or Beneficiary, if the Participant is deceased):

(1) Who is diagnosed with SARS-CoV-2 or coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act).

(2) Whose spouse or dependent (as defined in section 152 of the Code) is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act).

(3) Who experiences adverse financial consequences due to COVID-19 as a result of:

(A) being quarantined, being furloughed, laid off, or having work hours reduced;

(B) being unable to work due to the lack of childcare; or

(C) the closing or reduction in hours of a business that the Participant owns or operates.

(4) Who experiences an adverse financial consequence as a result of having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19.

(5) Who experiences an adverse financial consequence as a result of the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19.

(6) Who experiences an adverse financial consequence as a result of closing or reducing hours of a business owned or operated by his or her spouse or a member of the individual's household due to COVID-19.

For purposes of this definition, a "member of the individual's household" is an individual who shares the individual's principal residence.

(b) A "Coronavirus-Related Distribution" means any distribution made from January 1, 2020 and before December 31, 2020, to a Coronavirus-Affected Individual, to the extent that such distribution, when aggregated with all other Coronavirus-Related Distributions to the Coronavirus-Affected Individual (including the aggregate amount of such distributions from all eligible retirement plans that can be treated as Coronavirus-Related Distributions), does not exceed \$100,000.

(c) A Participant who received a Coronavirus-Related Distribution may repay any or all of such distribution to the Plan in one or more contributions, provided such Coronavirus-Related Distribution is eligible for tax-free rollover treatment. Any such re-contribution:

(1) Will be treated as having been made in a trustee-to-trustee transfer to the Plan;

(2) Must be made during the three-year period beginning on the day after the date on which such distribution was received; and

(3) Cannot exceed the amount of such distribution.

(d) This provision shall become effective January 1, 2020. [AS AMENDED SEPTEMBER 25, 2020]

### **ARTICLE XIII - DOMESTIC RELATIONS ORDERS**

**13.1. General Provisions.** Domestic relations orders which satisfy the requirements of Code Section 414(p)(1)(A)(i) and 414(p)(1)(B), this Article, and the procedures established by the Administrator or Service Manager for such orders shall be considered Plan-Approved Domestic Relations Orders ("PADROs") and shall be honored by the Plan. The Plan shall not honor any domestic relations orders issued by a court before January 26, 2004. The Administrator (or Service Manager) is authorized to establish and amend procedures for the determination of PADROs consistent with the above-referenced Code provisions and this Article.

**13.2. Investments.** During the period that the issue of whether an order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager is under consideration, the investment direction of the Participant with respect to the Participant's Accounts shall remain in effect, subject to a determination by the Administrator or Service Manager that such investment direction would be contrary to a final court order. After a determination has been made that a domestic relations order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager and a separate Plan Account has been established for the alternate payee, the alternate payee shall direct the investment of his or her Plan Account. The Administrator or Service Manager shall direct the investment of an alternate payee's Account to a default investment pursuant to Section 11.2 when there is no valid investment direction on file. The alternate payee's Account shall be assessed administrative fees in the same amount and in the same manner as a Participant's Account.

**13.3. Distributions to Alternate Payees.** Distribution of benefits to the alternate payee shall commence as soon as administratively practicable after (i) a determination is made that the order satisfies the applicable requirements of the Code and the procedures established by the Administrator or Service Manager, and (ii) receipt by the Administrator or Service Manager of the Applicable Forms for the election of benefits. In the event of an alternate payee's death, any remaining benefits shall be payable solely to the alternate payee's estate, via the duly-appointed and then-currently serving executor of the alternate payee's estate.

### **ARTICLE XIV - MINIMUM DISTRIBUTION RULES**

**14.1. Precedence.** The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

**14.2. Requirements of Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

**14.3. Time and Manner of Distribution.**

(a) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.

(b) If the Participant dies before distribution begins, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (age 70½ for distributions required to be made before January 1, 2020, with respect to a member who would have attained age 70½ before January 1, 2020), if later.

(2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary may be made by lump sum, and distribution must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (b), other than subsection (b)(2), will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and Section 14.5, unless subsection (b)(4) of this Section applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (b)(4) of this Section applies, distributions are considered to begin on the date the distributions are required to begin to the surviving spouse under subsection (b)(1) of this Section. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(1) of this Section), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 14.4 or 14.5. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations. **[AMENDED SEPTEMBER 25, 2020]**

#### **14.4. Required Minimum Distributions During Participant's Lifetime.**

(a) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the

Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) Required minimum distributions will be determined under this Section beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

#### **14.5. Required Minimum Distributions After Participant's Death.**

(a) Death on or After Date Distributions Begin.

(1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

1. The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

3. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the ~~h~~Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

(2) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death (on or before December 31, 2021) Before Date Distributions Begin.

(1) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (a) of this Section.

(2) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 14.3(b)(1), this subsection (b) will apply as if the surviving spouse were the Participant.

(c) Death (on or after January 1, 2022) Before Date Distributions Begin

(1) Notwithstanding the provisions above, if a Participant dies before their entire Account balance is distributed, the Participant's entire interest will be distributed no later than as follows:

1. If the Designated Beneficiary is not the Participant's surviving spouse, a child of the employee who has not yet reached the age of majority, an individual who is disabled or chronically ill, or an individual who is not more than ten years younger than the employee, distributions after the Participant's death must be distributed no later than December 31<sup>st</sup> of the calendar year containing the tenth (10<sup>th</sup>) anniversary of the Participant's death.

2. If the Designated Beneficiary is the Participant's surviving spouse, a child of the employee who has not yet reached the age of majority, an individual who is disabled or chronically ill, or an individual who is not more than ten (10) years younger than the employee, distributions after the Participant's death must be made over a period not to exceed the designated Beneficiary's life expectancy. Alternatively, the designated Beneficiary may elect to receive a total distribution of the Participant's Account Balance by no later than December 31<sup>st</sup> of the calendar year containing the tenth (10<sup>th</sup>) anniversary of the Participant's death.

**[AMENDED SEPTEMBER 25, 2020]**

**14.6. Definitions for this Article.**

(a) "Designated Beneficiary" means the individual who is designated as the ~~b~~Beneficiary under Article XI and is the Designated Beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) "Distribution Calendar Year" means a calendar year for which a minimum distribution is required pursuant to Section 401(a)(9) of the Code. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 14.3(b). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(c) "Life Expectancy" means life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

(d) "Participant's Account Balance" means the Account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) (i) increased by the amount of any contributions or forfeitures allocated to the Participant's Account Balance in the valuation calendar year and (ii) decreased by distributions made in the valuation calendar year. The Participant's Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(e) "Required Beginning Date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy-two (72) (age seventy and one-half (70½) for distributions required to be made before January 1, 2020, with respect to a member who would have attained age 70½ before January 1, 2020), or (ii) the calendar year in which the Participant retires from a Participating Employer.

**[AMENDED SEPTEMBER 25, 2020]**

**14.7. No Expansion of Payment Options.** Nothing in this Article shall provide any individual entitled to a benefit under this Plan a benefit or payment option to which such individual would not otherwise be entitled pursuant to the provisions of the Plan.

**14.8. 2020 Waiver of Required Minimum Distributions**

(a) Notwithstanding Sections 14.4 and 14.5 above, whether a Participant or Designated Beneficiary who would have been required to receive a required minimum distribution in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (2020 required minimum distributions), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 required minimum distributions, or (2) one or

more payments (that include the 2020 required minimum distributions) in a series of substantially equal periodic payments made at least annually and expected to last the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years (Extended 2020 required minimum distributions), will receive those distributions is determined in accordance with Section 14.8(b) below. Notwithstanding Section 14.8(b) below, a Participant or Beneficiary will be given the opportunity to elect whether or not to receive those distributions. In addition, notwithstanding Section 15.1, and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2020 will be treated as eligible rollover distributions.

(b) A Participant or Beneficiary who would have been required to receive a 2020 required minimum distribution will not receive this distribution unless the Participant or Beneficiary chooses to receive the distribution.

[AMENDED SEPTEMBER 25, 2020]

## **ARTICLE XV - ELIGIBLE ROLLOVER FROM THIS PLAN**

### **15.1. Plan Distributions and Withholding Requirements.**

(a) To the extent required by applicable provisions of the Code and regulations issued thereunder, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) A direct rollover for an Eligible Rollover Distribution or any portion thereof from a Roth Contribution Account shall only be made to another designated Roth account under an applicable retirement plan described in Code Section 402A(e)(1) of the Code or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under Code Section 402(c). [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

(c) For purposes of the direct rollover provisions of the Plan, 2020 required minimum distributions will be treated as an Eligible Rollover Distribution in 2020. [AMENDED SEPTEMBER 25, 2020]

### **15.2. Definitions.** The following definitions shall apply to this Article:

(a) An "Eligible Rollover Distribution" is any distribution under Article XII of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated ~~B~~Beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includable in gross income; or (iv) any distribution which is made upon

the hardship of the Distributee. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

(b) An "Eligible Retirement Plan" is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, a qualified trust described in section 401(a) of the Code that accepts the distributee's eligible rollover distribution or an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and, effective January 1, 2008, a Roth IRA described in section 408A of the Code. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of an Eligible Retirement Plan for a nonspouse designated ~~b~~Beneficiary of a deceased participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Code Section 408(d)(3)(C)).

(c) A "distributee" includes an employee, former employee, and, effective January 1, 2010, a nonspouse designated ~~b~~Beneficiary (as defined in section 401(a)(9)(E) of the Code) of a deceased Participant. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**15.3. Notice Requirements.** Effective January 1, 2007, not fewer than 30 nor more than 180 days before a Plan distribution, the Administrator shall provide the recipient with a written tax explanation as required by Code Section 402(f), if applicable, including an explanation of (i) the direct transfer of benefits, if applicable; (ii) the applicability of withholding taxes; (iii) the availability of direct transfers or rollovers; (iv) the availability of the special forward income averaging of Code Section 402(d); and (v) the applicability of such provisions to an alternate payee under Code Section 402(e). Notwithstanding the preceding sentence, a distribution may begin fewer than 30 days after the notice described in the preceding sentence is given, provided that:

(1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a participant distribution option), and

(2) the Participant, after receiving a notice, affirmatively elects a distribution.

## **ARTICLE XVI - ELIGIBLE ROLLOVERS TO THIS PLAN**

**16.1. Rollovers from Governmental 457(b) Plans.** To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, a Participant may contribute to the Plan in cash as a rollover contribution a qualified rollover amount from a governmental deferred compensation plan under Code Section 457(b), provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. A rollover contribution shall be allocated to the Rollover Account in the Participant's Account as of the date of the contribution. Unless otherwise directed by the Participant, in accordance with procedures established by the Service Manager, the Participant's Rollover Account shall be invested in the same manner as the Participant's Employee Contribution Account. The Participant's Rollover Account shall be available for distribution, under the payment options set forth in Section 12.2, at any time at the direction of the Participant, subject to any applicable penalties or other distribution requirements under the Code (including, but not limited to, Article XIV).

**16.2. Rollovers from other Eligible Retirement Plans.** Prior to and as of the effective date of this Restated Plan, only eligible rollovers from a governmental deferred compensation plan under Code Section 457(b) shall be accepted by the Plan. In the event that the Service Manager establishes a procedure under which all amounts received from a qualified plan, individual retirement account or annuity, or a tax-sheltered 403(b) plan would be separately accounted for, a Participant may contribute to the Plan in cash as a rollover contribution a qualified rollover amount from a qualified plan under Code Section 401(a), an annuity plan under Code Section 403(a), an individual retirement account or annuity, or a tax-sheltered annuity under Code Section 403(b), provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code.

**16.3. Rollovers of Roth Contributions.** If a Participant has a Roth Contribution Account under the Plan, to the extent an eligible rollover distribution paid to the Plan consists of amounts distributed from a designated Roth account which was under an applicable retirement plan described in Code Section 402A(e)(1)(C), and only to the extent the rollover is permitted under Code Section 402(c), such amounts shall be credited to the Participant's Roth Contribution Account. If rollovers from other retirement plans are accepted to the Plan under Section 16.2, then under this Section 16.3 the Plan may accept a rollover of amounts distributed from a designated Roth account which was under an applicable retirement plan described in Code Section 402A(e)(1), to the extent the rollover is permitted under Code Section 402(c), and such amounts shall be credited to the Participant's Roth Account. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

## **ARTICLE XVII - PARTICIPATING EMPLOYER OBLIGATIONS**

Each Participating Employer is required to: (i) remit contributions on a timely basis pursuant to Articles IV, V and VI, in the form and manner required by the Administrator; (ii) notify the Administrator of any change in the Adoption Agreement at least thirty (30) days prior to the proposed effective date of the change; (iii) provide and/or distribute any reports, information, or notices as required by the Administrator; and (iv) comply with all requirements of the Plan. The Participating Employer will also be responsible for ensuring that all of its

arrangements, treated as a single plan, comply with the applicable requirements of Code Section 457 and Regulations, including, but not limited to, the coordination of limitations on Annual Deferrals (including the basic limit, age 50 catch-up limit, and special 457 catch-up limit under Article VI), corrections of excess deferrals (Section 6.7), and plan-to-plan transfers (Article XVIII). The Plan for a Participating Employer who fails to comply with its obligations under the Plan may be terminated by the Trustees in their discretion. A Participating Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan. [AMENDED SEPTEMBER 25, 2020]

### **ARTICLE XVIII - PLAN TO PLAN TRANSFERS**

**18.1. Direct Transfers Among Plans of the Same Employer.** A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:

(a) The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);

(b) The transferor plan provides for transfers;

(c) The receiving plan provides for the receipt of transfers;

(d) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that ~~p~~Participant or ~~b~~Beneficiary immediately before the transfer; and

(e) The ~~p~~Participant or ~~b~~Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the ~~p~~Participant or ~~b~~Beneficiary is performing services for the entity maintaining the receiving plan. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

### **18.2. Plan-to-Plan Transfers from the Plan to the Plan of Another Employer.**

(a) At the direction of the Participating Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457 2(f) of the Income Tax Regulations. A transfer is permitted under this Section 18.2(a) for a Participant only if the Participant has had a Severance from Employment with the Participating Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 18.2 (a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers only with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) Upon the transfer of assets under this Section 18.2, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 18.2 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 18.2, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

**18.3. Plan-to-Plan Transfers to the Plan.** At the direction of the Participating Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under section 457(b) of the Code to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article VI.

**18.4. Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan; provided, however, that no portion of the Participant's Account balance attributable to Roth Contributions may be transferred under this Section 18.4(a). A transfer under this Section 18.4(a) may be made before the Participant has had a Severance from Employment. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

(b) A transfer may be made under Section 18.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

**18.5. Direct Transfers to this Plan.** Subject to the approval of the Administrator, this Plan shall accept cash transfers of Participants' accounts maintained under an eligible Section 457 plan directly to this Plan.

## **ARTICLE XIX - ADMINISTRATION OF PLAN**

**19.1. Compliance with Code Section 457.** At all times, the Plan shall be administered in accordance and construed to be consistent with Section 457 of the Code and its accompanying regulations.

**19.2. Duties and Powers of the Trustees.** The Trustees shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Trustees shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Trustees to carry out their duties under the Plan. The Trustees also have the powers and duties specified in the Trust Agreement. By way of illustration and not limitation, the Trustees are empowered and authorized:

1. to establish procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such procedures;

2. to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

3. pursuant to Article XII of the Plan, to make payments from the Trust Fund to Participants, their Beneficiaries and other persons as the Trustees may determine;

4. to contract with one or more Service Managers to perform education, enrollment, and administrative services under this Plan;

5. to accept service of legal process;

6. subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.

(b) Any action by the Trustees, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Trustees may take any such action in such manner and to such extent as the Trustees in their sole discretion may deem expedient and the Trustees shall be the sole and final judge of such expediency.

(c) The Trustees may delegate any power or duty to the Administrator except where the Trustees are required to review an action by the Administrator.

**19.3. Advice.** The Trustees may employ one (1) or more persons to render advice with regard to their responsibilities under the Plan.

**19.4. Delegation by Trustees.** In addition to the powers stated in Section 19.2, the Trustees may from time to time delegate to an individual, committee or organization certain of their fiduciary or other responsibilities under the Plan. Any such individual, committee or organization shall remain a fiduciary until the delegation of fiduciary duty is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have such power and authority with respect to delegated fiduciary or other responsibilities as the Trustees have under the Plan.

**19.5. Fiduciary Insurance.** The Trustees may require the purchase of fiduciary liability insurance for any of their fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

**19.6. Payment of Benefits.**

(a) **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

(b) **Correctness of Actions.** The Trustees or Administrator, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Trustees or Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions. The Trustees and Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, and Participating Employers shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

**19.7. Limitation on Recovery.** Participating Employers, Participants, and Beneficiaries (or their estates, if applicable) may not seek recovery against the Trustees, GMA or any employee or agent of the Trustees, for any loss sustained by any Participating Employer, Participant, or Beneficiary (or estate, if applicable) due to the nonperformance of their duties, negligence or any other misconduct of the above-named persons. Participants and Beneficiaries (or their estates, if applicable) may not seek recovery against Participating Employers or any employee or agent of the Participating Employer, for any loss sustained by the Participant or Beneficiary (or their estates, if applicable) due to the nonperformance of their duties, negligence or any other misconduct of the above-named persons. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

This paragraph shall not, however, excuse fraud or a wrongful taking by any person.

## **ARTICLE XX - CLAIMS PROCEDURE**

**20.1. Claims Procedure: Service Manager.** Any Participant may present a claim in writing to the Service Manager for any issue involving the Participant's Account investments or record-keeping. In addition, the Administrator may refer such issues to the Service Manager for review and resolution. The Service Manager shall utilize the protocol agreed to with the Administrator. The Service Manager shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Service Manager, the Participant may request in writing a claim review under Section 20.4.

**20.2. Claims Procedure: Employer.** Any Participant may present a claim in writing to the Participant's Employer for any issue involving eligibility. In addition, the Administrator may refer such issues to the Employer for review and resolution. The Employer shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Employer, the Participant may request in writing a claim review under Section 20.4.

**20.3. Claims Procedure: Administrator.** The Administrator shall have sole discretion to determine, based upon the issue(s) raised, if a claim should be resolved by the Service Manager, the Employer, or the Administrator pursuant to Sections 20.1, 20.2, or 20.3, respectively. A Participant, Beneficiary, or other person claiming benefits under this Plan ("Claimant") may present a claim in writing to the Administrator for any issue not covered by Section 20.1 or 20.2. The Administrator shall resolve any such claim presented to it in accordance with the procedure specified in Section 20.4(b) - (d). If the Claimant is not satisfied with the resolution determined by the Administrator, the Claimant may appeal the Administrator's decision under Section 20.5.

### **20.4. Claims Review.**

(a) Within thirty (30) days after the Claimant is notified of a decision under Section 20.1 or 20.2, the Claimant may submit a written request for review of the decision by the Administrator. If such request is not filed within thirty (30) days, the decision of the Service Manager or Employer, as applicable, shall be final and binding. The thirty-day period may be waived by the Trustees for good cause shown.

(b) The Administrator shall within ninety (90) days provide adequate notice in writing to any Claimant as to its decision on any review. Such notice shall be written in a manner calculated to be understood by the Claimant. If such claim is denied by the Administrator, in whole or in part, such notice shall set forth:

1. the specific reasons for such denial,
2. specific reference to any pertinent provisions of the Plan on which denial is based,
3. a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and

4. an explanation of the appeals procedure for the Plan.

(c) The Administrator shall act as a fiduciary in making a full and fair review of such claim.

(d) The Claimant or a duly authorized representative may review any Plan document which is pertinent to the claim and may submit issues and comments to the Administrator in writing at any time prior to the issuance of the Administrator's decision on review.

#### **20.5. Appeals Procedure.**

(a) Within sixty (60) days after receipt by the Claimant of notification of denial under Section 20.3 or 20.4, the Claimant shall have the right to present a written appeal to the Trustees, including submission of any additional material that is pertinent to the claim. If such appeal is not filed within the sixty (60) day period, the decision of the Administrator shall be final and binding.

(b) A decision by the Trustees shall be made no later than sixty (60) days after its receipt of the appeal. However, if the Trustees decide that a hearing at which the claimant or his duly authorized representative may be present is necessary and such a hearing is held, such decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after their receipt of the appeal. Any such decision of the Trustees shall be in writing and shall provide adequate notice to the claimant setting forth the specific reasons for any denial and written in a manner calculated to be understood by a Participant. Any such decision by the Trustees shall be final and binding.

**20.6. Report to Trustees Concerning Claims and Appeals.** The Administrator shall present a quarterly summary to the Trustees concerning any claim or appeal under this Article.

### **ARTICLE XXI - AMENDMENT OF THE PLAN**

#### **21.1. Amendment of the Master Plan and the Adoption Agreement.**

(a) Subject to the provisions of any applicable law, the Trustees and the Administrator may at any time amend or modify this Master Plan without the consent of the Participating Employers or of Participants (or any Beneficiaries thereof). Any modification, alteration, or amendment of the Master Plan, made in accordance with this Section, may be made retroactively, if deemed necessary or appropriate by the Trustees. A certified copy of the resolution of the Trustees making such amendment shall be delivered to the Administrator, and the Master Plan shall be amended in the manner and effective as of the date set for in such resolution, and the Participating Employers, Employees, Participants, Beneficiaries, Trustees, and the Administrator shall be bound by the amendment. A Participating Employer may not amend the Master Plan in any way.

(b) Subject to the provisions of any applicable law, the Trustees and the Administrator may at any time amend or modify the form of the Adoption Agreement with the consent of the Participating Employers unless otherwise required under Section 21.2.

**21.2. Amendment for Eligible Plan Status.** It is the intent of the Trustees that the Plan shall be and remain an eligible plan under the provisions of Code Section 457 and that the Trust be exempt from tax under Code Section 457. The Trustees shall promptly submit the Master Plan for approval under the Code and all expenses incident thereto shall be borne by the Trust. The Trustees may make any modifications, alterations, or amendments to the Master Plan, Adoption Agreement, or Addendum necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Plan as an eligible plan under the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Master Plan, Adoption Agreement, or Addendum, made in accordance with this Section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the Trustees making such amendment shall be delivered to the Administrator, and the Master Plan, Adoption Agreement, or Addendum shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Participants, Beneficiaries, Trustees, the Administrator and all others having any interest under the Plan shall be bound thereby.

**21.3. Amendment of Adoption Agreement and/or Addendum by Participating Employer.** The Governing Authority shall have the right at any time to amend, in whole or in part, any or all of its elections under of the Adoption Agreement and/or Addendum; provided, however, that no such amendment shall:

(a) Deprive any Participant or Beneficiary of any of the benefits to which the Participant or Beneficiary is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment; or

(b) Authorize or permit any part of the Trust Fund to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries; or

(c) Become effective until approved by the Trustees. In order to be approved by the Trustees, any amendment must comply with all applicable state and federal laws, including Code Section 457(b), and the Master Plan. If the Trustees do not approve an amendment, the Trustees or Administrator shall continue to administer the Plan as if such amendment had not been made.

**21.4. Effective Date of Amendments.** If an amendment limits or otherwise restricts the deferral or distribution rights of the Participants, the amendment shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment. If the amendment was made by the Trustees, notice shall be deemed given when the amendment is posted in the office of the Administrator and is sent to each Participating Employer. If the amendment was made by the Participating Employer, notice shall be deemed given when the amendment is posted in the office of the Participating Employer and is sent to the Administrator. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

## **ARTICLE XXII - FROZEN PLANS AND PLAN TERMINATION**

**22.1. Frozen Plan by Participating Employer.** A Participating Employer may terminate or freeze its participation in the Plan if it takes the following actions:

(a) The Governing Authority of the Participating Employer must pass a resolution terminating its participation in the Plan or freezing its Employees' rights to participate in the Plan.

(b) The resolution must specify when the Plan will be closed to any additional participation by Eligible Employees, which date must be at least sixty (60) days after the adoption of the resolution.

(c) The resolution must be submitted to the Trustees.

The Trustees shall determine whether the resolution complies with this Section, and all applicable federal and state laws, and shall determine an appropriate effective date for the Plan termination or freezing of Employer participation. ~~which date shall be no later than twelve (12) months from the Trustees' receipt of the resolution.~~ The Administrator shall provide appropriate forms to the Participating Employer and the Participants to terminate or freeze ongoing participation. Distributions under the Plan of existing accounts to these Participants and Beneficiaries affected by the termination, or to Participants affected by the freeze, are subject to Article XII. However, if the Participating Employer requests a plan-to-plan transfer of Plan assets with respect to the Participating Employer's Employees who are Participants, the Trustees may in their discretion make the transfer. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**22.2. Discontinuance of Contributions.** At the discretion of the Trustees, a Participating Employer who fails to make contributions for a period of one (1) year or who fails to make timely contributions over a period of one (1) year shall be considered to have frozen participation.

**22.3. Effect of Plan Termination or Freeze ing Plan by Participating Employer.** In the case of the complete or partial termination or freezing of the Plan as to one (1) or more Participating Employers, including a freeze arising from the discontinuance and/or delinquency of contributions, the affected portion of the Trust Fund shall continue to be held pursuant to the direction of the Trustees, for the benefit of affected Participants pursuant to Article XII. The Plan shall remain in full effect with respect to each Participating Employer that does not terminate its participation in the Plan on behalf of its Employees, freeze its participation in the Plan on behalf of its Employees, or whose participation is not frozen by the Trustees. In the case of a complete termination of the Plan as to one (1) or more Participating Employers, the Trustees must distribute all assets of the Trust Fund as to such Participating Employer to Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan, pursuant to

benefit options under Article XII, or, if applicable, such assets may be transferred to the trust of a successor plan. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

**22.4. Termination of the Entire Plan.** This Plan in its entirety may be terminated at any time by official action of the Trustees, with notice to all Participating Employers and Participants. The last date for contributions and earnings to be credited to Participant Accounts must be specified in the Trustees' official action and must be no sooner than ninety (90) days after the adoption of the official action. In the event of a complete Plan termination, the Trustees must distribute all assets of the Trust Fund to Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan, pursuant to benefit options under Article XII, or, if applicable, such assets may be transferred to the trust of a successor plan. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

### **ARTICLE XXIII - NONASSIGNABILITY**

**23.1. Nonassignment.** No Participant, Beneficiary (or estate, if applicable) or designee may commute, sell, assign, transfer or otherwise convey the right to receive any payment under the Plan. [AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]

#### **23.2. Rights.**

(a) Except as provided in Article XIII concerning Plan-Approved Domestic Relations Orders, and Section 23.2(b), the rights of Participants and Beneficiaries under this Plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person.

(b) Notwithstanding Section 23.2(a), the Administrator may pay from a Participant's or Beneficiary's Account the amount the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to the Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

### **ARTICLE XXIV - MISCELLANEOUS**

**24.1. Federal Taxes.** The Trustees, the Participating Employers, and the Administrator do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in this Plan.

**24.2. Contract.** This Plan, the Adoption Agreement, and the Participation Agreement, including any properly adopted or executed amendments thereof, shall constitute the total agreement or contract between the Participating Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant or other person.

**24.3. Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute an eligible plan under the provisions of Code Section 457 and the Trust to be exempt from tax under Code Section 457, (ii) causes the Plan to

comply with all applicable requirements of the Code, and (iii) causes the Plan to comply with all applicable Georgia statutes and rules, shall prevail over any different interpretation.

**24.4. Limitation on Rights.** Neither the establishment or maintenance of the Plan (including the Adoption Agreement), nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

(a) As conferring upon any Participant, Beneficiary (or their estate, if applicable) or any other person a right or claim against the Trust, Trustees, Participating Employer, or Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) As creating any responsibility or liability of the Participating Employer for the validity or effect of the Plan;

(c) As a contract between the Participating Employer and any Participant or other person (or estate, if applicable); **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

(d) As being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) As giving any Participant the right to be retained in the service of the Participating Employer or to interfere with the right of the Participating Employer to discharge any Participant or other person at any time.

**24.5. USERRA Compliance.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Code Section 414(u); and Code Section 401(a)(37), as amended from time to time.

For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

A Participant, whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service who timely resumes employment with the Participating Employer in accordance with USERRA, may elect to make-up deferral contributions to the Plan in accordance with Code Section 414(u) reduced by deferral contributions under Code Section 457(b), if any, actually made for the Participant during the period of such interruption or leave. Except to the extent otherwise provided under Code Section 414(u), this right applies for five (5) years following such resumption of employment (or, if shorter, for a period equal to three (3) times the period of the interruption or leave). Such contribution by the Participant may only be made during such period and while the Participant is employed by the Participating Employer.

If such Participant elects to make such make-up contributions, then the Participating Employer shall make-up the related Employer Contributions which would have been required had such contributions actually been made during the period of qualified military service. The make-up contributions by the Participating Employer shall be made as soon as practicable after the Participant makes such make-up contributions.

If the Participant timely resumes employment in accordance with USERRA after a qualified military leave, the Participating Employer shall make any other Employer Contribution that would have been made if the Participant had remained employed during the Participant's qualified military service. Such contributions must be made no later than ninety (90) days after the date of such reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later.

In determining the amount of Employer Contribution, a Participant shall be treated as receiving compensation from the Participating Employer during such period of qualified military service equal to (i) the compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Participating Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Participating Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as a Participant who is eligible to make deferral contributions under Code Section 457(b). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. However, such individual shall be treated as having a severance from employment during any period the individual is performing qualified military service for purposes of electing to take a distribution from the Plan. An individual who elects to take a distribution on account of qualified military service may not make an Employee Contribution with respect to differential wage payments during the 6-month period beginning on the date of the distribution.

**24.6. Procedure when Distributee Cannot be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary (or an estate, if applicable) entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last

known address shown on the Participating Employer's ~~Insert Name of the Employer~~'s or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

**24.7. Erroneous Payments.** If the Trustees or Administrator make any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Trustees or Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Trustees or Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Trustees or Administrator may deduct it when making any future payments directly to that Participant.

**24.8. Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Participating Employer.

**24.9. Release.** Any payment to any Participant or Beneficiary (or estate, if applicable) shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Trustees or Administrator may condition payment thereof on the delivery by the Participant or Beneficiary (or estate, if applicable) of the duly executed receipt and release in such form as may be determined by the Trustees or Administrator. **[AS AMENDED JUNE 27, 2016; EFFECTIVE AS OF JUNE 27, 2016]**

**24.10. Liability.** The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**24.11. Governing Laws.** The law of the State of Georgia, except to the extent preempted by federal law, shall apply in determining the construction and validity of this Plan.

**24.12. Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Trustees and the Administrator. However, the Service Manager is a necessary party for those duties that have been delegated to the Service Manager. The settlement or judgment in any such case in which the Trustees are duly served shall be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

**24.13. Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**24.14. Supersession.** The terms of the Plan shall supersede any previous agreement between the parties pertaining to the Plan.

**24.15. Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF** the Board of Trustees has caused to be affixed the signature of its duly authorized Representative:

Board of Trustees of the GMA Defined  
Contribution and Deferred Compensation Program

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary

*Approved by the Board of Trustees at the meeting held June 21, 2009*



## **CITY COUNCIL AGENDA ITEM**

### **SUBJECT: CDW COOPERATIVE PURCHASING APPROVAL**

---

**CATEGORY:** (check all that apply)

- ( ) **OLD BUSINESS**                      ( **x** ) **NEW BUSINESS**
- ( ) **PUBLIC HEARING**                      ( ) **STATUS REPORT**
- ( ) **ORDINANCE**                      ( ) **POLICY**                      ( ) **RESOLUTION**
- ( ) **DISCUSSION ONLY**                      ( **x** ) **DECISION**
- 

**Date Submitted:**    **Work Session:**    **Council Meeting:**

**Date(s) Previously Heard:**

---

**SUBMITTED BY:** Gia Scruggs, Finance Director

**PRESENTER:** Gia Scruggs, Finance Director

**PURPOSE:** As a part of the transition efforts from Jacobs Engineering, the City of Stonecrest needs tablets so that city staff can perform fieldwork and utilize tablets to maintain the current service level while performing field work such as building inspections and code enforcement activities. The use of tablets will assist field staff in their day-to-day operations. Staff currently utilizes equipment that is owned by Jacobs. As a result, the city needs to make this purchase to ensure continuity in the transition.

**FACTS AND ISSUES:** Pursuant to the purchasing threshold and approvals required and prior to making this purchase, the Finance Director is requesting approval to utilize State Contract 99999-SPD-SPD0000161-003 for CDW to purchase the required equipment for Code Enforcement and Building. The purchase will be for twelve (12) tablets, twelve (12) mobile printers and twelve (12) car adaptors for a total of \$28,800.00. The funding for this order will be from the FY21 Code Enforcement and Building budgets.

**OPTIONS:** Approve, Deny, Defy

**RECOMMENDED ACTION:** Approve

**ATTACHMENTS:** CDW QUOTE

# QUOTE CONFIRMATION



DEAR COREY DANIEL,

Thank you for considering CDW•G LLC for your computing needs. The details of your quote are below.  
[Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MKVC065	10/15/2021	BUDGETARY QUOTE	12730461	\$28,800.00

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<a href="#">Dell Latitude 7220 Rugged Extreme Tablet - 11.6" - Core i5 8365U - vPro - 1</a> Mfg. Part#: 413D9 Contract: MARKET	12	6279310	\$2,050.00	\$24,600.00
<a href="#">Brother PocketJet PJ-762 - printer - B/W - direct thermal</a> Mfg. Part#: PJ762 UNSPSC: 43212108 Contract: MARKET	12	3863666	\$330.00	\$3,960.00
<a href="#">Brother - car power adapter</a> Mfg. Part#: LB3690 UNSPSC: 39121006 Contract: State of Georgia Peripherals (99999-SPD-SPD0000161-0003)	12	1940027	\$20.00	\$240.00

PURCHASER BILLING INFO	SUBTOTAL	\$28,800.00
<b>Billing Address:</b> CITY OF STONECREST ACCOUNTS PAYABLE 3120 STONECREST BLVD LITHONIA, GA 30038-2693 <b>Phone:</b> (770) 224-0200 <b>Payment Terms:</b> Net 30 Days-Govt State/Local	SHIPPING	\$0.00
	SALES TAX	\$0.00
	GRAND TOTAL	\$28,800.00
DELIVER TO	<b>Please remit payments to:</b>  CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	
<b>Shipping Address:</b> CITY OF STONECREST COREY DANIEL 3120 STONECREST BLVD LITHONIA, GA 30038-2693 <b>Phone:</b> (770) 224-0200 <b>Shipping Method:</b> UPS Ground (2- 3 Day)		

## Need Assistance? CDW•G LLC SALES CONTACT INFORMATION



Zach Deliberto

(877) 649-8688

zachdel@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at  
<http://www.cdwg.com/content/terms-conditions/product-sales.aspx>  
 For more information, contact a CDW account manager

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