



**Mayor/Council Meeting Agenda**  
**Tuesday, February 2, 2021, 5:30 PM**  
**Public Safety Complex, Municipal Court Room**  
**701 Queen City Parkway, Gainesville, GA 30501**  
**Mayor or Mayor Pro Tem Presides**

**INVOCATION:**

**PLEDGE OF ALLEGIANCE:**

**COUNCIL ANNOUNCEMENTS:**

**PUBLIC COMMENTS: (20 minutes maximum)**

**CONSENT AGENDA:**

**Minutes**

- A. January 14, 2021 Work Session
- B. January 19, 2021 Mayor/Council Meeting

**Resolutions**

- A. AR-2021-08 First Quarter Budget Adjustment for Fiscal Year 2021
- B. AR-2021-09 Second Quarter Budget Adjustment for Fiscal Year 2021

**GENERAL LEGISLATION:**

- A. Ordinance 2021-06 Amend Chapter 6-4 as it Pertains to Alcoholic Beverages

**RESOLUTIONS:**

- A. BR-2021-07 Gainesville 85 Business Park Covenants

**PUBLIC HEARING(S):**

**Annexation/Zoning Items**

- A. Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I). **Ward Number: Four**. Tax Parcel Number(s): 08-024-002-047. **Request: Office/Metal fabrication plant.**
  - **Proposed Annexation Ordinance 2021-07**
  - **Proposed Zoning Ordinance 2021-08**
- B. Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**). **Ward Number: Four**. Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363. **Request: Multi-family apartments and industrial / office / warehouse uses.**
  - **Proposed Zoning Amendment Ordinance 2021-09**

**CITY MANAGER ISSUES:**

**CITY ATTORNEY ISSUES:**

**CITY CLERK ISSUES:**

**EXECUTIVE SESSION:**

**ADJOURNMENT:**

Final: Friday, January 29, 2021, 9:15 AM



# CITY OF GAINESVILLE

## COUNCIL AGENDA REQUEST

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**Date Submitted:** 1/28/2021

**Presenter:**

**Item of Business:** Consent Agenda Items

**Meeting Date:** 2/2/2021

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**Purpose of Request:**

The following appointments, minutes and/or resolutions are being considered under the Consent Agenda Section. These items were previously distributed for review and/or discussed. Unless otherwise directed by Mayor and Council, they will not be discussed during this meeting.

If you have questions regarding these documents, please feel free to contact the City Clerk's Office during normal business hours (Monday through Friday from 8:00 AM to 5:00 PM) at 770-535-6865 or via email to [cityclerk@gainesville.org](mailto:cityclerk@gainesville.org).

**History/Background:**

**Facts & Issues for Consideration:**

**Department Recommendation:**

**Department Director:**

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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**Date Submitted:** 1/29/2021  
**Presenter:** Denise Jordan  
**Item of Business:** January 14, 2021 Work Session  
**Meeting Date:** 2/2/2021

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**Purpose of Request:**

The purpose of this request is to allow the governing body to approve the referenced meeting minutes.

**History/Background:**

**Facts & Issues for Consideration:**

The referenced draft minutes were distributed to the governing body, City Manager, City Attorney and Department Directors for comments/corrections.

**Department Recommendation:**

Approve the minutes accepting edits as presented.

**Department Director:**

Bryan Lackey

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**If funding is involved, are funds approved within the current budget?**

N/A

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

Description

Type



**Date Submitted:** 1/28/2021  
**Presenter:** Denise Jordan  
**Item of Business:** January 19, 2021 Mayor/Council Meeting  
**Meeting Date:** 2/2/2021

---

**Purpose of Request:**

The purpose of this request is to allow the governing body to approve the referenced meeting minutes.

**History/Background:**

**Facts & Issues for Consideration:**

The referenced draft minutes were distributed to the governing body, City Manager, City Attorney and Department Directors for comments/corrections.

**Department Recommendation:**

Approve the minutes accepting edits as presented.

**Department Director:**

Bryan Lackey

---

**If funding is involved, are funds approved within the current budget?**

N/A

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

---

**Administrative Comments:**

---

**ATTACHMENTS:**

Description

Type

# CITY OF GAINESVILLE

## COUNCIL AGENDA REQUEST

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**Date Submitted:** 1/19/2021  
**Presenter:** Bryan Lackey  
**Item of Business:** AR-2021-08 First Quarter Budget Adjustment for Fiscal Year 2021  
**Meeting Date:** 2/2/2021

---

**Purpose of Request:**

This request is to approve the budget adjustments associated with the first quarter of fiscal year 2021.

**History/Background:**

The City of Gainesville Code states in part:

Sec. 2-3-87 - Budget amendments

(a) General amendment. The council may amend the budget as deemed necessary or advantageous during the fiscal year, provided additional revenues or funding sources are identified for any net increase in expenditure. Following the end of each fiscal year quarter, any approved adjustments, including budgets for any projects authorized during the quarter shall be enacted through a budget adjustment resolution upon favorable vote of the city council. The supplemental budget resolutions shall be balanced for each and every fund that is amended.

**Facts & Issues for Consideration:**

**Department Recommendation:**

Financial Services recommends the approval of the first quarter budget adjustment for fiscal year 2021.

**Department Director:**

Jeremy Perry

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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

| Description                                                                                      | Type            |
|--------------------------------------------------------------------------------------------------|-----------------|
| <input type="checkbox"/> AR-2021-08 First Quarter Budget Adjustment for Fiscal Year 2021         | Resolution      |
| <input type="checkbox"/> Attachment A - Charts for 1st Quarter Budget Adjustments for FY2021     | Backup Material |
| <input type="checkbox"/> Attachment B - Description of 1st Quarter Budget Adjustments for FY2021 | Backup Material |



**RESOLUTION AR-2021-08**

**REGARDING FIRST QUARTER BUDGET ADJUSTMENT  
FOR FISCAL YEAR 2021**

**WHEREAS**, the City Council approved a budget for fiscal year 2021 for the City of Gainesville on June 16, 2020; and

**WHEREAS**, the budget is a dynamic rather than static revenue and spending plan which requires adjustment from time to time as circumstances change; and

**WHEREAS**, these adjustments maintain a balanced budget for all funds.

**NOW, THEREFORE, BE IT RESOLVED THAT** the governing body for the City of Gainesville hereby adopts the adjustments to the budget listed on "Attachment A" and "Attachment B", attached hereto and made a part of the Resolution.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
**C. Danny Dunagan, Jr., Mayor**

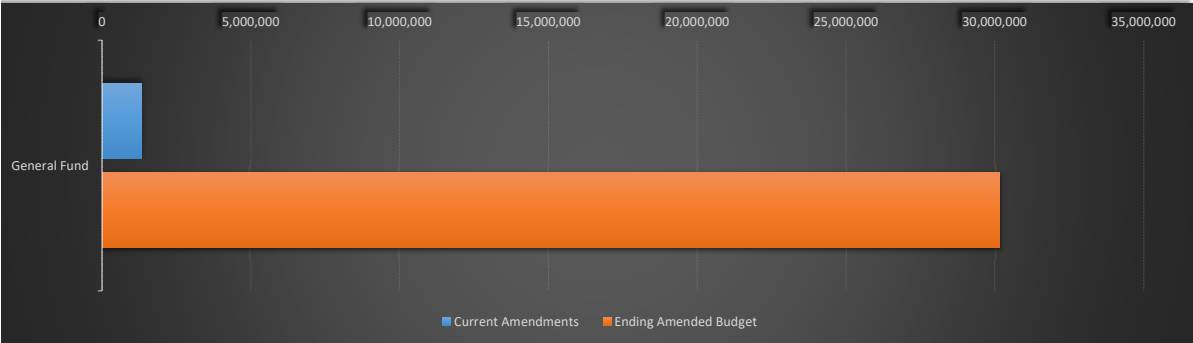
This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

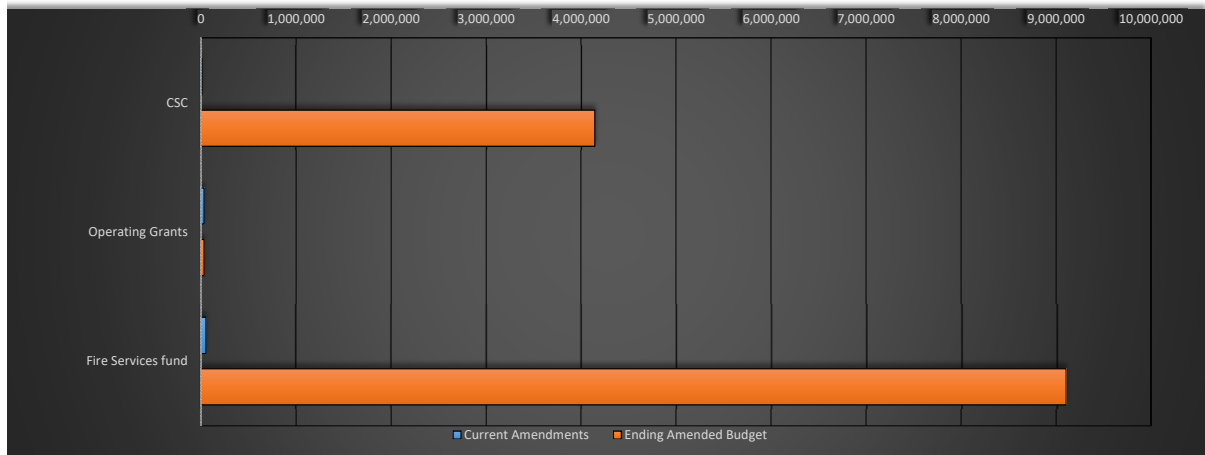
\_\_\_\_\_  
**Denise O. Jordan, City Clerk**

ATTACHMENT A

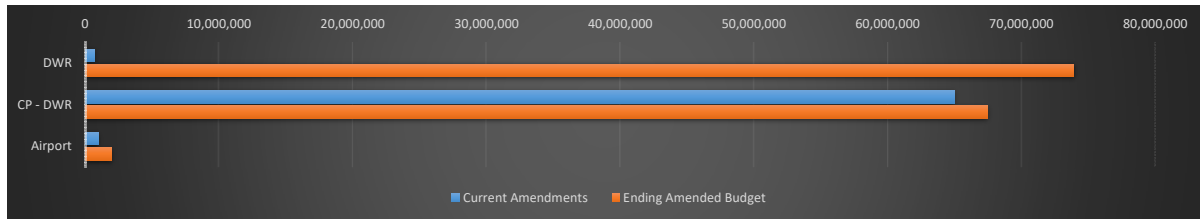
| General Fund |                          |                    |                       |
|--------------|--------------------------|--------------------|-----------------------|
| Fund         | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| General Fund | 28,818,504               | 1,339,986          | 30,158,490            |
| Grand Total  | 28,818,504               | 1,339,986          | 30,158,490            |



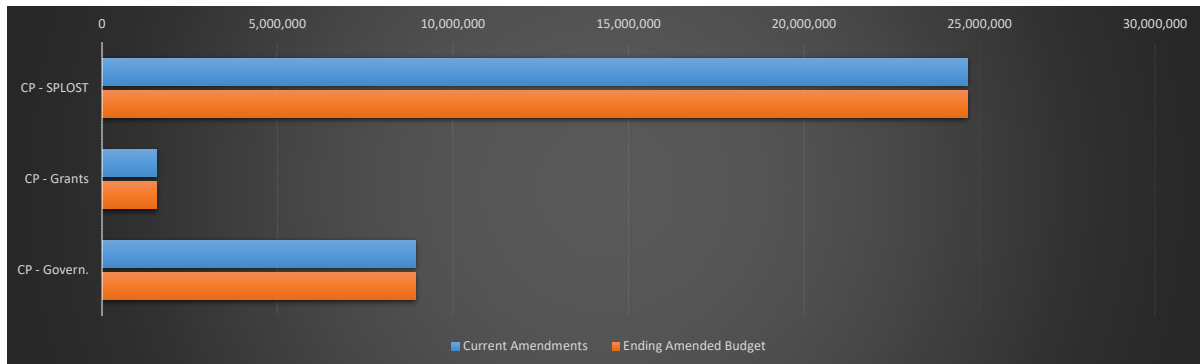
| Special Revenue Funds |                          |                    |                       |
|-----------------------|--------------------------|--------------------|-----------------------|
| Fund                  | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CSC                   | 4,136,219                | 10,000             | 4,146,219             |
| Cemetery Trust        | 47,500                   | 0                  | 47,500                |
| Confiscated Assets    | 323,227                  | 0                  | 323,227               |
| Operating Grants      | 0                        | 31,948             | 31,948                |
| HUD Grants            | 1,443,263                | 0                  | 1,443,263             |
| HUD Rev. Loan         | 0                        | 0                  | 0                     |
| Fire Services fund    | 9,052,003                | 53,400             | 9,105,403             |
| Econ. Dev.            | 108,000                  | 0                  | 108,000               |
| Land Bank Authority   | 75,000                   | 0                  | 75,000                |
| TAD                   | 648,282                  | 0                  | 648,282               |
| H/M Tax Fund          | 886,585                  | 0                  | 886,585               |
| Impact Fee            | 995,536                  | 0                  | 995,536               |
| Info. Tech. Fund      | 44,700                   | 0                  | 44,700                |
| <b>Grand Total</b>    | <b>17,760,315</b>        | <b>95,348</b>      | <b>17,855,663</b>     |



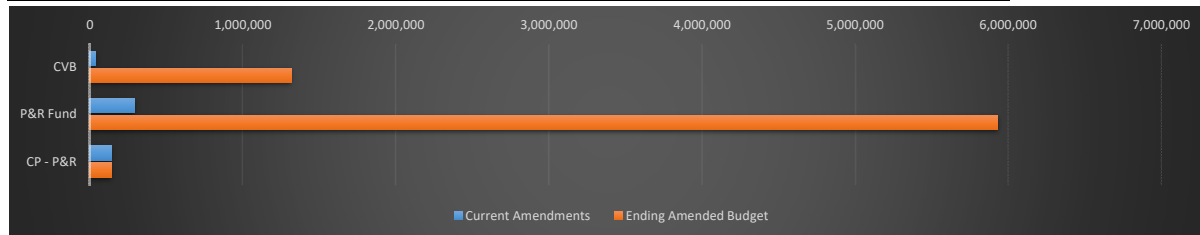
| Enterprise Funds   |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| DWR                | 73,225,856               | 716,246            | 73,942,102            |
| CP - DWR           | 2,453,112                | 65,003,291         | 67,456,403            |
| Solid Waste        | 3,400,904                | 0                  | 3,400,904             |
| Airport            | 1,009,462                | 978,831            | 1,988,293             |
| Golf               | 1,397,086                | 0                  | 1,397,086             |
| <b>Grand Total</b> | <b>81,486,420</b>        | <b>66,698,368</b>  | <b>148,184,788</b>    |



| Capital and Debt Funds |                          |                    |                       |
|------------------------|--------------------------|--------------------|-----------------------|
| Fund                   | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CP - SPLOST            | 0                        | 24,666,968         | 24,666,968            |
| CP - Grants            | 0                        | 1,539,451          | 1,539,451             |
| CP - Govern.           | 0                        | 8,927,250          | 8,927,250             |
| Debt. Serv.            | 3,053,830                | 0                  | 3,053,830             |
| <b>Grand Total</b>     | <b>3,053,830</b>         | <b>35,133,669</b>  | <b>38,187,499</b>     |



| Component Unit     |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CVB                | 1,279,211                | 39,510             | 1,318,721             |
| P&R Fund           | 5,636,078                | 295,491            | 5,931,569             |
| CP - P&R           | 0                        | 141,820            | 141,820               |
| <b>Grand Total</b> | <b>6,915,289</b>         | <b>335,001</b>     | <b>7,250,290</b>      |



| Non-Profit         |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| Non-Profit         | 24,367                   | 0                  | 24,367                |
| <b>Grand Total</b> | <b>24,367</b>            | <b>0</b>           | <b>24,367</b>         |

| Internal Service Fund |                          |                    |                       |
|-----------------------|--------------------------|--------------------|-----------------------|
| Fund                  | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| Gen. Insurance        | 2,024,396                | 0                  | 2,024,396             |
| Employee Ben.         | 10,286,835               | 0                  | 10,286,835            |
| Veh. Serv.            | 2,600,244                | 0                  | 2,600,244             |
| <b>Grand Total</b>    | <b>14,911,475</b>        | <b>0</b>           | <b>14,911,475</b>     |



**ATTACHMENT B**  
**QUARTERLY BUDGET ADJUSTMENT RESOLUTION**  
**ADJUSTMENT DESCRIPTIONS**

**GENERAL FUND**

**GENERAL FUND**

The General fund recognized a total increase of \$1,339,986 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-appropriations of open balances from purchase orders in the amount of \$36,194.
- Recognize revenues in the amount of \$1,228,792 for CARES Act monies.
- Increase to Budgeted Fund Balance in the amount of \$75,000.

**SPECIAL REVENUE FUNDS**

**COMMUNITY SERVICE CENTER FUND**

The Community Service Center fund recognized a total increase of \$10,000 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Recognize revenues in the amount of \$10,000 for CARES Act monies.

**GRANTS FUND**

The Grants fund recognized a total increase of \$31,948 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- FY20-21 Anticipated re-appropriations of open grant and projects budgets.

**FIRE SERVICES FUND**

The Fire Services fund recognized a total increase of \$53,400 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Recognize revenues in the amount of \$53,400 for CARES Act monies.

**ATTACHMENT B**  
**QUARTERLY BUDGET ADJUSTMENT RESOLUTION**  
**ADJUSTMENT DESCRIPTIONS**  
**ENTERPRISE FUNDS**

**DEPARTMENT OF WATER RESOURCES OPERATING FUND**

The Department of Water Resources Operating fund recognized a total increase of \$716,246 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- FY20-21 Anticipated re-appropriations of open balances from purchase orders.

**AIRPORT FUND**

The Airport Fund recognized a total increase of \$978,831 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- FY20-21 Anticipated re-appropriations of open balances from purchase orders and existing project balances.

**CAPITAL AND DEBT FUNDS**

**DWR CAPITAL PROJECTS FUND**

The Department of Water Resources Capital Project fund recognized a total increase of \$65,003,291 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-establishing project budgets for open projects not closed during FY2020.
- Establishment of FY2021 Capital Projects per Resolution AR-2020-09.

**SPLOST CAPITAL PROJECTS FUND**

The SPLOST Capital Project fund recognized a total increase of \$24,666,968 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-establishing project budgets for open projects not closed during FY2020.
- Establishment of FY2021 Capital Projects per Resolution AR-2020-09.

**ATTACHMENT B**  
**QUARTERLY BUDGET ADJUSTMENT RESOLUTION**  
**ADJUSTMENT DESCRIPTIONS**

**GRANTS CAPITAL PROJECTS FUND**

The Grants Capital Project fund recognized a total increase of \$1,539,451 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-establishing project budgets for open projects not closed during FY2020.
- Establishment of FY2021 Capital Projects per Resolution AR-2020-09.

**GENERAL GOVERNMENT CAPITAL PROJECTS FUND**

The General Government Capital Projects fund recognized a total increase of \$8,927,250 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-establishing project budgets for open projects not closed during FY2020.
- Establishment of FY2021 Capital Projects per Resolution AR-2020-09.

**COMPONENT UNIT**

**CONVENTION VISITORS BUREAU**

The Convention Visitors Bureau fund recognized a total increase of \$39,510 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Recognize revenues in the amount of \$39,510 for CARES Act monies.

**PARKS AND RECREATION FUND**

The Parks and Recreation Operating fund recognized a total increase of \$295,491 during the first quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Increase in fund balance in the amount of \$56,491 for Civic Center emergency expenses.
- Recognize revenues in the amount of \$39,000 for CARES Act monies.
- Transfer of \$200,000 to SPLOST CIP Fund for project 70066-Civic Center Renovations.

**ATTACHMENT B**  
**QUARTERLY BUDGET ADJUSTMENT RESOLUTION**  
**ADJUSTMENT DESCRIPTIONS**

**PARKS & RECREATION CAPITAL PROJECTS FUND**

The Parks & Recreation Capital Projects fund recognized an increase of \$141,820 during the first quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- FY20-21 Anticipated re-establishing project budgets for open projects not closed during FY2020.
- Establishment of FY2021 Capital Projects per Resolution AR-2020-09.

**Date Submitted:** 1/19/2021  
**Presenter:** Bryan Lackey  
**Item of Business:** AR-2021-09 Second Quarter Budget Adjustment for Fiscal Year 2021  
**Meeting Date:** 2/2/2021

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**Purpose of Request:**

This request is to approve the budget adjustments associated with the second quarter of fiscal year 2021.

**History/Background:**

The City of Gainesville Code states in part:

Sec. 2-3-87 - Budget amendments

(a) General amendment. The council may amend the budget as deemed necessary or advantageous during the fiscal year, provided additional revenues or funding sources are identified for any net increase in expenditure. Following the end of each fiscal year quarter, any approved adjustments, including budgets for any projects authorized during the quarter shall be enacted through a budget adjustment resolution upon favorable vote of the city council. The supplemental budget resolutions shall be balanced for each and every fund that is amended.

**Facts & Issues for Consideration:**

**Department Recommendation:**

Financial Services recommends the approval of the second quarter budget adjustment for fiscal year 2021.

**Department Director:**

Jeremy Perry

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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

| Description                                                                                      | Type            |
|--------------------------------------------------------------------------------------------------|-----------------|
| <input type="checkbox"/> AR-2021-09 Second Quarter Budget Adjustment for Fiscal Year 2021        | Resolution      |
| <input type="checkbox"/> Attachment A - Charts for 2nd Quarter Budget Adjustments for FY2021     | Backup Material |
| <input type="checkbox"/> Attachment B - Description of 2nd Quarter Budget Adjustments for FY2021 | Backup Material |



**RESOLUTION AR-2021-09**

**REGARDING SECOND QUARTER BUDGET ADJUSTMENT  
FOR FISCAL YEAR 2021**

**WHEREAS**, the City Council approved a budget for fiscal year 2021 for the City of Gainesville on June 16, 2020; and

**WHEREAS**, the budget is a dynamic rather than static revenue and spending plan which requires adjustment from time to time as circumstances change; and

**WHEREAS**, these adjustments maintain a balanced budget for all funds.

**NOW, THEREFORE, BE IT RESOLVED THAT** the governing body for the City of Gainesville hereby adopts the adjustments to the budget listed on "Attachment A" and "Attachment B", attached hereto and made a part of the Resolution.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
**C. Danny Dunagan, Jr., Mayor**

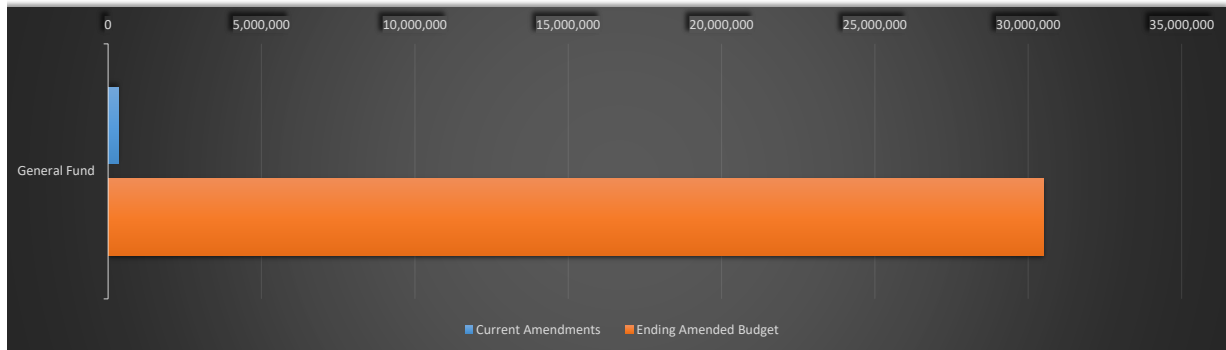
This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

\_\_\_\_\_  
**Denise O. Jordan, City Clerk**

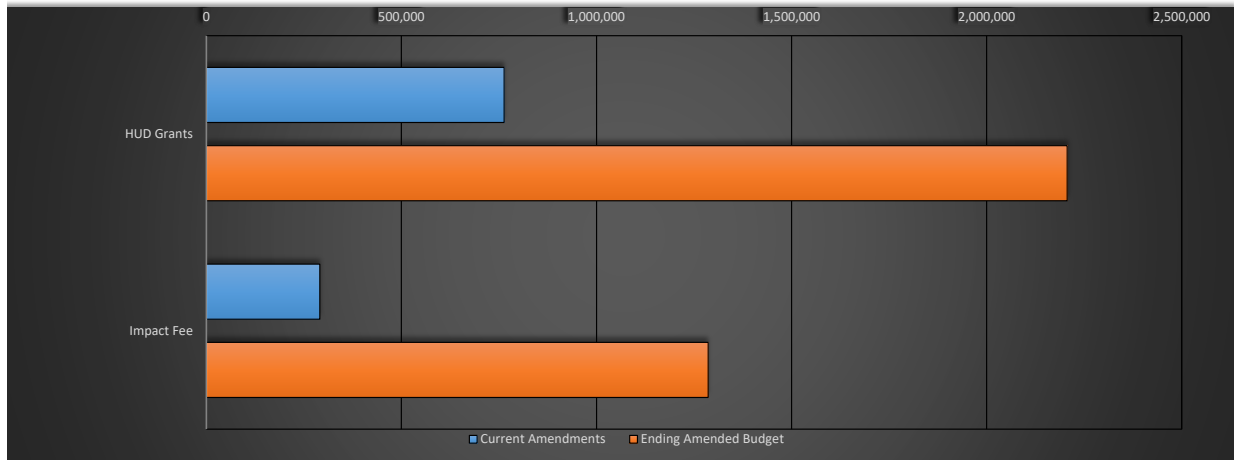
ATTACHMENT A

| General Fund       |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| General Fund       | 30,158,490               | 339,275            | 30,497,765            |
| <b>Grand Total</b> | <b>30,158,490</b>        | <b>339,275</b>     | <b>30,497,765</b>     |



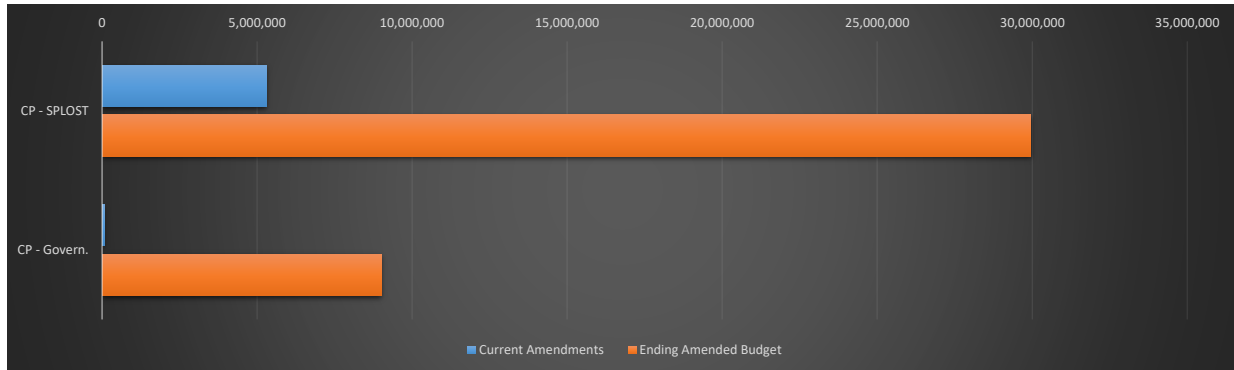


| Special Revenue Funds |                          |                    |                       |
|-----------------------|--------------------------|--------------------|-----------------------|
| Fund                  | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CSC                   | 4,146,219                | 0                  | 4,146,219             |
| Cemetery Trust        | 47,500                   | 0                  | 47,500                |
| Confiscated Assets    | 323,227                  | 0                  | 323,227               |
| Operating Grants      | 31,948                   | 0                  | 31,948                |
| HUD Grants            | 1,443,263                | 763,286            | 2,206,549             |
| HUD Rev. Loan         | 0                        | 0                  | 0                     |
| Fire Services fund    | 9,105,403                | 0                  | 9,105,403             |
| Econ. Dev.            | 108,000                  | 0                  | 108,000               |
| Land Bank Authority   | 75,000                   | 0                  | 75,000                |
| TAD                   | 648,282                  | 0                  | 648,282               |
| H/M Tax Fund          | 886,585                  | 0                  | 886,585               |
| Impact Fee            | 995,536                  | 290,785            | 1,286,321             |
| Info. Tech. Fund      | 44,700                   | 0                  | 44,700                |
| <b>Grand Total</b>    | <b>17,855,663</b>        | <b>1,054,071</b>   | <b>18,909,734</b>     |

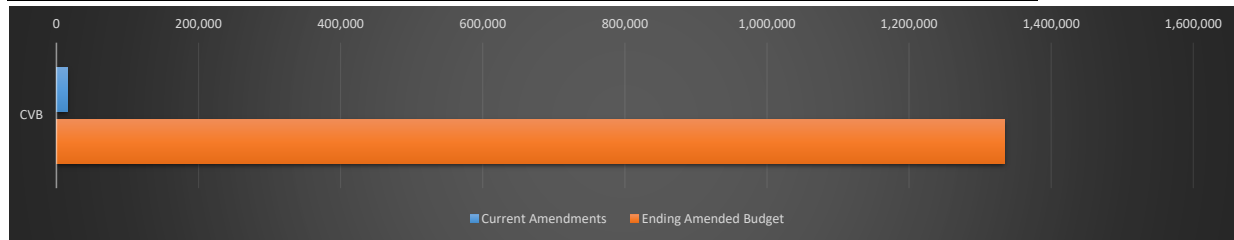


| Enterprise Funds   |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| DWR                | 73,942,102               | 0                  | 73,942,102            |
| CP - DWR           | 67,456,403               | 0                  | 67,456,403            |
| Solid Waste        | 3,400,904                | 0                  | 3,400,904             |
| Airport            | 1,988,293                | 0                  | 1,988,293             |
| Golf               | 1,397,086                | 0                  | 1,397,086             |
| <b>Grand Total</b> | <b>148,184,788</b>       | <b>0</b>           | <b>148,184,788</b>    |

| Capital and Debt Funds |                          |                    |                       |
|------------------------|--------------------------|--------------------|-----------------------|
| Fund                   | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CP - SPLOST            | 24,666,968               | 5,290,785          | 29,957,753            |
| CP - Grants            | 1,539,451                | 0                  | 1,539,451             |
| CP - Govern.           | 8,927,250                | 71,200             | 8,998,450             |
| Debt. Serv.            | 3,053,830                | 0                  | 3,053,830             |
| <b>Grand Total</b>     | <b>38,187,499</b>        | <b>5,361,985</b>   | <b>43,549,484</b>     |



| Component Unit     |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| CVB                | 1,318,721                | 15,000             | 1,333,721             |
| P&R Fund           | 5,931,569                | 0                  | 5,931,569             |
| CP - P&R           | 141,820                  | 0                  | 141,820               |
| <b>Grand Total</b> | <b>7,392,110</b>         | <b>15,000</b>      | <b>7,265,290</b>      |



| Non-Profit         |                          |                    |                       |
|--------------------|--------------------------|--------------------|-----------------------|
| Fund               | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| Non-Profit         | 24,367                   | 0                  | 24,367                |
| <b>Grand Total</b> | <b>24,367</b>            | <b>0</b>           | <b>24,367</b>         |

| Internal Service Fund |                          |                    |                       |
|-----------------------|--------------------------|--------------------|-----------------------|
| Fund                  | Beginning Amended Budget | Current Amendments | Ending Amended Budget |
| Gen. Insurance        | 2,024,396                | 0                  | 2,024,396             |
| Employee Ben.         | 10,286,835               | 0                  | 10,286,835            |
| Veh. Serv.            | 2,600,244                | 0                  | 2,600,244             |
| <b>Grand Total</b>    | <b>14,911,475</b>        | <b>0</b>           | <b>14,911,475</b>     |

**ATTACHMENT B**  
**QUARTERLY BUDGET ADJUSTMENT RESOLUTION**  
**ADJUSTMENT DESCRIPTIONS**

**GENERAL FUND**

**GENERAL FUND**

The General fund recognized a total increase of \$339,275 during the second quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- Increase in Budgeted Fund Balance in the amount of \$324,275 for CARES act funding.
- Increase in Budgeted Fund Balance in the amount of \$15,000 for Hall In Initiative.

**SPECIAL REVENUE FUNDS**

**HUD GRANT FUND**

The HUD Grant fund recognized a total increase of \$763,286 during the second quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Establishment of CDBG 2020 Budgets.

**IMPACT FEE FUND**

The Impact Fee fund recognized a total increase of \$290,785 during the second quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Establish project 92077-Police Precinct in the amount of \$290,785.

**ATTACHMENT B  
QUARTERLY BUDGET ADJUSTMENT RESOLUTION  
ADJUSTMENT DESCRIPTIONS**

**CAPITAL AND DEBT FUNDS**

**SPLOST CAPITAL PROJECTS FUND**

The SPLOST Capital Project fund recognized a total increase of \$5,290,785 during the second quarter of fiscal year 2021. The adjustments associated with this increase are as follows:

- Recognize Gainesville-Hall County agreement- BR-2020-47- Parking Deck project in the amount of \$5,000,000.
- Recognize transfer from Impact Fee Fund in the amount of \$290,785 for project 92077- Police Precinct.

**GENERAL GOVERNMENT CAPITAL PROJECTS FUND**

The General Government Capital Projects fund recognized a total increase of \$71,200 during the second quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Establishment of project 96016- EE Butler and Athens Highway Extension Master Plan in the amount of \$71,200.

**COMPONENT UNIT**

**CONVENTION VISITORS BUREAU**

The Convention Visitors Bureau fund recognized a total increase of \$15,000 during the second quarter of fiscal year 2021. The adjustment associated with this increase is as follows:

- Increase of \$15,000 for expenditures related to the Hall In Initiative.

**Date Submitted:** 1/22/2021  
**Presenter:** Angela Sheppard  
**Item of Business:** Ordinance 2021-06 Amend Chapter 6-4 as it Pertains to Alcoholic Beverages  
**Meeting Date:** 2/2/2021

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**Purpose of Request:**

Amend Chapter 6-4 to update the City's alcoholic beverage ordinance to reflect changes in State law and for other purposes.

**History/Background:**

**Facts & Issues for Consideration:**

**Department Recommendation:**

Approval of the Ordinance

**Department Director:**

Bryan Lackey

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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

| Description                                                                 | Type            |
|-----------------------------------------------------------------------------|-----------------|
| ❑ Ordinance 2021-06 Amend Chapter 6-4 as it Pertains to Alcoholic Beverages | Ordinance       |
| ❑ Chapter 6-4 Redline Changes                                               | Backup Material |

Passed: \_\_\_\_\_

**AN ORDINANCE**

**No. 2021-06**

**AN ORDINANCE TO AMEND SECTIONS 6-4-6, 6-4-12, 6-4-61, 6-4-63, 6-4-71, 6-4-72, 6-4-82, 6-4-87, 6-4-89, 6-4-104, AND 6-4-117 AND TO ADD SECTION 6-4-118 OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE AS SET FORTH BELOW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:**

**SECTION I.**

Subsection (c) of Section 6-4-6 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

(c) If objections have been raised by the City Manager or designee due to previous violations of this chapter or if there have been any changes in the ownership, managing agent, location, or operation of the business, an application must be submitted to the city manager or designee.

**SECTION II.**

Subsection (b) of Section 6-4-12 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended by deleting the word "fingerprint."

**SECTION III.**

Section 6-4-61 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended by changing "12:30 p.m." to "11:00 a.m."

**SECTION IV.**

Subsection (b) of Section 6-4-63 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

(b) This section shall not apply in the following circumstances:

1. For the holder of a temporary limited license as provided for in this chapter during the hours for which the temporary limited license is valid.
2. For drinks consumed within a patio/outdoor area that has been approved by the City and meets the requirements as stated in Section 6-4-89.
3. For samples provided by a representative or salesperson of a manufacturer or in accordance with O.C.G.A. § 3-3-26.

## **ORDINANCE NO. 2021-06**

### **SECTION V.**

Subsection (a) of Section 6-4-71 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended by changing "12:30 p.m." to "11:00 a.m."

### **SECTION VI.**

Section 6-4-72 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of distilled spirits by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises, except for samples provided by a representative or salesperson of a manufacturer or wholesaler in accordance with O.C.G.A. § 3-3-26.

### **SECTION VII.**

Subsections (b) and (c) of Section 6-4-82 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

- (b) Monthly reports for the preceding month's alcohol and food sales shall be submitted on forms provided by the city on or before the 20<sup>th</sup> day of the month. In the event monthly reports are delinquent for three consecutive months, a fee of \$100 shall be levied and the licensee shall be placed on probation for a six-month period, which period shall commence on the 21<sup>st</sup> day of the month following the third consecutive delinquency. If monthly reports are delinquent while the licensee is on probation, then the city manager or designee may give the licensee notice to show cause at a hearing before an administrative hearing officer as to why the license should not be revoked or suspended in accordance with section 6-4-11.
- (c) In the event food sales fall below fifty (50) percent of the business volume of the licensee for one quarter, then the city manager or designee may request a hearing for the suspension or revocation of such license in accordance with section 6-4-11. Nothing herein provided shall prevent the city manager or designee from suspending or revoking such license for any other violations of this chapter.

### **SECTION VIII.**

Subsection (e) of Section 6-4-87 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

- (e) This section shall not apply in the following instances:
  - 1. For events that are sponsored or organized by the City of Gainesville where the alcohol is obtained from a participating business within any City designated area, and is contained in and consumed from an approved, clear plastic container.
  - 2. Where the City Council through a resolution has permitted otherwise.
  - 3. For restaurants that have a valid sidewalk café permit provided that all outdoor activities are contained within the permitted sidewalk café.
  - 4. For establishments that have an approved patio/open area under section 6-4-89, provided that all outdoor activities are contained within the approved patio/open area.



## **ORDINANCE NO. 2021-06**

5. For an open-air café as defined by this chapter.
6. Beverages for consumption at a publicly owned or privately-owned golf course.
7. For the carrying out of a partially consumed bottle of wine as defined in Section 6-4-88.
8. When a temporary limited license has been issued, provided that the person consuming or possessing an alcoholic beverage remains on the licensed premises as defined in Section 6-4-2.
9. For a Downtown Dining District as defined by this chapter.
10. For home deliveries made in compliance with O.C.G.A. § 3-3-10.

### **SECTION IX.**

Subsections (a), (b), and (d) of Section 6-4-89 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

- (a) Alcoholic beverage sales may be made by a licensed consumption on premises establishment or an establishment licensed to sell growlers in a patio/open area type environment if the establishment has been approved as provided in this section.
- (b) The requirements for approval are:
  1. The patio/open area must be enclosed by some structure and allow for public ingress/egress. The height of such structure shall be a minimum of three and one-half (3.5) feet above the patio floor. The structure is not required to be solid nor does it have to restrict visibility into or out of the patio/open area.
  2. The patio/open area shall not be required to be covered by a roof.
  3. The patio/open area shall be used merely as an extension of the interior seating area. Service in the patio/open area shall be only by waiter or waitress or by customer self-service at an interior selling location; i.e., no outside bar or service window.
- (d) Patio/open area plans must be reviewed and approved on an individual basis by the city manager or designee. Patio/open areas must be permitted and approved by the city's building inspection and fire departments as required by their governing regulations or codes. If the patio/open area is within a multi-tenant development, the applicant must submit a letter of approval from the property owner.

### **SECTION X.**

Subsections (a)(2) of Section 6-4-104 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

2. No wine tasting may be conducted on the premises of any place of business licensed to sell distilled spirits in the unbroken package or container at retail. This prohibition shall not be construed so as to prohibit the consumption of samples in accordance with section 6-4-63(b)(3).

### **SECTION XI.**

Section 6-4-117 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended to read as follows:

## **ORDINANCE NO. 2021-06**

### **Sec. 6-4-117. Home Delivery**

Home delivery of alcoholic beverages, in accordance with O.C.G.A § 3-3-10, is allowed within the City. Any licensee engaged in home delivery shall comply with all State laws and regulations.

### **SECTION XII.**

Article 9 of Chapter 6.4 of Title 6 of the Code of Ordinances of the City of Gainesville, Georgia is hereby amended by adding Section 6-4-118 to read as follows:

### **Sec. 6-4-118. Violations.**

Any person violating any of the provisions of this chapter shall be punished as provided in section 1-1-7 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punished accordingly.

### **SECTION XIII.**

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

### **SECTION XIV.**

If any portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

### **SECTION XV.**

The effective date of this ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

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**C. Danny Dunagan, Jr., Mayor**

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

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**Denise O. Jordan, City Clerk**

# **Alcoholic Beverage Ordinance**

## **Chapter 6~4**

**Adopted: 2.2.21**



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## **ARTICLE 1. PURPOSE AND LICENSING**

### **Sec. 6-4-1. General Policies and Purpose.**

- (a) Alcoholic beverages may be sold, manufactured, distributed and imported in the City of Gainesville only after the issuance of a license for such sale by the City and only in the manner permitted by said license, unless exempted by state law. Alcoholic beverages may be sold, manufactured, distributed and imported in the City only by a licensee who complies with the rules and regulations of this Ordinance, and with the licensing, regulatory and revenue requirements of the State of Georgia.
- (b) Notwithstanding anything in this chapter to the contrary, the sale of alcoholic beverages in the city is a privilege and not a right, and the issuance of a license hereunder shall not create any property rights in the licensee.
- (c) The city council designates the city manager for the purpose of administering this chapter. Any powers granted to or duties imposed upon the city manager may be delegated by the city manager to other city personnel. The city manager or designee shall be responsible for the interpretation of the requirements, standards, definitions, or any other provision of this chapter, unless that authority is provided to another administrative official within a specific article. Interpretations of the city manager or designee may be appealed under the provisions of section 6-4-11. The city manager or designee shall have administrative authority of this code.
- (d) Each licensee of the City shall display the license prominently at all times at the premises for which the license is issued.
- (e) The holder of every alcoholic beverage license hereunder shall have available in his place of business at all times a copy of this chapter and shall be responsible for compliance herewith by all persons on the premises.
- (f) Any premises outlets which cannot be determined as one (1) identifiable place of business shall require additional licenses regardless of such establishments having the same tradename, ownership, or management.
- (g) The purposes of this Ordinance include but are not limited to the following:
  - 1. Compliance with state law.
  - 2. Prevention and control of the sale of alcoholic beverages by unfit persons.
  - 3. Protection of the public health, safety, and general welfare.

### **Sec. 6-4-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:



- (a) *Alcoholic beverage* means any beverage containing alcohol and shall include but shall not be limited to, malt beverages, wines and distilled spirits.
- (b) *Alcoholic beverage caterer* means any retail dealer who has been licensed by the city to sell alcoholic beverages by the drink or the unopened package.
- (c) *Art Shop* means a retail business devoted exclusively to providing art education that is limited to instruction in painting, sculpture and similar crafts. An art shop may also sell and display portraits, paintings, sculptures, art supplies and similar art work and crafts. An art shop shall not allow activities that would cause the business to be an "adult entertainment establishment" as defined in Chapter 6-10 of this Code.
- (d) *Authorized catered event* means an event at a location not otherwise licensed for consumption of alcoholic beverages by the drink at which alcoholic beverages are furnished, for consideration, and sold, dispensed or provided free of charge to persons present at the event, by the drink, pursuant to a permit obtained under this section.
- (e) *Business* means any person, corporation, partnership, or other legal entity which exerts substantial efforts within the city, engages in, causes to be engaged in, and/or represents or holds out to the public to be engaged in any occupation or activity with the object of gain or benefit, either directly or indirectly.
- (f) *Brewery* means a place where malt beverages are manufactured. In addition to manufacturing, malt beverages may be sold for consumption on the premises, and/or sold by the package for consumption off the premises in accordance with State law.
- (g) *Brewpub* means any restaurant in which malt beverages are manufactured, subject to the barrel production limitation prescribed in O.C.G.A § 3-5-36. Barrels of malt beverage sold to licensed wholesale dealers for distribution or to the public for consumption off the premises as authorized by State law shall not be used when determining the total annual gross food and beverages sales.
- (h) *BYOB or brown bagging* means possession of an open glass bottle, can, or other container containing an alcoholic beverage or consumption of an alcoholic beverage on premises:
  - 1. For which a city business/occupation tax certificate has been issued; and
  - 2. Which occurs at a location different from where said alcoholic beverage was purchased.
- (i) *Church* means a body of communicants gathered into church order: united under one (1) form of government by the profession of the same faith and the observance of the same ritual and ceremonies, place where persons regularly assemble in a facility for worship, congregation, or organization for religious purposes.
- (j) *College Campus* means a collection of two or more buildings used for educational purposes, on either one parcel or contiguous parcels that are under the same ownership by either a public or private institution of higher learning.
- (k) *Distilled spirits* means any alcoholic beverage obtained by distillation or containing more than twenty-four (24) percent alcohol by volume.
- (l) *Distillery* means a facility that manufactures distilled spirits.

- (m) *Establishment* means any physical location or section thereof for the operation of a business.
- (n) *Food caterer* means any person who holds a valid business license and for consideration, prepares food for consumption off the premises.
- (o) *Fortified wine* means any alcoholic beverage containing not more than twenty-four (24) percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentations with brandy added. The term includes, but is not limited to “brandy.”
- (p) *Georgia Farm Winery* means a farm winery which is licensed by the state to manufacture wine in Georgia.
- (q) *Growler* means a reusable, resealable, and professionally sanitized glass jug used to transport malt beverages or wine for off-premises consumption that is not to exceed 64 ounces and is filled with malt beverages or wine from a keg by a licensee, or an employee of a licensee, with a malt beverage and/or wine license for consumption off premises issued by the City of Gainesville.
- (r) *Hard cider* means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than six (6) percent alcohol by volume, including, but not limited to flavored or carbonated cider. For purposes of this chapter, hard cider shall be deemed a malt beverage.
- (s) *Importer* means any person who imports an alcoholic beverage into this state from a foreign country and sells the alcoholic beverage to another importer, broker or wholesaler and who warehouses a stock of the alcoholic beverage.
- (t) *Licensed alcoholic beverage caterer* means any person licensed for the sale of alcoholic beverages by the state and who possesses a license by a local government in the state authorizing such person to sell or dispense alcoholic beverages by the drink off licensed premises and in connection with an authorized catered function.
- (u) *Licensee* means any person who holds a license from the city to engage in the selling, manufacturing, distributing or importing at retail or wholesale, of any alcoholic beverages.
- (v) *Lounge* means a separate room connected with a part of and adjacent to a restaurant with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned and have a seating capacity of at least forty (40).
- (w) *Malt beverage* means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination of such products in water, containing not more than fourteen (14) percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer and strong beer. The term does not include sake, also known as Japanese rice wine.
- (x) *Managing Agent* means an individual that is at least twenty-one (21) years of age, is a U.S. citizen or an alien lawfully admitted for permanent residency, is a resident of the State of Georgia, has day-to-day managerial authority over the business conducted on the licensed premises including the sale of alcoholic beverages, and is employed full-time by the licensed business.
- (y) *Manufacturer* means any maker, producer or bottler of an alcoholic beverage. The term also means:

1. In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits;
  2. In the case of malt beverages, any brewer; and
  3. In the case of wine, any vintner
- (z) *Minor* means any person less than twenty-one (21) years of age.
- (aa) *Multi-use facility* means a structure containing three or more retail or office establishments and one or more eating establishment, which has a court area for pedestrian use.
- (bb) *Non-profit, charitable and civic organization* means a bona fide nonprofit civic organization which is exempt from federal income tax pursuant to the provisions of subsection (c), (d), or (e) of 26 U.S.C. Section 501.
- (cc) *Nonprofit botanical garden or nature science center* means a facility primarily used to develop and maintain animals or plant collections, including flowers, shrubs and trees, for public display, education, research, conservation and enjoyment, through, without limitation, horticultural gardens, public and private programs, exhibitions and special events, having not less than 75 acres of outdoor gardens or land preserved for conservation, containing a documented collection of living plants, shrubs and trees, having meeting event space with a capacity for not less than 100 people, that is owned by a corporation that is exempt from federal income taxes pursuant to section 501(c) of the Internal Revenue Code, as amended.
- (dd) *Open air café* means a premise located within the pedestrian court area and adjacent sidewalk of a multi-use facility where food is available for purchase during all hours of operation and where alcoholic beverages may be purchased from a restaurant contained within the multi-use facility for consumption within the open air café.
- (ee) *Person* means any individual, firm, partnership, cooperative, nonprofit membership corporation, social club, joint venture, association, company, corporation, limited liability company, limited liability partnerships, agency, syndicate, estate, trust, business trust, receiver, fiduciary or other group or combination acting as a unit, body politic or political subdivision, the plural as well as the singular member, whether public, private or quasi-public.
- (ff) *Premises* means one physically identifiable place of business operated by the same ownership and/or overall management consisting of one or more contiguous rooms with only one address registered as a single place of business with the local licensing authority and the state. "Premises" is further defined to include the following areas:
1. In the case of hotels, motels or private clubs, the swimming pool which is owned by said hotel, motel or club.
  2. Outdoor areas or patios approved pursuant to this chapter.
  3. In the case of a malt beverage and/or wine licensee where a golf course is located adjacent to and contiguous with a restaurant, the playing area of the golf course.
  4. In the case of a nonprofit botanical garden or nature science center, the geographic grounds.

5. In the case of an open air café, the pedestrian court area and sidewalk in front of the building in which the multi-use facility is contained.
6. In the case of the Gainesville Civic Center, the geographic grounds of the Gainesville Civic Center and the Martha Hope Cabin.
7. In the case of a brewery or distillery, an adjacent outdoor area, contained on the same property utilized by the licensee. If the adjacent outdoor area is a parking lot that is shared and utilized by more than one business, the outdoor consumption area must be controlled to limit public access.
8. In the case of a temporary limited license permit holder, the sidewalk café, deck, lawn and parking lot adjacent to the licensed premises during the hours for which the temporary limited license is valid. In the case of a parking lot that is shared and utilized by more than one business, the outdoor consumption area must be controlled to limit public access.

(gg) *Private club* means any nonprofit association organized under the laws of this state which:

1. Has been in existence at least one (1) year prior to the filing of its application for a license to be issued pursuant to this chapter;
2. Has at least seventy-five (75) regular dues-paying members;
3. Owns, hires or leases a building or space within a building for the reasonable use of its members, which building or space:
  - i. Has suitable kitchen and dining room space and equipment; and
  - ii. Is staffed with a sufficient number of employees for cooking, preparing and serving meals for its members and guests; and
4. Has no member, officer, agent or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary as defined by state law.

(hh) *Private function* means any affair where attendance is by invitation only, where no business transactions are conducted during the private function and there is no cost to attend or to consume the food or alcohol either by donations or by any other means.

(ii) *Residence* means the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit or the place where one actually lives as distinguished from his domicile or place of temporary sojourn.

(jj) *Resident* means a person whose primary residence is within the territorial limits of the county.

(kk) *Restaurant* means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment, air conditioned, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests for every hour they are open. At least one (1) meal per day shall be served at least five (5) days a week, except that

restaurants that open for business more than five (5) days a week, shall be required to serve at least one (1) meal per day each day that the restaurant is open, with the exception of holidays, vacation and periods of redecoration, and the serving of such meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall provide at least thirty (30) seats for customers.

- (ll) *School* means an organized source of education or training whether public or private for the teaching of children in which the traditional subjects and learning processes associated with the Pre-K - 12 grades of school are taught.
- (mm) *Tasting room* means an outlet for the promotion of a Georgia Farm Winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.
- (nn) *Wholesaler or Wholesale Dealer* means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers. This shall include any person that transports or delivers alcoholic beverages from a manufacturer for sale at retail by the package.
- (oo) *Wine tasting* means an event as defined in the rules and regulations of the department of revenue.
- (pp) *Wine* means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

### **Sec. 6-4-3. Qualifications for Licensing.**

- (a) To qualify for an alcoholic beverage license, an applicant shall meet the following:
  - 1. Designate a managing agent that meets the defined qualifications in Section 6-4-2. In the case of a non-profit private club, the managing agent may be an officer of the non-profit private club in lieu of a full-time employee if the individual is otherwise qualified.
  - 2. All licensed establishments must have and continuously maintain in Hall County a registered agent upon whom any process, notice or demand required or permitted by law or under this chapter to be served upon the licensee or owner may be served. The registered agent must be a resident of Hall County. The licensee shall file the name of such agent, along with the written, notarized consent of such agent with the city in such form as may be prescribed.
  - 3. Have a certificate of occupancy that has been issued by the City for the premises for which an alcoholic beverage license is sought.

- (b) Where the application is made on behalf of a corporation, partnership, limited liability corporation, limited liability partnership or sole proprietorship, the license shall be issued jointly to the organization and an individual that meets the qualifications of a managing agent.

#### **Sec. 6-4-4. The Application Process.**

- (a) Any person desiring to obtain an alcoholic beverage license in the City shall submit a written and signed application on forms provided by City and in connection therewith, shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, bonds and other supporting data as required by the City.
- (b) All applications for licenses to sell alcoholic beverages of any kind shall be made in person by the applicant to the city manager or designee and shall contain but not be restricted to the following statements and information:
  - 1. The name, age, address and length of residency of applicant.
  - 2. The name of the corporation, partnership, sole proprietorship, or other organization applying for the license. Said name shall include the legal name as well as the trade name of the business.
  - 3. A statement of whether the applicant or any person with an interest in the application has made application at any previous time for any alcoholic beverage license and the disposition of such application.
  - 4. Whether the applicant or any person with an interest in the application has ever been convicted of a crime, other than for traffic violations.
  - 5. Whether a previous license issued to the applicant or any person with interest in the application has been revoked by any state or subdivision thereof or by the federal government and the reason therefor.
  - 6. The identity of any other person interested directly or indirectly in the profits or losses or both of the proposed business.
  - 7. The physical address and detailed plans of such building and outside premises, and evidence of ownership of the building, or a document that evidences the right of the applicant to use the premises, including but not limited to a deed, lease, sublease, management agreement, concession agreement, shall be attached to the application
  - 8. Every new application for a package license hereunder shall be accompanied by a drawing to scale, showing the nearest church, school or college or by the affidavit of a registered surveyor that the proposed location of the business complies with the distance requirements as specified in this chapter. Applications for renewal of licenses, or for premises that have been licensed in the preceding 12 months, are exempted from this subsection.

- (c) Every managing agent, owner and interest holder listed in an application for an alcoholic beverage license shall be fingerprinted in a manner prescribed by the city.
- (d) The license fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application. Any person who is doing business on or after the first day of January shall pay the full annual license fee without proration; provided, however, that if an application is filed after July 1<sup>st</sup>, the license fee shall be one-half (½) of the annual license fee for such calendar year.
- (e) All new applications for alcoholic beverage licenses shall be accompanied either by lawful money of the U.S., or by a certified check, cashier's check or money order, payable to the city for the proper amount of the license fee. If the application is denied or if the applicant withdraws the application prior to its being issued, the license fee shall be refunded, less a one hundred fifty dollar (\$150.00) administrative fee which shall be retained by the city.
- (f) The city license issued shall be valid for the calendar year indicated thereon and shall expire at midnight on the last day of the year.
- (g) All applications for alcoholic beverage licenses shall be filed with and approved by the city manager or designee provided the applicant meets all of the requirements and qualifications of this chapter.
- (h) The written application for the license shall be a permanent record, and the licensee must maintain current and accurate information within said application as required by this chapter.

#### **Sec. 6-4-5. Grounds for Denial of Application.**

- (a) The following shall be sufficient cause for the denial of an application:
  - 1. Failure of the applicant to meet the qualifications for licensing as set forth in this chapter.
  - 2. The making of any untrue or misleading statement in the application for an alcoholic beverage license.
  - 3. Failure to meet distance requirements as provided in this chapter.
  - 4. Where it appears that the applicant would not have adequate participation in the proposed business to direct and manage its affairs, or where it appears that the application is intended to be a mere surrogate for a person or persons who would not otherwise qualify for a license for any reason whatsoever.
- (b) When contrary to the public interest and welfare, no license to sell alcoholic beverages of any kind shall be issued to or for:
  - 1. Any person by reason of such person's business experience, trade associations, personal associations, record of arrest, or reputation in any community in which he has resided, who is not likely to maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.

2. Any person who has been convicted under any federal, state or local law of any felony involving moral turpitude.
3. Any person who has been convicted under any federal, state or local law of any felony not involving moral turpitude within ten (10) years immediately preceding the filing of application for such license.
4. Any person convicted under any federal, state or local law of a misdemeanor, particularly, but not limited to, those involving alcoholic beverages, gambling or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state or local laws, rules and regulations.
5. A location not suitable in the judgment and discretion of the city because of traffic congestion, general character of the neighborhood, or by reason of the effect which such an establishment would have on the adjacent and surrounding properties or on the neighborhood.
6. A location within an area where, in the judgment of the city manager, the number of alcoholic beverage licenses already granted makes it contrary to the public interest or welfare.
7. A location at which the operation of the proposed business would be in violation of the City's Unified Land Development Code.
8. A location at which a previous alcoholic beverage license has been revoked or suspended, and where, in the judgment of the city manager, the problems which have arisen from the operation of an alcoholic beverage license at such location indicate that it is not in the interest of public health, safety, welfare or morals that the sale of alcoholic beverages be permitted at such location.
9. A person or location which the granting of such license would constitute a violation of state law or regulations.
10. The operation of a distilled spirits package business licensed hereunder by any person already holding two (2) such licenses.
11. Any person who is as close kin as brothers or sisters, by blood or marriage, to one already holding two (2) distilled spirits package licenses under this chapter.
12. Any trustee or director of a private club, if disqualified under this chapter.

#### **Sec. 6-4-6. Renewal of Licenses.**

- (a) The city manager or designee may approve all applications for renewal of an existing license upon payment of the license fees for renewal of licenses, where no objections have been raised by the City Manager or designee and the application clearly shows no change in the ownership, managing agent, location, or operation of the business.



- (b) A licensee that desires to continue in business during the next or subsequent calendar year must make application for such year, on or before November 15<sup>th</sup> of the preceding year. License fees for such year shall be submitted on or before December 15 of the preceding year. Any license fee submitted after the due date of December 15<sup>th</sup>, shall be considered delinquent and assessed a penalty in the amount of ten (10) percent of the fees due. Interest on delinquent fees shall be assessed at one (1) percent for each month or fraction thereof of delinquency.
- (c) If objections have been raised by the City Manager or designee due to previous violations of this chapter or if there have been any changes in the ownership, managing agent, location, or operation of the business, a ~~new~~ application must be submitted to the city manager or designee.

#### **Sec. 6-4-7. Duty to Remain Current.**

- (a) It is the duty and responsibility of the licensee to notify the city manager or designee of any changes to the information contained in the original application. Any amendments to the original application shall be made in writing on forms provided by the city manager or designee and shall be under oath and verified as otherwise required of license applications.
- (b) Failure to maintain a current application shall be grounds for revocation of the license.
- (c) In the event the "managing agent" either ceases to be employed by or ceases to have day-to-day managerial oversight of alcoholic beverage sales, the licensee shall notify the city within five (5) days of the change and must follow the requirements to transfer the license to a new "managing agent" as set forth in section 6-4-8 (b). If the applicant does not meet the qualifications for "managing agent" as required by this chapter and the city manager or designee recommends denial, the applicant may have a hearing as set out in section 6-4-11.
- (d) In the event the "registered agent" changes, the licensee shall notify the city within ten (10) days of the change and must submit written information on forms provided by the city. A fee as required in Title 10 will be charged for the processing of a change in the "registered agent."
- (e) No person shall have, own or enjoy any ownership, interest in, share in the profits from, or otherwise participate in the business of any alcoholic beverage licensee in the city unless a full description of such interest is furnished to the city manager or designee at the time such interest arises. It shall be the duty of the licensee to report to the city manager or designee, within twenty (20) days, any change in any interest in such licensee's business including but not limited to:
  - 1. Any division of the profits;
  - 2. Any division of net or gross sales for any purpose whatsoever;
  - 3. Any change in the payment of rents or leases;
  - 4. Any change in the ownership of any lease or building or land used in such business;

5. Any change in the ownership of any corporation that has any interest in such business or the change of management of such corporation.
- (f) After receipt of notice pursuant to Section 6-4-7(e), the city manager or designee shall notify such person within thirty (30) days of any objection to the ownership or interest set forth therein, based on the interest holder's ability to qualify as a licensee under this chapter. In the event such interest is not disposed of in accordance with the objections set forth by the city manager or designee within thirty (30) days after the mailing of the notice by the city manager or designee, or in the event no objections are mailed to the licensee within such thirty-day period, or in the event such person fails to notify the city manager or designee of the transfer of any such interest within twenty (20) days after the acquisition thereof, then the license as provided for herein may be subject to suspension or revocation by the city manager or designee.
- (g) The licensee shall make all reports required by this section in the form required by the city manager or designee, and such reports shall be an amendment to the licensee's permanent license application on file with the city and as such shall be under oath and verified as otherwise required of license applications.

#### **Sec. 6-4-8. Transfer of Licenses.**

- (a) No city license may be transferred from one (1) person or from one (1) location to another without permission and approval of the city manager or designee upon receipt of a written application made. Approvals as to any change shall be at the discretion of the city manager or designee.
- (b) In the event of a change in the managing agent of a licensee, the city license shall remain in effect pending approval or denial of the transfer provided:
  1. The licensee notifies the city manager or designee within ten (10) days of the change of the managing agent;
  2. The licensee submits a proper written application for approval thereof;
  3. The licensee pays a transfer fee as required by Title 10;
  4. The transferee meets all qualifications of a managing agent as required by this chapter; and
  5. There has been no change of ownership, location or operation of the business.
- (c) Any licensee desiring to discontinue business at one (1) location and commence business at some other new location must make a complete change of location application for such new location. Upon proper application and provided that there has been no change of ownership or interest in the business, the city manager or designee may permit the license to be transferred upon payment of a fee required in Title 10 for a change of location, provided that the licensee and the new location meet all qualifications required by this chapter. The fee for a change of location shall be in addition to the original license fee paid by the licensee for the calendar year.

- (d) Upon the sale of an existing business, the city license issued for that business location shall remain in effect pending approval or denial of a new application by the city manager or designee, provided that the buyer or transferee meets all the qualifications of a managing agent as required by this chapter, and provided that the buyer or transferee has immediately upon the date of sale or prior to the date of sale made proper written application and has paid the original license fee required by Title 10.

#### **Sec. 6-4-9. Right to Investigate.**

- (a) Upon receipt by the city manager or designee of any application for an alcoholic beverage license, or for the transfer of any license, each person listed on the application shall consent to a criminal background check on the forms supplied by the city manager or designee.
- (b) The city manager or designee, the chief of police, or any policeman of the city may enter upon the premises operated under the provisions of this chapter during operating hours for the purpose of inspecting the premises and enforcing this chapter and shall have access during the inspection of all books, records, and supplies relating to the sale, storage or possession of alcoholic beverages.

#### **Sec. 6-4-10. Surrender, Suspension or Revocation of License or Imposition of a Monetary Administrative Penalty.**

- (a) The following may be grounds for the suspension and/or revocation of an alcoholic beverage license or for the imposition of a monetary administrative penalty against the licensee.
  - 1. The violation by the licensee of any state or federal law or regulation, except misdemeanors or any ordinance of the city, other than traffic violations. The determination of whether any such violation has occurred shall be made by the administrative hearing officer and an actual conviction in a court for such offense shall not be necessary in order to suspend or revoke the license or issue a monetary administrative penalty.
  - 2. The failure of the licensee or his employee to report promptly to the police department any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, occurring on the premises.
  - 3. Any conduct on the part of the owner of the business, the licensee or his employee contrary to the public welfare, safety, health or morals. While not to be considered a comprehensive or exhaustive listing of prohibited behavior, specific instances of prohibited behavior by the owner, the licensee and/or his employee include, but are not limited to, the following:
    - a. Consumption or being under the influence of alcoholic beverage while working or on duty;
    - b. Breach of the peace, disturbance or altercation resulting in violence;
    - c. The conviction of any felony reasonably related to the ability of the licensee to operate and maintain the premises in a proper manner;

- d. The violation of any state law or regulation governing the manufacture, sale, distribution or transportation of alcoholic beverages;
  - e. The violation of any section of O.C.G.A. § 10-1-370 et seq., known as the Uniform Deceptive Trade Practices Act, reasonably related to the operation of licensed establishments;
  - f. The conviction of the owner or the licensee of driving under the influence of alcoholic beverages and/or drugs on two (2) or more occasions;
  - g. Permitting the solicitation of patrons on the licensed premises for prostitution or any other unlawful act where the licensee or the licensee's employee or agent knew or should have known of such conduct;
  - h. The selling or serving of any alcoholic beverage to any person that the licensee or the licensee's employee or agent knew or should have known to be in a state of intoxication;
  - i. The failure to comply with any and all federal, state or municipal tax laws and regulations applicable to the operation of establishments licensed to sell alcoholic beverages;
  - j. Failure by the licensee to adequately supervise and monitor the conduct of the employees, patrons and others on the licensed premises or on any property owned or leased by the owner or licensee, including but not limited to parking lots and parking areas, or on any parking lots or areas which may be lawfully used by patrons of a licensed establishment, in order to protect the safety and well-being of the general public and of those utilizing the premises.
4. Operating or conducting the business in a manner contrary to the public welfare, safety, health or morals, or in such manner as to constitute a nuisance. Any combination totaling three (3) or more of the following occurrences within any thirty-day period shall constitute prima facie evidence that the licensee is operating or conducting an alcoholic beverage business in a manner which is contrary to the public welfare, safety, health or morals, or in such manner as to constitute a nuisance: Three (3) or more violations of law, violations of municipal ordinances, breach of the peace, disturbance or altercation resulting in violence, all occurring on the premises. The business license holder shall, upon suspension for violations of this section, have the burden of proving such occurrences were beyond his control and not related to the operation of his business.
5. The violation of any state law or regulation or municipal ordinance pertaining to alcoholic beverages.
6. The violation of any provision contained in this chapter.
- (b) For the purposes of this section, the definition of an employee shall include any agent or independent contractor that is working for hire on the licensed premises.

- (c) The city manager or designee, with an order from the Gainesville Municipal court and/or administrative hearing officer, shall have the right to suspend any alcoholic beverage license pending a hearing as provided for in section 6-4-11 where in the judgment of the city manager or designee such action is necessary to protect the public health, safety, welfare or morals.
- (d) The city manager or designee, chief of police or any police department shift commander on duty at the time may close any location holding an alcoholic beverage license for a period not in excess of twenty-four (24) hours in the event there shall occur on the premises any violation of law or municipal ordinance, breach of the peace, disturbance or altercation resulting in violence, or other occurrence which is contrary to the public health, welfare, safety or morals, when in the judgment of the city manager or designee, chief of police or shift commander such action is necessary to protect the public health, welfare, safety or morals.
- (e) In the case of the revocation or surrender of an alcoholic beverage license before expiration, the holder thereof shall not be entitled to receive any refund or fees paid to the City regarding the license to sell alcoholic beverages.
- (f) All licenses issued pursuant to this chapter shall be valid only so long as the licensee is actively engaged in such business, with the exception of holidays, vacations, and periods of redecoration, and in the event the licensee shall cease to be actively engaged in such business such license shall be invalid and the licensee of such business shall immediately notify the city manager or designee and return his license thereto.
- (g) The violation of any of the provisions of this chapter by a holder of an alcoholic beverage license, or his agent, or employee, shall be unlawful, and shall be punishable as provided in section 1-1-7 of this Code, and shall also subject the holder of such license to suspension or revocation of such license or monetary administrative penalty, or any combination thereof as the city manager or designee deems proper.

**Sec. 6-4-11. Hearing on Denial, Suspension or Revocation or Imposition of Monetary Administrative Penalty.**

- (a) Before the denial of any application, including a renewal application, for an alcoholic beverage license or for the transfer of any alcoholic beverage license, or the revocation or suspension of any existing alcoholic beverage license, or for the imposition of a monetary administrative penalty against a licensee, the applicant or licensee, as the case may be, shall be given notice in writing from the city manager or designee to show cause before an administrative hearing officer at a time and place specified therein not less than three (3) days nor more than thirty (30) days from the date of service of the notice, why such application for license or for transfer of license should not be denied, or why such license should not be revoked or suspended as the case may be, or why a monetary administrative penalty should not be imposed, stating the grounds therefor, and at the appointed time and place the applicant or licensee shall have an opportunity to show cause, if any exist, why such application should not be denied or such license revoked or suspended or a monetary administrative penalty imposed after which the administrative hearing officer

shall take such actions as he or she in his or her judgment and discretion, shall deem warranted under the facts.

- (b) The decision of the administrative hearing officer shall be final unless appealed by certiorari to the superior court of Hall County.
- (c) In all instances of a denial of any application for an alcoholic beverage license or the revocation of any existing alcoholic beverage license, the applicant, licensee or any person(s) with twenty-five (25) percent or more interest, shall not reapply for a license for at least one (1) year from the final date of the denial or revocation.

#### **Sec. 6-4-12. Employee Permits.**

- (a) No person shall be employed to dispense, sell, serve, take orders, or mix alcoholic beverages, or be in any managerial position, by an establishment holding a license for the sale of distilled spirits by the package or for consumption on premises or an establishment holding a license for malt beverage or wine for consumption on premises unless such person has been approved by the chief of police or his designee. The individual named on the alcoholic beverage license as the managing agent for such establishment shall be exempt from obtaining an employee permit.
- (b) Upon approval by the chief of police or his designee, such person shall be issued an employee permit which shall contain the name, expiration date, ~~fingerprint~~ and photograph of such employee. Such employee permit shall remain the property of the city and shall be in the possession of the employee at any time he or she is working at any licensed establishment, and shall be produced upon the request of any law enforcement officer of the city.
- (c) No permit shall be issued until such time as a signed application has been filed with the Gainesville Police Department and upon the payment of the non-refundable fee designated in Title 10 of this Code. The applicant shall furnish, at the time of presenting the application, two (2) forms of valid, current identification. Such application shall contain the following information: Applicant's name, date of birth, height, weight, race, sex, address, telephone number, and disclosure of arrest record. Applicant must give permission to the police department to obtain and inspect any criminal history on such applicant which is in the possession of any law enforcement agency.
- (d) No person shall be granted an employee permit that has been convicted, plead guilty, or entered a plea of nolo contendere to any crime involving the sale or furnishing of alcoholic beverages to an underage person or any felony within three (3) years of the date of the application.
- (e) No person shall be granted an employee permit if he or she has been the holder of an alcoholic beverage license or employee permit which has been revoked within five (5) years of the date of the application.
- (f) An employee permit shall be valid for three (3) years from the date of issue. At the expiration of three (3) years, the employee permit may be renewed upon the submission of a renewal application, the payment of the appropriate fee, and upon determination that such individual remains qualified under this chapter.

- (g) The employee permit is non-transferable and is valid only for the individual named on the permit. Such permit is valid for the individual named while employed in any establishment licensed in the city.
- (h) An employee permit may be suspended or revoked by the chief of police if it is determined that the individual has violated any provision of this chapter or committed any offense which would make him or her ineligible to hold such a permit.
- (i) Falsifying or failing to disclose any information required by this chapter shall be grounds for denial or revocation of the employee permit.
- (j) Notification of any denial, suspension, or revocation of an employee permit shall be in writing and served either in person or by certified mail and shall contain the reasons for such action and the notice of the right to appeal the decision.
  - 1. Decisions of the chief of police that adversely affect or aggrieve any applicant, certificate holder, or permit holder under this chapter may be appealed to the administrative hearing officer, as defined in section 1-8-1 of this Code. All appeals shall be submitted in writing to the chief of police within ten (10) calendar days after notification of the adverse decision.
  - 2. A hearing shall be conducted on each appeal within thirty (30) days of the date of the filing of the written appeal, unless a continuance of such hearing is agreed to by the appellant and the chief of police, or unless the hearing is rescheduled by the administrative hearing officer. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses.
  - 3. The appellant shall be notified in writing of the date and time of the hearing at least three (3) calendar days prior to the date of the hearing.
  - 4. The findings of the administrative hearing officer shall be final unless appealed within thirty (30) days of the date of the finding by certiorari to the Superior Court of Hall County.
- (k) No licensee shall allow any employee or manager required to hold an employee permit to work on the premises unless the employee or manager has in their possession a current valid employee permit. Provided, however, that an individual may be employed for a period of time not to exceed fourteen (14) days pending the submission of the application to and the approval of the permit by the police department.

**Sec. 6-4-13. – Sec. 6-4-19. Reserved.**

## **ARTICLE 2. MANUFACTURERS**

### **Sec. 6-4-20. Malt Beverage.**

No individual shall be permitted to own or operate a brewery without first obtaining a proper brewery license from the City. A licensed brewery shall comply with State law relating to the limited sale of malt beverages to the public and may sell on all days and at all times that sales of malt beverages by retailers are lawful within the City.

### **Sec. 6-4-21. Wine.**

A Georgia Farm Winery may engage in retail package sales of wine in a tasting room or the retail consumption sales on premises of its wine and the wine of any other Georgia Farm Winery in a tasting room.

### **Sec. 6-4-22. Distilled Spirits.**

No individual shall be permitted to own or operate a distillery without first obtaining a proper distillery license from the City. A licensed distillery shall comply with State and Federal law relating to the manufacture and limited sale of distilled spirits to the public and may sell on all days and at all times that sales of distilled spirits by retailers are lawful within the City.

**Sec. 6-4-23. – 6-4-29. Reserved.**

## **ARTICLE 3. EXCISE TAX ON MIXED DRINKS CONSUMED ON PREMISES**

### **Sec. 6-4-31. Definitions.**

*Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Agent* means the person designated by the licensee in this application for permit to sell alcoholic beverages by the drink.
2. *Drink* or *mixed drink* shall include any distilled spirits served for consumption on the premises, which may or may not be diluted by water or other substance in solution.
3. *Licensee* means any person who holds a license from the city to engage in the sale of distilled spirits by the drink for consumption on the premises.
4. *Monthly period* means the calendar months of any year.



5. *Purchase price* means the consideration received for the sale of distilled spirits by the drink valued in money, whether received in cash or otherwise, including receipts, cash, credit, property or services of any kind or nature, and also the amount for which credit is allowed by the licensee to the purchaser, without any deduction therefrom whatsoever.
6. *Purchaser* means any person who orders and gives present or future consideration for any distilled spirits by the drink.
7. *Return* means any return filed or required to be filed as herein provided.
8. *Tax* means the tax imposed by this section.

#### **Sec. 6-4-32. Imposition and Rate of Tax.**

There is hereby imposed and levied upon every purchaser of a distilled spirits purchased by the drink within this city a tax in the amount provided in Title 10.

#### **Sec. 6-4-33. Collection of Tax.**

- (a) Every licensee or his agent is hereby authorized and directed to collect the tax imposed herein from purchasers of distilled spirits by the drink within the licensed premises. Such licensee or agent shall furnish such information as may be required by the city to facilitate the collection of the tax.
- (b) In all cases where the collection of food and drinks is by deferred payment or credit, the licensee is liable at the time of and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The city shall have authority to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

#### **Sec. 6-4-34. Determination, Returns and Payments.**

- (a) The tax imposed by this article shall become due and payable from the purchaser at the time of purchase of any mixed drink in this city. All amount of such taxes collected by the licensee shall be due and payable to the city monthly on or before the twentieth day of every month next succeeding each respective monthly period for which this tax is imposed; provided, however, that upon a proper showing that the tax imposed will not be collected until after a regular billing period of the collecting agent, then the collection of the tax may be deferred by the city for an additional period not exceeding thirty (30) days.
- (b) On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the city in such form as the city may prescribe by every licensee liable for the payment of tax hereunder. All returns shall show the gross receipt of the sale of distilled spirits by the drink and the amount of the tax collected on such drinks.
- (c) Licensees collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if such amount

is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under State Law.

#### **Sec. 6-4-35. Deficiency Determinations.**

- (a) If the city has cause to believe that the return or returns of the tax or the amount of the tax required to be paid to the city by any person is not proper, it may compute and determine the amount required to be paid upon the basis of any information that is within or may come into its possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly period.
- (b) The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof from the due date of taxes.
- (c) The city or its designated representatives shall give to the licensee written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the licensee at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.
- (d) Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire.

#### **Sec. 6-4-36. Determination if No Return Made.**

- (a) If any person fails to make a return, the city shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total sales in this city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is in possession of or may come into the possession of the city official. Written notice shall be given in the manner prescribed in section 6-4-35 (c).
- (b) The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof, from the due date of taxes.

#### **Sec. 6-4-37. Penalty for Nonpayment.**

Any person who fails to pay the tax herein imposed or fails to pay any amount of the tax required to be collected and paid to the city within the time required shall pay a penalty of twenty-five (25) percent of the tax or amount of the tax, in addition to the tax or amount of the tax plus interest on the unpaid tax or any portion thereof as set forth in section 6-4-36 (b).

#### **Sec. 6-4-38. Action for Collection.**

- (a) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of

tax required to be collected, the city may bring an action in the courts of this state any other state or of the United States in the name of the city to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

- (b) Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be offset against any future liability for the tax.

#### **Sec. 6-4-39. Overpayment.**

If the licensee determines that he has overpaid or paid more than once, which fact has not been determined by the city, he will have three (3) years from the date of payment to file claim in writing with the City Manager stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it was paid, or from his administrators or administrators.

#### **Sec. 6-4-40. Purchasers or Successors of Business.**

- (a) If any licensee liable for any amount under this chapter sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the city either a receipt reflecting full payment or a certificate stating that no amount is due.
- (b) If the purchaser of a business fails to withhold purchase as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

#### **Sec. 6-4-41. Administration.**

- (a) Every licensee for the sale of alcoholic beverages by the drink in the city shall keep such records, receipts, invoices and other pertinent papers in such form as the city may require.
- (b) The city or any person authorized in writing by the city may examine the books, papers, records, financial reports, equipment and other facilities of any licensee for sale of distilled spirits by the drink and any licensee liable for the tax in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid.
- (c) In administration of the provisions of this subsection, the city may require the filing of reports by any person or class of persons having in such person's or persons' possession or custody information relating to purchases which are subject to the tax. Reports shall be filed with the city when required by the city and shall set forth the purchase price for each purchase, the date or dates of purchase, and such other information as the city may require.

#### **Sec. 6-4-42. Violations.**

- (a) Any person violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-1-7 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the subsection is committed, continued or permitted by such person, and shall be punished accordingly. Any licensee or any other person who fails to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the city or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid.
- (b) Any person violating any of the provisions of this article may, in addition to the other penalties and liabilities provided for herein, have his license or permit revoked as provided for previously herein.

#### **Sec. 6-4-43. – 6-4-49. Reserved.**

### **ARTICLE 4. EXCISE TAX REQUIRED OF WHOLESALE DEALERS**

#### **Sec. 6-4-50. Imposition of Tax.**

There is hereby levied and imposed upon each wholesale dealer and manufacturer distributing malt beverages, wine or distilled spirits within the city an excise tax in the amounts fixed in Title 10.

#### **Sec. 6-4-51. Payment of Taxes.**

- (a) Payment of excise taxes for the distribution of malt beverages, wine or distilled spirits shall be remitted by the tenth day of each month following the month in which deliveries were made.
- (b) Copies of the "summary of sales" showing delivery by each supplier to retailers and/or consumption on the premises licensees shall be furnished to the city's finance department with each monthly payment.

#### **Sec. 6-4-52. – 6-4-59. Reserved.**

### **ARTICLE 5. MALT BEVERAGE AND WINE – ORIGINAL PACKAGE**

#### **Sec. 6-4-60. Distance Requirements.**

- (a) No malt beverage and/or wine shall be offered for sale or sold in an unopened package within one hundred (100) yards of any school building, school grounds or college campus. This subsection shall not apply:

1. To a grocery store licensed for the retail sale of only wine and malt beverages for consumption off the premises, which shall be allowed to sell wine and malt beverages within 100 yards of any school building, school grounds or college campus. As used in this subparagraph, the term “grocery store” means a retail establishment which has a total retail floor space of at least 10,000 square feet of which at least 85 percent is reserved for the sale of food and other nonalcoholic items and conducts all of its sales inside the building containing its retail floor space.
  2. To any premises or location where an alcoholic beverage license was issued or approved prior to July 1, 1981, so long as alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter.
  3. To any premises or location where alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter and a school or college campus is built or erected within the minimum distances provided for in this section.
- (b) No malt beverage and/or wine shall be offered for sale or sold in an unopened package within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government.
- (c) All measurements to determine distances required by this chapter shall be measured as provided for in Section 6-4-110.

#### **Sec. 6-4-61. Hours of Sale.**

The hours of sale of malt beverages and wine at retail and not for consumption on premises are from 7:00 a.m. to 11:45 p.m. on Monday through Saturday and from ~~12:30 p.m.~~ 11:00 a.m. to 11:30 p.m. on Sunday.

#### **Sec. 6-4-62. Growler Sales.**

Package malt beverage licensees or wine licensees, who are not also licensed to sell distilled spirits by the package, may fill growlers with malt beverages and/or wine at the licensed location subject to the following requirements:

1. At least ninety (90) percent of the licensee's total gross sales are from packaged sale of malt beverages and/or wine or the licensee's premises have a minimum of four hundred (400) square feet of floor space dedicated to the display of malt beverages and/or wine offered for sale.
2. A growler shall not exceed sixty-four (64) ounces. Growlers may only be filled from kegs or barrels procured by the licensee from a duly licensed wholesaler.
3. Only professionally sanitized and sealed growlers may be filled and made available for retail sale.
4. Each growler must be securely sealed and removed from the premises in its original sealed condition.
5. Samples of tap malt beverages may be made available. No individual shall be allowed to sample more than a total of forty-eight (48) ounces of malt beverages per day.

6. Samples of wine may be made available. No individual shall be allowed to sample more than a total of twenty-four (24) ounces per day.
7. Individuals may sample both beer and wine, however no individual shall be allowed to sample a total combination of more than forty-eight (48) ounces per day.
8. A licensee may charge a fee for samples of tap malt beverages or wine.

#### **Sec. 6-4-63. No Consumption on Premises.**

- (a) It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of malt beverages or wine by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises.

(b) This section shall not apply in the following circumstances:

1. ~~For~~ For the holder of a temporary limited license as provided for in this chapter during the hours for which the temporary limited license is valid.
- ~~1.2.~~ For drinks consumed within a patio/outdoor area that has been approved by the City and meets the requirements as stated in Section 6-4-89.
- ~~2.3.~~ For samples provided by a representative or salesperson of a manufacturer or ~~wholesaler to a retail dealer or its employees~~ in accordance with O.C.G.A. § 3-3-26.

#### **Sec. 6-4-64. – Sec. 6-4-69. Reserved.**

### **ARTICLE 6. DISTILLED SPIRITS – ORIGINAL PACKAGE**

#### **Sec. 6-4-70. Distance Requirements.**

- (a) No distilled spirits shall be offered for sale or sold in an unopened package within one hundred (100) yards of any church building or within two hundred (200) yards of any school building, education building, school grounds or college campus.
- (b) A new retail package liquor licensed place of business or the relocation of an existing retail package liquor licensed place of business engaged in the retail package sales of distilled spirits shall not be located within five hundred (500) yards of any other business licensed to sell package liquor at retail.
- (c) The distance provided for herein shall not apply:

1. To any premises or location where alcoholic beverages are being sold or dispensed in compliance with the other provisions of this chapter and a school or church is built or erected within the minimum distances provided for in this section.
  2. To any premises or location licensed as an importer, so long as the same is allowed by the state; provided, however, no signs or other forms of advertisement shall be placed on or near the licensed premises, which directly or indirectly advertise that alcoholic beverages are stored or warehoused on the premises.
- (d) No distilled spirits shall be offered for sale or sold in an unopened package within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government.
- (e) All measurements to determine distances required by this chapter shall be measured as provided for in Section 6-4-110.

#### **Sec. 6-4-71. Hours of Sale.**

- (a) The hours of sale of distilled spirits at retail and not for consumption on premises are from 8:00 a.m. to 11:45 p.m. on Monday through Saturday and from ~~12:30 p.m.~~11:00 a.m. to 11:30 p.m. on Sunday.
- (b) No retail dealer of distilled spirits shall be in, or permit others to be in, its place of business Monday through Saturday any time prior to 6:00 a.m. or thirty (30) minutes past the closing time. No retail dealer of distilled spirits shall be in, or permit others to be in, its place of business on Sundays prior to 10:30 a.m. or 30 minutes past the closing time.

#### **Sec. 6-4-72. No Consumption on Premises.**

It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of distilled spirits by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises, except for samples provided by a representative or salesperson of a manufacturer or wholesaler to a retail dealer or its employees in accordance with O.C.G.A. § 3-3-26.

#### **Sec. 6-4-73. Sufficient Lighting Required.**

The building in which each retail dealer of distilled spirits in the unbroken package is located shall contain sufficient lighting so that the building itself, the premises and all entrances are readily visible at all times from the street on which the building is located so as to reveal the inside retail area of the building and so as to reveal all of the outside premises of such building.

**Sec. 6-4-74. – Sec. 6-4-79. Reserved.**

## **ARTICLE 7. CONSUMPTION ON PREMISES OF ALCOHOLIC BEVERAGES**

### **Sec. 6-4-80. Distance Requirements.**

- (a) No malt beverages, wine and/or distilled spirits for consumption on the premises may be offered for sale, sold or dispensed within one hundred (100) yards of any property containing three hundred (300) housing units or fewer, which property is owned or operated by a housing authority created by OCGA § 8-3-1 et seq., also known as the Housing Authorities Law. This subsection shall not apply at any location for which a license has been issued prior to July 1, 2000, or to the renewal of such license.
- (b) All measurements to determine distances required by this Chapter shall be measured as provided for in Section 6-4-110.

### **Sec. 6-4-81. Hours of Sale.**

- (a) The hours of sale for consumption by the drink on the premises where sold are from 8:00 a.m. to 1:30 a.m. on Monday through Friday, from 8:00 a.m. on Saturday through 1:30 a.m. on Sunday, and from and 11:00 a.m. on Sunday to 1:30 a.m. on Monday.
- (b) All alcoholic beverages shall be removed, from the area of the premises utilized by customers or patrons within forty-five (45) minutes after the closing time for the sale of alcoholic beverages.

### **Sec. 6-4-82. Food Volume Ratio for Restaurants.**

- (a) Restaurants shall maintain at least fifty (50) percent of their business volume from the sale of food, private clubs exempted. Food sales shall include all consumable items sold on the premises except alcoholic beverages. The fifty-percent ratio shall be determined on a calendar quarter basis by review of the monthly report submitted by each licensee.
- (b) Monthly reports for the preceding month's alcohol and food sales shall be submitted on forms provided by the city on or before the 20<sup>th</sup> day of the month. In the event monthly reports are delinquent for three consecutive months, a fee of \$100 shall be levied and the licensee shall be placed on probation for a six-month period, which period shall commence on the 21<sup>st</sup> day of the month following the third consecutive delinquency. If monthly reports are delinquent while the licensee is on probation, then the city manager or designee may request give the licensee notice to show cause at a hearing before an administrative hearing officer for as to why the suspension or revocation of such license license should not be revoked or suspended in accordance with section 6-4-11.
- (c) In the event food sales fall below fifty (50) percent of the business volume of the licensee for ~~any two (2) consecutive one~~ quarters, then the city manager or designee may request a hearing for the suspension or revocation of such license in accordance with section 6-4-11. Nothing herein provided shall prevent the city manager or designee from suspending or revoking such license for any other violations of this chapter.



- (d) Authorized officials of the city may examine the records of businesses licensed hereunder at any reasonable time to ascertain that the requirements of this and other provisions of this chapter are met.

#### **Sec. 6-4-83. Sales Volume Ratio for Select Businesses.**

Any business required to pay a business occupation tax that does not meet the criteria in Section 6-4-82, Section 6-4-84, or Section 6-4-85 may obtain a consumption on premises license for malt beverages and wine subject to the following conditions:

- (a) The sale of alcoholic beverages shall be clearly incidental to the primary business conducted on the premises.
- (b) No individual shall be allowed to consume more than forty-eight (48) ounces of malt beverages per day or more than a total of twenty-four (24) ounces of wine per day. Individuals may consume both beer and wine, but shall not consume a total combination of more than forty-eight (48) ounces per day.
- (c) Consumption on the premises licensees shall maintain at least sixty (60) percent of their business volume from the sale of merchandise or services, not including alcoholic beverages. The sixty-percent ratio shall be determined on a calendar quarter basis on the monthly report submitted by each licensee.
- (d) Monthly reports for the preceding month's alcohol and retail or services sales shall be submitted on forms provided by the city on or before the 20<sup>th</sup> day of the month.
- (e) No alcoholic beverages shall be served on Sunday.
- (f) To qualify for a license, a retail or business establishment must be open to the public for business a minimum of 32 hours per week.

#### **Sec. 6-4-84. Reserved.**

#### **Sec. 6-4-85. Non-Profit Organizations with Facilities.**

- (a) Non-profit organizations meeting the criteria of subsection (b) below may obtain a consumption on premises license subject to the following conditions:
  - 1. The sale of alcoholic beverages shall be clearly incidental to the primary function of the non-profit organization on the premises.
  - 2. No alcoholic beverages shall be served on Sunday except as provided by O.C.G.A. § 3-3-7.
- (b) To qualify for a consumption on premises license, the nonprofit organization must be exempt from federal income taxes pursuant to section 501(c), (d) or (e) of the Internal Revenue Code and must have a building, facility or grounds that is primarily used for public education, research, conservation and enjoyment, or that serves as a repository for a collection of literary, natural, or scientific objects of interest, or works of art where such facility or building is arranged, intended, designed and open to be viewed by members of

the public with or without an admission fee. This shall include, but not be limited to, nonprofit botanical gardens or nature science centers.

#### **Sec. 6-4-86. Brown Bagging.**

- (a) It shall be unlawful for a licensee or any other business that has been issued a business occupation tax certificate to allow customers to bring with them their own alcoholic beverages, a practice commonly referred to as “BYOB” or “brown bagging.”
- (b) It shall be unlawful for any alcoholic beverages to be served, stored, kept or consumed by any person on the premises of any business establishment for which a city business/occupation tax certificate has been issued, excluding those businesses with a valid alcoholic beverage license or as otherwise exempted by this chapter.
- (c) The prohibitions in paragraph (a) shall not apply to a private function, art shop, or when contained in a 16 ounce clear plastic cup within the Downtown Dining District and when authorized by the business establishment.
- (d) Art shops, as defined by this chapter are subject to the specific provisions governing the operation of an art shop:
  - 1. An art shop may allow customers to bring in a bottle or bottles of wine and/or malt beverages to be consumed on the premises.
  - 2. The customer must remove any unconsumed wine and or malt beverages from the premises before leaving the premises.
  - 3. The brown bagging of wine and or malt beverages in an art shop shall be subject to this chapter and to state law; including but not limited to the prohibition of consumption by one who is under 21 years of age or intoxicated.
  - 4. An art shop may serve food provided it meets all federal, state and local requirements.

#### **Sec. 6-4-87. No Outside Consumption.**

- (a) A consumption on premises licensee shall not permit a purchaser to remove from the premises any alcoholic beverage from the premises, and it is the licensee's responsibility to ensure that no beverages are sold and carried out.
- (b) It shall be unlawful for any licensee hereunder to make deliveries of any alcoholic beverage beyond the boundaries of the premises covered by the license.
- (c) It is prohibited for customers to gather outside a premises licensed to sell alcoholic beverages and consume alcoholic beverages.

(d) It is prohibited for the manager or any employee to allow persons to gather outside an alcoholic beverage premise and consume alcoholic beverages.

(e) This section shall not apply in the following instances:

1. For events that are sponsored or organized by the City of Gainesville where the alcohol is obtained from a participating business within any City designated area, and is contained in and consumed from an approved, clear plastic container.

2. Where the City Council through a resolution has permitted otherwise.

3. For restaurants that have a valid sidewalk café permit provided that all outdoor activities are contained within the permitted sidewalk café.

~~3-4.~~ For restaurants establishments that have an approved patio/open area under section 6-4-89, provided that all outdoor activities are contained within the approved patio/open area.

~~4-5.~~ For an open air café as defined by this chapter.

~~5-6.~~ Beverages for consumption at a publicly owned or privately owned golf course.

~~6-7.~~ For the carrying out of a partially consumed bottle of wine as defined in Section 6-4-88.

~~7-8.~~ When a temporary limited license has been issued, provided that the person consuming or possessing an alcoholic beverage remains on the licensed premises as defined in Section 6-4-2(ff)(8).

9. For a Downtown Dining District as defined by this chapter.

~~8-10.~~ For home deliveries made in compliance with State Regulations O.C.G.A. § 3-3-10.

(f) Downtown Dining District - Outside consumption of alcoholic beverages permitted.

1. For the purposes of this Chapter only, a Downtown Dining District is defined as follows: A specifically authorized and pedestrian oriented area of the City as established by resolution of Mayor and Council that allows those establishments with a valid alcohol license within such area to dispense and/or serve an alcoholic beverage for carry out purposes, provided all other laws, rules and ordinances are followed.

2. Within a Downtown Dining District, any establishment licensed to sell alcoholic beverages by the drink for consumption on the premises is authorized to dispense an alcoholic beverage in a clear plastic cup; provided, however, that no person shall remove more than two such alcoholic beverage from the licensed premises at a time.

3. Within a Downtown Dining District, no unsealed container in which an alcoholic beverage is carried and consumed shall exceed sixteen (16) fluid ounces in size.

4. It shall be unlawful within a Downtown Dining District for any person to drink, attempt to drink or possess any alcoholic beverage in a can, glass or metal container, on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private. This section shall not prohibit the possession of containers of alcoholic beverages with unbroken seals.
5. No alcoholic beverage purchased pursuant to this provision may be consumed outside of the Downtown Dining District, or upon any private property, without the express consent of the private property owners.
6. Unless authorized by Mayor and Council in the Resolution creating the Downtown Dining District, no alcoholic beverage purchased within the Downtown Dining District pursuant to this provision shall be consumed within the Downtown Dining District on the streets, sidewalks, rights-of-way, and/or parking lots, whether public or private, prior to 12:00 p.m. or later than 12:00 a.m.

#### **Sec. 6-4-88. Partially Consumed Bottles of Wine Purchased with a Meal.**

- (a) Any restaurant which is licensed to sell alcoholic beverages for consumption on the premises may permit a patron to remove one (1) unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the restaurant's premises.
- (b) A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises.
- (c) The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container.
- (d) If transporting in a motor vehicle, the container with the resealed bottle of wine shall be placed in a locked glove compartment, a lock trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

#### **Sec. 6-4-89. Open Area and Patio Sales.**

- (a) Alcoholic beverage sales may be made by a licensed consumption on premises establishment or an establishment licensed to sell growlers in a patio/open area type environment if the establishment has been approved as provided in this section.
- (b) The requirements for approval are:
  1. The patio/open area must be enclosed by some structure and allow providing for public ingress/egress. ~~only through the main licensed premises. The only exception to this would be a fire exit as required by building and fire codes. Such fire exit would not be for general public use unless an emergency exists and would be of the type which sounds an alarm so that the~~

~~establishment would be alerted of unauthorized use if no emergency exists.~~ The height of such structure shall be a minimum of three and one-half (3.5) feet above the patio floor. The structure is not required to be solid nor does it have to restrict visibility into or out of the patio/open area.

2. The patio/open area shall not be required to be covered by a roof.
  3. The patio/open area shall be used merely as an extension of the interior seating area. Service in the patio/open area shall be only by waiter or waitress or by customer self-service at an interior selling location; i.e. no outside bar or service window.
- (c) It is prohibited for an establishment to be in violation of the City's noise ordinance as defined in Chapter 3-8 of the Code of Ordinances and to allow any noise to be created in a patio/open area which may be heard from a distance of one hundred (100) feet from the patio/open area. Any measurement made pursuant to this section shall describe the shortest straight line distance from the patio to the point in question.
- (d) Patio/open area plans must be reviewed and approved on an individual basis by the city manager or designee. Patio/open areas must be permitted and approved by the city's building inspection and fire departments as required by their governing regulations or codes. If the patio/open area is within a multi-tenant development, the applicant must submit a letter of approval from the property owner or management company.
- (e) Nothing contained herein shall prohibit a hotel or motel with a consumption on the premises license from making sales and allowing consumption of alcoholic beverages in the patio areas of such hotel or motel. "Patio areas," as that term is used herein, do not have to conform to the standards in this section.
- (f) Sidewalk cafés approved pursuant to Chapter 6-13 are exempt from this section.
- (g) Licensed consumption on premises establishments located within the City's Midtown Tax Allocation District, as adopted by Ordinance 2006-53, are exempt from subsection (b) of this section.

#### **Sec. 6-4-90. Happy Hour Promotions.**

- (a) As used in this section, the term "*drink*" means a single portion beverage which contains any alcoholic beverage.
- (b) This section shall be construed to cover, include and apply to all alcoholic beverages including malt beverages, wine and distilled spirits for consumption on premises by properly licensed establishments in the city. All consumption on premises licensees are prohibited from selling or giving away alcoholic beverages under the following circumstances:
1. Offering all you can drink for a set price during a set time.
  2. Serving multiple drinks for a single price unless the drinks are part of a variety sampler of which no more than a total of sixteen (16) ounces can be served as part of the sampler and which

sampler shall be comprised of at least four (4) different varieties of malt beverages or wine or three (3) different mixes containing distilled spirits.

3. Making a single price the basis for a required purchase of two (2) or more servings.
  4. Serving alcoholic beverages by the pitcher, except to two (2) or more persons at any one (1) time.
  5. Offering reduced-price drinks to any segment of the population for any period of time as an inducement to patronize the premises; except between the hours of 4:00 p.m. and 8:00 p.m. on Monday through Saturday, drinks may be sold at a reduced price which is no less than half the price usually charged.
  6. Selling alcoholic beverages for less than half the normal retail price, or selling alcoholic beverages in pitchers or in jumbo sizes for less than half the normal retail price. Nothing contained in this subsection shall be construed to prohibit the dispensing of drinks in pitchers or in jumbo sizes, provided that such pitchers or jumbo sizes shall be available at all times that the licensee is open for business.
  7. Using coupons or other special promotional items as an inducement to purchase alcoholic beverages.
  8. Sponsoring, conducting or allowing contests or other promotions which have as their primary purpose increasing the consumption of alcoholic beverages.
  9. Offering or delivering any free alcoholic beverages to the general public except as otherwise allowed by law.
- (c) The prohibitions and restrictions in the foregoing subsection which apply to licensees or agents or employees of licensees shall not:
1. Apply at private functions;
  2. Prohibit the offering of free food or entertainment at any time;
  3. Prohibit including drinks as part of the price of a hotel, travel, entertainment, or meal package;
  4. Prohibit the sale, offer to sell, or delivery of wine or malt beverage by the bottle, pitcher or carafe;
  5. Prohibit any motel or hotel from offering room service to registered guests.

#### **Sec. 6-4-91. Brewpubs.**

- (a) No individual shall be permitted to own or operate a brewpub without first obtaining a proper brewpub license from the city. Each brewpub licensee shall comply with all other applicable state and local license requirements.
- (b) A brewpub license authorizes the holder of such license to:

1. Manufacture on the licensed premises not more than ten thousand (10,000) barrels of malt beverage in a calendar year solely for retail sale.
  2. Operate a restaurant that shall be the sole retail outlet for such malt beverage and may offer for sale for consumption on premises any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this chapter, provided that such alcoholic beverages are purchased from a licensed wholesale dealer and, provided further, in addition to malt beverages manufactured on the premises, each brew pub licensee shall offer for sale commercially available canned or bottled malt beverages purchased from a licensed wholesale dealer.
  3. Sell up to a maximum of five thousand (5,000) barrels annually of such malt beverage to licensed wholesale dealers. Under no circumstances shall such malt beverages be sold by a brewpub licensee to any person holding a retail consumption dealer's license or a retailer's license for the purpose of resale.
  4. Sell malt beverages manufactured on the premises by the package for consumption off the premises.
- (c) Possession of a brewpub license shall not prevent the holder of such license from obtaining any other license available under this chapter for the same premises.
  - (d) A brewpub licensee shall pay all state and local license fees and excise taxes applicable to individuals licensed under this chapter as manufacturers, retailers and, where applicable, wholesale dealers.
  - (e) Except as set forth in this section, a brewpub licensee shall be subject to all sections of this chapter.

#### **Sec. 6-4-92. Private Clubs.**

- (a) Private clubs, meeting the definition of this chapter, are eligible to apply for a license for consumption on premises of alcoholic beverages.
- (b) No license shall be issued or renewed for the sale of alcoholic beverages prior to the furnishing of evidence, satisfactory to the city, that such private club has been approved as a tax exempt entity by the IRS.

#### **Sec. 6-4-93. Gainesville Civic Center.**

- (a) The sale of alcoholic beverages and consumption of mixed drinks on the premises of the Gainesville Civic Center shall be allowed.
- (b) The Director of the Gainesville Parks and Recreation Department, or his designee, may hold an alcoholic beverage license for the Gainesville Civic Center. There shall be no alcoholic beverage license fee paid by the Director of the Gainesville Parks and Recreation Department or his designee.
- (c) The consumption on the premises license provided for herein is exempted from the food sale requirements provided for in section 6-4-82 of this chapter.

- (d) The city may solicit for proposals to be the designee for the Gainesville Parks and Recreation Department for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center.
- (e) Any designee shall obtain a business occupation tax and an alcoholic beverage license for consumption on the premises under this chapter.
- (f) The hours of sale of alcoholic beverages on the premises of the Gainesville Civic Center shall be the same as provided in Section 6-4-81.

**Sec. 6-4-94. – 6-4-99. Reserved.**

**ARTICLE 8. EVENTS**

**Sec. 6-4-100. Non-Profit Special Temporary Event Permit.**

- (a) Bona fide non-profit charitable and civic organizations, colleges and universities desiring to sell alcoholic beverages may apply to the city manager or designee for a special temporary event permit authorizing the organization to sell or distribute alcoholic beverages for a period not to exceed three (3) days as provided in rules 560-2-11-.02 and 560-2-11-.03 of the rules and regulations of the state department of revenue as amended from time to time.
- (b) The non-refundable permit fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application for a special temporary event permit.
- (c) Bona fide non-profit charitable and civic organizations, colleges and universities, if approved for a temporary event, may sell distilled spirits and malt beverages for consumption on premises only. Wine may be sold for consumption on the premises and by the unopened package subject to O.C.G.A. §§ 3-9-3, 3-9-4 and 3-9-5 and subject to distance requirements for package sales as outlined in this chapter. If the temporary event is a wine tasting, then the event shall also be subject to the provisions of section 6-4-104.
- (d) Holders of a special temporary event permit shall be considered the same as any other licensee and subject to all laws, rules and regulations and other applicable sections of this chapter relating thereto.
- (e) No more than six (6) permits may be issued to an organization in any one (1) calendar year pursuant to this section.
- (f) Permits issued pursuant to this section shall be valid only for the place specified in the permit.
- (g) Applicants under this section do not have to obtain alcohol bonds.
- (h) If a designee has been appointed by the Gainesville Parks and Recreation Board for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center, then only the designee shall submit an application for a special temporary event permit to be held at the Gainesville Civic Center.



#### **Sec. 6-4-101. For-Profit Special Temporary Event Permit.**

- (a) A for-profit organization desiring to sell alcoholic beverages may apply to the city manager or designee for a special temporary event permit which, if issued, licenses the event for alcohol sales by the drink.
- (b) A for-profit organization desiring to obtain a special temporary event permit, must possess a valid consumption on premises license for malt beverage, wine or liquor or a valid malt beverage, wine, or distilled spirits package license issued by the city.
- (c) The non-refundable permit fees as required in Title 10 of the Code of Ordinances of the City of Gainesville are due and payable upon the filing of the application for a special temporary event permit.
- (d) Provided a special temporary permit has been issued to a for-profit organization, said organization shall be subject to all laws, rules and regulations and other applicable sections of this chapter relating thereto.
- (e) Permits issued pursuant to this section shall be valid only for the place specified in the application.
- (f) If a designee has been appointed by the Gainesville Parks and Recreation Board for alcoholic beverage services for consumption on the premises at the Gainesville Civic Center, then only the designee shall submit an application for a special temporary event permit to be held at the Gainesville Civic Center.
- (g) No special temporary event permit shall be issued within any property zoned central business during any event that is sponsored or organized by the City of Gainesville.
- (h) The licensee for a permitted special temporary event shall designate and clearly mark, by the use of ropes, barricades, stanchions or similar devices, a specific area within which alcoholic beverages may be consumed.
- (i) Applicants desiring to sell distilled spirits must obtain an alcohol bond as required by the City.

#### **Sec. 6-4-102. Temporary Limited License.**

- (a) A retail dealer that is licensed to sell alcohol for consumption on the premises or a retail dealer licensed to sell only malt beverages and/or wine by the package where 75% of total annual retail sales of the business are from beer or wine sales by the package and/or from charges for samples of beer or wine, may apply for a temporary limited license to allow for the sale of alcohol by the drink for consumption on the premises.
  - 1. Applications for the temporary limited license shall be made by the licensee with the city manager or designee on forms provided by the City.
  - 2. Payment of the non-refundable license fee as provided for in Title 10 shall be paid at the time the application is submitted.
- (b) If issued, the temporary limited license shall allow for outdoor consumption on the premises during an event and shall be valid for one calendar day for the specific event as set forth in the application. For the

purposes of this section, a calendar day for which the temporary limited license is granted will extend to 1:30 a.m.

- (c) The hours and day of sale or distribution of alcoholic beverages at a licensed event shall be conducted in compliance with Section 6-4-81 of this chapter.
- (d) Any licensed retail dealer shall not be granted more than thirty (30) temporary limited licenses per calendar year and any licensed retail dealer shall not be granted more than four (4) per calendar month.
- (e) If a temporary limited license is issued prior to an event, revenue from food and alcohol sales that occur during the time the temporary limited license is valid may be exempt from the food volume ratio requirement stated in Section 6-4-82 of this chapter and from the sales volume ratio requirement stated in Section 6-4-83 of this chapter. If the temporary limited license holder chooses to have food and alcohol exempt from the food volume ratio requirement stated in Section 6-4-82, the food and alcohol sales that occur during the time the temporary limited license is valid, must be reported to the City on a separate report from the monthly sales report that is provided to the City. Any attempt to manipulate food or alcohol sales between days, times or reports may be cause for revocation of the retail dealer's alcohol license.
- (f) No temporary limited license shall be issued within any property zoned central business during any event that is sponsored or organized by the City of Gainesville, unless approved by the City.
- (g) Any retailer dealer receiving a temporary limited license under this section shall comply with all other provisions of this chapter not in conflict with this section.

#### **Sec. 6-4-103. Catered Events.**

- (a) Annual licenses to cater alcoholic beverages by the drink on premises at authorized catered events may be obtained only by those persons, firms or corporations currently licensed by the city for the sale of alcoholic beverages by the drink or for sales of alcohol in the unbroken package.
- (b) Any licensee desiring to obtain a license to be an alcoholic beverage caterer in the City shall submit, in person, a written and signed application on forms provided by City. Only a licensed alcoholic beverage caterer may distribute or sell alcoholic beverages by the drink at an authorized catered event, after the application and issuance of a catered event permit.
- (c) Before a licensed alcoholic beverage caterer may sell or dispense alcoholic beverages at any authorized catered function, such caterer shall apply for a catered event permit from the city manager or designee at least ten (10) working days prior to the event.
  - 1. The application for a catered event permit shall include the name of the alcoholic beverage caterer, the caterer's license number, and the date, address and time of the event.
  - 2. If the catered event permit is granted, it shall be good only for the specific event at the specified address and times set forth in the application, unless otherwise stated by city council by resolution.

3. The permit shall be kept in the vehicle used to transport alcoholic beverages to the event at all times during which the permit is in effect.
- (d) Caterers licensed by the city shall maintain a record of all alcoholic beverages transported for each event, and shall make report and remittance of such taxes with their regular monthly reports to the city.
- (e) No alcoholic beverages shall be transported, distributed, or sold to other than licensed locations in the city, except to permitted catered events, unless otherwise authorized by this chapter or by state law.
- (f) No licensed alcoholic beverage caterer shall employ any person under twenty-one (21) years of age to dispense, serve, sell or handle alcoholic beverages at authorized catered functions.
- (g) No catered event permit will be issued for an event at the Gainesville Civic Center or any location with respect to which any alcohol license has been denied or revoked within the past twelve (12) months; nor for any location with respect to which conduct prohibited in this chapter has previously occurred.
- (h) The hours and days of sale or distribution of alcoholic beverages at an authorized catered event, except for private functions, shall be conducted in compliance with Section 6-4-81 of this chapter. Except as set forth above in this section, an off-premises permit holder must comply with all other provisions set forth in this chapter.

#### **Sec. 6-4-104. Wine Tasting.**

- (a) A request to conduct a wine tasting may be approved by the city manager or designee when such request is made in writing on an application furnished by the city manager or designee, and a non-refundable fee as provided for in Title 10 is submitted. If issued, the wine tasting shall be conducted under the following conditions:
  1. A wine tasting must comply with all local and state laws and regulations pertaining to the sale and distribution of alcoholic beverages in the state and the city.
  2. No wine tasting may be conducted on the premises of any place of business licensed to sell distilled spirits in the unbroken package or container at retail. [This prohibition shall not be construed so as to prohibit the consumption of samples in accordance with section 6-4-63\(b\)\(3\).](#)
- (b) A bona fide non-profit charitable and civic organization that seeks to conduct a wine tasting shall comply with all requirements set forth in O.C.G.A. §§ 3-9-3, 3-9-4, and 3-9-5 and must make application twenty-five (25) days prior to the proposed event on forms supplied by the city.
- (c) A for-profit organization that seeks to conduct a wine tasting and is not licensed shall comply with all requirements set forth in O.C.G.A. § 3-6-20 and must make application twenty-five (25) days prior to the proposed event on forms supplied by the city, and shall obtain the wine secured for the wine tasting through a wholesale dealer possessing a valid license to distribute wine issued by the city.

- (d) Licensees that are licensed to sell wine in the unbroken package are exempt from the requirement to make application for a wine tasting if sixty (60) percent or greater of the total malt beverage and/or wine sales is derived from the sale of wine. Samples of wine may be made available for consumption on the premise provided no individual shall be allowed to sample more than a total of twenty-four (24) ounces per day. A licensee may charge a fee for samples of wine.

#### **Sec. 6-4-105. Home Brew Special Events.**

- (a) Home brewed malt beverages for purposes of this section shall be limited to malt beverages produced by an individual(s) pursuant to the provisions of O.C.G.A. § 3-5-4 and any applicable rules and regulations of the Georgia Department of Revenue.
- (b) A home brew special event may be conducted on the premises of any place of business licensed under this chapter for the sale, storage, or distribution of alcoholic beverages by the package or for consumption on the premises, or may be conducted at locations not otherwise licensed under this chapter.
- (c) All applications for a home brew special event shall be submitted in writing to the city manager or designee, on forms provided by the city, along with a payment of a non-refundable fee as outlined in Title 10.
- (d) At a minimum, applicants shall provide the following information in their application:
  - 1. Name, address, and contact number of the applicant;
  - 2. Location of the event;
  - 3. Date and times at which the event will be held;
  - 4. Estimated number of participants in the event.
- (e) Home brew special events shall be subject to the following regulations:
  - 1. Events shall only be held during legal hours for drinking on premises as defined in this chapter.
  - 2. Consumption of alcoholic beverages at the event shall be limited solely to home brewed malt beverages produced pursuant to O.C.G.A. § 3-5-4. Consumption of other alcoholic beverages shall be prohibited.
  - 3. Consumption of home brewed malt beverages shall be limited solely to participants in and judges of the special event. For the purpose of this section participants shall be either individuals submitting home brewed malt beverages to the event or individuals admitted to the event by the sponsor without having to submit a home brew.
  - 4. At the event, home brewed malt beverages shall not be sold, offered for sale, or made available for consumption by the general public.

5. A home brew special event permittee shall not allow any person to take an open container of alcoholic beverage from the designated event area.
- (f) A home brew special event permittee shall be subject to all laws, rules and regulations of the city and state, including the rules and regulations of the Georgia Department of Revenue and shall be subject to permit revocation for violation thereof.

**Sec. 6-4-106. – 6-4-109. Reserved.**

**ARTICLE 9. RULES AND REGULATIONS**

**Sec. 6-4-110. Measurement of Distances.**

- (a) All measurements to determine distances required by this chapter shall be measured by the most direct route of travel on the ground and shall be measured in the following manner:
  1. In a straight line from the front door of the structure from which alcoholic beverages are sold or offered for sale;
  2. To the front door of the building of a church, government-owned treatment center or a retail package store; or
  3. To the nearest property line of the real property being used for school or educational purposes or property that is owned or operated by a housing authority.

**Sec. 6-4-111. Grandfather Provision for Distance Requirements.**

If the sale of alcoholic beverages was lawful at a location at any time during the 12 months immediately preceding an application for renewal or a new application for an alcoholic beverage license, the premises shall be grandfathered in regarding any distance requirements as outlined in this chapter.

**Sec. 6-4-112. Sales on Election Day.**

No malt beverages, wine or distilled spirits will be sold within two hundred fifty (250) feet of any polling place or of the outer edge of any building within which such polling place is established on primary or election days. As used in this section, the term “day” means that period of time beginning with the opening of the polls and ending with the closing of the polls.

**Sec. 6-4-113. Responsibility of Licensees and Employees.**

- (a) No holder of a license authorizing the sale of alcoholic beverages in the city nor any agent or employee of the licensee, shall do any of the following upon the licensed premises:

1. Knowingly furnish or cause to be furnished or permit any other person in his employ to furnish any minor alcoholic beverages.
  2. Knowingly sell alcoholic beverages to any person while such person is in an intoxicated condition.
  3. Sell alcoholic beverages upon the licensed premises on any day or at any time when such sale or consumption is prohibited by law.
  4. Permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practice on the licensed premises. Such misconduct shall be immediately reported to the city police department.
  5. Sell, offer for sale, possess, or permit the consumption on the licensed premises of any kind of alcoholic beverages, the sale, possession or consumption of which is not authorized under his license.
  6. Add to the contents of a bottle or to refill empty bottles or in any other manner to misrepresent the quantity, quality or brand name of any alcoholic beverage.
- (b) Sell or offer for sale alcoholic beverages by use of vending machines.
- (c) Receive or cause to be delivered at the licensed premises any alcoholic beverages by any means other than by a conveyance owned and operated by a wholesale dealer with a license from the city to make such deliveries. Transportation of alcoholic beverages by any other means shall be grounds for revocation of all licenses concerned.
- (d) The sale of alcoholic beverages for consumption by persons in any back room or side room which is not open to the general public use is prohibited, except that private parties and conventions, or a properly permitted wine tasting, which have been scheduled in advance, may be served in public or private dining rooms or meeting rooms, and provided further that this prohibition shall not apply at private clubs hereunder, nor to the sale for consumption hereunder to the registered guests of any hotel or motel in their designated rooms.
- (e) All alcoholic beverages shall be stored only on the premises for which the license is issued.

#### **Sec. 6-4-114. Financial Interest Prohibited.**

It shall be unlawful for any person to hold an alcoholic beverage license (package or consumption) who also has any direct financial interest in any wholesale alcoholic beverage business. It shall be unlawful for the holder of any alcoholic beverage license (package or consumption) to or accept or receive financial aid or assistance from the holder of any alcoholic beverage manufacturer's or wholesale dealer's license.

#### **Sec. 6-4-115. Employment of Minors.**

- (a) No person shall allow or require a person in his employment under eighteen (18) years of age to dispense, serve, sell or take orders for any alcoholic beverages for consumption on premises.

- (b) No person shall allow or require a person in his employment under eighteen (18) years of age to sell or take orders for any distilled spirits in the unopened package.
- (c) No person shall allow or require a person in his employment under sixteen (16) years of age to sell or take orders for any malt beverages or wine in the unopened package.

#### **Sec. 6-4-116. Regulations Involving Minors.**

- (a) The following regulations involving minors shall apply:
  - 1. No person knowingly, by himself or through another, shall furnish, cause to be furnished, or permit any person in his employ to furnish any alcoholic beverage to any person under twenty-one (21) years of age.
  - 2. No person under twenty-one (21) years of age shall purchase or knowingly possess any alcoholic beverage.
  - 3. No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under twenty-one (21) years of age.
  - 4. No person under twenty-one (21) years of age shall misrepresent his age, identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.
- (b) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually twenty-one (21) years of age or older, it shall be the duty of the person selling or otherwise furnishing such alcoholic beverage to request to see and to be furnished with proper identification in order to verify the age of such person; and the failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than twenty-one (21) years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.
- (c) For purposes of this chapter, "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license or an identification card authorized under O.C.G.A. § 40-5-100 et seq. "Proper identification" shall not include a birth certificate.
- (d) The prohibition contained in subsection (a) above shall not apply with respect to the sale, purchase or possession of alcoholic beverages for consumption:
  - 1. For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state.
  - 2. At a religious ceremony.

3. In the home of the minor with the consent of said minor's parent or legal guardian.

#### **Sec. 6-4-117. Home Delivery**

Home delivery of alcoholic beverages, in accordance with O.C.G.A § 3-3-10, is allowed within in the City.  
Any licensee engaged in home delivery shall comply with all State law and regulations.

#### **Sec. 6-4-1178. Violations.**

Any person violating any of the provisions of this chapter shall be punished as provided in section 1-1-7 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punished accordingly.



**Date Submitted:** 1/28/2021  
**Presenter:** Linda MacGregor  
**Item of Business:** BR-2021-07 Gainesville 85 Business Park Covenants  
**Meeting Date:** 2/2/2021

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**Purpose of Request:**

To execute and record Covenants associated with the Gainesville 85 Business Park.

**History/Background:**

**Facts & Issues for Consideration:**

Covenants establish standards for the benefit of all owners of the business park and a method for the administration, maintenance, preservation, use, and enjoyment of the business park.

**Department Recommendation:**

The Department of Water Resources recommends approval of the resolutions and covenants for the Business Park.

**Department Director:**

Linda MacGregor

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**If funding is involved, are funds approved within the current budget?**

Yes

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

| Description                                                                | Type                   |
|----------------------------------------------------------------------------|------------------------|
| <input type="checkbox"/> BR-2021-07 Gainesville 85 Business Park Covenants | Resolution             |
| <input type="checkbox"/> Business Park Declaration                         | Contract/Agreement/MOU |

**RESOLUTION BR-2021-07**

**AUTHORIZATION TO EXECUTE AND RECORD DECLARATION OF COVENANTS,  
RESTRICTIONS, AND EASEMENTS FOR GAINESVILLE 85 BUSINESS PARK**

**WHEREAS**, the City of Gainesville ("the City") wishes to provide economic opportunities for the citizens of Gainesville and Hall County through the development of a business park on real property owned by the City, which business park is known as the Gainesville 85 Business Park; and

**WHEREAS**, the City desires to impose upon the Gainesville 85 Business Park mutually beneficial restrictions for the benefit of all owners of real property within the Gainesville 85 Business Park; and

**WHEREAS**, the City desires to provide for reasonable procedures for the overall development of the Gainesville 85 Business Park and to establish a method for the administration, maintenance, preservation, use, and enjoyment of the real property within the Gainesville 85 Business Park; and

**WHEREAS**, the City desires to subject the real property within the Gainesville 85 Business Park to the Declaration of Covenants, Restrictions, and Easements attached to this Resolution.

**NOW, THEREFORE, BE IT RESOLVED THAT** the governing body for the City of Gainesville hereby authorizes the Mayor, City Manager, and City Attorney to execute and record a document in substantially the same form as the attached Declaration of Covenants, Restrictions, and Easements for Gainesville 85 Business Park and to sign such additional documents as necessary to effectuate the approvals set forth in this Resolution.

**Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**C. Danny Dunagan, Jr., Mayor**

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

\_\_\_\_\_  
**Denise O. Jordan, City Clerk**

After recording, return to:  
Hulsey, Oliver & Mahar, LLP  
Attn: T. Wesley Robinson  
PO Box 1457  
Gainesville, GA 30503

## **DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR GAINESVILLE 85 BUSINESS PARK**

This Declaration of Covenants, Restrictions, and Easements for Gainesville 85 Business Park is made this \_\_\_ day of \_\_\_\_\_, 2021, by the **City of Gainesville, Georgia**, a body politic and corporate and political subdivision of the State of Georgia (hereinafter referred to as “Declarant”).

### **W I T N E S S E T H:**

**WHEREAS**, Declarant is the owner of real property located in Hall County, Georgia, more particularly described on **Exhibit A** attached hereto and depicted on the site plan attached hereto as **Exhibit B** (hereinafter “the Property”); and

**WHEREAS**, Declarant, in conjunction with the Gainesville and Hall County Development Authority is developing on the Property a business park known as Gainesville 85 Business Park and desires to impose upon the Property mutually beneficial restrictions for the benefit of all owners of property within Gainesville 85 Business Park. Declarant desires to provide for reasonable procedures for the overall development of Gainesville 85 Business Park and to establish a method for the administration, maintenance, preservation, use, and enjoyment of the Property which will be subject to this Declaration; and

**WHEREAS**, Declarant will cause the Association (as hereinafter defined) to be formed as a non-profit organization to perform certain functions for the common good and general welfare of each Owner and Occupant of the Property.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described on **Exhibit A**, and any additional property that may be subsequently added to and subjected to this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions. This Declaration is intended to protect the value and desirability of the Property and this Declaration shall run with the title to the real property submitted to this Declaration and shall be binding on all parties having any right, title, or interest in any property

subject to this Declaration or any part thereof, and their heirs, successors, successors-in-title and assigns; the easements, restrictions, covenants, and conditions of this Declaration shall inure to the benefit of each Owner of Property subjected to this Declaration and to the benefit of the Association.

This document does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et. seq.* and the Association is not subject to the Georgia Property Owner's Association Act, O.C.G.A. § 44-3-220, *et. seq.*

## **ARTICLE I DEFINITIONS**

The following words, when used in this Declaration, shall have the meanings assigned to them below, unless the context requires otherwise:

“Annual Assessments” shall mean the regular assessments for the Common Expenses levied from time to time in accordance with and as more fully described in Article V hereof.

“Areas of Common Responsibility” shall mean any property or Improvements maintained, improved, or landscaped from time to time by the Declarant, the Development Review Committee, or the Association, and each of their respective agents or representatives, which property or improvements shall include, without limitation (a) all Common Areas; (b) property which is owned by a Governmental Entity or which has been dedicated to a Governmental Entity where the terms and conditions of the dedication require continued maintenance of the dedicated property by the Declarant, the Development Review Committee, or the Association, or which is otherwise maintained by the Declarant, the Development Review Committee, or the Association, or their respective agents and representatives, regardless of whether such property is also maintained by the Governmental Entity; (c) Stormwater Management Facilities, as designated by Declarant located on and serving one or more Lots and maintained by the Declarant, the Development Review Committee, or the Association, or their respective agents and representatives, as provided herein; and (d) such other portions of Lots maintained, improved, or landscaped by the Declarant, the Development Review Committee, or the Association, or their respective agents and representatives, pursuant to the terms of this Declaration. The Declarant retains the right to change the designation of any property owned by Declarant as an Area of Common Responsibility for so long as it remains owned by the Declarant.

“Assessments” shall mean, collectively, the Annual Assessments and the Special Assessments levied from time to time in accordance with and as more fully described in Article V hereof.

“Association” shall mean the non-profit, non-stock membership corporation to be incorporated under the Georgia Non-Profit Corporation Code and named “Gainesville 85 Business Park Owner's Association, Inc.” (or another similar, available name conforming to Governmental Requirements), its successors and assigns. Unless otherwise expressly provided herein, any and all obligations, rights, powers, and authority granted to the Association by this Declaration shall inure to and be vested in the Declarant until the Association is incorporated.

“Board” shall mean the board of directors of the Association.

“Common Areas” shall mean all real property, including any Improvements located thereon from time to time, owned, leased, or used by the Declarant, and thereafter the Association, for the common use and enjoyment of the Owners, their respective guests and invitees, or for the common benefit of Gainesville 85 Business Park. Common Areas may include, without limitation (a) those areas designated by the Declarant, and thereafter the Association, as a “Common Area” by instrument or plat recorded in the records of the Clerk of the Superior Court of Hall County, Georgia; (b) Stormwater Management Facilities and related Stormwater- Management-Facility infrastructure, as designated by the Declarant; and (c) conservation easement areas as designated by the Declarant, if any. Common Areas shall not include any property which has been dedicated to a Governmental Entity. Common Areas may be owned by the Declarant and shall be conveyed by the Declarant to the Association at or before Turnover. It is intended that all roadways within the Property will be public streets. The Declarant retains the right to change the designation of any property owned by Declarant as Common Area for so long as it remains owned by the Declarant.

“Common Expenses” shall mean the expenses incurred in connection with the administration of the Association and Development Review Committee, and for Improvements on and maintenance and operation of the Common Areas or any Areas of Common Responsibility by the Declarant, the Association, or the Development Review Committee, including, but not limited to, the expenses related to taxes and insurance, utility bills, repair and replacement of Improvements, supervision and security, signage, landscaping, drainage, irrigation and litter control.

“Declarant” shall mean the City of Gainesville, a body politic and corporate and political subdivision of the State of Georgia, its successors-in-title and assigns, provided any successor-in-title or assignee acquires or is conveyed all or any portion of the Property for the purpose of development or sale, and provided further that the “Declarant” designates the grantee of such conveyance to be the “Declarant” under this Declaration. It is the intent of the Declarant that the Property will be conveyed to and the Declarant’s Rights under this Declaration will be assigned to the Gainesville and Hall County Development Authority. Upon a grantor Declarant’s designation of a successor Declarant in an instrument of conveyance, all rights and obligations of the former Declarant in and to such status as Declarant shall cease. Unless otherwise expressly provided herein, any duty, obligation, rights, power or authority granted to the Association by this Declaration shall inure to the Declarant until the incorporation of the Association.

“Declaration” shall mean and refer to this Declaration of Covenants, Restrictions and Easements for Gainesville 85 Business Park, and any and all subsequent Amendments thereto.

“Development Guidelines” shall generally mean the standards required for development on the Property as may be set forth in this Declaration, as amended from time to time, or as otherwise may be separately imposed by any rules or regulations adopted by the Declarant, the

Development Review Committee, or the Association. The Development Guidelines shall at all times be subject to any additional or more restrictive Governmental Requirements.

“Development Review Committee” shall mean the Development Review Committee created pursuant to Article III of this Declaration.

“Governmental Entity” shall mean the State of Georgia, Hall County, the City of Gainesville, and any city, town, or other federal, regional, state, county, or municipal government or quasi-governmental entity (including, without limitation, any agency, authority, subdivision, department or bureau thereof) with jurisdiction over all or any portion of the Property.

“Governmental Requirements” shall mean any laws, statutes, permits, policies, ordinances, rules, regulations, or requirements of any Governmental Entity.

“Improvement” shall mean any structure or other improvement of any kind, whether below, at, or above grade, located anywhere on the Property, including, but not limited to, all permanent or temporary buildings, structures, walks, towers, storage tanks, patios, loading facilities, driveways, signs, docks, walls, fences, screens, parking areas, drainage conduits, mechanical equipment, telecommunications equipment, berms, landscaping, light fixtures, site grading, other artificial earth movement, and any subsequent replacement, rebuilding, expansion or alteration thereof.

“Lot” shall mean a subdivided lot, parcel, tract, or portion of the Property subdivided as a Lot by the Declarant from time to time pursuant to the terms of this Declaration.

“Member” shall mean any Owner.

“Mortgagee” shall mean the holder of fee title or a security interest in any Lot by virtue of any mortgage, deed of trust, deed to secure debt or other security instrument, and that Mortgagee’s successors and assigns.

“Occupant” shall mean any person occupying all or any portion of a building located on a Lot for any period of time, regardless of whether such person is a lessee, sublessee, tenant, subtenant, licensee, or the Owner of the Lot.

“Owner” shall mean the one (1) or more persons or entities (including Declarant) that are the record owner of fee simple title to any Lot hereafter subjected to this Declaration, but excluding in all cases any party holding an interest in a Lot hereafter subjected to this Declaration merely as security for the performance of an obligation. An Owner may, from time to time, expressly designate an Occupant as the “Owner” hereunder in a lease from the Owner to the Occupant with a term in excess of one (1) year, provided that at any time there shall be only one (1) “Owner” of a Lot or any portion of the Property for purposes of this Declaration.

“Owner’s Pro rata Share” means at the time of such determination, that number expressed as a percentage (rounded to the nearest one-hundredth of a percent) obtained by dividing the acreage within any such Owner’s Lot by the aggregate amount of acreage within the Property

subject to this Declaration that has been designated as a Lot, which has been conveyed to an Owner other than Declarant.

“Person” shall mean any natural person, trust, corporation, limited liability company, association, partnership, joint venture or other public or private legal business entity.

“Plans” shall mean the applicable plans and designs outlining the nature, kind, shape, height, materials, and location of any Improvements on the Property, including, without limitation, site plans, grading plans, architectural elevations, signage details, and landscape plans.

“Property” shall mean the real property described on **Exhibit A** attached hereto, and any additional property subjected to this Declaration pursuant to Article II, Section 4. The Property shall not refer to any property released from the terms and conditions of this Declaration pursuant to Article II, Section 4.

“Special Assessments” shall mean those special assessments other than Annual Assessments levied from time to time which are established and collected for the purpose of defraying, in whole or in part, any shortfall related to Common Expenses or the cost of any construction, reconstruction, repair, or replacement of a capital Improvement upon or serving any Common Areas or Areas of Common Responsibility.

“Stormwater Management Facility” shall mean a system on or related to the Property designed and constructed or implemented (a) to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, or (b) to affect the quantity and quality of discharges of such water, as may be permitted by Governmental Requirements.

“Turnover” shall mean the transfer of Declarant’s power to appoint or remove directors and officers of the Association, upon the first to occur of: (a) the date that is ninety (90) days after the date upon which all of the Property, other than the Common Area have been conveyed by Declarant to Owners other than Declarant; or (b) a surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by the Declarant.

## **ARTICLE II PROPERTY RIGHTS AND CONTROL**

Section 1. Consent to Declaration. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, shall take such interest subject to this Declaration and will be deemed to have assented to the terms and conditions hereof, whether or not (a) assent is expressed in a grantee’s deed or instrument of conveyance, (b) such deed or conveyance is signed by the grantee thereof, or (c) any grantee otherwise consents in writing.

Section 2. Control.

(a) The authority and power to enforce the terms and conditions of this Declaration and any restrictions set forth herein, create and enforce the Development Guidelines, and to exercise any and all rights of the Association, until the incorporation of the Association, shall be vested in and inure solely to the Declarant. The Declarant may, in its sole discretion, delegate all or a portion of such authority and power, including the right to create and enforce Development Guidelines, to the Development Review Committee established pursuant to Article III hereof, in accordance with terms and conditions outlined herein. The incorporation of the Association shall occur at such time as Declarant may determine in its sole discretion, but in any event prior to Turnover.

(b) Declarant shall have the right and power to subdivide all or any portion of the Property owned by Declarant, without the joinder or consent of any other Person, into Lots. The Declarant shall exercise such right and power from time to time by (i) designating the Lot in a deed conveying a portion of the Property to an Owner, or (ii) designating the Lot or Lots Declarant desires to designate as such by the terms of this Declaration; along with causing an appropriate plat or plats to be prepared of the Lot or Lots that Declarant desires to designate as such and by duly filing such plat or plats for public record in the Office of the Clerk of the Superior Court of Hall County, Georgia. All plats are subject to the approval by the City of Gainesville prior to recording. Declarant shall have the further right and power, but only with respect to portions of the Property owned by Declarant, to withdraw its designation of any part thereof as a Lot or Lots, to re-designate previously designated areas thereof as a Lot or Lots having different boundaries and configurations from those previously described, to re-combine two (2) or more previously designated Lots, and to divide or subdivide a Lot into two (2) or more Lots. To accomplish any withdrawal, re-designation, re-combination, or subdivision of a Lot or Lots, Declarant shall make express provision in a deed conveying all or any portion of the Property then owned by Declarant to an Owner and by filing in the public records an appropriate plat, which plat shall expressly refer to any other plat previously filed of public record which is superseded in whole or in part by the new plat. Except for the rights granted to Declarant under this Section 2, no Lot may be subdivided without the prior written consent of the Declarant at any time prior to Turnover, and following Turnover, without the prior written consent of the Association. All Lot withdrawals, re-designations, re-combinations and subdivisions shall comply with the terms and provisions of all applicable Governmental Requirements, including, without limitations, any zoning or development ordinance of the City of Gainesville, Georgia

Section 3. Ownership of Common Areas. Legal title in and to the Common Areas (or if such Common Areas are created or exist by virtue of a grant or reservation of easement, then the easement right and the benefit of use in and to such Common Areas) shall be vested in the Declarant until the Declarant conveys the Common Areas to the Association, which conveyance may occur from time to time and at any time, but in any event not later than the date which is ninety (90) days after Turnover. The Declarant or the Association, as the case may be, shall control the benefit, use, and enjoyment of the Common Areas. Declarant shall have the right at any time to convey or cause to be conveyed to the Association all or any portion of the Property owned by the Declarant, whether or not such portion of the Property was a Common Area prior to the conveyance, and which conveyance shall be by quitclaim deed and subject to all matters of record. Declarant or the Association, as the case may be, shall have the right, at any time, to dedicate or transfer all or any part of the Common Areas to any Governmental Entity, utility companies, public agencies or authorities for such purposes and subject to any conditions as Declarant or the



Association, as applicable, may determine to be necessary or appropriate. Declarant or the Association shall further have the right to grant easements and rights-of-way to Governmental Entities, utility companies, and public agencies or authorities as it shall deem necessary for the proper service and maintenance of the Common Areas or any other portion of the Property; provided, however, that if any such easements or rights-of-way are to be located within the boundary lines of a Lot, Declarant or the Association, as applicable, shall, to the extent reasonably possible, attempt to limit the location thereof to setback areas or other areas so as to not materially and adversely affect the development and use of any Lot. The Common Areas shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof. Notwithstanding anything contained herein to the contrary, it is intended that the roads within the Property will be public roads, with ownership retained by the City of Gainesville. It is also anticipated that the City of Gainesville will retain ownership of significant portions of the Property that will not be Common Area and will be withdrawn from these covenants at a later date. Declarant may, upon written notice to the Association, require reconveyance by the Association to the Declarant, or to the City, of any Common Area or any portion thereof, improved or unimproved, at no charge to Declarant, or the City, without a vote of the Owners/members of the Association, if the Common Area or portion thereof is: (a) found by Declarant to have been conveyed in error; (b) needed by Declarant or the City to make adjustments in property boundary lines; or (c) reasonably determined by Declarant to be needed by Declarant or the City due to changes in the overall scheme of development for the park. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and reconveyance and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms necessary to effectuate and document any such conveyance or reconveyance, and all acts of such attorney-in-fact are hereby ratified.

Section 4. Additional Property and Release of Property. Declarant may, at any time prior to Turnover, and with written approval of the City if the City is no longer the Declarant by an amendment filed in the records of the Clerk of Superior Court of Hall County, Georgia, (a) subject additional property contiguous to the property described on **Exhibit A** to this Declaration, and (b) only with respect to portions of the Property owned by Declarant or the City, release portions of the Property from the terms and conditions of this Declaration. Notwithstanding anything contained herein to the contrary, even if Declarant's rights are assigned by the City of Gainesville, the City of Gainesville retains the absolute right to withdraw any portion of the Property now or hereinafter owned by the City of Gainesville, from the application of these Covenants.

Section 5. Insurance. While either the Declarant or the Association (a) holds title to any Common Areas, or (b) undertakes to maintain, improve, or landscape any Area of Common Responsibility, the Declarant or the Association, as the case may be, shall obtain commercial general liability insurance (with a limit of not less than \$1,000,000.00 on an occurrence basis and \$2,000,000.00 in the aggregate), and property insurance covering the Common Areas and any Improvements thereon, with such coverage and with such limits as the title holder of the Common Areas may determine, from time to time, except as may be expressly set forth herein. Any premiums for insurance policies maintained by or on behalf of the Declarant or the Association shall be a Common Expense. In the event any insurance proceeds are not sufficient to defray the

cost of repair to or reconstruction of any Common Area or Improvements thereon, the Declarant or the Association shall have the authority to and shall levy a Special Assessment against all Owners in sufficient amounts to provide funds to pay such excess costs of repair or reconstruction. Each Owner shall obtain additional insurance, at its own expense, affording commercial general liability coverage, along with fire and extended property damage coverage upon its Lot and its Improvements. Nothing herein shall prevent the Declarant or the Association from obtaining additional insurance coverages as each may determine from time to time, including, without limitation, an Association policy with coverage for Directors & Officers liability and coverage for employee theft.

### **ARTICLE III DEVELOPMENT AND ARCHITECTURAL CONTROL**

Section 1. Creation. The Development Review Committee shall consist of five (5) individual natural persons. The members of the Development Review Committee shall be appointed by Declarant. The Development Review Committee shall be a committee of the Association upon the incorporation of the Association. Upon the incorporation of the Association the right to appoint and remove the members of the Development Review Committee shall remain vested in Declarant, as specifically provided herein, until Turnover, at which time the right to appoint or remove Development Review Committee members shall be vested solely in the Association and exercised in accordance with the by-laws of the Association.

Section 2. Duties. No Improvement may be commenced, erected, or maintained upon the Property, nor may any exterior addition or change to any Improvement be made until Plans for the Improvement have been submitted to and approved by the Development Review Committee in writing.

Section 3. Approval. Owners shall submit all applicable Plans to the Development Review Committee in such form and detail as the Development Review Committee may deem necessary, and the Development Review Committee shall approve or disapprove the Plans within thirty (30) days. Each Owner shall, in the Plans, conspicuously note any proposed Improvements which may conflict with the Development Guidelines. In the event the Development Review Committee fails to approve or disapprove Plans within thirty (30) days, the Development Review Committee shall be deemed to have approved those portions of the Plans which do not conflict with the Development Guidelines. In no event may any Owner, without an express written variance issued by the Development Review Committee, commence construction of any Improvements unless and until Plans therefore are approved by the Development Review Committee. The Development Review Committee may, in its sole discretion, disapprove (a) any incomplete plans or (b) any Plans deemed by the Development Review Committee to be contrary to the best interests of the Property or any Owners. In the event the Development Review Committee expressly disapproves any Plans, the Owner may resubmit corrected, amended, or revised Plans to the Development Review Committee not sooner than ten (10) days after receipt of the disapproval. Any Plans for any temporary structures shall include provisions for dismantling and removing the temporary structures. Decisions of the Development Review Committee shall be made upon the majority vote of the members of the Development Review Committee unless otherwise expressly provided in the Bylaws of the Association.

Section 4. Interior Alterations. An Owner may make Improvements and alterations within the interior of any building on its Lot without obtaining Development Review Committee approval therefor; provided, however, that no Owner shall make any structural alterations in or to Improvements on its Lot or remove any portion thereof or make any additions thereto or do anything else that changes the exterior appearance of the Owner's Improvements without first submitting Plans therefor to and obtaining the approval of the Development Review Committee.

Section 5. Violations. If an Owner proceeds to construct Improvements without the approvals required by this Article III, the Declarant, the Development Review Committee, the Association, and every Owner shall be irreparably harmed thereby, and the Declarant, the Development Review Committee, the Association, and each Owner may have no adequate remedy at law for an Owner's breach of this Article III. Therefore, in the event any Owner or Occupant, or their agents or representatives, commences any Improvement without the approvals required pursuant to this Article III, then the Declarant and the Development Review Committee shall have the right to take any action necessary to obtain a restraining order barring the Improvements from a court having proper jurisdiction over the matter. The foregoing rights shall inure to the Association upon the incorporation of the Association. The costs incurred by the Declarant, Development Review Committee, or Association for any successful enforcement of this Declaration shall be levied against the Owner of the Lot upon which such construction was commenced.

Section 6. Variances. The Development Review Committee shall have the power and authority, in its sole discretion, to grant variances in writing to any Owner, modifying or waiving the Owner's compliance with any portion of the Development Guidelines. All variances shall be reasonably consistent with the terms, conditions, and purpose of this Declaration, and shall not materially or adversely affect any existing Improvement(s). No waiver or variance shall be construed to apply to any Lot or any matter other than the particular Lot or matter that is the subject of the waiver or variance, and no waiver or variance shall be construed as an ongoing or continuing waiver of or variance as to any rights and duties imposed by this Declaration, which shall continue, but for the particular waiver or variance, in full force and effect.

Section 7. Liability. Declarant, the Association, the Board or any of its members, and the Development Review Committee or any of its members, shall not, individually or in combination, be liable in damages or otherwise to anyone or any business entity submitting Plans for approval or to any Owner affected by an action taken with respect to such a submission, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Plans. Declarant, the Association, the Board or any of its members, and the Development Review Committee or any of construction, design, engineering, or related defect associated with any Improvement constructed on the Property. Without limiting the foregoing, in no event shall any approval, inspection, or certification given by the Development Review Committee, the Declarant, or the Association with respect to any Plans or inspection or approval of any Improvements be in any way deemed to be a warranty of compliance with any applicable laws, rules, regulations, codes or guidelines, including, but not limited to, any health, safety, building or zoning codes, laws, rules or regulations.

Section 8. Review Fees. The Development Review Committee may establish a reasonable fee for review of any plans or variance request and require the payment of that fee prior to review.

Section 9. Innovative Ideas. Gainesville 85 Business Park is striving to be a 21st century business park with innovative ideas incorporated within the business park. Innovative ideas could include, but are not limited to; energy efficient technologies, water conservation practices, public outreach and education methods, environmental wellness measures, and innovative stormwater best management practices. Innovative design measures are encouraged, but all will require approval from either the Director of Water Resources or the Director of Community and Economic Development of the City of Gainesville as well as Development Review Committee.

#### **ARTICLE IV ASSOCIATION**

Section 1. Purpose. The Association, once formed, shall exist for the sole purpose of performing certain functions for the common good and general welfare of the Owners and of the Property. The Association shall not take any action inconsistent with the promotion of the common good and welfare of the Owners and of the Property. The Board shall manage and control the affairs of the Association. The number of directors and the method of election of directors to the Board after Turnover shall be set forth in the by-laws of the Association.

Section 2. Membership. Every person or entity who is an Owner shall be deemed to be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot; provided, however, that if an Occupant has been designated as the “Owner” of a Lot as provided herein, only the Occupant (and not the record owner) shall have a membership and be entitled to vote while designated as the Owner.

Section 3. Voting. As may be more fully set forth in the articles of incorporation or the bylaws of the Association:

(a) Each Owner, with the exception of Declarant, shall be a “Class A” Member of the Association and shall be entitled to vote based on the Owner’s Pro rata Share for each Lot owned so long as the Member is in good standing. When more than one (1) individual or entity holds a fee ownership interest in a single Lot, all such individuals and entities shall be Members, but they will collectively be entitled to the vote based on the Owner’s Pro rata Share allocated to such Lot. In the event of joint ownership of a Lot, the vote for the Lot may be exercised as the Owners shall collectively determine, however, the failure of joint owners to agree on how to cast their vote with respect to any matter before the Association shall be deemed an abstention as to such matters. In no event shall the Association be required to make any determination with respect to the casting of votes by joint Owners.

(b) The Declarant shall be the sole “Class B” Member and shall be entitled to the total number of outstanding Class A votes plus one (1). The Class B membership shall terminate and be converted to Class A memberships upon Turnover, with all of the rights of Class A membership as may be set forth herein.

(c) The Declarant (until Turnover) or the Association may suspend the voting rights of any Member who is delinquent in the payment of any Assessment levied by the Association or who is in violation of any rules and regulations adopted by the Association.

Section 4. Appointment of Officers and Directors; Turnover.

(a) Until Turnover, Declarant shall set the number of Directors and appoint and remove all of the members of the Board.

(b) Upon Turnover, the right to appoint and remove directors and officers of the Association shall automatically pass to the Owners. At the time of Turnover, a special meeting of the Association shall be called by the Declarant, and the Members shall elect a Board, which shall immediately undertake its responsibilities. Declarant shall deliver to the Board the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association in Declarant's possession.

Section 5. Insurance. In addition to any insurance required under Article II, Section 5, the Association may obtain commercial general liability insurance and property insurance covering the Common Areas and any Improvements thereon providing such coverage and with such limits as the Association may determine, from time to time. Any premiums for insurance policies maintained by or on behalf of the Association shall be a Common Expense. In the event any insurance proceeds paid to the Association are not sufficient to defray the cost of repair to or reconstruction of any Common Areas or Improvements thereon, the Association shall have the authority to and shall levy a Special Assessment against all Owners in sufficient amounts to provide funds to pay such excess costs of repair or reconstruction. Each Owner shall obtain additional insurance, at its own expense, affording commercial general liability coverage, along with fire and extended property damage coverage upon its Lot and its Improvements.

**ARTICLE V  
MAINTENANCE AND ASSESSMENTS**

Section 1. Common Areas. The Declarant, until the incorporation of the Association, shall maintain and replace, and keep in good repair the Common Areas and the Areas of Common Responsibility, including, without limitation, all landscaping and Improvements situated upon or serving the Common Areas and the Areas of Common Responsibility. The foregoing shall be the responsibility of the Association upon the incorporation of the Association. The cost of the Declarant's or the Association's maintenance obligations shall be a Common Expense.

Section 2. Lots. Each Owner shall be solely responsible for maintaining the portions of its Lot and all Improvements thereon in a safe, clean, and attractive condition, free of all paper, debris, and trash, and in a manner consistent with the Development Guidelines and with the general appearance of other portions of the Property. Without limiting the foregoing, each Owner shall promptly remove all litter, trash, refuse, and waste; mow the lawn on a regular basis; prune trees and shrubs; water landscaped areas; keep all Improvements, exterior lighting, and maintenance facilities in good repair and working order; keep landscaped areas alive, free of weeds, and

attractive; keep driveways and parking areas in good repair; promptly repair exterior damage to Improvements. The Owner and Occupant of any Lot shall observe all building codes, health regulations, zoning restrictions, or similar Governmental Requirements. The Declarant, until the incorporation of the Association, shall have the right, privilege, and license to make any and all corrections, repairs, Improvements, and landscape maintenance at the expense of the Owner should the Owner of any Lot fail to remedy any deficiency in the maintenance of the landscaping and general maintenance of the Owner's Lot within seven (7) days' written notice. The foregoing right, privilege, and license shall inure to the Association upon the incorporation of the Association. All costs incurred by the Declarant or the Association as a result of performing any maintenance obligation of an Owner shall be included with the Assessments levied as to that Owner, and each Person who is an Owner shall be personally liable to the Declarant or the Association, as the case may be, for all direct or indirect costs incurred by the Declarant or Association as a result of performing repairs or maintenance on behalf of an Owner pursuant to this Section.

### Section 3. Creation of a Lien and Obligation for Assessments.

(a) Every Owner of a Lot, by acceptance of a deed therefor, agrees that the Declarant, until the incorporation of the Association, may levy, and each Owner agrees to pay, all Assessments. The foregoing right shall inure to the Association upon the incorporation of the Association. The Annual Assessments shall be used for Common Expenses. No Owner may waive or otherwise escape liability for Assessments for any reason, including, without limitation, by the non-use of any Common Area or by abandoning a Lot or any Improvement thereon.

(b) All Assessments, together with any interest (as provided in Section 7 of this Article V), collection costs, and reasonable attorneys' fees that may accrue due to an Owner's failure to pay Assessments in a timely manner, shall be charged on the Lots and shall be (i) a continuing lien upon any Lot against which each Assessment is made, and (ii) the personal obligation of any Person who is an Owner of a Lot at the time each Assessment is levied. Each Owner shall be personally liable for all Assessments against the Lot of such Owner coming due while such Owner is the holder of title, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the personal liability of a grantee for the unpaid assessments of its grantor (including, but not limited to any interest, costs or reasonable attorneys' fees applicable to or related to such unpaid assessments) shall not apply to any Mortgagee holding a first priority mortgage taking title through foreclosure proceedings or deed in lieu of foreclosure.

Section 4. Special Assessments. In addition to the Annual Assessments, the Declarant, until the incorporation of the Association, may levy a Special Assessment at any time. The foregoing right shall inure to the Association upon the incorporation of the Association. Upon levying a Special Assessment, the Declarant or the Association, as the case may be, shall send a written notice to each Owner stating (a) the amount of the Special Assessment owed by such Owner, (b) the basis for the calculation of the Special Assessment assessed against such Owner's Lot in relation to all Special Assessments concurrently levied, and (c) that unless the Owner pays the Special Assessment levied against that Owner's Lot(s) within thirty (30) days following the Owner's receipt of the statement, payment of the Special Assessment shall be

delinquent and shall bear interest in accordance with Section 7 of this Article V from the date when due until the receipt of full payment by the Association.

Section 5. Allocation of Assessments. All Assessments shall be assessed against Lots in a uniform manner, based upon the Owner's Pro rata Share.

Section 6. Due Dates of Annual Assessments. Annual Assessments shall commence as to any Lot at a date established by the Declarant or the Association, as the case may be. The first (1st) Annual Assessment shall be adjusted according to the number of months remaining in the calendar year in which the first (1st) Annual Assessment is levied. The Declarant or the Association shall determine Annual Assessments on an annual basis and thereafter levy Assessments in such manner and on such dates as may be fixed by the Declarant or the Association. Unless otherwise provided by the Declarant or the Association, as the case may be, all Assessments or any portion thereof levied shall be due within thirty (30) calendar days after the receipt by Owner of an invoice or statement for the Assessments.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) Any Assessment not paid on or before the date when due shall be delinquent and shall accrue interest thereon at a rate equal to ten percent (10.0%) per annum. If an Assessment is not paid within thirty (30) days of the due date, the Declarant or the Association, as the case may be, may enforce and foreclose the lien for Assessments against the Lot, and/or bring an action at law or equity against any Person personally obligated as an Owner to pay an Assessment. All of the remedies permitted or available to the Declarant or the Association under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(b) If the Declarant or the Association chooses to enforce the lien for Assessments, the Declarant or the Association, as the case may be, shall prepare a written notice of an Assessment lien setting forth the amount of the unpaid indebtedness, the date that the unpaid indebtedness was due, the name of the Owner of the Lot or portion of the Property covered by such lien, and a description of such Lot or portion of the Property. The lien notice shall be signed on behalf of the Declarant or the Association and shall be recorded in the records of the Clerk of Superior Court of Hall County, Georgia. The lien shall attach with the priority set forth in this Declaration and from the date that such payment becomes delinquent.

(c) The personal obligation of any Person who is an Owner of a Lot and the lien for Assessments shall include all interest accruing on the unpaid Assessments pursuant to this Section 7, along with the costs of collection, including court costs, any expenses required for the protection and preservation of the Lot, and reasonable attorney's fees. The Declarant or the Association, as the case may be, acting on behalf of the Owners, shall have the power to credit bid up to an amount equal to all unpaid Assessments, costs, and fees for the Lot at a foreclosure sale to enforce its lien, and to acquire, hold, and convey title to any Lot acquired through the foreclosure sale. During the period the Lot is owned by the Declarant or the Association following foreclosure, no Assessment shall be assessed or levied on such Lot foreclosed upon.

Section 8. Subordination of Assessment Lien to First Mortgages. The lien on any Lot for the Assessments provided for herein shall be superior to all other liens except for (a) the lien for ad-valorem taxes and any other liens which, by law, would be superior to a lien for Assessments, and (b) the lien and security title of any first priority mortgage of record made in good faith and for value to an institutional Mortgagee such as a bank, savings and loan association, real estate investment trust, holder of industrial revenue bonds, or insurance company, unless a suit and lis pendens to enforce the lien for Assessments shall have been filed in a court of competent jurisdiction prior to the recordation of such mortgage; provided, however, that any Mortgagee or other purchaser at any trustee's, mortgagee's, or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner of the Property effective upon the date of acquisition. No sale or transfer shall relieve (y) any selling or transferring Owner from liability for any Assessments levied prior to the sale or transfer (whether or not coming due subsequent to such sale or transfer), or (z) the transferred Lot from liability for a lien of any Assessment thereafter coming due.

Section 9. Delegation of Rights and Obligations to Development Review Committee. Notwithstanding the foregoing or any other terms and conditions of this Declaration, the Declarant may, at any time prior to and until the incorporation of the Association, delegate to the Development Review Committee any or all of the rights, privileges, licenses and obligations allocated to Declarant pursuant to this Article V, including, without limitation, the right to levy Assessments and enforce the provisions hereof.

Section 10. Obligation to Pay Assessments. The Obligation to pay Assessments as set forth in this Article V will begin for each Lot upon the conveyance of the Lot from Declarant to an Owner other than Declarant. Declarant will have no obligation to pay Assessments on any Lot owned by Declarant.

## **ARTICLE VI PERMITTED USES**

### Section 1. General Permitted Uses and Restrictions.

(a) Unless otherwise restricted herein, the following uses shall be permitted on the Property:

(i) Any commercial or industrial use which involves manufacturing, fabrication, technology or assembly operations with primary activities conducted in enclosed buildings that may include as an accessory the storage and sale of materials, products or equipment; but not including uses which may cause injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard or other objectionable conditions to nearby areas;

(ii) Business enterprises engaged in manufacturing, headquarters, research and development, life sciences, data processing, distribution and national or international headquarters;

(iii) Bottling plants;



(iv) Clinics, cafeterias, employee credit unions and recreational facilities appurtenant to such uses for employees only;

(v) Distribution of products and merchandise;

(vi) Vocational education and training facilities;

(vii) Electrical appliances and equipment, sales, and repairs;

(viii) Electronic manufacturing and assembly plants;

(ix) Offices and administrative facilities; and

(x) Customary accessory buildings and uses.

(b) No Owner may use the Lot or any portion of the Property in such a manner as to increase the fire insurance rating applicable to present or future Improvements of others in the immediate vicinity of the Lot.

(c) No Owner or Occupant of any Lot may conduct any activity on any portion of the Property which results in objectionable noises, sounds, or smoke; the emission of noxious, toxic, or corrosive fumes; the emission of dust, dirt, or fly ash; the use, production, storage, or handling of fire or explosive hazards, and no Lot or any portion of the Property shall be used so as to cause a nuisance. A “nuisance” as used herein may include, without limitation, any activity which (i) annoys, disturbs, or affects the Owners and/or Occupants of any Improvement or Lot, or the owners or occupants of property contiguous to the Property; (ii) obstructs or interferes with the reasonable or compatible use of a Lot, the Property, or any lot or property contiguous to the Property; (iii) renders the usage or occupancy of any Improvement potentially dangerous or damaging to persons or property located on the Property or any property contiguous thereto; or (iv) violates any Governmental Requirement.

Section 2. Specific Use Restrictions. Notwithstanding the restrictions outlined in Section 1 of this Article VI, the following uses shall not be permitted on the Property:

(a) any processing, manufacturing, fabrication or assembly operations that causes or emits injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard or other objectionable conditions to nearby areas;

(b) any refining, smelting, agricultural, forestry, excavation, or mining operations, and any drilling for and/or removal of subsurface substances;

(c) any mobile home parks, trailer courts, junkyards, stockyards, or animal raising or care facilities; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction, or maintenance;

(d) any dumping, disposing, incineration, or reduction of garbage, provided, however, that this prohibition shall not be applicable to appropriate garbage management appurtenant to a permitted use in accordance with the Development Guidelines;

(e) any automotive, boat, or trailer or recreational vehicle sales, leasing, display, service, storage or body shop repair operations;

(f) any animal raising or boarding facilities;

(g) any cemeteries, mortuaries, crematoriums or funeral homes;

(h) any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits, either live or by other means, to any degree, nude or partially clothed dancers or entertainers and/or any massage parlors or similar establishments;

(i) any dry-cleaning plant or facilities;

(j) any auction or public sale facility, pawn shop, flea market, amusement or video arcade, pool or billiard hall, car wash, convenience store, gas station, billboard, or dance hall;

(k) any bingo halls, gambling facilities, or related operations, including, without limitation, off-track or sports betting parlors, or facilities for table games such as blackjack or poker, slot machines, video poker/blackjack/keno machines, or similar devices.

(l) any dwellings (including, without limitation, permanent residential dwellings, and temporary or transient dwellings such as inns, hotels, or motels);

(m) any sewage treatment plants or facilities, except for pretreatment facilities;

(n) any landfill, regardless of type.

Section 3. Zoning. Notwithstanding the foregoing or any other provision of this Declaration to the contrary, all Owners at all times shall use their Lot and the Property in compliance with all Governmental Requirements, including, without limitation, all zoning ordinances applicable to the Property.

## **ARTICLE VII ADDITIONAL DEVELOPMENT GUIDELINES AND COVENANTS**

Section 1. Construction. Any builder employed by an Owner may conduct its construction operations and activities on that Owner's Lot or any portion thereof and do all things reasonably necessary as required expeditiously to commence, continue, and complete construction of Improvements thereon, including the provision of temporary buildings and/or trailers for administration of work and for the storage of materials and equipment. The open storage of building materials and equipment and the construction of temporary security fences and lighting shall be confined solely within the boundaries of a Lot. All Lots shall be kept reasonably clear

during any construction period, and the Owner of any such Lot shall be responsible for ensuring that construction debris is not left on any other Lot or within any right-of-way or easement. The Development Review Committee may designate points of ingress and egress to individual Lots for construction vehicles. Each Owner shall be responsible for all damages (such as, but not limited to, air pollution, soil erosion, damage to rights-of-way, landscaping, or other Common Areas, elimination of trees without replacement, or increased water runoff rates) to areas outside that Owner's Lot resulting from any construction, alteration, maintenance, repair, replacement, or removal of Improvements.

Section 2. Setbacks. All buildings shall be set back a minimum of seventy-five (75) feet from any street or public right-of-way fronting the building; thirty (30) feet from any side-yard property line; and thirty (30) feet from any rear-yard property line. In addition, all parking must be located at least ten (10) feet from any property line and no building or portion of a building may be located any closer than ten (10) feet from any parking area in front of a building.

Section 3. Site Coverage. The building-to-land ratio (the footprint of the building coverage on the land) shall be no less than ten percent (10%) and not more than sixty percent (60%) for any Lot.

Section 4. Impervious Surface Coverage. The maximum impervious surface coverage per lot shall not exceed eighty-five (85%) for any Lot.

Section 5. Subdivision. No Owner may subdivide a Lot without the prior written approval of the Development Review Committee.

Section 6. Parking. Each Lot shall have off-street automobile parking, and no parking shall be permitted on any street, driveway, entrance, or any other location, other than in approved parking spaces. All parking areas shall be paved with asphalt or concrete and shall have concrete curbs and gutters around their perimeters, except in locations where expansion is anticipated or sheet flow is being treated in a stormwater application shown in an approved stormwater management plan. Permeable pavers, permeable concrete, or porous asphalt would be allowed for a stormwater application shown in an approved stormwater management plan. All stormwater management plans would need the approval of the Director of Water Resources. No trucks or motor vehicles other than passenger vehicles may be parked or stored in any automobile parking area located within seventy-five (75) feet from any street or public right-of-way fronting a building, and no passenger vehicle parked within seventy-five (75) feet of any street or public right-of-way fronting a building shall have applied thereon or attached thereto any sign or advertising which is inconsistent with the City of Gainesville code of ordinances, or with the intent of any signage criteria provided in this Declaration, as may be determined by the Development Review Committee, in its sole discretion.

Section 6. Loading. All loading or staging areas shall be paved. All loading areas shall be at least one hundred twenty (120) feet deep and shall be located at the side or rear of the building unless otherwise approved by the Development Review Committee

Section 7. Exterior Facades.

(a) The exterior construction of all buildings shall be either brick, brick and glass, pre-cast or tilt-wall concrete panels, stone, stucco and/or painted/stained concrete, excluding expansion walls, windows, door trim, canopies, and architectural accents.

(b) Except as specifically provided herein, the exterior facade and appearance of any expansion or addition to any existing building shall be consistent with the color, texture, and materials of the original building.

(c) There shall be no “expansion walls” in the front yard of any Lot. Otherwise, expansion walls shall (i) be constructed of concrete block and painted to match any surrounding brick, (ii) consist of pre-cast or tilt-wall concrete panels matching any surrounding permanent walls, or (iii) consist of insulated metal wall panels or pre-finished metal panel cladding, so long as such panels and walls are complementary or similar color to the color of the exterior walls of the building.

(d) If any wall exceeds one hundred (100) feet in length or twenty (20) feet in height, the pattern of the brick or concrete construction shall be varied to provide visual relief.

(e) All down-spouts and gravel stops shall be pre-finished metal and shall be painted a color complementary to the wall color.

(f) No building shall have any appendages (i.e. exhaust fans, vents, etc.) visible from front yard.

#### Section 8. Screening.

(a) No truck courts, materials storage areas or any other outdoor storage areas shall be visible from any public street or right-of-way and any potentially visible courts or storage areas must be screened by Improvements such as berms or site grading, or landscaping consisting of evergreen plants or flora with a minimum installation height of four (4) feet.

(b) Trash dumpsters, compressors, and other similar equipment shall be located in such a manner as to minimize the visibility from any street or right-of-way and screened by masonry or concrete walls, or landscaping.

(c) Any ground mounted antennae or receiving dishes must be in rear yards or screened so as to not be visible from any street or right-of-way.

(d) All screens and visual barriers must be approved by the Development Review Committee.

(e) Roof mounted antennas or satellite or receiving dishes shall be located in such a manner or screened so as to not be visible from any street or right-of-way.

Section 9. Fences. No fences or screen walls may be permitted in the front yard of any Lot, unless a variance is expressly granted therefore by the Development Review Committee, in which case any such fences or screen walls shall (a) be of masonry or concrete construction similar in design and material to that of the building, or black vinyl coated fencing, or decorative aluminum fencing, (b) conform to all setback requirements outlined in this Declaration, and (c) only contain gates of a design approved by the Development Review Committee which consist of fabricated metal painted or colored black. Vinyl-clad, chain-link, or other similar type fences colored black are permitted in side and rear yards only, and must be placed along the Lot boundary lines in the side and rear yards, except the fences may, if necessary, be set back five (5) feet from the Lot boundary line to accommodate trees or shrubs. Any gates installed in front yard fences or screen walls shall be of fabricated metal, painted or colored black; and of a design approved by the Development Review Committee.

Section 10. Utilities.

- (a) All utilities must be installed underground.
- (b) Ground mounted transformers and switching gear must be visually screened from view by landscaping.
- (c) All street lights and parking lot lights must be uniform throughout the Property, matching the standard lighting installed by the Declarant.
- (d) Only those solar applications approved by the Development Review Committee are permitted.

Section 11. Landscaping.

- (a) The entire unpaved area of any Lot containing a building site, including the area between the Lot line and street curb line, shall be landscaped. Expansion areas may contain grass or sod until construction on the expansion area commences.
- (b) All landscaping must be irrigated and comply with the City of Gainesville's Large Landscape Irrigation Policy. Automatic sprinkler systems are required for front yards.
- (c) Planting beds shall be mulched with pine straw or hardwood mulch not less than once per year. All landscaped beds are to be maintained weed free and defined for a clean, crisp appearance.
- (d) One tree (minimum 3-inch caliper) shall be planted along the street for every one hundred (100) feet of street frontage for each Lot. Each Lot shall have a minimum number of plant specimens selected from the Approved Plant List, attached hereto as **Exhibit C**. Landscaping included within a stormwater best management practice application, which might not include native plants, must be included within a stormwater management plan approved by the Director of Water Resources.

(e) All ground cover shall be selected from the Approved Plant List, or native plants that are approved by the City of Gainesville in writing.

(f) Ditches and swales shall have a minimum side slope of one (1) foot vertical to three (3) feet horizontal.

(g) All landscaping shall be installed within sixty (60) days of the occupancy or substantial completion of any building on a Lot, whichever occurs first, as determined by the Development Review Committee in its sole discretion.

Section 12. Pedestrian Access. Pedestrian access within the site should be provided over clearly marked travel pathways from the street and through parking areas to primary building entries.

Section 13. Signage and Lighting.

(a) All signs on a Lot must be flush mounted on a building facade on the Lot or mounted on a ground-set monument on the Lot of similar design and material as the building(s) on the Lot.

(b) Facade mounted signs shall be metal, ground lighted, and uniform in size and color throughout the Property. Any ground-set monument signs shall be ground lighted and appropriately landscaped.

(c) No portable or temporary signs of any form shall be permitted on any Lot, except for "Building For Sale" or "Building For Lease" signs.

(d) All exterior lighting installed on a Lot shall be indirect or of such controlled focus and intensity that it will not disturb the Owners or Occupants of any adjacent Lots.

(e) All monument signage structures shall be consistent throughout the Property and subject to the approval of the Development Review Committee.

(f) No changeable copy or electronic changeable copy signs shall be allowed.

Section 14. Exterior Storage Tanks. Above ground exterior storage tanks, silos, hoppers or similar structures are not allowed without a specific variance and shall not be visible from any public street or right-of way. Potentially visible exterior storage tanks, silos, hoppers or similar structures must be screened so as not to be visible from the street. .

Section 15. Temporary Structures. Except as otherwise may be expressly permitted herein, no temporary structure shall be installed or maintained on any property or Lot without the specific written approval of the Development Review Committee.

Section 16. Restoration. In the event of the damage or destruction of any Improvement on any Lot, the Owner thereof shall, as soon as reasonably possible, but in any event within thirty

(30) days after receipt of notification by the Declarant or the Development Review Committee, (a) replace or commence the prompt replacement of the damaged or destroyed Improvement to its original condition, or such other condition as may be approved in writing by the Development Review Committee, or (b) upon receipt of approval from the Declarant or Development Review Committee, demolish the damaged or destroyed Improvements and thereafter landscape the Lot so as to present a pleasing and attractive appearance.

Section 17. Prosecution of Work After Approval. After the Development Review Committee approves any proposed Improvement, the Owner must commence construction and completion of the proposed Improvement as promptly and diligently as reasonably possible and in complete conformity with the Plans submitted to the Development Review Committee and any conditions imposed by the Development Review Committee. Failure to complete a proposed Improvement either within twelve (12) months after the date of approval or in accordance with the Plans submitted to the Development Review Committee or any conditions imposed by the Development Review Committee will be deemed a breach of this Declaration. The foregoing may not be interpreted to prevent the construction of “shell” buildings to be ultimately completed based upon requirements provided by specific prospective Occupants subsequent to the expiration of the twelve (12) month completion deadline outlined herein. An Owner shall notify the Development Review Committee in writing of any suspended construction in excess of thirty (30) days and of subsequent recommencement thereof.

Section 18. “Unlimited Area” Buildings. All buildings on the Property are intended to be classified as “Unlimited Area” buildings (Type II, Fully Sprinklered) under the International Building Code adopted by the City of Gainesville, Georgia, which term refers to a building that is allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but by virtue of its isolation on the property and by the inclusion of fire sprinkler systems. All buildings and other Improvements shall comply with building code requirements applicable to “Unlimited Area” buildings, including, without limitation, any requirements related to the installation of approved fire sprinkler systems. Notwithstanding the foregoing, no Owner or Occupant shall be obligated to modify or alter any existing building or other Improvements by virtue of this Section 18 due to subsequent changes in the applicable zoning ordinance, building code or any other Governmental Requirements.

Section 19. Stormwater Management Facilities. If prior to the conveyance of any Lot or portion of the Property, Declarant should enter into a “Stormwater Management Facility Maintenance Agreement” or other similar instrument or agreement arising by virtue of Governmental Requirements and duly recorded in the Official Records of the Clerk of the Superior Court in and for Hall County, Georgia, and such instrument requires a “landowner” to maintain a Stormwater Management Facility that is not otherwise a Common Area, Declarant shall, until the incorporation of the Association, remain responsible for the maintenance of such Stormwater Management Facility. The foregoing obligation shall inure to the Association upon the incorporation of the Association. Any Stormwater Management Facility maintained by the Declarant or the Association may be designated an Area of Common Responsibility by the Declarant. Owners shall maintain all Stormwater Management Facilities on their Lots which are otherwise not required to be maintained by the Declarant or the Association in good order and repair at all times. All stormwater best management practices for water quality and runoff

reduction used must be listed within the current version of the Georgia Stormwater Management Manual and included in a stormwater management plan approved by the Director of Water Resources.

## **ARTICLE VIII EASEMENTS AND RESTRICTIONS**

Section 1. Easement for Utilities. There is hereby reserved unto the Declarant, its successors and assigns, a ten (10) foot strip on each Lot parallel to and along the boundary line of every Lot as an easement for the purpose of installing, replacing, repairing, and maintaining any and all utilities and all ingress and egress related to such purpose. By virtue of this easement, all utility providers may erect and maintain all necessary equipment within the easement area and to affix, maintain, and repair all utility wires, circuits, and conduits on, across, and under the surface of any Lot. This easement includes the right to conduct site work, cut any trees, bushes, or shrubbery, and take any other actions reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance on the Property. The Declarant shall promptly restore or cause to be restored any area affected by the exercise of the rights provided by this easement. Should any utility furnishing a service covered by the general easement herein provided require a specific easement by a separate recordable document, the Declarant and the Association shall have the continuing right to grant such easements on this easement strip without conflicting with the terms hereof. Notwithstanding anything contained herein to the contrary, no sewers, electrical lines, water lines, or other utility infrastructure may be installed, located, or relocated on any portion of the Property except as approved by the Development Review Committee or as installed and located during the original development of the Property by the Declarant. The Declarant and the Association shall have the power to dedicate all or part of any utility easement granted pursuant to this Section 2 to any Governmental Entity.

Section 2. Drainage Easement. There is hereby reserved a blanket easement over each Lot, for the benefit of every other Lot, for the drainage of surface water and for altering drainage and water flow wherever and whenever reasonably necessary to maintain reasonable standards of health, safety, and appearance on the Property; provided, however, that when construction of the initial Improvements and landscaping has been completed in accordance with the terms hereof, this drainage easement shall be deemed to be limited to (a) the drainage lines, facilities, and Improvements installed in, on, and under the Lot, and (b) that portion of the surface of the Lots necessarily used for surface drainage into any drainage related Improvements on the Property. This easement includes the right to conduct site work, cut any trees, bushes, or shrubbery, and take any other actions reasonably necessary to maintain reasonable standards of health and appearance on the Property. Declarant, until Turnover, and thereafter the Association, shall promptly restore or cause to be restored any area affected by the exercise of the rights provided by this easement. The provisions hereof shall not be construed to impose any obligation upon Declarant or the Association to create any specific drainways upon any portion of the Property.

Section 3. Landscape and Access Easements. There is hereby reserved a blanket easement over each Lot for the purpose of maintaining landscaping on any portion of the Property which either the Declarant, the Development Review Committee, or the Association is required or permitted to maintain and/or landscape pursuant to the terms and conditions of this Declaration.



Without limiting the generality of the foregoing, a twenty (20) foot strip on each Lot parallel to and along the boundary lines of the roads within Gainesville 85 Business Park is hereby reserved unto the Declarant, the Development Review Committee, and the Association, as an easement for the purpose of landscaping and installing, maintaining, and replacing landscaping and landscaping related Improvements, and ingress and egress related to such purpose. Nothing contained herein will be construed as imposing an obligation on Declarant to landscape any portion of any Lot or to maintain the landscaping on any Lot.

Section 4. “No-Build” Easement. In order to assure compliance with the building code requirements related to “Unlimited Area” buildings as set forth in Section 17 of Article VII, no building may be constructed within a strip of land running thirty (30) feet in width parallel to the boundary lines of every Lot, so that a total “No-Build Area” consisting of a strip of land sixty (60) feet in width shall at all times exist between buildings located on adjacent Lots on the Property. No structure shall project, be erected, or placed upon or above the No Build Area, other than those Improvements permitted to project and/or to be erected and/or placed upon or above required yard areas between buildings pursuant to any applicable Hall County or City of Gainesville zoning ordinances and building codes. The No Build Area shall be held, conveyed, encumbered, leased, and used subject to the restrictions, covenants, agreements, and equitable servitudes set forth in this Section 5, which are hereby declared to be for the benefit of the Property and each portion thereof. No building or other Improvements shall be constructed on any Lot in a manner which will, based on then-existing applicable Hall County or City of Gainesville zoning ordinances and building codes, either preclude the construction on an adjacent Lot of an “Unlimited Area” building, or cause an existing “Unlimited Area” building on any adjacent Lot to no longer be in conformance with my applicable zoning ordinance and building code requirements. Notwithstanding the foregoing, (a) no Owner or Occupant shall be obligated to modify or alter any existing building or other Improvements by virtue of this Section 5 due to subsequent changes in the applicable zoning ordinance, building code, or any other Governmental Requirements, and (b) upon obtaining the express prior written approval of the Development Review Committee (which shall be sought as a variance in accordance with Section 6 of Article III of this Declaration), the Owners of adjacent Lots may shift the No Build Area between such adjacent Lots, so long as a total contiguous sixty (60) feet wide No Build Area is maintained at all times between the buildings on such Lots (for example, an Owner may agree to an increased No Build Area forty (40) feet in width so that the Owner of an adjacent Lot may have an adjacent reduced No Build Area twenty (20) feet in width). Any re-allocated No Build Area shall be evidenced by a No Build Area easement amendment which shall identify the affected adjacent Lots and the location of the re-positioned No Build Area, and which shall be duly executed by the Owners of the affected adjacent Lots and recorded in the real property records of Hall County, Georgia (with a cross reference to this Declaration).

Section 6. General Access and Emergencies.

(a) Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Areas, if any, which right and easement shall be appurtenant to and shall pass with the title to the portion of the Property owned by such Owner, subject to the right of the Declarant or the Association to dedicate or transfer all or any portion of the Common Areas to a Governmental Entity for public use as otherwise provided herein. An Owner’s right of

use and enjoyment in and to the Common Areas and facilities located thereon, if any (a) shall extend to the Occupants of the portion of the Property owned by such Owner, and (b) shall not give any Owner or Occupant the right of ingress or egress across any portion of the Property owned by another Owner and not a part of the Common Areas to obtain access to Common Areas.

(b) In addition to the right of the Declarant or the Association to exercise self-help as otherwise provided herein, the Declarant, until Turnover, and thereafter the Association shall have the right, but not the obligation, to enter upon any portion of Property for emergency, security, and safety reasons, which right may be exercised by the Declarant's or the Association's agents or representatives (including, without limitation, the Development Review Committee), and by all police, fire, ambulance, medical technicians, paramedic, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Declarant and the Association, and their agents or representatives (including, without limitation, the Development Review Committee), to enter any Lot to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Declarant, Development Review Committee, or the Association.

(c) No owner or any invitee, licensee or guest of any Owner shall use the roads located on or adjacent to the Property so as to obstruct the normal flow of vehicular and pedestrian access across such roads. No signs or billboards shall be placed in or along said roads unless such are previously approved in writing by the Development Review Committee.

(d) The Wetlands that exist onsite are waters of the United States and are therefore within the jurisdiction of Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The placement of dredged or fill material into any waterways and/or their adjacent wetlands or mechanized land clearing of those wetlands would require prior Department of the Army authorization pursuant to Section 404. Any development within the Property that could possibly impact the aquatic environment, should be coordinated with:

Department of the Army  
Savannah District, Corps of Engineers  
Post Office Box 889  
Savannah, Georgia 314002

Section 7. Perpetuity. All easements reserved or granted in this Declaration shall be perpetual, non-exclusive easements except where the terms of this Declaration expressly provide otherwise or where the context and grant or reservation of such easement reasonably require a different interpretation. Nothing contained in the preceding sentence is intended to alter, waive, or terminate the right of the Declarant, the Association, or others to whom such right is given herein, to relocate or modify any easement in accordance with any rights provided in this Declaration.

## **ARTICLE IX ENFORCEMENT**

Section 1. General. The Declarant, the Association, and any Owner may proceed at law or in equity to prevent the violation of any term of this Declaration. Each Owner and every Occupant shall comply with the covenants, conditions, and restrictions set forth in this Declaration, as amended from time to time.

Section 2. Declarant's and Association's Rights. The Declarant and Development Review Committee shall have the right (a) upon reasonable notice, at any time following a violation or breach of this Declaration, without any liability to the Owner or Occupant for trespass or otherwise, to appoint an agent or representative to enter upon any Lot where a violation or breach exists and abate and remove, at the expense of the Owner, any Improvement or condition as may be necessary to remedy the breach or violation or conform the Lot with the Development Guidelines; and (b) to prosecute a proceeding at law or in equity against the Owner, Occupant, or any other person or persons that violate or attempt to violate any of the terms, conditions, or restrictions imposed by this Declaration. The foregoing rights shall inure to the Association upon the incorporation of the Association. Each Owner shall be liable to and pay the Declarant, the Development Review Committee, or the Association, as the case may be, for all costs incurred related to enforcing the terms and conditions of this Declaration, including court costs and reasonable attorneys' fees. Each Owner and Occupant, if different individuals or entities, shall be jointly and severally liable for the conduct of an Occupant on any Lot.

Section 3. No Waiver. No delay or failure on the part of any aggrieved party to invoke any available remedy in respect to a violation of any of the terms of this Declaration shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it upon recurrence or continuance of the violation or the occurrence of a different violation, nor shall there be construed upon the Declarant, the Development Review Committee, or the Association an absolute duty to take any action to enforce this Declaration.

## **ARTICLE X AMENDMENTS**

Section 1. Amendments by Declarant. Prior to Turnover, Declarant may amend this Declaration, with the exception of Article VI (which may only be changed with the consent of the City of Gainesville, even if Declarant's Rights have been assigned), by an instrument in writing filed and recorded in the records of the Clerk of Superior Court of Hall County, Georgia, without the approval of any Member or Owner of any portion of the Property, provided, however, that (a) in the event that an amendment materially alters or changes any Owner's right to the use and enjoyment of the Owner's Lot or if the amendment adversely affects the title to any Lot, the amendment shall be enforceable as to any affected Owner only upon the written consent of the Owner affected thereby, (b) in the event that an amendment adversely affects the security title and interest of any Mortgagee, the amendment shall be enforceable as to such Mortgagees only upon the approval thereof of all Mortgagees affected thereby. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by any amendments permitted by this Section and further agrees that, upon receipt of a request for a consent to an amendment from the Declarant, each Owner will consent to the amendment of this Declaration or any other instruments relating to the Property so long as (x) the amendment is necessary for this Declaration to conform with any Governmental Requirement or any judicial determination otherwise in conflict with this

Declaration; (y) the amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot subject to this Declaration, or (z) the amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

Additionally, Declarant reserves the right but not the obligation to subject to this Declaration additional property not described in the attached **Exhibit A**. Subjecting additional property may be accomplished by recording of a Supplemental Declaration describing the additional property being subjected to this Declaration.

Declarant also reserve the right to amend this Declaration for the purpose of removing and withdrawing any portion of the Property from the terms of this Declaration, whether originally submitted or subsequently subjected pursuant to the terms of this Declaration. Such withdrawal will not require the consent of any Person

Section 2. Amendments by Association. Upon the incorporation of the Association, notice of proposed amendments to this Declaration, other than those authorized by Section 1 of this Article X shall be given to each Member along with the notice for a meeting of the Association. At the noticed meeting of the Association, an amendment may be adopted by a vote of at least two-thirds (2/3) of the total votes in the Association, provided, however, that (a) in the event that an amendment materially alters or changes any Owner's right to the use and enjoyment of the Owner's Lot or if the amendment adversely affects the title to any Lot, the amendment shall be enforceable as to any affected Owner only upon the written consent of the Owner affected thereby, (b) in the event that an amendment materially and adversely affects the security title and interest of a Mortgagee, the amendment shall be enforceable as to such Mortgagee only upon the approval thereof of all Mortgagees affected thereby, and (c) any amendment proposed prior to Turnover must also be approved by Declarant. Any such amendment shall be affected by a signed instrument recorded in the records of the Clerk of Superior Court of Hall County, Georgia.

## **ARTICLE XI GENERAL PROVISIONS**

Section 1. Coverage. This Declaration, and the terms and conditions hereof shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Declarant, the Association, the Board, the Development Review Committee, or (except where enforcement is expressly reserved to the Association pursuant to the terms of this Declaration) by any Owner, their respective legal representatives, heirs, successors and assigns.

Section 2. Compliance. Each Owner shall strictly comply with the terms, conditions, and restrictions set forth in this Declaration, and the by-laws and any rules and regulations adopted by the Association, as the same may be lawfully amended from time to time.

Section 3. Duration. This Declaration, and the terms and conditions hereof shall remain in effect, and shall inure to the benefit of and be enforceable by the Declarant, the Association, and any Owner for a period of twenty (20) years from the date this Declaration is first recorded in the public records of Hall County, Georgia. This Declaration shall automatically renew and be extended beyond twenty (20) years for additional successive periods of twenty (20) years each without limitation, unless and until this Declaration is terminated either (i) by execution of a notice

of termination by Declarant, if it is an Owner, and the then Owners of at least two-thirds (2/3) of the square footage of the Property (exclusive of streets, public rights-of-way, and Common Areas), with no termination effective unless the notice of termination is filed of record with the Clerk of the Superior Court of Hall County, Georgia, or other appropriate office, at least thirty (30) days prior to the expiration date of a term of this Declaration, as the same may be renewed pursuant to the terms hereof, or (ii) as otherwise may be provided by law.

Section 4. Rezoning. Every Owner, by acquiring its interest in any Lot, agrees that it will not seek any variance or administrative exception to any Governmental Requirements related to zoning or bring any action or suit to change the zoning of any portion of the Property that may materially and adversely affect any other portion of the Property without the express prior written approval of the Declarant, until the incorporation of the Association, and thereafter, the Association.

Section 5. Severability. If any term condition, or restriction in this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other term, condition, or restriction, or the application of any term, condition, or restriction which can be effectuated without the invalid provision or the application thereof.

Section 6. Governing Law. The interpretation of this Declaration shall be governed by and construed in accordance with the laws of the State of Georgia.

Section 7. Time. Time is of the essence of this Declaration.

Section 8. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given an interpretation or construction which, in the opinion of the Declarant or the Association, will best effect the intent of this Declaration. The provisions hereof shall be liberally interpreted, and if necessary, shall be so extended or enlarged by implication as to make them fully effective. In the event of any conflicts or inconsistencies between the Georgia Non-Profit Corporation Code, this Declaration, or the articles of incorporation or the by-laws of the Association, the terms and provisions of the Georgia Non-Profit Corporation Code as may be applicable, this Declaration, the articles of incorporation or the by-laws, in that order, shall prevail. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof applicable either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case accurately expressed. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Estoppel Certificates. The Declarant (or the Development Review Committee, if Declarant has expressly delegated the right to levy Assessments to the Development Review Committee pursuant to the terms and conditions hereof), until the incorporation of the Association, and thereafter the Association, shall, upon written request (which shall not be more frequent than two (2) times during any calendar year), issue, within thirty (30) days after receipt of such request

from an Owner or its mortgagee, prospective mortgagee, or prospective successor, an estoppel certificate stating, to the best of the Declarant's (or the Development Review Committee, as the case may be) or the Association's knowledge as of such date: (a) whether the Assessments as to a specified Lot have been paid and the amount of any outstanding Assessment obligation, and (b) whether any default exists under this Declaration with respect to the applicable Lot(s). If the Association states that it has knowledge of any existing defaults, the Association shall specify the nature thereof in reasonable detail.

**IN WITNESS WHEREOF**, Declarant has set its hand and seal to this Declaration the date first above written.

CITY OF GAINESVILLE

By: \_\_\_\_\_  
Bryan Lackey, City Manager

Signed, sealed and delivered  
on the date above shown

\_\_\_\_\_  
Unofficial Witness

Attest: \_\_\_\_\_  
Denise O. Jordan, City Clerk

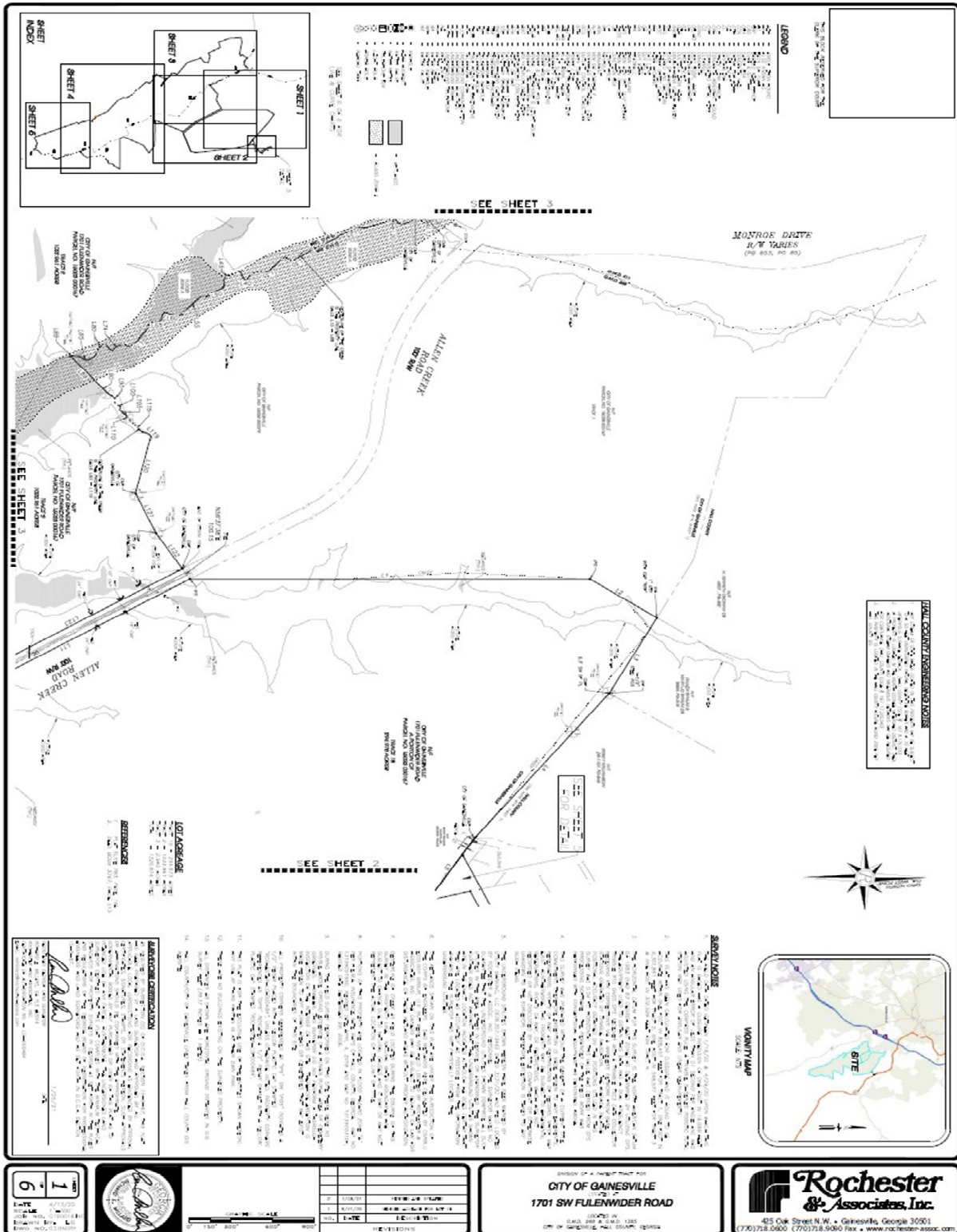
\_\_\_\_\_  
Notary Public  
My Commission Expires:

[AFFIX CITY SEAL]

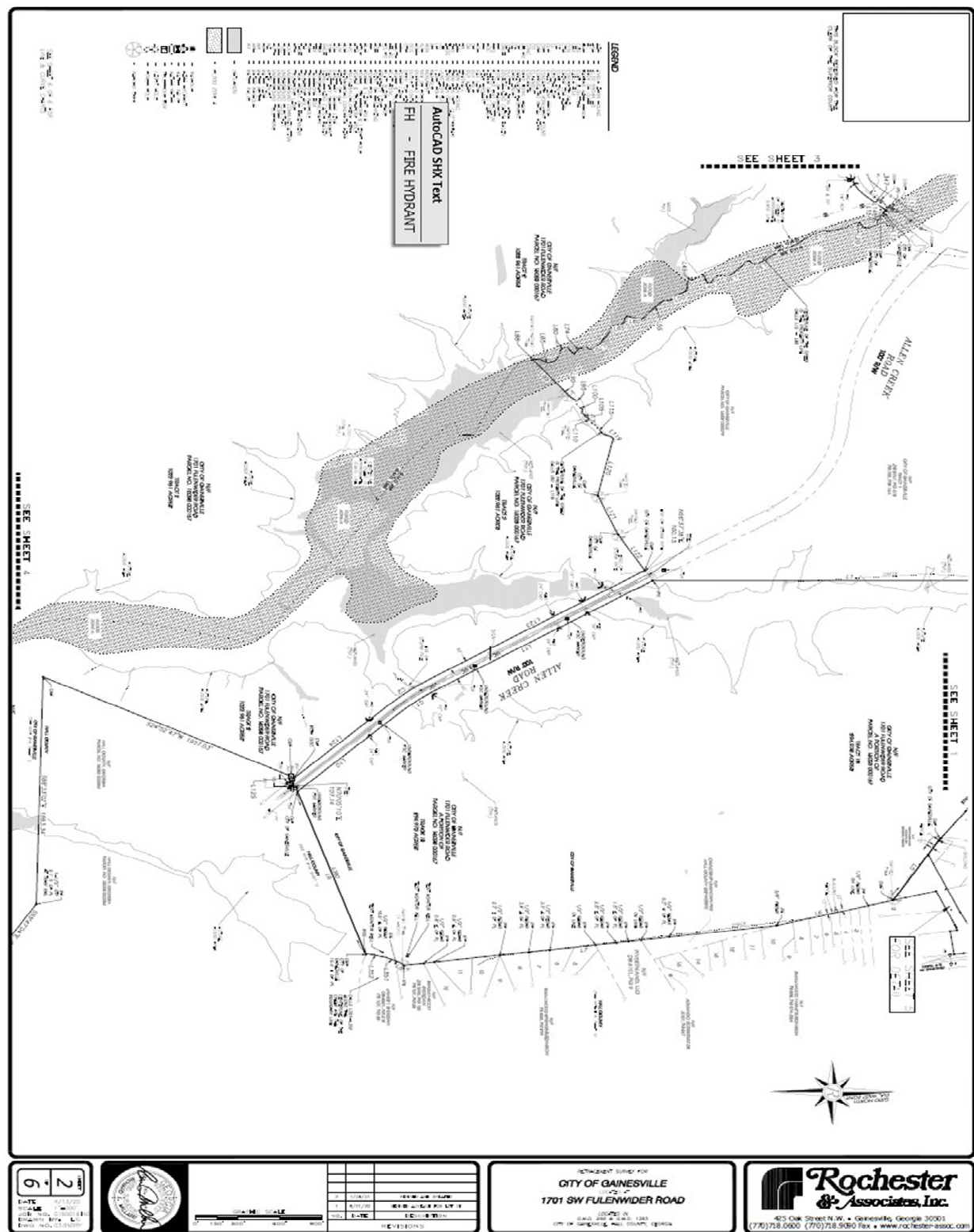
APPROVED AS TO FORM

By: \_\_\_\_\_  
Abbott S. Hayes, Jr., City Attorney

# EXHIBIT A

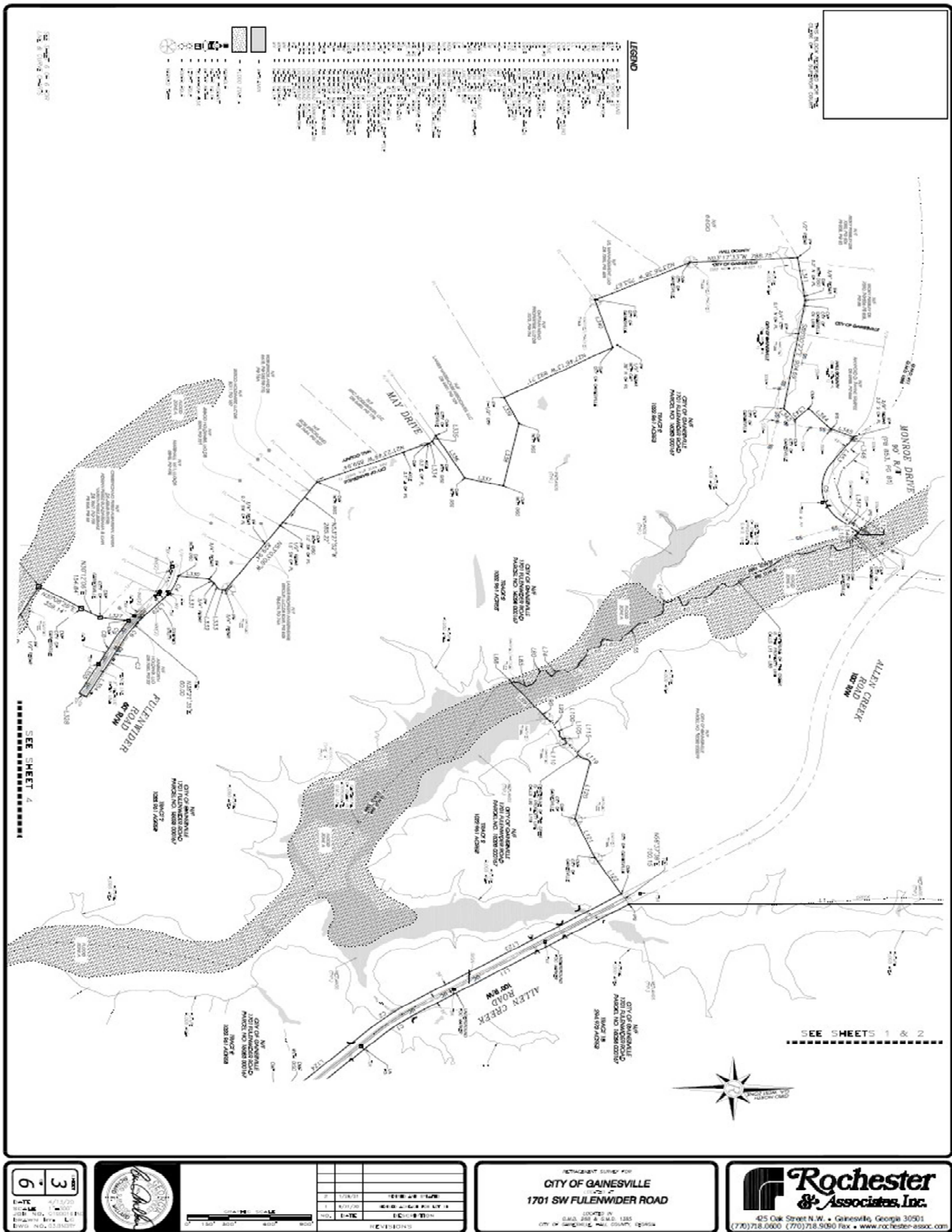


A-1

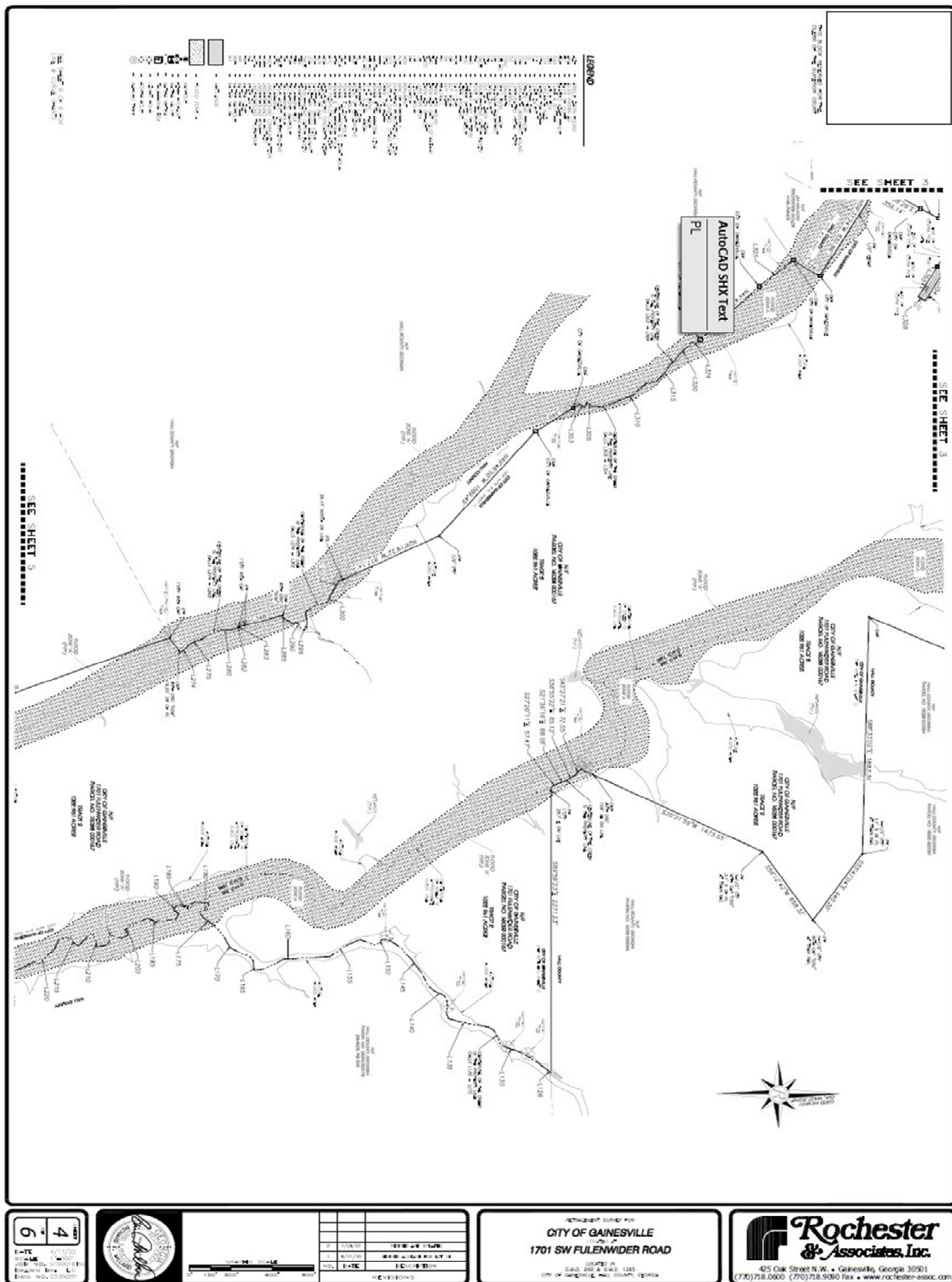


A-2

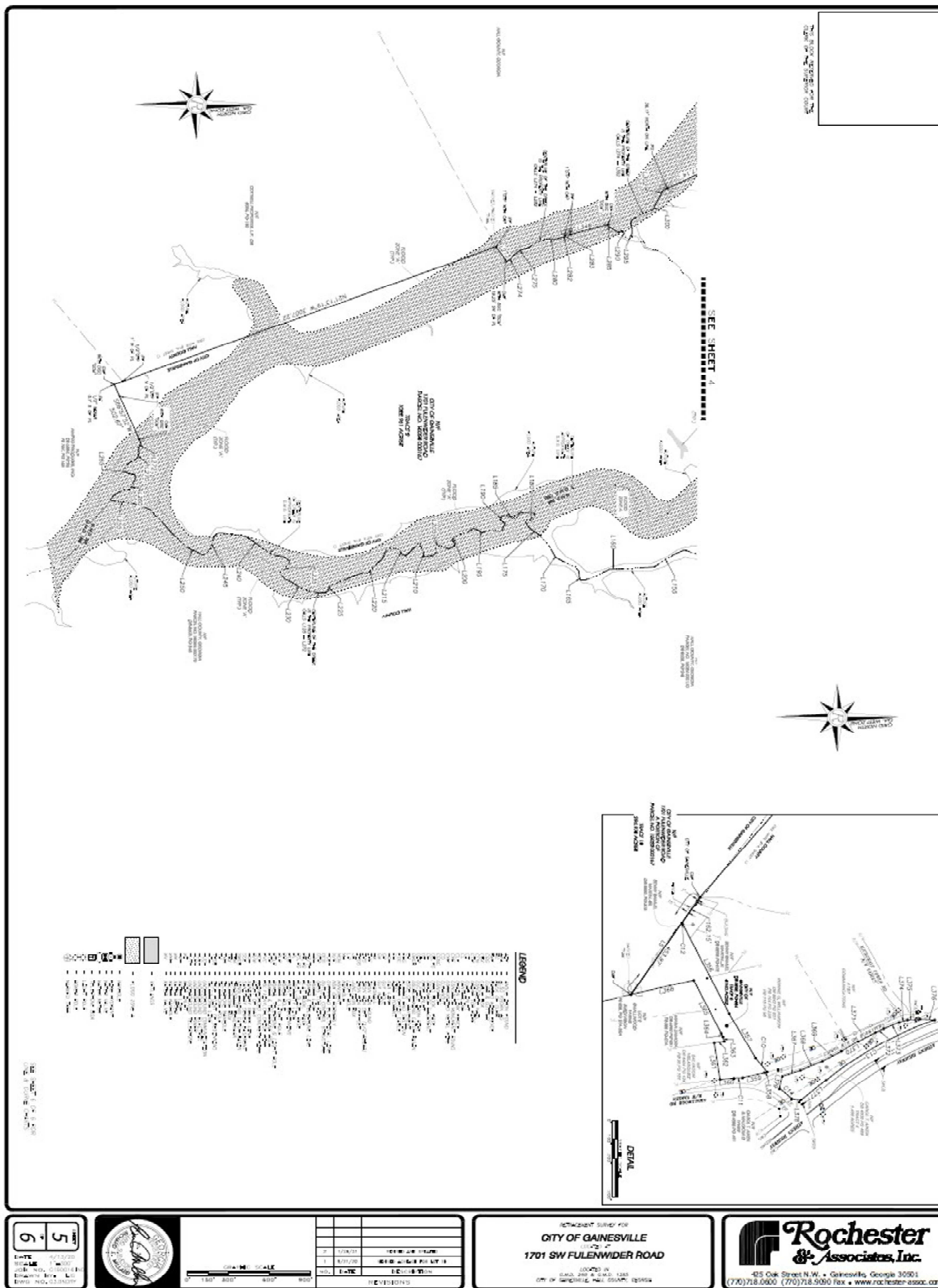




A-3



A-4

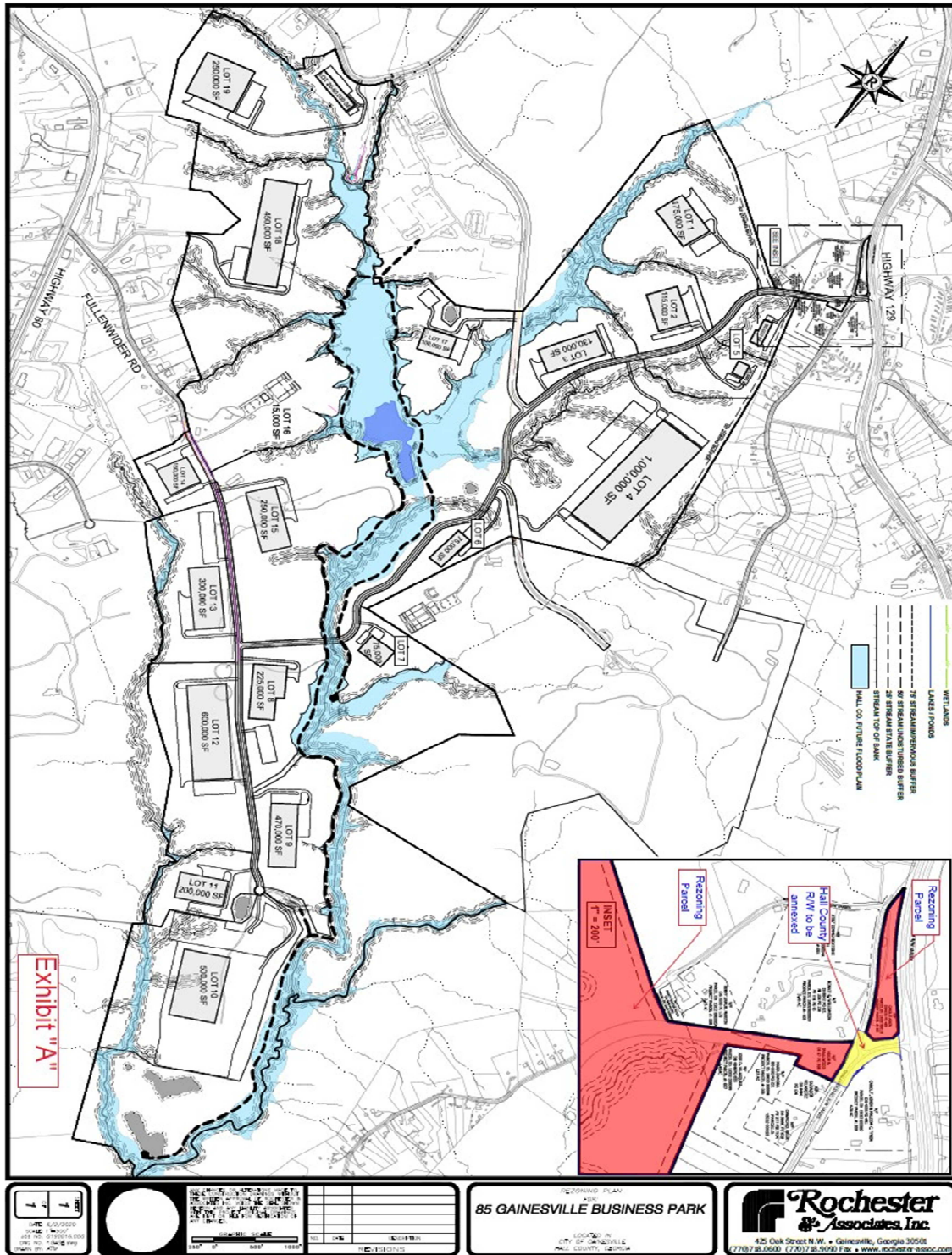


A-5

[illegible]



# EXHIBIT B SITE PLAN



**EXHIBIT C  
APPROVED PLANT LIST**

| <b>TREES</b>  | <b><u>BOTANICAL NAME</u></b>                 | <b><u>COMMON NAME</u></b> |
|---------------|----------------------------------------------|---------------------------|
|               | Deciduous Material                           |                           |
|               | Quercus phellos                              | Willow Oak                |
|               | Quercus macrocarpa                           | Bur Oak                   |
|               | Quercus nuttallii                            | Nuttall Oak               |
|               | Quercus accutissima                          | Saw Tooth Oak             |
|               | Quercus velutina                             | Black Oak                 |
|               | Acer mbmm                                    | Red Maple                 |
|               | Acer buergerianum                            | Trident Maple             |
|               | Ulmus parvifolia                             | Lacebark Elm              |
|               | Ulmus parvifolia                             | Chinese Elm               |
|               | Lagerstroemia indica                         | Crape Myrtle              |
|               | Prunus serrulata                             | Kwanzan Cherry            |
|               | Prunus x yedoensis                           | Yoshino Cherry            |
|               | Betula nigra "dura heat"                     | River Birch Dura Heat     |
|               | Metasequoia glyptostroboides                 | Dawn Redwood              |
|               | Evergreen Specimen/High Visibility Screening |                           |
|               | Magnolia grandiflora                         | Southern Magnolia         |
|               | Cedrus deodara                               | Deodar Cedar              |
|               | Cryptomeria japonica                         | Japanese Cryptomeria      |
|               | Tsuga canadensis                             | Canadian Hemlock          |
|               | X Cupressocyparissus lelandii                | Leyland Cypress           |
|               | Ilex x Nellie R. Stevens                     | Nellie R. Stevens Holly   |
|               | Ilex x attenuata "Foster's #2"               | Foster Holly              |
|               | Evergreen Screening Material                 |                           |
|               | Pinus taeda                                  | Loblolly Pine             |
|               | Pinus thunbergiana                           | Japanese Black Pine       |
| <b>SHRUBS</b> |                                              |                           |
|               | Juniperus conferta "Blue Pacific"            | Blue Pacific Juniper      |
|               | Juniperus squamata x parsonii                | Parsoni Juniper           |
|               | Juniperus chinensis pfitzeriana              | Nicks Compacta Juniper    |
|               | Ilex comuta                                  | Carissa Holly             |
|               | Ilex comuta                                  | Chinese Holly             |
|               | Ilex convexa                                 | Compacta Holly            |

|                                    |                        |
|------------------------------------|------------------------|
| Hex vomitoria nana                 | Dwarf Yaupon Holly     |
| Ilex burfordii nana                | Dwarf Buford Holly     |
| Ilex comuta "Rotunda"              | Rotunda Holly          |
| Hex comuta "Needlepoint" Nandina   | Needle Point Holly     |
| Domestica "Fire Power" Nandina     | Fire Power Nandina     |
| Domestica "Harbor Dwarf" Nandina   | Harbor Dwarf Nandina   |
| Domestica "Gulf Stream"            | Gulf Stream Nandina    |
| Lorepetalurn Chinensis             | Lorepetalum            |
| Ligustrum japonicum "recurvifolia" | Ligustrum Recurvifolia |
| Berberus thunbergii Crimson Pygmy  | Crimson Pygmy Barberry |
| Miscanthus giganteus               | Miscanthus Grass       |
| Raphiolepis indica                 | Indian Hawthorne       |
| Chamaecyparis pisifera             | Gold Thread Cypress    |
| Cleyera Japonica                   | Cleyera                |

#### Large Shrubs

|                           |                              |
|---------------------------|------------------------------|
| Juniperus Cinensis Abelia | Pfitzer Juniper              |
| Grandiflora Forsythia     | Abelia                       |
| Intermedia Euonymus       | Forsythia                    |
| Alatus compacta           | Winged Euonymus/Burning Bush |
| Ligustrum japonica        | Wax Leaf Privet              |
| Leucothoe                 | Florida Leucothoe            |
| Ilex Comuta "bufordii"    | Buford Holly                 |
| Viburnum Japonicum        | Virburnum                    |
| Camellia haponica         | Camellia                     |
| Camellia sinensis         | Tea Plant                    |
| Ilex aquifolium Ilex      | English Holly                |
| Latifolia Forsythia       | Lusterleaf Holly             |
| Intermedia                | Forsythia                    |

#### GROUNDCOVER

|                      |                  |
|----------------------|------------------|
| Liriope muscari      | Big Blue Liriope |
| Ophiopogon japonicus | Mondo Grass      |
| Adjuva reptans       | Bugleflower      |
| Aspidictra elatior   | Cast-Iron Plant  |
| Hemerocallis sp.     | Daylily var.     |
| Phlox subulate       | Thrift           |

**Date Submitted:** 1/19/2021

**Presenter:** Abb Hayes

**Item of Business:** Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I). **Ward Number: Four.** Tax Parcel Number(s): 08-024-002-047. **Request: Office/Metal fabrication plant.**

- **Proposed Annexation Ordinance 2021-07**
- **Proposed Zoning Ordinance 2021-08**

**Meeting Date:** 2/2/2021

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**Purpose of Request:**

To conduct a public hearing regarding the following zoning request as presented at the January 12, 2021 Planning and Appeals Board Meeting:

The applicant is proposing to annex the subject property with Light Industrial (L-I) zoning for sewer for the proposed Titan Steel Door metal fabrication plant which involves robotic welding, laser cutting, roll forming, tamping and machining. The applicant intends to construct 61,200 square feet of office/warehouse and manufacturing space that will be developed in two phases. Access is proposed from Mabry Road. The property is currently zoned Light Industrial (L-I) within unincorporated Hall County and is adjacent to the city limits located on the east side of Mabry Road. The adjacent uses include single-family homes, Avita Community Partners for Disability Services, Energy Assurance Laboratory and the Centennial Industrial Park all of which are in the county.

**History/Background:**

**Facts & Issues for Consideration:**

**Department Recommendation:**

Staff and PAB recommended approval with six conditions. See the PAB Recommendation Report for details and excerpts from the meeting minutes.

**SAMPLE MOTIONS**

**Approval of Ordinance 2021-07:**

I move to approve the ordinance to annex the subject property for an Office/Metal fabrication plant as presented.

**Approval of Ordinance 2021-08:**

I move to approve the ordinance to establish zoning as Light Industrial (L-I) for the subject property with six conditions as presented.

**Denial of the Request:**

I move to deny this request.

**Department Director:**



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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

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**ATTACHMENTS:**

| Description              |                                       | Type            |
|--------------------------|---------------------------------------|-----------------|
| <input type="checkbox"/> | Legal Ad                              | Legal Ad        |
| <input type="checkbox"/> | PAB Recommendation Report             | Report          |
| <input type="checkbox"/> | Proposed Annexation Ordinance 2021-07 | Ordinance       |
| <input type="checkbox"/> | Proposed Zoning Ordinance 2021-08     | Ordinance       |
| <input type="checkbox"/> | Location Maps                         | Backup Material |
| <input type="checkbox"/> | Narrative                             | Backup Material |
| <input type="checkbox"/> | Site Plan                             | Backup Material |
| <input type="checkbox"/> | Floor Plan                            | Backup Material |
| <input type="checkbox"/> | Overall Floor Plan                    | Backup Material |
| <input type="checkbox"/> | Front Elevation                       | Backup Material |

**COMBINED LEGAL AD  
Gainesville Planning and Appeals Board  
Gainesville City Council**

**Publish Wednesday, December 23, 2020  
THE TIMES**

**NOTICE OF PLANNING AND APPEALS BOARD PUBLIC HEARING**

Notice is hereby given that the **Gainesville Planning and Appeals Board** will conduct a public hearing on **Tuesday, January 12, 2021 at 5:30 p.m.** in the **Gainesville Justice Center** (Municipal Courtroom at the Public Safety Complex), 701 Queen City Parkway in midtown Gainesville on the following requests:

- 1) Request from **Cornel Potra** to vary the front yard setback requirement within the Midtown Overlay Zone on a 0.57± acre tract located on the southwest side of the intersection of Gordon Avenue and Saint Thomas Drive, having road frontage on the northside of Queen City Parkway (a/k/a **535 Queen City Parkway, SW**), having a zoning classification of General Business (G-B).  
Ward Number: Three  
Tax Parcel Number(s): 01-029-007-003  
Request: Office building addition
- 2) Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I).  
Ward Number: Four  
Tax Parcel Number(s): 08-024-002-047  
Request: Office/Metal fabrication plant
- 3) Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**).  
Ward Number: Four  
Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363  
Request: Multi-family apartments and industrial / office / warehouse uses

**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE  
GAINESVILLE ZONING MAP**

Notice is hereby given that the **Gainesville City Council** will conduct a public hearing on **Tuesday, February 2, 2021 at 5:30 p.m.** in the **Gainesville Justice Center** (Municipal Courtroom at the Public Safety Complex), 701 Queen City Parkway in midtown Gainesville on the following requests:

- 1) Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I).  
Ward Number: Four  
Tax Parcel Number(s): 08-024-002-047  
Request: Office/Metal fabrication plant

- 2) Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**).

Ward Number: Four

Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363

Request: Multi-family apartments and industrial / office / warehouse uses

Additional information is available from the Community and Economic Development Department, Planning Division, by calling 770-531-6570.

NOTE: In accordance with Georgia law, anyone who wishes to express opposition to the proposed zoning action, and has made, within two years immediately preceding the filing of the proposed zoning action, campaign contributions aggregating \$250 or more to a local government official who will consider the application, shall file a disclosure of contribution(s) with the Planning Division at least five (5) days prior to the first reading of the proposed zoning action by the City Council. (OCGA § 36-67A-3 3 {c})

**GAINESVILLE PLANNING and APPEALS BOARD  
RECOMMENDATION**

**Applicant** ..... Damon Santimauro  
**Property Owner** ..... Rack Systems Holdings, LLC  
**Location** ..... 3521 Mabry Road  
**Request** ..... Annex with L-I zoning  
**Size** ..... 7.01± acres  
**Ward** ..... Four  
**Proposed Use** ..... Office/Metal fabrication plant  
**Planning Division Staff Recommendation** ..... **Approval, with conditions**  
**Planning & Appeals Board Recommendation** ..... **Approval, with conditions**  
**Date** ..... January 12, 2021

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▪ **Applicant's Proposal and Background Information**

The applicant is proposing to annex the subject property with Light Industrial (L-I) zoning for sewer for the proposed Titan Steel Door metal fabrication plant which involves robotic welding, laser cutting, roll forming, tamping and machining. The applicant intends to construct 61,200 square feet of office/warehouse and manufacturing space that will be developed in two phases. Employee hours are 7:00 A.M. to 3:30 P.M. A second shift may be added depending on the growth of the company. A portion of Mabry Road is proposed to be improved by constructing a cul-de-sac at the driveway entrance to address truck turning movements while still allowing for vehicular traffic to pass through.

The property is currently zoned Light Industrial (I-I) within unincorporated Hall County and is adjacent to the city limits located on the east side of Mabry Road. The property was previously rezoned to Light Industrial (I-I) in the County in 2017 which allows the proposed use.

▪ **Adjacent Land Use and Zoning**

| Location | Use                                                                                               | Zoning                                    |
|----------|---------------------------------------------------------------------------------------------------|-------------------------------------------|
| North    | Single-family homes; Agriculture<br>Undeveloped industrial land                                   | AR-III -County<br>L-I -City               |
| South    | Avita Community Partners for Disability Services                                                  | AR-III -County                            |
| East     | City of Gainesville owned property;<br>Energy Assurance Laboratory, Centennial<br>Industrial Park | R-I -City<br>Light Industrial I-I -County |
| West     | West Gate Estates Subdivision                                                                     | R-I -County                               |

▪ **Other Departmental Comments**

There were no departmental comments for this request.

▪ **Zoning History**

*The following zoning actions have taken place in the immediate area during the last ten years:*

**2020** – A request by Smith, Gambrell & Russell, LLP to annex a 4.01± acres tract with a zoning of Light Industrial (L-I) located at 2500 West Park Drive was conditionally approved for an existing industrial warehouse use.

**2018** – A request by Hydro Extruder, LLC to annex a 10.98± acres tract and a 11.29± acres tract with a zoning of Light Industrial (L-I) located at 2829 Mountain View Road and 2949 Old Oakwood Road was conditionally approved to expand the existing industrial use.

**2016** – A request by Butler Property, LLC to amend a 92.06± acres tract located within the Mundy Mill development at 3035 Old Oakwood Road SW and 3523 Mountain View Road SW zoned Planned Unit Development (P-U-D) was approved to change the location of some of the single-family homes, multi-family apartments, commercial and industrial uses.

**2011** – A request by Butler Property, LLC to amend the zoning conditions for a 65.425± acres tract located within the Mundy Mill development at 2975 Mountain View Road SW; and 3755 Meeks Drive SW zoned Planned Unit Development (P-U-D) was approved to amend conditions 17 and 18 to reduce the minimum square footage for apartments.

**2011** – A request by ACR Property Services, LLC to amend the zoning conditions for a 105.51± acres tract located within the Mundy Mill development at 0 Mundy Mill Road; 2975 Mountain View Road SW; and 3755 Meeks Drive SW zoned Planned Unit Development (P-U-D) was approved to amend conditions 17 and 18 to reduce the minimum square footage for apartments.

▪ **Staff Analysis**

**(1) Is the proposed use suitable in view of the zoning and development of adjacent and nearby property?**

The subject property is adjacent to residential and industrial uses. Recent development has trended toward light industrial development primarily due to the adjacent County Centennial Industrial Park. The proposal is suitable in light of the surrounding properties.

**(2) Will the proposed use adversely affect the existing use or usability of adjacent or nearby property?**

The proposed use will function similarly as the nearby industrial uses located within Centennial Industrial Park but will increase traffic along Mabry Road. The proposed buildings will be sufficiently buffered from adjacent and nearby residential uses.

**(3) Is the proposed use compatible with the purpose and intent of the Comprehensive Plan?**

It is staff's opinion that the proposal is inconsistent with the Comprehensive Plan. The Future Development Map for the City of Gainesville places the property within the Low-Medium Density Residential land use category, which includes areas containing or planned for single-family detached or semi-detached housing at densities ranging from two to four dwelling units per acre.

According to the Character Area map for the City of Gainesville, the subject property is located within the *Suburban Residential* Character Area. The vision for this area is to preserve older, stable residential subdivisions and encourage newer projects with smaller lot sizes, pedestrian infrastructure, and buildings patterned after traditional local housing, possibly containing a small

neighborhood-serving “village center”. As well, the quality community objectives state that housing choices should continue to be diversified to support a range of household incomes, sizes, types, but consist mostly of traditional single-family detached lots. In areas where natural features or sensitive environments are important, cluster housing or conservation subdivision design may be appropriate. Land uses allowed in the Suburban Residential Character Area include low-density residential, medium-density residential, multi-family residential, public / institutional, commercial, and parks / recreation / conservation, mixed-use.

**(4) Are there substantial reasons why the property cannot or should not be used as currently zoned?**

The property is currently zoned Light Industrial (I-I) in the County and is approved for the proposed use. The applicant desires to annex the property for sewer for the same use.

**(5) Will the proposed use cause an excessive or burdensome use of public facilities or services, including but not limited to streets, schools, water or sewer utilities, and police or fire protection?**

The change from County jurisdiction to City jurisdiction should not substantially affect public facilities or services at this time.

City water, sewer, and public safety services are currently available for the subject property and capacity is sufficient. Gainesville Fire Station #4 is located approximately 1.7± miles off of Memorial Park Drive which currently services adjacent and nearby properties.

Direct impacts to the school system should be limited as the proposed request is for industrial purposes.

According to the “Trip Generation Manual” as published by the Institute of Transportation Engineers, the estimated trips for the industrial use are 425 ± trips per weekday, 62 A.M. and 66 P.M. peak hour trips. This is based on the total square footage of the facility. The proposed industrial use will require improvements to Mabry Road which is a County maintained road. The applicant proposes to construct a new cul-de-sac at the entrance to the development to address truck traffic.

**(6) Is the proposed use supported by new or changing conditions not anticipated by the Comprehensive Plan or reflected in the existing zoning on the property or surrounding properties?**

The area has experienced industrial growth over the past 25 years due to the location of Centennial Industrial Park. While available parcels within the industrial park are limited, future industrial growth is expected due to the availability of water and sewer.

**(7) Does the proposed use reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property?**

Based on the Comprehensive Plan and the adjacent industrial uses, the proposal appears to reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property.

▪ **Staff Recommendation**

The Planning Division staff is recommending **conditional approval** of this annexation request with a zoning of **Light Industrial (L-I)** based on the Comprehensive Plan and the adjacent industrial uses.

**Conditions**

1. The approved uses for the property shall be limited to light industrial uses to include the proposed use, office, warehouse, storage, distribution, further processing, assembly and fabrication.
2. The proposed development shall be generally consistent with the standards depicted on the architectural elevation provided with the annexation application. Any zoning conditions adopted as part of this zoning ordinance that conflict with the applicant's narrative, concept plan and architectural renderings shall take precedence over the applicant's development standards.
3. The development shall require a minimum 50-foot wide evergreen planted buffer adjacent to all single-family properties located to the south and west. The trees shall be a minimum installation height of 8 feet and shall consist of a mixture of Arborvitae Green Giant, Japanese Cryptomeria, Eastern Red Cedar, and Holly. The location, number, spacing, size and type of trees planted shall be subject to Community and Economic Development Department Director approval in order to effectively screen the adjacent residential properties.
4. All access point design for the subject property shall require approval by the Gainesville Public Works Director and Hall County Public Works Department. All required access / traffic / sidewalk and improvements to Mabry Road associated with the proposed development shall be at the full expense of the developer/property owner.
5. An electronic message board sign shall not be permitted for the subject property.
6. An updated as-built boundary survey / plat of the subject property, indicating all improvements required for the proposed use, shall be recorded prior to obtaining a Certificate of Occupancy.

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**Excerpts from the January 12, 2021 PAB Meeting Minutes**

**Applicant Presentation:** **Damon Santimauro**, 2314 Centennial Circle stated he has no problems with the conditions and agrees to working with staff on the 50 foot buffer in condition three. Mr. Santimauro said they have another facility nearby within the Centennial Industrial park with similar items so they have knowledge of the traffic flow. He asked the Board to consider their request to be annexed into city for sewer.

**FAVOR:** None

**OPPOSE:** None

**Planning and Appeals Board Comments:** None

There was a motion to recommend conditional approval of the annexation request and establish zoning as Light Industrial (L-I) with the following conditions:

### **Conditions**

1. The approved uses for the property shall be limited to light industrial uses to include the proposed use, office, warehouse, storage, distribution, further processing, assembly and fabrication.
2. The proposed development shall be generally consistent with the standards depicted on the architectural elevation provided with the annexation application. Any zoning conditions adopted as part of this zoning ordinance that conflict with the applicant's narrative, concept plan and architectural renderings shall take precedence over the applicant's development standards.
3. The development shall require a minimum 50-foot wide evergreen planted buffer adjacent to all single-family properties located to the south and west. The trees shall be a minimum installation height of 8 feet and shall consist of a mixture of Arborvitae Green Giant, Japanese Cryptomeria, Eastern Red Cedar, and Holly. The location, number, spacing, size and type of trees planted shall be subject to Community and Economic Development Department Director approval in order to effectively screen the adjacent residential properties.
4. All access point design for the subject property shall require approval by the Gainesville Public Works Director and Hall County Public Works Department. All required access / traffic / sidewalk and improvements to Mabry Road associated with the proposed development shall be at the full expense of the developer/property owner.
5. An electronic message board sign shall not be permitted for the subject property.
6. An updated as-built boundary survey / plat of the subject property, indicating all improvements required for the proposed use, shall be recorded prior to obtaining a Certificate of Occupancy.

Motion made by Board Member White

Motion seconded by Board Member Martin

**Vote – 6 favor, 1 absent (Fleming)**



Passed: \_\_\_\_\_

**AN ORDINANCE**

**No. 2021-07**

**AN ORDINANCE ANNEXING A 7.01± ACRES TRACT LOCATED ON THE SOUTHWEST SIDE OF MABRY ROAD, BETWEEN OLD FLOWERY BRANCH ROAD AND CENTENNIAL DRIVE (A/K/A 3521 MABRY ROAD); ADJACENT TO BUT NOT NOW WITHIN THE CORPORATE LIMITS OF THE CITY OF GAINESVILLE, GEORGIA; REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**(Amendment to City Limit Boundary)**

**WHEREAS**, a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**), lies within the unincorporated lands of Hall County and adjoins the existing corporate limits of the City of Gainesville; and

**WHEREAS**, the hereinafter described lands be incorporated and annexed into the City of Gainesville.

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:**

**SECTION I.**

That from and after the passage of this Ordinance the following described lands are and shall be annexed into the existing corporate limits of the City of Gainesville, Georgia, so that said lands shall constitute a part of the land within the corporate limits of the City of Gainesville, Georgia, as fully and completely as if the limits had been so defined by the General Assembly of Georgia.

**Legal Description**

All that tract of land lying and being in Land Lots 13, 23 and 24 of the 8<sup>th</sup> Land District, Hall County, Georgia as shown on plat prepared by B. Lamar Floyd dated December 2, 1986 entitled "Survey for Mary Ann N. Brock, and More particularly described as follows:

BEGINNING at a one-half inch rebar located on the southwest corner of the intersection of Old Flowery Branch Road with Mabry Road; thence South 39-07-27 East along the westerly ROW of Mabry Road a distance of 119.90 feet to a point; thence South 51-56-52 East along the curve of the westerly ROW of Mabry Road a distance of 99.12 feet to a point; thence South 65-48-59 East along the westerly ROW of Mabry Road a distance of 285.47 feet to a point; thence South 62-25-01 East along the westerly ROW of Mabry Road a distance of 216.89 feet to a point; thence South 41-52-11 East along the curve of the westerly ROW of Mabry Road a distance of 123.52 feet to a point; thence South 21-19-22 East along the Westerly ROW of Mabry Road a distance of 159.40 feet to a point; thence South 25-05-44 East along the curve of the westerly ROW of Mabry Road a distance of 29.06 feet to a point; thence South 54-41-47 West a

## **ORDINANCE NO. 2021-07**

distance of 10.06 feet to a one-half rebar; thence South 59-23-03 West a distance of 40.13 feet to a point; thence South 72-08-18 West a distance of 60.70 feet to a point; thence South 72-02-36 West a distance of 52.47 feet to point; thence South 56-59-37 West a distance of 50.34 feet to a point; thence South 48-56-28 West a distance of 51.86 feet to a point; thence South 48-42-12 West a distance of 51.80 feet to a point; thence South 65-58-26 West a distance of 83.65 feet to an iron axle; thence North 31-29-47 West a distance of 895.97 feet to an iron pin along the southerly right-of-way of Old Flowery Branch Road; thence North 46-21-28 East along the southerly right-of-way of Old Flowery Branch Road a distance of 181.27 feet to the POINT OF BEGINNING.

Less and except a 1.00 acre tract, totaling 7.01± acres in size.

The annexation is to include all that portion of right-of-way known as Mabry Road as shown on the location map.

### **SECTION II.**

The Community and Economic Development Department of the City of Gainesville is directed to make and file with the Department of Community Affairs of the State of Georgia a certified copy of this Ordinance together with a plat describing lands annexed to the City of Gainesville by this Ordinance.

### **SECTION III.**

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

### **SECTION IV.**

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

### **SECTION V.**

The effective date of this Ordinance shall be the first day of the month following approval by the governing body of the City of Gainesville, Georgia.

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**C. Danny Dunagan, Jr., Mayor**

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

---

**Denise O. Jordan, City Clerk**

Passed: \_\_\_\_\_

**AN ORDINANCE**

**No. 2021-08**

**AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA BY ESTABLISHING THE ZONING ON A 7.01± ACRES TRACT LOCATED ON THE SOUTHWEST SIDE OF MABRY ROAD, BETWEEN OLD FLOWERY BRANCH ROAD AND CENTENNIAL DRIVE (A/K/A 3521 MABRY ROAD) AT THE TIME OF ANNEXATION AS LIGHT INDUSTRIAL, WITH CONDITIONS (L-I-c); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**(Amendment to Zoning Map)**

**BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:**

**SECTION I.**

That from and after the passage of this Ordinance the following described lands shall be zoned and so designated on the Zoning Map of the City of Gainesville as **Light Industrial, with conditions (L-I-c)**.

**Conditions**

- 1. The approved uses for the property shall be limited to light industrial uses to include the proposed use, office, warehouse, storage, distribution, further processing, assembly and fabrication.**
- 2. The proposed development shall be generally consistent with the standards depicted on the architectural elevation provided with the annexation application. Any zoning conditions adopted as part of this zoning ordinance that conflict with the applicant's narrative, concept plan and architectural renderings shall take precedence over the applicant's development standards.**
- 3. The development shall require a minimum 50-foot wide evergreen planted buffer adjacent to all single-family properties located to the south and west. The trees shall be a minimum installation height of 8 feet and shall consist of a mixture of Arborvitae Green Giant, Japanese Cryptomeria, Eastern Red Cedar, and Holly. The location, number, spacing, size and type of trees planted shall be subject to Community and Economic Development Department Director approval in order to effectively screen the adjacent residential properties.**
- 4. All access point design for the subject property shall require approval by the Gainesville Public Works Director and Hall County Public Works Department. All required access / traffic / sidewalk and improvements to Mabry Road associated with**

## ORDINANCE NO. 2021-08

the proposed development shall be at the full expense of the developer/property owner.

5. An electronic message board sign shall not be permitted for the subject property.
6. An updated as-built boundary survey / plat of the subject property, indicating all improvements required for the proposed use, shall be recorded prior to obtaining a Certificate of Occupancy.

### **Legal Description**

All that tract of land lying and being in Land Lots 13, 23 and 24 of the 8<sup>th</sup> Land District, Hall County, Georgia as shown on plat prepared by B. Lamar Floyd dated December 2, 1986 entitled "Survey for Mary Ann N. Brock, and More particularly described as follows:

BEGINNING at a one-half inch rebar located on the southwest corner of the intersection of Old Flowery Branch Road with Mabry Road; thence South 39-07-27 East along the westerly ROW of Mabry Road a distance of 119.90 feet to a point; thence South 51-56-52 East along the curve of the westerly ROW of Mabry Road a distance of 99.12 feet to a point; thence South 65-48-59 East along the westerly ROW of Mabry Road a distance of 285.47 feet to a point; thence South 62-25-01 East along the westerly ROW of Mabry Road a distance of 216.89 feet to a point; thence South 41-52-11 East along the curve of the westerly ROW of Mabry Road a distance of 123.52 feet to a point; thence South 21-19-22 East along the Westerly ROW of Mabry Road a distance of 159.40 feet to a point; thence South 25-05-44 East along the curve of the westerly ROW of Mabry Road a distance of 29.06 feet to a point; thence South 54-41-47 West a distance of 10.06 feet to a one-half rebar; thence South 59-23-03 West a distance of 40.13 feet to a point; thence South 72-08-18 West a distance of 60.70 feet to a point; thence South 72-02-36 West a distance of 52.47 feet to point; thence South 56-59-37 West a distance of 50.34 feet to a point; thence South 48-56-28 West a distance of 51.86 feet to a point; thence South 48-42-12 West a distance of 51.80 feet to a point; thence South 65-58-26 West a distance of 83.65 feet to an iron axle; thence North 31-29-47 West a distance of 895.97 feet to an iron pin along the southerly right-of-way of Old Flowery Branch Road; thence North 46-21-28 East along the southerly right-of-way of Old Flowery Branch Road a distance of 181.27 feet to the POINT OF BEGINNING.

Less and except a 1.00 acre tract, totaling 7.01± acres in size.

The annexation is to include all that portion of right-of-way known as Mabry Road as shown on the location map.

### **SECTION II.**

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

### **SECTION III.**

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

**ORDINANCE NO. 2021-08**

**SECTION IV.**

This Ordinance is enacted as an amendment to the Code of the City of Gainesville, Georgia, and is to be codified as a part of Section 9-1-1-5.

**SECTION V.**

The effective date of this Ordinance shall be the first day of the month following approval by the governing body of the City of Gainesville, Georgia.

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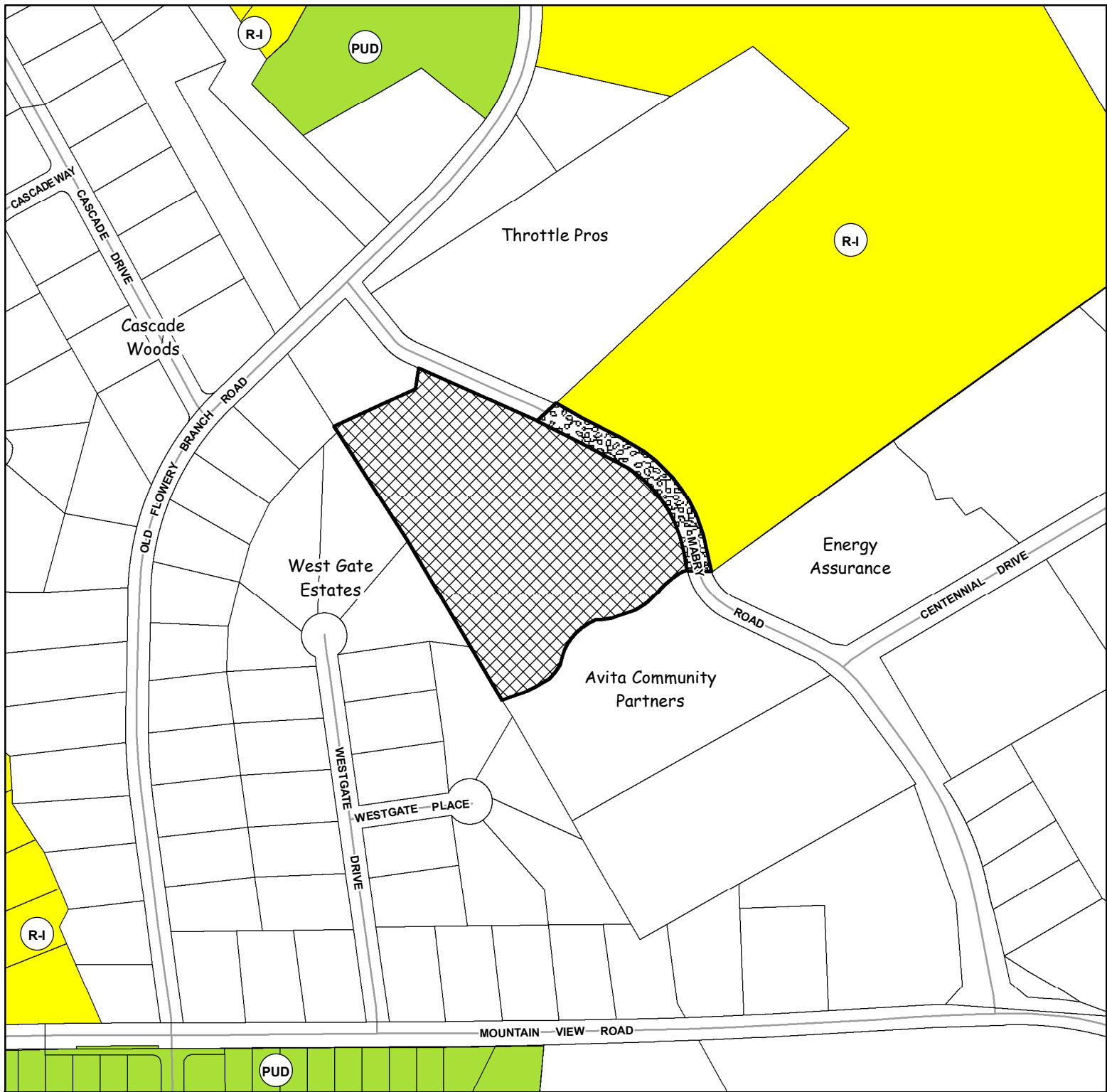
**C. Danny Dunagan, Jr., Mayor**

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

---

**Denise O. Jordan, City Clerk**



Applicant:

**DAMON SANTIMAURO**

## ANNEXATION REQUEST

Request:

Annex 7.01+/- acres and establish zoning as Light Industrial (L-I) for an office/metal fabrication plant

Subject Property Address:

3521 Mabry Road

Tax Parcel:

08-024-002-047

Meeting Date: 01/12/2021

Map Prepared: 12/08/2020



Subject Property



Right-of-Way to be Annexed



0 180 360 540 720 Feet

1" = 300'



CITY OF

**GAINESVILLE**

COMMUNITY AND ECONOMIC DEVELOPMENT







Applicant:

**DAMON SANTIMAURO**

## ANNEXATION REQUEST

Request:

Annex 7.01+/- acres and establish zoning as Light Industrial (L-I) for an office/metal fabrication plant

Subject Property Address:

3521 Mabry Road

Tax Parcel:

08-024-002-047

Meeting Date: 01/12/2021

Map Prepared: 12/08/2020



Subject Property and  
Right-of-Way to be Annexed

Aerial from 2018

0 180 360 540 720 Feet

1" = 300'



CITY OF  
**GAINESVILLE**

COMMUNITY AND ECONOMIC DEVELOPMENT



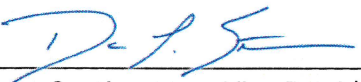




## **Narrative Report**

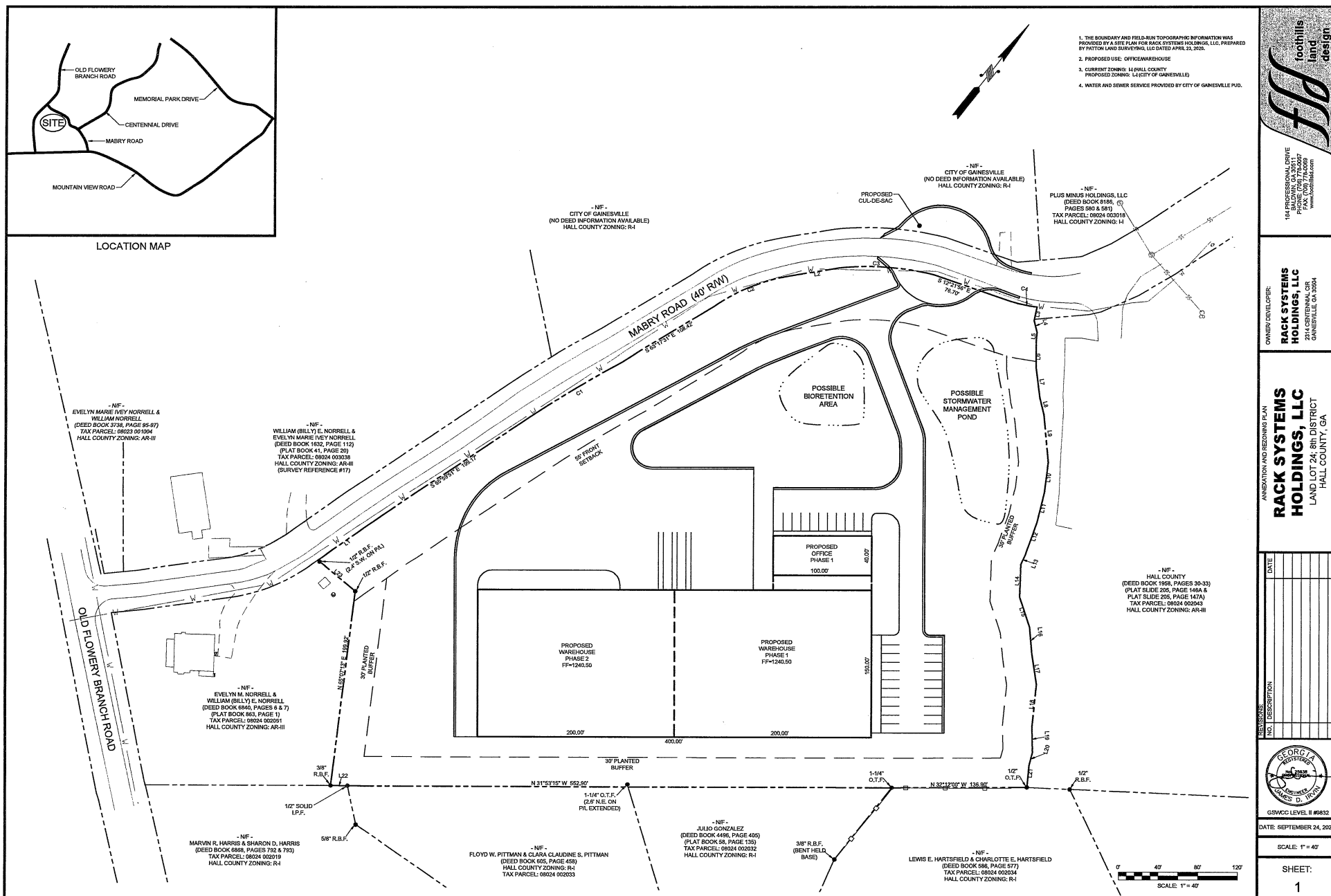
*Project: 3521 Mabry Rd Gainesville GA 30504*

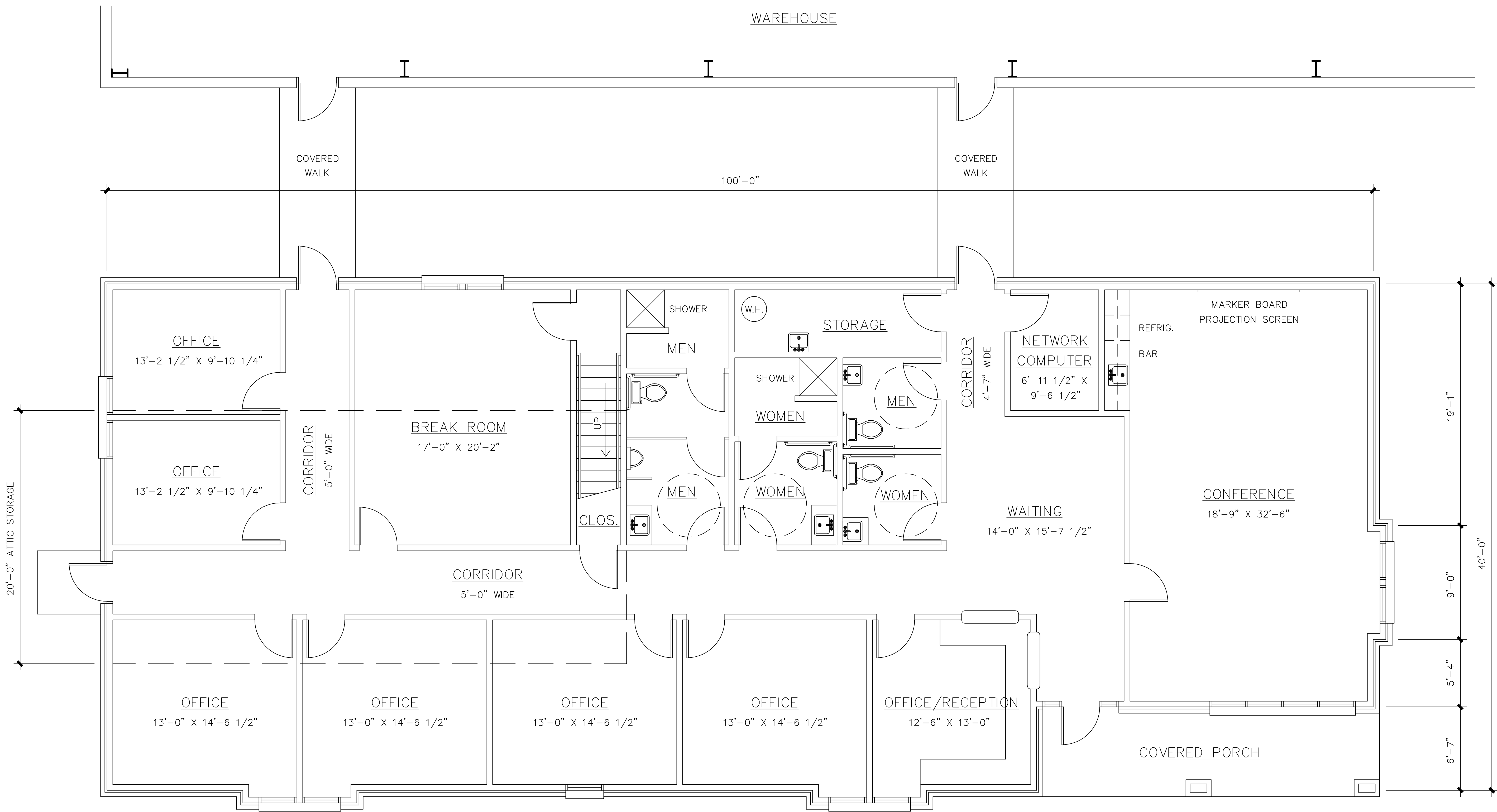
Titan Steel Door's plan for developing the property, located at 3521 Mabry Rd, is for corporate office space and a metal fabrication plant to begin in spring 2021. Within the office space (~1,200 sq/ft) we look to operate accounting / HR / purchasing / design of product and other administrative functions. The plant portion (*phase 1 = ~30,000 sq/ft with a plan of phase 2 for an additional ~30,000 sq/ft as part of our growth*) of the project will allow us to expand our fabrication footprint for more equipment and employees. Some of the fabrication actions slated for this development include robotic welding, laser cutting, roll forming, stamping and machining.

  
\_\_\_\_\_  
Damon Santimauro – Vice President

\_\_11/3/2020\_\_  
Date

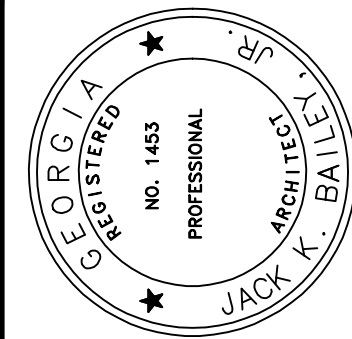






FLOOR PLAN

1/4" = 1'-0"



Architects  
Gainesville  
Georgia 30501  
770 534 0612

Bailey Associates

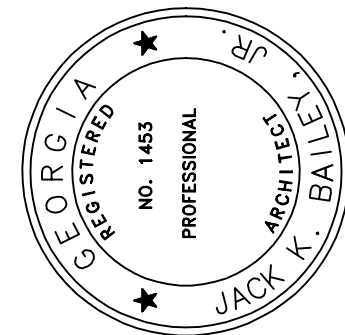
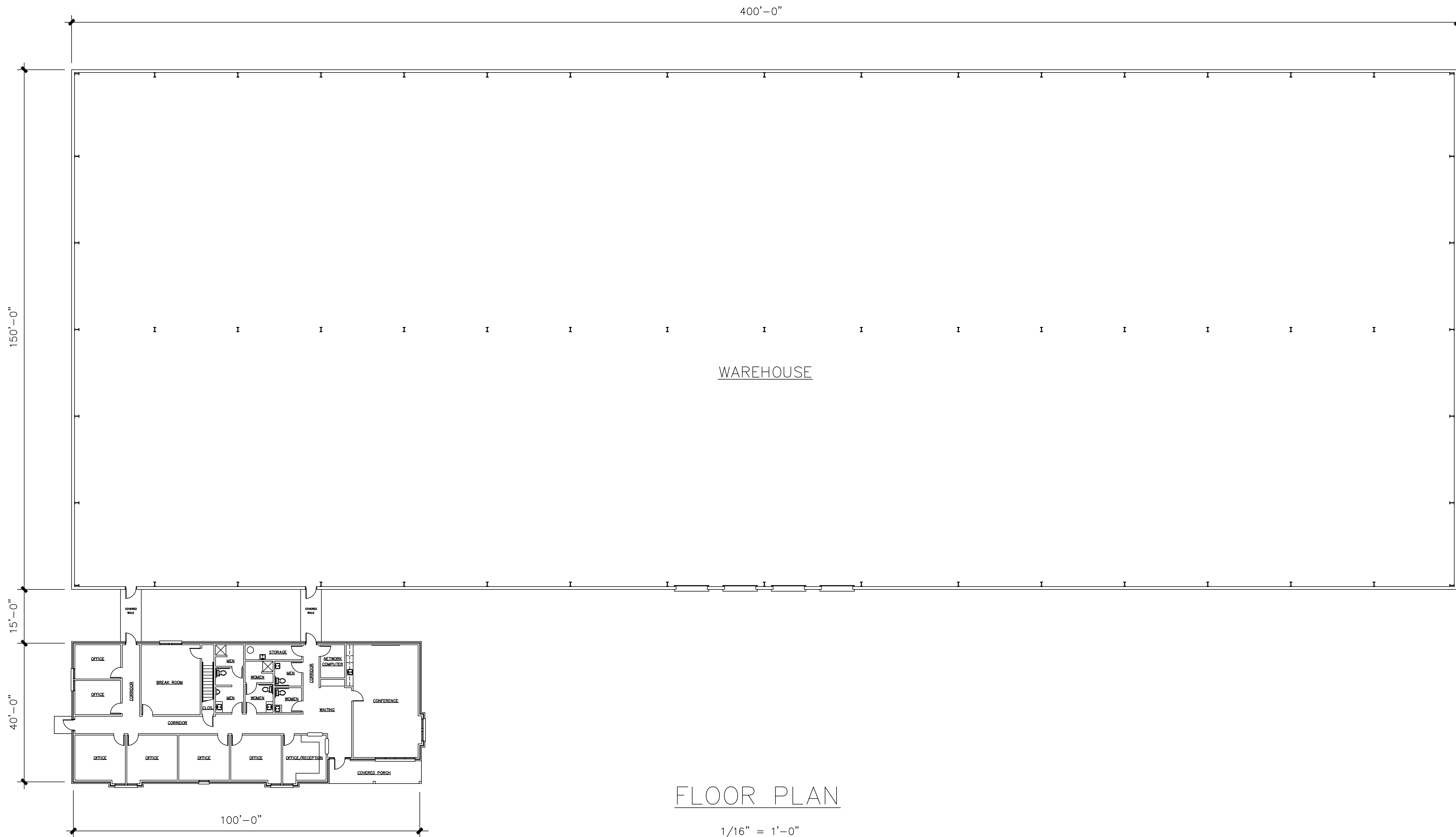
RACK SYSTEMS HOLDINGS, LLC  
MABRY ROAD, GAINESVILLE, GEORGIA

Project No 2X052  
Drawn By JKB  
Checked By  
Date DEC. 22, 2020  
Revisions

A2

OF 3





Architects  
Gainesville  
Georgia 30501  
770 534 0612

Bailey Associates

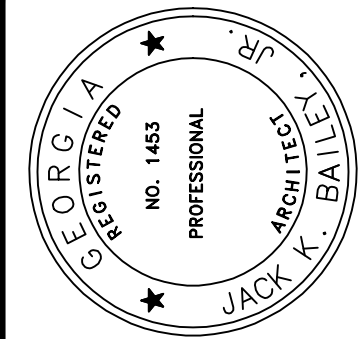
RACK SYSTEMS HOLDINGS, LLC  
MABRY ROAD, GAINESVILLE, GEORGIA

Project No 2X052  
Drawn By JKB  
Checked By  
Date DEC. 22, 2020  
Revisions

A1

OF 3





Architects  
Gainesville  
Georgia 30501  
770 534 0612

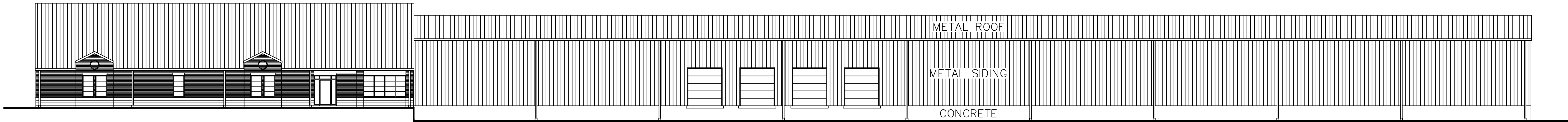
Bailey Associates

RACK SYSTEMS HOLDINGS, LLC  
MABRY ROAD, GAINESVILLE, GEORGIA

Project No 2X052  
Drawn By JKB  
Checked By  
Date DEC. 22, 2020  
Revisions

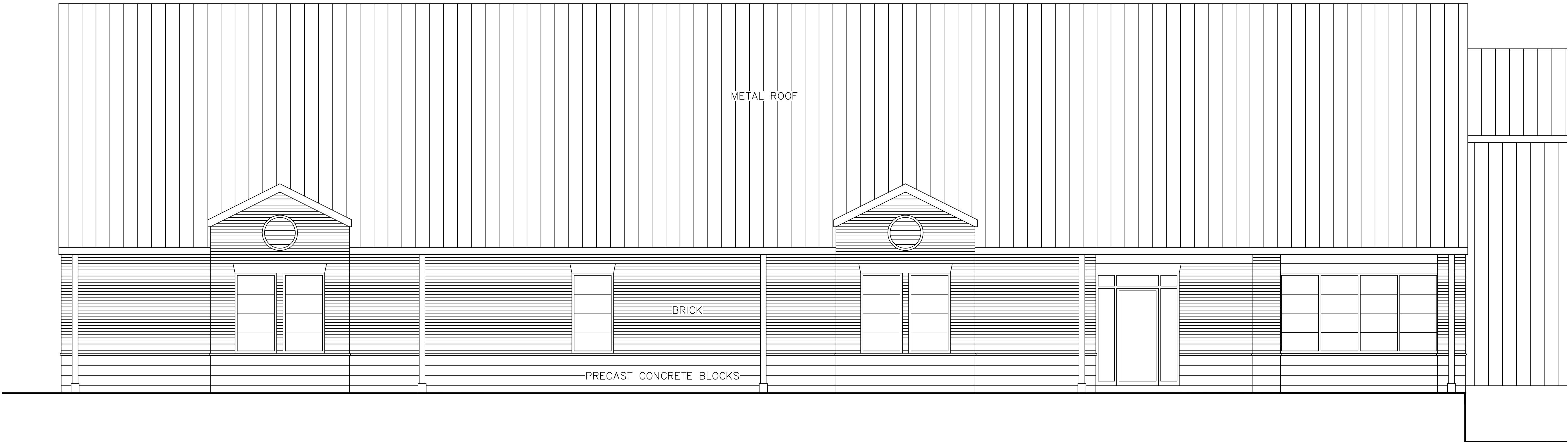
A3

OF 3



FRONT ELEVATION

1/16" = 1'-0"



OFFICE FRONT ELEVATION

1/4" = 1'-0"

**Date Submitted:** 1/19/2021

**Presenter:** Abb Hayes

**Item of Business:** Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**). **Ward Number: Four**. Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363. **Request: Multi-family apartments and industrial / office / warehouse uses.**

- **Proposed Zoning Amendment Ordinance 2021-09**

**Meeting Date:** 2/2/2021

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**Purpose of Request:**

To conduct a public hearing regarding the following zoning request as presented at the January 12, 2021 Planning and Appeals Board Meeting:

The proposed zoning amendment is part of the 604.0± acres Mundy Mill mixed-use development that was originally approved in 2004. At this time, there are multiple phases of single-family homes and apartments built or under construction as well as the existing Mundy Mill Learning Academy elementary school.

The proposed zoning amendment includes only Pod's "E" and "I" to relocate and revise some of the approved planned uses. However, the overall number of residential units and nonresidential square footage will remain the same. Specifically, 300 multi-family apartment units originally intended for Pod "E" will be located to part of Pod "I". The previously approved office/commercial/retail uses within the same part of Pod "I" will be relocated to Pod "E" and changed to approximately 170,000 square feet of industrial/office/warehouse uses. The purpose of relocating the uses is to utilize the planned traffic signal at the intersection of Mundy Mill Road and Millside Parkway and to help entice commercial development along Mundy Mill Road. As well, the industrial/office/warehouse will be located to similar uses off of Old Oakwood Road. The total number of multi-family units within the PUD will remain unchanged from what was previously approved.

**History/Background:**

**Facts & Issues for Consideration:**

**Department Recommendation:**

Staff and PAB recommended approval with thirty-two conditions. See the PAB Recommendation Report for details and excerpts from the meeting minutes.

**SAMPLE MOTIONS**

**Approval of Ordinance 2021-09:**

I move to approve the ordinance to amend the existing Planned Unit Development (P-U-D) for the subject property for multi-family apartments and industrial/office/warehouse uses with thirty-two conditions as presented.

**Denial of the Request:**

I move to deny this request.

**Department Director:**

Rusty Ligon

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**If funding is involved, are funds approved within the current budget?**

**Amount Requested:**

**Source of Funds:**

**Finance Comments:**

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**Administrative Comments:**

---

**ATTACHMENTS:**

| Description                                                          | Type            |
|----------------------------------------------------------------------|-----------------|
| <input type="checkbox"/> Legal Ad                                    | Legal Ad        |
| <input type="checkbox"/> PAB Recommendation Report                   | Report          |
| <input type="checkbox"/> Proposed Zoning Amendment Ordinance 2021-09 | Ordinance       |
| <input type="checkbox"/> Location Maps                               | Backup Material |
| <input type="checkbox"/> Narrative                                   | Backup Material |
| <input type="checkbox"/> Plat - 40.04 acres tract                    | Backup Material |
| <input type="checkbox"/> Plat - 17.25 acres tract                    | Backup Material |
| <input type="checkbox"/> Concept Plan - Multi Family                 | Backup Material |
| <input type="checkbox"/> Site Plan - Industrial-Office-Warehouse     | Backup Material |
| <input type="checkbox"/> Proposed PUD Master Plan                    | Backup Material |
| <input type="checkbox"/> Existing PUD Master Plan                    | Backup Material |
| <input type="checkbox"/> Architectural Renderings                    | Backup Material |

**COMBINED LEGAL AD  
Gainesville Planning and Appeals Board  
Gainesville City Council**

**Publish Wednesday, December 23, 2020  
THE TIMES**

**NOTICE OF PLANNING AND APPEALS BOARD PUBLIC HEARING**

Notice is hereby given that the **Gainesville Planning and Appeals Board** will conduct a public hearing on **Tuesday, January 12, 2021 at 5:30 p.m.** in the **Gainesville Justice Center** (Municipal Courtroom at the Public Safety Complex), 701 Queen City Parkway in midtown Gainesville on the following requests:

- 1) Request from **Cornel Potra** to vary the front yard setback requirement within the Midtown Overlay Zone on a 0.57± acre tract located on the southwest side of the intersection of Gordon Avenue and Saint Thomas Drive, having road frontage on the northside of Queen City Parkway (a/k/a **535 Queen City Parkway, SW**), having a zoning classification of General Business (G-B).  
Ward Number: Three  
Tax Parcel Number(s): 01-029-007-003  
Request: Office building addition
- 2) Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I).  
Ward Number: Four  
Tax Parcel Number(s): 08-024-002-047  
Request: Office/Metal fabrication plant
- 3) Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**).  
Ward Number: Four  
Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363  
Request: Multi-family apartments and industrial / office / warehouse uses

**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE  
GAINESVILLE ZONING MAP**

Notice is hereby given that the **Gainesville City Council** will conduct a public hearing on **Tuesday, February 2, 2021 at 5:30 p.m.** in the **Gainesville Justice Center** (Municipal Courtroom at the Public Safety Complex), 701 Queen City Parkway in midtown Gainesville on the following requests:

- 1) Request from **Damon Santimauro** to annex a 7.01± acres tract located on the southwest side of Mabry Road, between Old Flowery Branch Road and Centennial Drive (a/k/a **3521 Mabry Road**) and to establish zoning as Light Industrial (L-I).  
Ward Number: Four  
Tax Parcel Number(s): 08-024-002-047  
Request: Office/Metal fabrication plant



- 2) Request from **Scott Stringer** to amend a portion of an existing Planned Unit Development (P-U-D) zoning totaling 57.29± acres located on the southwest side of the intersection of Mundy Mill Road and Millside Parkway and west of the intersection of Mountain View Road and Old Oakwood Road (a/k/a **0 Mundy Mill Road, SW and 0 Old Oakwood Road, SW**).

Ward Number: Four

Tax Parcel Number(s): 08-043-000-078 and 08-024-005-363

Request: Multi-family apartments and industrial / office / warehouse uses

Additional information is available from the Community and Economic Development Department, Planning Division, by calling 770-531-6570.

NOTE: In accordance with Georgia law, anyone who wishes to express opposition to the proposed zoning action, and has made, within two years immediately preceding the filing of the proposed zoning action, campaign contributions aggregating \$250 or more to a local government official who will consider the application, shall file a disclosure of contribution(s) with the Planning Division at least five (5) days prior to the first reading of the proposed zoning action by the City Council. (OCGA § 36-67A-3 3 {c})



|                                                          |                                                                        |
|----------------------------------------------------------|------------------------------------------------------------------------|
| <b>Applicant and Property Owner</b> .....                | Scott Stringer                                                         |
| <b>Property Owner</b> .....                              | Butler Property, LLC                                                   |
| <b>Locations</b> .....                                   | 0 Mundy Mill Road SW; 0 Old Oakwood Road SW;                           |
| <b>Request</b> .....                                     | Amend P-U-D zoning                                                     |
| <b>Size</b> .....                                        | 57.29± total acres<br>17.25± acres (Pod “E”)<br>40.04± acres (Pod “I”) |
| <b>Ward</b> .....                                        | Four                                                                   |
| <b>Proposed Use</b> .....                                | Multi-family apartments and industrial / office / warehouse uses       |
| <b>Planning Division Staff Recommendation</b> .....      | <b>Approval, with conditions</b>                                       |
| <b>Planning &amp; Appeals Board Recommendation</b> ..... | <b>Approval, with conditions</b>                                       |
| <b>Date</b> .....                                        | January 12, 2021                                                       |

|                                    |                                                      |              |                                                                                     |                              |
|------------------------------------|------------------------------------------------------|--------------|-------------------------------------------------------------------------------------|------------------------------|
| <b>I<br/>(Comm-1<br/>and MF-5)</b> | 750,000 square feet commercial<br>for all of Pod "I" | 40.04± acres | 300 Multi-family apartments<br>580,000 square feet commercial<br>for all of Pod "I" | 22.95± acres<br>17.09± acres |
|------------------------------------|------------------------------------------------------|--------------|-------------------------------------------------------------------------------------|------------------------------|

▪ **Adjacent Land Use and Zoning**

| Location                       | Use                                                                                   | Zoning                                    |
|--------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------|
| <b>Pod E (Comm-6)</b>          |                                                                                       |                                           |
| North/East                     | Single-family homes, Family Dollar retail store, Hair salon<br>Hydro Extruder         | AR-III, R-I and H-B – County<br>L-I- City |
| South/West                     | Single-family homes<br>Garrison Trucking Company                                      | PUD -City<br>M-1 -Oakwood                 |
| <b>Pod I (Comm-1 and MF-5)</b> |                                                                                       |                                           |
| North/East                     | Undeveloped commercial land<br>Creekside Apartments                                   | PUD -City<br>R-4 -Oakwood                 |
| South/West                     | 53 West Apartments, The Exchange at Oakwood Apartments<br>Undeveloped commercial land | PUD – City<br>PUD -City                   |

▪ **Other Departmental Comments**

There were no other department comments regarding this request.

▪ **Zoning History**

*The following zoning actions have taken place in the immediate area during the last ten years:*

**2020** – A request by Smith, Gambrell & Russell, LLP to annex a 4.01± acres tract with a zoning of Light Industrial (L-I) located at 2500 West Park Drive was conditionally approved for an existing industrial warehouse use.

**2018** – A request by Hydro Extruder, LLC to annex a 10.98± acres tract and a 11.29± acres tract with a zoning of Light Industrial (L-I) located at 2829 Mountain View Road and 2949 Old Oakwood Road was conditionally approved to expand the existing industrial use.

**2016** – A request by Butler Property, LLC to amend a 92.06± acres tract located within the Mundy Mill development at 3035 Old Oakwood Road SW and 3523 Mountain View Road SW zoned Planned Unit Development (P-U-D) was approved to change the location of some of the single-family homes, multi-family apartments, commercial and industrial uses.

**2011** – A request by Butler Property, LLC to amend the zoning conditions for a 65.425± acres tract located within the Mundy Mill development at 2975 Mountain View Road SW; and 3755 Meeks Drive SW zoned Planned Unit Development (P-U-D) was approved to amend conditions 17 and 18 to reduce the minimum square footage for apartments.

**2011** – A request by ACR Property Services, LLC to amend the zoning conditions for a 105.51± acres tract located within the Mundy Mill development at 0 Mundy Mill Road; 2975 Mountain View Road SW; and 3755 Meeks Drive SW zoned Planned Unit Development (P-U-D) was approved to amend conditions 17 and 18 to reduce the minimum square footage for apartments.

▪ **Staff Analysis**

(1) Is the proposed use suitable in view of the zoning and development of adjacent and nearby property?

The proposed zoning amendment appears to be suitable based on the adjacent and nearby uses. Adjacent to Pod "I" includes undeveloped commercial property and multi-family apartments including the 53 West apartments (266 units) and The Exchange at Oakwood apartments (194 units). Uses adjacent to pod "E" include nonresidential uses such as Hydro Extruder industrial use, Garrison Trucking Company, Family Dollar retail and a hair salon. Residential uses are located off of Old Oakwood Road and Mountain View Road and within the Mundy Mill planned community.

The relocation of the multi-family uses and industrial/office/warehouse uses appear reasonable given the proposal is in keeping with the overall mixture of uses within the planned development and compliment the adjacent uses.

**(2) Will the proposed use adversely affect the existing use or usability of adjacent or nearby property?**

The proposed amendment should not adversely affect the use or usability of the adjacent or nearby property. The proposed uses will be relocated with no additional density or non-residential square footage. The overall development will function similarly as planned. Primary access is will continue to be from Millside Parkway and from Old Oakwood Road/Mountain View Road. A future traffic signal will be installed the intersection of Mundy Mill Road and Millside Parkway to better serve the apartments and commercial uses.

The proposed industrial/office/warehouse uses within Pod "E" will add traffic movements along Old Oakwood Road and Mountain View Road which are two lane roads and already experience a mixture of light industrial and residential traffic. The amount light industrial traffic created has not been determined as there is no end user identified for this pod. A future traffic study for this area may be warranted at such time.

To buffer the proposed industrial/office/warehouse uses from the adjacent residential uses, the PUD development standards require a minimum 30-foot wide perimeter buffer. In addition, there is currently a 100± vegetated buffer located between Pod "E" and the homes within the adjacent Mundy Mill subdivision.

**(3) Is the proposed use compatible with the purpose and intent of the Comprehensive Plan?**

It is staff's opinion that the proposal is consistent with the Comprehensive Plan given the property is located within a planned mixed-use development. The Gainesville 2030 Future Development Map places the Pod "E" portion of the subject property within the *Mixed-Use General* land use category and the Pod "I" portion of the subject property within the *Retail/Commercial* land use category. The *Mixed-Use General* land use category includes areas containing or planned for a mixture of land uses including office, neighborhood retail, and residential. The *Retail/Commercial* land use category includes commercial service activities such as grocery stores, banks, restaurants, theatres, hotels, and automotive related businesses.

According to the Character Area map for the City of Gainesville, the subject property is located within the *Suburban Residential* Character Area which includes low-density residential, medium-density residential, multi-family residential, public / institutional, commercial, and parks / recreation / conservation and mixed-use.

**(4) Are there substantial reasons why the property cannot or should not be used as currently zoned?**

The property is zoned Planned Unit Development (P-U-D) which is a site-specific zoning. Modifications to the proposed plan require the zoning to be amended. The proposed zoning

was originally approved in 2004 and has been amended six times over the past 16 years. The proposed changes appear to better position the existing approved uses given the location of the school site, multi-family uses and nearby light industrial uses without increasing density.

**(5) Will the proposed use cause an excessive or burdensome use of public facilities or services, including but not limited to streets, schools, water or sewer utilities, and police or fire protection?**

The proposed zoning amendment request should not cause an excessive or burdensome use of public facilities or services above what is currently approved for the property as the residential density and non-residential square footage will remain the same.

City water, sewer, and public safety services are currently provided within the development and have the capacity to serve the additional single-family homes. Gainesville Fire Station #4 is located approximately 2.5± miles away off of Memorial Park Drive.

According to the "Trip Generation Manual" as published by the Institute of Transportation Engineers, the estimated trips for the future industrial use are 1,185± trips per weekday, 172 A.M. and 184 P.M. peak hour trips. The estimated trips for the apartment uses are 1,995± trips per weekday, 165 A.M. and 201 P.M. peak hour trips.

The total number of residential units will remain unchanged but will be relocated adjacent to the existing multi-family development located south of Mundy Mill Road. Children are expected to attend the existing Mundy Mill Learning Academy elementary school within the Mundy Mill community and the new Middle School under construction off of McEver Road.

**(6) Is the proposed use supported by new or changing conditions not anticipated by the Comprehensive Plan or reflected in the existing zoning on the property or surrounding properties?**

The subject property is part of a planned mixed-use development originally approved in 2004. The proposed zoning amendment appears to still support the original scope planned for the mixed-use development. As well, the surrounding development located within the jurisdictions of Gainesville, Oakwood and Hall County appear to support the mixture of uses planned within the Mundy Mill development.

**(7) Does the proposed use reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property?**

Based on the Comprehensive Plan and the surrounding land uses, the proposed zoning amendment request appears to reflect a reasonable balance between the promotion of the public health, safety, morality, or general welfare and the right to unrestricted use of property.

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▪ **Staff Recommendation**

The Planning Division staff is recommending **conditional approval** of this zoning amendment request based on the comprehensive plan and the adjacent uses. The existing zoning conditions are recommended with highlighted amendments to zoning conditions 17, 18 and 20 and the addition of zoning conditions 31 and 32.

**Conditions**

**Transportation/Traffic**

1. All road improvements associated within the scope of the proposed development shall be at the full expense of the developer(s). The scope of the development shall be defined as those roads/intersections directly within, adjacent to, and within 1,500 feet of the subject property as studied within the Traffic Impact Study (TIS) submitted with this application. These road improvements are to include additional signalization, turn lanes, widening of roads, striping, and signage as stated in the TIS. This may include all or portions of Mundy Mill Road, Meeks Road, Fairbanks Drive, Old Oakwood Road, Old Flowery Branch Road, and Mountain View Road. The cost of the required road improvements shall be prorated based on developed property values of the residential, commercial, retail, office and industrial properties.
2. The developer(s) shall work with the Georgia Department of Transportation, Hall County Traffic Engineering, the City of Oakwood, and the City of Gainesville Public Works Department to ensure that these improvements are performed in a timely manner so as to not conflict with any of the existing or planned road projects that are scheduled to take place outside the scope of the proposed development.
3. All sign locations, access point (new and existing) designations for *new* roads, sight distances, and sight triangles shall be reviewed and clarified, in the beginning stages of plans and submittals with GDOT and the Public Works Director so as to limit the number of access points in that area.
4. A signal warrant study will be required for the major intersections of internal streets within the development. If a signal light is warranted at a specific intersection, such installation shall be completed at the expense of the developer(s) and shall meet all specifications as determined by the Public Works Department. A signal light shall not be installed until traffic volumes actually meet the levels as determined by the warrant study.
5. The developer(s) shall meet with Public Works prior to initiating the final civil design to discuss a traffic calming plan. A traffic calming plan consisting of tools such as landscaped traffic circles at intersections, raised crosswalks, landscaped center medians, chicanes, or other measures that aid in keeping the average speed on residential streets approximately 25 mph or below shall be prepared and approved by Public Works. Specific measures in the approved plan shall be constructed at the same time the streets are constructed.
6. All roads dedicated to the City of Gainesville shall meet City specifications, and all private roads shall be constructed with materials that meet City specifications.
7. All interpretations relating to transportation and/or traffic improvement conditions shall be subject to approval of the Gainesville Public Works Director.
8. The new four lane parkway as reflected on the site plan shall be constructed and designed so as to allow a connection to the Tumbling Creek Connector across Old Oakwood Road.

#### Development Standards

9. Sidewalks shall be required along both sides of the streets within the development and shall be a minimum of four feet (4') wide along streets classified as residential streets and six feet (6') wide along collector streets and streets in the commercial zones. Alternatively, sidewalks shall be permitted along one side of the street in parkway areas at a minimum width of eight feet (8') and a minimum of five feet (5') along roads classified as residential streets.
10. All proposed single-family lots within the development shall only be allowed to access new interior roads within the subdivision. Direct access shall not be allowed onto roads that existed prior to this development.

11. Access to all service areas adjacent to single-family detached homes, including dumpster pads, shall be limited to the hours of between 9:00 a.m. and 6:00 p.m., unless an emergency situation warrants access to these areas.
12. Upon completion of the development, no outside storage of any materials shall be allowed. No storage of hazardous chemicals, as listed in the Standard Fire Code, shall be permitted.
13. Outdoor lighting used in this development; be it for recreational, security or general purposes, shall be of non-spill design and placed in a manner so as to minimize direct visibility by adjoining or adjacent properties.
14. The proposed residential, office, commercial, and accessory structures shall be similar in scale and architecture to the elevation drawings and pictures as submitted with the application.
15. The subject property shall be developed substantially in accordance with the site plan with minor engineering deviations excepted. All site plan, architectural renderings, pedestrian/trail access plan, and traffic impact studies shall become a part of the annexation, zoning and rezoning ordinances.
16. The number of *single-family detached homes* shall not exceed 1208 units and shall contain a minimum of 1,500 square feet of heated space. Front facades shall consist of masonry, stacked stone, cedar shake or stucco, architectural accents excluded. The remaining three facades shall consist of these materials or cementeous siding such as hardiplank. Single-family lots shall be no less than 6,000 square feet in size, with 60 feet of lot width at the building setback line and minimum lot width at right-of-way line of 20 feet, with the exception of Pod M of the concept plan which shall have a minimum lot width at the building setback line reduced to 50-feet.

Pod L of the concept plan dated 10/06/04 shall be the highest-end product proposed by the developer and shall contain a minimum of 1,800 square feet of heated space. Single-family lots shall be no less than 6,000 square feet in size, with 60 feet of lot width at the building setback line, and minimum lot width at right-of-way line of 20 feet. Front and side facades shall consist of masonry, stacked stone, cedar shake or stucco, architectural accents excluded. The rear facade may consist of these materials or cementeous siding such as hardiplank.

Each home within all single-family residential detached pods will have an attached garage for at least two cars. The front yard of each lot shall be sodded and planted with at least one hardwood tree. Monument signage shall be used for the entrance to any detached single-family residential pod as per the attached site plan, and each entrance shall have plantings or other architectural accents.

17. The number of attached *single-family condominiums*, fee simple townhomes or apartments shall not exceed 1,235 total units to include a total of 775 units for Pod's C and I and 460 units for Pod's J and K. The minimum unit/lot width for each condominium or fee simple townhome unit shall be 16 feet, and each unit shall contain a minimum of 1,200 feet of heated space. Building separations shall be as reflected on the site plan, and private drives built to City specs will be used within these communities. Front, side and rear facades shall consist of masonry, stacked stone, cedar shake, stucco, cementeous siding or a mixture thereof. No vinyl siding shall be allowed excluding soffit areas. No fewer than three or more than ten condominium or fee simple townhome units shall exist within one continuous structure, and front facades will be staggered. All single-family condominiums shall contain one car garages. Monument signage shall be used for the entrance to any attached single-family residential pod as per the sign plan.
18. The height of an apartment building shall not exceed three stories, although  $\frac{3}{4}$  splits will be allowed. Each apartment unit will contain a minimum of 650 square feet for

Pod's C, I, J and K. Each unit shall have at least 1.75 parking spaces. Front, side and rear facades shall consist of masonry, stacked stone, cedar shake, stucco, cementeous siding or a mixture thereof. No vinyl siding shall be allowed excluding soffit areas. Minimum building separations shall be as depicted on the site plan. Signage shall be as per the attached sign plan.

19. The subject property may be developed for up to 806,000 square feet of traditional office, mid-rise office, and office warehouse space. Within the 806,000 square foot maximum, commercial and retail uses may be allowed within Pods B and N. At no such time shall the maximum allowed square footage within those pods exceed what is specified on the approved concept plan. This space may be developed for these uses but sold in a condominium format. Height of such structures shall be limited to 3 stories from average finished grade. Parking spaces will be provided at a minimum ratio of 3.5 spaces per 1000 square feet of useable office space. Monument signage shall be required in any office pod as per Exhibit B, and lights shall be shielded and angled so as to minimize glare onto adjacent properties. Minimum setbacks shall be as per the site plan, but there shall be no minimum lot, lot width or lot frontage required.
20. **The subject property may be developed for up to 170,000 square feet of industrial/office/warehouse space within Pod E and 580,000 square feet of commercial space within Pod I.** The maximum height of any structure, excluding architectural accents; such as clocks, cupolas and bell towers; shall be 50 feet. Use of pitched roofs shall be encouraged. Minimum setbacks shall be as per the site plan, but there shall be no minimum lot, lot width or lot frontage required. Parking shall be provided at a minimum of four spaces per 1,000 square feet of space. Lights shall be shielded and angled so as to minimize glare onto adjacent properties, and dumpsters shall be screened. Under no circumstances shall the following uses be allowed: Pawn shops, adult entertainment, adult bookstores, extended-stay hotel, rooming house, or boarding house. Signage shall be as per the attached sign plan.
21. Architectural treatment shall be of consistent design throughout the community and as per the renderings.
22. A minimum of 100 acres shall be maintained as green space, with passive recreation and trails as per the plan. Sidewalks shall connect the residential and non-residential components of this community.
23. A Mandatory Property Owners Association will be created for the single-family detached community to insure that these conditions are observed during development and in terms of architectural consistency thereafter. Separate mandatory associations will be set up for the single-family detached and single-family attached products to own and manage open space, common areas, and architectural controls. Open space elsewhere in the project shall be maintained as common area by the overall Property Owner's Association, or by a separate Association within whose boundaries the common area is located. Maintenance of the amenities package set forth on the site plan shall be the responsibility of the owners of single-family detached homes. However, at the option of those residents, memberships may be extended to other Mundy Mill residents for a fee to cover maintenance. Amenities packages also may be established in the individual townhome or apartment pods, but shall be the responsibility of the owners of land therein.

#### **Buffers**

24. A 100 foot wide buffer shall be provided against Balus Creek and all other blue-line streams. The first 50 feet of the buffer shall be measured from the top of the creek bank and shall be undisturbed. The remaining 50 feet of the buffer, if disturbed, shall be stabilized and replanted with vegetation subject to Planning Department approval.

25. A 25 foot minimum perimeter buffer will be created and infilled as necessary with plant material. However, this buffer will not be required along any Mundy Mill Road frontages. Landscaped buffers of at least 25 feet are also required along any road frontages.
26. Landscaped buffers of at least 25 feet also shall separate any non-residential pod or existing non-residential use from a residential pod. The buffer shall be subject to Planning Department approval.
27. All proposed detention ponds shall be sufficiently fenced and buffered from view from all roads and adjacent properties. All buffer materials shall be approved by the Planning Department.

**Gainesville City Board of Education**

28. As agreed to by the owner/developer, the 17.0 acre tract of land identified on the plat/site plan attached as Exhibit A shall be reserved for use as an elementary school site. At that time (or earlier at the owner/developer's discretion), and presupposing the School Board still wants the property for an elementary school, the owner/developer shall promptly convey to it, without charge. In the event the School Board does not secure a building permit and begin construction of an elementary school before December 31, 2012, then the developer shall retain all rights to development of the entire 17.0 acres tract as per the original terms of zoning approval except for this condition, and the School Board shall promptly convey marketable title to the property back to the owner/developer at no charge. Additionally, if no elementary school is actually constructed on this site by December 31, 2013, then the School Board shall return marketable title to the property to the developer without charge. The conveyance documents executed by the owner/developer to the School Board will contain these terms and requirements. This agreement to reserve the 17.0 acres tract shall not prohibit the owner/developer from including it in any plat it may prepare for its development of a single-family residential pod and also will allow the owner/developer to put on it any necessary utility or other storm water easements which may be required for the development as a whole, provided such improvements do not materially affect the Board's ability to use the site for a school. This agreement also shall not prohibit the owner/developer from earlier transferring the 17.0 acres site to the City to be held for the School Board, subject to the requirements of this paragraph. Finally, but for utility/drainage easements or right-of-way dedicated as part of the road system in or along the frontages of the Mundy Mill development, the owner/developer shall not be required to dedicate or give to the City of Gainesville any additional property incidental to this development. However, if the School Board fails to acquire this property, then the owner/developer shall convey three acres of land to the City for a public safety use.

Notwithstanding any of the foregoing, if at such time as the School Board has acquired the 17.0 acres site and is ready to begin feasibility assessments, and if the State Board of Education should determine that the site is not then suitable for use as a school under the applicable state standards, then the Board of Education may sell the 17.0 acres tract and retain the proceeds for use in purchasing an alternative site. Provided, however, that once an arms length transaction for a fair market value purchase of the site has been secured by the School Board, the owner/developer shall have a right of first refusal to repurchase the tract at the exact same purchase price. Provided further, that the proceeds from such sale must be expended on a new school site within 60 days of closing, otherwise it shall be remitted instantly to the owner/developer.

The City notes that this condition may be imposed only because the owner/developer has agreed to it.



### Quality Enhancement

29. In order to further enhance and assure the quality of development, the City expects the developer shall perform/provide the following:

- Detailed landscape plan for parkway, subject to approval by the Department of Planning and Development.
- Reconstruction of Mundy Mill as focal point for community, subject to approval of the Georgia Department of Transportation.
- A minimum of two amenity locations shall be provided for the entire development of the detached single-family residential pods. At minimum the amenity sites shall include a pool house, swimming pool and playground.
- Sidewalks and streetlights throughout community.
- All products within the development shall contain exterior construction materials limitation; must use brick, masonry stucco, stacked stone, cedar shake, or hardiplank.
- Open space - 18%.
- Pedestrian trail plan (3.5± miles) connecting entire community.
- Parkway plan sidewalk width sufficient to create a bicycle lane.
- Every single-family home built on the subject property shall contain ceramic tiled bathroom floors.
- Every single-family home shall be built to accommodate at least one fireplace.
- No vinyl siding on any product within development excluding soffit areas.
- Each pod of townhouses and apartments will have its own amenities package.
- All underground utilities.
- Uniform mailboxes will be provided for each detached single-family residential pod.
- Uniform street signs will be provided throughout the development.

30. Along Balus Creek, the developer shall reserve for the City, by way of easement, a ten-foot strip of land for use as a bicycle path. At such time as the City or County constructs an element of its bike path system to which this easement might connect, the City and/or County, at its/their expense, may pave this strip. No development shall occur on the property which would interfere with the eventual construction of this path by the appropriate governmental entity, except for the boulevard which will cross the creek.

**31. Prior to a land development permit application being submitted for the proposed Industrial/office/warehouse uses within Pod "E", the property owner shall be required to submit a site plan review application for a public hearing before the Planning and Appeals Board.**

**32. A Traffic Impact Study shall be required with the submittal of the site plan review application for Pod "E" if determined necessary by the Gainesville Public Works Department Director. All access point design for the subject property shall require review and approval by Hall County and the Gainesville Public Works Department Director. All required access/traffic/sidewalk improvements associated with the proposal or any additional improvements identified within the Traffic Impact Study, if determined necessary, shall be at the full expense of the property owner.**

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### Excerpts from the January 12, 2021 PAB Meeting Minutes

**Applicant Presentation:** **Billy Powell**, 329 Oak Street stated he is speaking on behalf of the applicant and owner. Mr. Powell said the main point is there will be no additional units as they are simply relocating the product along with retail space. He stated the reason for relocating the 300 multi-family units to Mundy Mill Road is to increase marketability. Mr. Powell stated Atlanta builder Carter USA which is a six-decade old firm and builds a high quality product. Mr. Powell then reviewed the slides on the PowerPoint and said they intend to build 10 buildings.

**FAVOR:** None

**OPPOSE:** **Fiona Thorpe**, 4142 Pear Haven Lane, stated she is speaking on behalf of her mother Winnifred Thorpe that lives next to the proposed industrial warehouse use. Ms. Thorpe stated there are concerns about the warehouse portion of the new plan. She said her mother would like to know the type of industrial plant, any barriers installed to keep the noise and commercial traffic out. The other concern was if a traffic light would be installed at Millside Parkway on Mundy Mill which is a divided highway and would need a traffic light between the apartments, warehouses and the homes. The last concern mentioned by Ms. Thorpe was water runoff and absorption when it rains because there is an issue now and does not want any additional water problems.

**Maclesha Bourne**, 4233 Weeping Willow Drive, stated she is with the HOA representing Winnifred Thorpe. She said they wanted to know what provisions will be in place to prevent any possible industrial pollution that might affect the health of the surrounding community. She mentioned there are a lot of senior citizens that reside on Pear Haven Lane and wants everyone to be mindful of those citizens.

**Planning and Appeals Board Comments:** Chairman Carter stated they will get answers regarding the five issues mentioned. He also said to his knowledge from speaking with Mr. Tate there are no definite plans for the industrial pod and they would be required to come back before the Board for approval.

Mr. Tate showed the location in question on the map where Pear Haven Lane backs up to the industrial part. He said there is a natural buffer within the residential portion and with no specific plans staff has added two extra conditions to the thirty conditions. Mr. Tate read the new conditions and stated since there is no specific use for the industrial pod, the developers would need to come back before the Board for approval and public notification would be sent out allowing citizens to attend and there is no timetable for the industrial pod. Mr. Tate stated the last condition, depending on the use/size of it, may require further traffic study. Mr. Tate said any run-off issues are thoroughly studied during the plan review process which would be required once it has come back to this Board and approved. The stormwater engineer would review the plans during that process that could impact the adjacent properties. He said that it would be reviewed again and there are noise control measures, and buffer requirements in place to address the issue.

**Rebuttal:** Mr. Powell stated they will comply with any setback requirements and stormwater runoffs by working with the staff and the Community and Economic Development Department. The traffic signal at Mundy Mill and Millside Parkway has been approved. Mr. Powell said he is not aware of the time frame for it but the property owner has gotten approval for it.

There was a motion to recommend conditional approval of the zoning amendment request for multi-family apartments and industrial / office / warehouse uses within Planned Unit Development (P-U-D) with the following conditions:

Changes to existing zoning conditions 17, 18 and 20 and new zoning conditions 31 and 32 are highlighted below.

### Conditions

#### Transportation/Traffic

1. All road improvements associated within the scope of the proposed development shall be at the full expense of the developer(s). The scope of the development shall be defined as those roads/intersections directly within, adjacent to, and within 1,500 feet of the subject property as studied within the Traffic Impact Study (TIS) submitted with this application. These road improvements are to include additional signalization, turn lanes, widening of roads, striping, and signage as stated in the TIS. This may include all or portions of Mundy Mill Road, Meeks Road, Fairbanks Drive, Old Oakwood Road, Old Flowery Branch Road, and Mountain View Road. The cost of the required road improvements shall be prorated based on developed property values of the residential, commercial, retail, office and industrial properties.
2. The developer(s) shall work with the Georgia Department of Transportation, Hall County Traffic Engineering, the City of Oakwood, and the City of Gainesville Public Works Department to ensure that these improvements are performed in a timely manner so as to not conflict with any of the existing or planned road projects that are scheduled to take place outside the scope of the proposed development.
3. All sign locations, access point (new and existing) designations for *new* roads, sight distances, and sight triangles shall be reviewed and clarified, in the beginning stages of plans and submittals with GDOT and the Public Works Director so as to limit the number of access points in that area.
4. A signal warrant study will be required for the major intersections of internal streets within the development. If a signal light is warranted at a specific intersection, such installation shall be completed at the expense of the developer(s) and shall meet all specifications as determined by the Public Works Department. A signal light shall not be installed until traffic volumes actually meet the levels as determined by the warrant study.
5. The developer(s) shall meet with Public Works prior to initiating the final civil design to discuss a traffic calming plan. A traffic calming plan consisting of tools such as landscaped traffic circles at intersections, raised crosswalks, landscaped center medians, chicanes, or other measures that aid in keeping the average speed on residential streets approximately 25 mph or below shall be prepared and approved by Public Works. Specific measures in the approved plan shall be constructed at the same time the streets are constructed.
6. All roads dedicated to the City of Gainesville shall meet City specifications, and all private roads shall be constructed with materials that meet City specifications.
7. All interpretations relating to transportation and/or traffic improvement conditions shall be subject to approval of the Gainesville Public Works Director.

8. The new four lane parkway as reflected on the site plan shall be constructed and designed so as to allow a connection to the Tumbling Creek Connector across Old Oakwood Road.

#### Development Standards

9. Sidewalks shall be required along both sides of the streets within the development and shall be a minimum of four feet (4') wide along streets classified as residential streets and six feet (6') wide along collector streets and streets in the commercial zones. Alternatively, sidewalks shall be permitted along one side of the street in parkway areas at a minimum width of eight feet (8') and a minimum of five feet (5') along roads classified as residential streets.
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Pod L of the concept plan dated 10/06/04 shall be the highest-end product proposed by the developer and shall contain a minimum of 1,800 square feet of heated space. Single-family lots shall be no less than 6,000 square feet in size, with 60 feet of lot width at the building setback line, and minimum lot width at right-of-way line of 20 feet. Front and side facades shall consist of masonry, stacked stone, cedar shake or stucco, architectural accents excluded. The rear facade may consist of these materials or cementeous siding such as hardiplank.

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18. The height of an apartment building shall not exceed three stories, although  $\frac{3}{4}$  splits will be allowed. Each apartment unit will contain a minimum of 650 square feet for Pod's C, **I**, J and K. Each unit shall have at least 1.75 parking spaces. Front, side and rear facades shall consist of masonry, stacked stone, cedar shake, stucco, cementeous siding or a mixture thereof. No vinyl siding shall be allowed excluding soffit areas. Minimum building separations shall be as depicted on the site plan. Signage shall be as per the attached sign plan.
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22. A minimum of 100 acres shall be maintained as green space, with passive recreation and trails as per the plan. Sidewalks shall connect the residential and non-residential components of this community.
23. A Mandatory Property Owners Association will be created for the single-family detached community to insure that these conditions are observed during development and in terms of architectural consistency thereafter. Separate

mandatory associations will be set up for the single-family detached and single-family attached products to own and manage open space, common areas, and architectural controls. Open space elsewhere in the project shall be maintained as common area by the overall Property Owner's Association, or by a separate Association within whose boundaries the common area is located. Maintenance of the amenities package set forth on the site plan shall be the responsibility of the owners of single-family detached homes. However, at the option of those residents, memberships may be extended to other Mundy Mill residents for a fee to cover maintenance. Amenities packages also may be established in the individual townhome or apartment pods, but shall be the responsibility of the owners of land therein.

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24. A 100 foot wide buffer shall be provided against Balus Creek and all other blue-line streams. The first 50 feet of the buffer shall be measured from the top of the creek bank and shall be undisturbed. The remaining 50 feet of the buffer, if disturbed, shall be stabilized and replanted with vegetation subject to Planning Department approval.
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#### **Gainesville City Board of Education**

28. As agreed to by the owner/developer, the 17.0 acre tract of land identified on the plat/site plan attached as Exhibit A shall be reserved for use as an elementary school site. At that time (or earlier at the owner/developer's discretion), and presupposing the School Board still wants the property for an elementary school, the owner/developer shall promptly convey to it, without charge. In the event the School Board does not secure a building permit and begin construction of an elementary school before December 31, 2012, then the developer shall retain all rights to development of the entire 17.0 acres tract as per the original terms of zoning approval except for this condition, and the School Board shall promptly convey marketable title to the property back to the owner/developer at no charge. Additionally, if no elementary school is actually constructed on this site by December 31, 2013, then the School Board shall return marketable title to the property to the developer without charge. The conveyance documents executed by the owner/developer to the School Board will contain these terms and requirements. This agreement to reserve the 17.0 acres tract shall not prohibit the owner/developer from including it in any plat it may prepare for its development of a single-family residential pod and also will allow the owner/developer to put on it any necessary utility or other storm water easements which may be required for the development as a whole, provided such improvements do not materially affect the Board's ability to use the site for a school. This agreement also shall not prohibit the owner/developer from earlier transferring the 17.0 acres site to the City to be held for the School Board, subject to the requirements of this paragraph. Finally, but for utility/drainage easements or right-of-way dedicated as part of the road system in or along the frontages of

the Mundy Mill development, the owner/developer shall not be required to dedicate or give to the City of Gainesville any additional property incidental to this development. However, if the School Board fails to acquire this property, then the owner/developer shall convey three acres of land to the City for a public safety use.

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The City notes that this condition may be imposed only because the owner/developer has agreed to it.

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- Reconstruction of Mundy Mill as focal point for community, subject to approval of the Georgia Department of Transportation.
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32. A Traffic Impact Study shall be required with the submittal of the site plan review application for Pod "E" if determined necessary by the Gainesville Public Works Department Director. All access point design for the subject property shall require review and approval by Hall County and the Gainesville Public Works Department Director. All required access/traffic/sidewalk improvements associated with the proposal or any additional improvements identified within the Traffic Impact Study, if determined necessary, shall be at the full expense of the property owner.

Motion made by Board Member Martin  
Motion seconded by Board Member Simmons  
**Vote – 6 favor, 1 absent (Fleming)**



Passed: \_\_\_\_\_

**AN ORDINANCE**

**No. 2021-09**

**AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF GAINESVILLE, GEORGIA, BY AMENDING THE EXISTING PLANNED UNIT DEVELOPMENT, WITH CONDITIONS (P-U-D-c) ZONING ON A 57.29± ACRES PORTION OF THE 605± ACRES MUNDY MILL DEVELOPMENT CONSISTING OF POD E AND I LOCATED ON THE SOUTHWEST SIDE OF THE INTERSECTION OF MUNDY MILL ROAD AND MILLSIDE PARKWAY AND WEST OF THE INTERSECTION OF MOUNTAIN VIEW ROAD AND OLD OAKWOOD ROAD (A/K/A 0 MUNDY MILL ROAD, SW AND 0 OLD OAKWOOD ROAD, SW); REPEALING CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**(Amendment to Zoning Map)**

**BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF GAINESVILLE, GEORGIA, AS FOLLOWS:**

**SECTION I.**

That from and after the passage of this Ordinance, the subject property containing 57.29± acres with **Planned Unit Development, with conditions (P-U-D-c)** zoning is hereby amended as follows:

**Conditions**

**Transportation/Traffic**

- 1. All road improvements associated within the scope of the proposed development shall be at the full expense of the developer(s). The scope of the development shall be defined as those roads/intersections directly within, adjacent to, and within 1,500 feet of the subject property as studied within the Traffic Impact Study (TIS) submitted with this application. These road improvements are to include additional signalization, turn lanes, widening of roads, striping, and signage as stated in the TIS. This may include all or portions of Mundy Mill Road, Meeks Road, Fairbanks Drive, Old Oakwood Road, Old Flowery Branch Road, and Mountain View Road. The cost of the required road improvements shall be prorated based on developed property values of the residential, commercial, retail, office and industrial properties.**
- 2. The developer(s) shall work with the Georgia Department of Transportation, Hall County Traffic Engineering, the City of Oakwood, and the City of Gainesville Public Works Department to ensure that these improvements are performed in a timely manner so as to not conflict with any of the existing or planned road projects that are scheduled to take place outside the scope of the proposed development.**
- 3. All sign locations, access point (new and existing) designations for *new* roads, sight distances, and sight triangles shall be reviewed and clarified, in the beginning stages**

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of plans and submittals with GDOT and the Public Works Director so as to limit the number of access points in that area.

4. A signal warrant study will be required for the major intersections of internal streets within the development. If a signal light is warranted at a specific intersection, such installation shall be completed at the expense of the developer(s) and shall meet all specifications as determined by the Public Works Department. A signal light shall not be installed until traffic volumes actually meet the levels as determined by the warrant study.
5. The developer(s) shall meet with Public Works prior to initiating the final civil design to discuss a traffic calming plan. A traffic calming plan consisting of tools such as landscaped traffic circles at intersections, raised crosswalks, landscaped center medians, chicanes, or other measures that aid in keeping the average speed on residential streets approximately 25 mph or below shall be prepared and approved by Public Works. Specific measures in the approved plan shall be constructed at the same time the streets are constructed.
6. All roads dedicated to the City of Gainesville shall meet City specifications, and all private roads shall be constructed with materials that meet City specifications.
7. All interpretations relating to transportation and/or traffic improvement conditions shall be subject to approval of the Gainesville Public Works Director.
8. The new four lane parkway as reflected on the site plan shall be constructed and designed so as to allow a connection to the Tumbling Creek Connector across Old Oakwood Road.

### **Development Standards**

9. Sidewalks shall be required along both sides of the streets within the development and shall be a minimum of four feet (4') wide along streets classified as residential streets and six feet (6') wide along collector streets and streets in the commercial zones. Alternatively, sidewalks shall be permitted along one side of the street in parkway areas at a minimum width of eight feet (8') and a minimum of five feet (5') along roads classified as residential streets.
10. All proposed single-family lots within the development shall only be allowed to access new interior roads within the subdivision. Direct access shall not be allowed onto roads that existed prior to this development.
11. Access to all service areas adjacent to single-family detached homes, including dumpster pads, shall be limited to the hours of between 9:00 a.m. and 6:00 p.m., unless an emergency situation warrants access to these areas.
12. Upon completion of the development, no outside storage of any materials shall be allowed. No storage of hazardous chemicals, as listed in the Standard Fire Code, shall be permitted.
13. Outdoor lighting used in this development; be it for recreational, security or general purposes, shall be of non-spill design and placed in a manner so as to minimize direct visibility by adjoining or adjacent properties.
14. The proposed residential, office, commercial, and accessory structures shall be similar in scale and architecture to the elevation drawings and pictures as submitted with the application.

15. The subject property shall be developed substantially in accordance with the site plan with minor engineering deviations excepted. All site plan, architectural renderings, pedestrian/trail access plan, and traffic impact studies shall become a part of the annexation, zoning and rezoning ordinances.

16. The number of *single-family detached homes* shall not exceed 1208 units and shall contain a minimum of 1,500 square feet of heated space. Front facades shall consist of masonry, stacked stone, cedar shake or stucco, architectural accents excluded. The remaining three facades shall consist of these materials or cementeous siding such as hardiplank. Single-family lots shall be no less than 6,000 square feet in size, with 60 feet of lot width at the building setback line and minimum lot width at right-of-way line of 20 feet, with the exception of Pod M of the concept plan which shall have a minimum lot width at the building setback line reduced to 50-feet.

Pod L of the concept plan dated 10/06/04 shall be the highest-end product proposed by the developer and shall contain a minimum of 1,800 square feet of heated space. Single-family lots shall be no less than 6,000 square feet in size, with 60 feet of lot width at the building setback line, and minimum lot width at right-of-way line of 20 feet. Front and side facades shall consist of masonry, stacked stone, cedar shake or stucco, architectural accents excluded. The rear facade may consist of these materials or cementeous siding such as hardiplank.

Each home within all single-family residential detached pods will have an attached garage for at least two cars. The front yard of each lot shall be sodded and planted with at least one hardwood tree. Monument signage shall be used for the entrance to any detached single-family residential pod as per the attached site plan, and each entrance shall have plantings or other architectural accents.

17. The number of attached *single-family condominiums*, fee simple townhomes or apartments shall not exceed 1,235 total units to include a total of 775 units for Pod's C and I and 460 units for Pod's J and K. The minimum unit/lot width for each condominium or fee simple townhome unit shall be 16 feet, and each unit shall contain a minimum of 1,200 feet of heated space. Building separations shall be as reflected on the site plan, and private drives built to City specs will be used within these communities. Front, side and rear facades shall consist of masonry, stacked stone, cedar shake, stucco, cementeous siding or a mixture thereof. No vinyl siding shall be allowed excluding soffit areas. No fewer than three or more than ten condominium or fee simple townhome units shall exist within one continuous structure, and front facades will be staggered. All single-family condominiums shall contain one car garages. Monument signage shall be used for the entrance to any attached single-family residential pod as per the sign plan.

18. The height of an apartment building shall not exceed three stories, although  $\frac{3}{4}$  splits will be allowed. Each apartment unit will contain a minimum of 650 square feet for Pod's C, I, J and K. Each unit shall have at least 1.75 parking spaces. Front, side and rear facades shall consist of masonry, stacked stone, cedar shake, stucco, cementeous siding or a mixture thereof. No vinyl siding shall be allowed excluding soffit areas. Minimum building separations shall be as depicted on the site plan. Signage shall be as per the attached sign plan.

19. The subject property may be developed for up to 806,000 square feet of traditional office, mid-rise office, and office warehouse space. Within the 806,000 square foot maximum, commercial and retail uses may be allowed within Pods B and N. At no such time shall the maximum allowed square footage within those pods exceed what

is specified on the approved concept plan. This space may be developed for these uses but sold in a condominium format. Height of such structures shall be limited to 3 stories from average finished grade. Parking spaces will be provided at a minimum ratio of 3.5 spaces per 1000 square feet of useable office space. Monument signage shall be required in any office pod as per Exhibit B, and lights shall be shielded and angled so as to minimize glare onto adjacent properties. Minimum setbacks shall be as per the site plan, but there shall be no minimum lot, lot width or lot frontage required.

20. The subject property may be developed for up to 170,000 square feet of industrial/office/warehouse space within Pod E and 580,000 square feet of commercial space within Pod I. The maximum height of any structure, excluding architectural accents; such as clocks, cupolas and bell towers; shall be 50 feet. Use of pitched roofs shall be encouraged. Minimum setbacks shall be as per the site plan, but there shall be no minimum lot, lot width or lot frontage required. Parking shall be provided at a minimum of four spaces per 1,000 square feet of space. Lights shall be shielded and angled so as to minimize glare onto adjacent properties, and dumpsters shall be screened. Under no circumstances shall the following uses be allowed: Pawn shops, adult entertainment, adult bookstores, extended-stay hotel, rooming house, or boarding house. Signage shall be as per the attached sign plan.
21. Architectural treatment shall be of consistent design throughout the community and as per the renderings.
22. A minimum of 100 acres shall be maintained as green space, with passive recreation and trails as per the plan. Sidewalks shall connect the residential and non-residential components of this community.
23. A Mandatory Property Owners Association will be created for the single-family detached community to insure that these conditions are observed during development and in terms of architectural consistency thereafter. Separate mandatory associations will be set up for the single-family detached and single-family attached products to own and manage open space, common areas, and architectural controls. Open space elsewhere in the project shall be maintained as common area by the overall Property Owner's Association, or by a separate Association within whose boundaries the common area is located. Maintenance of the amenities package set forth on the site plan shall be the responsibility of the owners of single-family detached homes. However, at the option of those residents, memberships may be extended to other Mundy Mill residents for a fee to cover maintenance. Amenities packages also may be established in the individual townhome or apartment pods, but shall be the responsibility of the owners of land therein.

#### Buffers

24. A 100 foot wide buffer shall be provided against Balus Creek and all other blue-line streams. The first 50 feet of the buffer shall be measured from the top of the creek bank and shall be undisturbed. The remaining 50 feet of the buffer, if disturbed, shall be stabilized and replanted with vegetation subject to Planning Department approval.
25. A 25 foot minimum perimeter buffer will be created and infilled as necessary with plant material. However, this buffer will not be required along any Mundy Mill Road frontages. Landscaped buffers of at least 25 feet are also required along any road frontages.

26. Landscaped buffers of at least 25 feet also shall separate any non-residential pod or existing non-residential use from a residential pod. The buffer shall be subject to Planning Department approval.
27. All proposed detention ponds shall be sufficiently fenced and buffered from view from all roads and adjacent properties. All buffer materials shall be approved by the Planning Department.

Gainesville City Board of Education

28. As agreed to by the owner/developer, the 17.0 acre tract of land identified on the plat/site plan attached as Exhibit A shall be reserved for use as an elementary school site. At that time (or earlier at the owner/developer's discretion), and presupposing the School Board still wants the property for an elementary school, the owner/developer shall promptly convey to it, without charge. In the event the School Board does not secure a building permit and begin construction of an elementary school before December 31, 2012, then the developer shall retain all rights to development of the entire 17.0 acres tract as per the original terms of zoning approval except for this condition, and the School Board shall promptly convey marketable title to the property back to the owner/developer at no charge. Additionally, if no elementary school is actually constructed on this site by December 31, 2013, then the School Board shall return marketable title to the property to the developer without charge. The conveyance documents executed by the owner/developer to the School Board will contain these terms and requirements. This agreement to reserve the 17.0 acres tract shall not prohibit the owner/developer from including it in any plat it may prepare for its development of a single-family residential pod and also will allow the owner/developer to put on it any necessary utility or other storm water easements which may be required for the development as a whole, provided such improvements do not materially affect the Board's ability to use the site for a school. This agreement also shall not prohibit the owner/developer from earlier transferring the 17.0 acres site to the City to be held for the School Board, subject to the requirements of this paragraph. Finally, but for utility/drainage easements or right-of-way dedicated as part of the road system in or along the frontages of the Mundy Mill development, the owner/developer shall not be required to dedicate or give to the City of Gainesville any additional property incidental to this development. However, if the School Board fails to acquire this property, then the owner/developer shall convey three acres of land to the City for a public safety use.

Notwithstanding any of the foregoing, if at such time as the School Board has acquired the 17.0 acres site and is ready to begin feasibility assessments, and if the State Board of Education should determine that the site is not then suitable for use as a school under the applicable state standards, then the Board of Education may sell the 17.0 acres tract and retain the proceeds for use in purchasing an alternative site. Provided, however, that once an arms length transaction for a fair market value purchase of the site has been secured by the School Board, the owner/developer shall have a right of first refusal to repurchase the tract at the exact same purchase price. Provided further, that the proceeds from such sale must be expended on a new school site within 60 days of closing, otherwise it shall be remitted instantly to the owner/developer.

The City notes that this condition may be imposed only because the owner/developer has agreed to it.

Quality Enhancement

29. In order to further enhance and assure the quality of development, the City expects the developer shall perform/provide the following:
- Detailed landscape plan for parkway, subject to approval by the Department of Planning and Development.
  - Reconstruction of Mundy Mill as focal point for community, subject to approval of the Georgia Department of Transportation.
  - A minimum of two amenity locations shall be provided for the entire development of the detached single-family residential pods. At minimum the amenity sites shall include a pool house, swimming pool and playground.
  - Sidewalks and streetlights throughout community.
  - All products within the development shall contain exterior construction materials limitation; must use brick, masonry stucco, stacked stone, cedar shake, or hardiplank.
  - Open space - 18%.
  - Pedestrian trail plan (3.5± miles) connecting entire community.
  - Parkway plan sidewalk width sufficient to create a bicycle lane.
  - Every single-family home built on the subject property shall contain ceramic tiled bathroom floors.
  - Every single-family home shall be built to accommodate at least one fireplace.
  - No vinyl siding on any product within development excluding soffit areas.
  - Each pod of townhouses and apartments will have its own amenities package.
  - All underground utilities.
  - Uniform mailboxes will be provided for each detached single-family residential pod.
  - Uniform street signs will be provided throughout the development.
30. Along Balus Creek, the developer shall reserve for the City, by way of easement, a ten-foot strip of land for use as a bicycle path. At such time as the City or County constructs an element of its bike path system to which this easement might connect, the City and/or County, at its/their expense, may pave this strip. No development shall occur on the property which would interfere with the eventual construction of this path by the appropriate governmental entity, except for the boulevard which will cross the creek.
31. Prior to a land development permit application being submitted for the proposed Industrial/office/warehouse uses within Pod "E", the property owner shall be required to submit a site plan review application for a public hearing before the Planning and Appeals Board.
32. A Traffic Impact Study shall be required with the submittal of the site plan review application for Pod "E" if determined necessary by the Gainesville Public Works Department Director. All access point design for the subject property shall require review and approval by Hall County and the Gainesville Public Works Department

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**Director. All required access/traffic/sidewalk improvements associated with the proposal or any additional improvements identified within the Traffic Impact Study, if determined necessary, shall be at the full expense of the property owner.**

### **Legal Description**

All that tract or parcel of land lying and being in the City of Gainesville, Land Lots 42 and 43 of the 8th District of Hall County, Georgia, as shown on an Exhibit for Carter dated November 20<sup>th</sup> 2020 prepared by Patton Land Surveying, LLC for Carter and being more particularly described as follows:

**BEGINNING** at a point formed by the intersection of the southwesterly right-of-way line of Mundy Mill Road (aka State Route No. 53) (R/W Varies) with the northwesterly right-of-way line of Parkway C (100' R/W); thence following said right-of-way line of Millside Parkway the following courses and distances: South 03 degrees 36 minutes 25 seconds East a distance of 52.00 feet to a point; thence running along an curve to the right an arc distance of 15.77 feet, said arc having a radius of 61.00 feet and a chord which bears South 40 degrees 39 minutes 37 seconds West a distance of 15.73 feet to a point; thence running South 48 degrees 02 minutes 17 seconds West a distance of 524.23 feet to a point and said point being the True Point of Beginning.

Thence continuing along said R/W line of Millside Parkway South 48 degrees 02 minutes 17 seconds West for a distance of 535.24 feet to a point;

Thence leaving said R/W line of Millside Parkway North 41 degrees 57 minutes 43 seconds West for a distance of 1203.79 feet to a point;

Thence South 85 degrees 30 minutes 15 seconds West for a distance of 95.51 feet to a point;  
Thence North 74 degrees 15 minutes 16 seconds West for a distance of 48.86 feet to a point;  
Thence North 44 degrees 40 minutes 01 seconds West for a distance of 35.28 feet to a point;  
Thence North 25 degrees 13 minutes 32 seconds West for a distance of 32.33 feet to a point;  
Thence North 03 degrees 38 minutes 41 seconds West for a distance of 44.99 feet to a point;  
Thence North 04 degrees 41 minutes 58 seconds East for a distance of 91.25 feet to a point;  
Thence North 41 degrees 57 minutes 43 seconds West for a distance of 188.87 feet to a point;  
Thence North 20 degrees 47 minutes 45 seconds West for a distance of 3.53 feet to a point;  
Thence North 24 degrees 34 minutes 29 seconds West for a distance of 47.42 feet to a point;  
Thence North 23 degrees 01 minutes 40 seconds West for a distance of 49.49 feet to a point;  
Thence North 19 degrees 42 minutes 00 seconds West for a distance of 53.50 feet to a point;  
Thence North 10 degrees 24 minutes 34 seconds East for a distance of 52.40 feet to a point;  
Thence North 58 degrees 03 minutes 54 seconds East for a distance of 31.97 feet to a point;  
Thence North 59 degrees 37 minutes 27 seconds East for a distance of 57.51 feet to a point;  
Thence North 38 degrees 13 minutes 57 seconds East for a distance of 48.73 feet to a point;  
Thence North 70 degrees 20 minutes 08 seconds East for a distance of 10.86 feet to a point;  
Thence South 46 degrees 13 minutes 56 seconds East for a distance of 80.65 feet to a point;  
Thence North 69 degrees 56 minutes 52 seconds East for a distance of 105.00 feet to a point;  
Thence North 76 degrees 17 minutes 19 seconds East for a distance of 27.73 feet to a point;  
Thence South 70 degrees 14 minutes 35 seconds East for a distance of 120.37 feet to a point;  
Thence North 76 degrees 44 minutes 04 seconds East for a distance of 72.55 feet to a point;  
Thence North 60 degrees 06 minutes 01 seconds East for a distance of 72.48 feet to a point;  
Thence North 45 degrees 06 minutes 33 seconds East for a distance of 55.75 feet to a point;  
Thence South 41 degrees 59 minutes 37 seconds East for a distance of 828.43 feet to a point;  
Thence South 48 degrees 00 minutes 23 seconds West for a distance of 79.83 feet to a point;

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Thence South 41 degrees 59 minutes 37 seconds East for a distance of 705.75 feet to a point and said point being the TRUE POINT OF BEGINNING.

Said Tract or Parcel containing 22.95 acres of land.

All that tract or parcel of land lying and being in the City of Gainesville, Land Lots 42 and 43 of the 8th District of Hall County, Georgia, as shown on an Exhibit for Carter dated November 20<sup>th</sup> 2020 prepared by Patton Land Surveying, LLC for Carter and being more particularly described as follows:

**BEGINNING** at a point formed by the intersection of the southwesterly right-of-way line of Mundy Mill Road (aka State Route No. 53) (R/W Varies) with the northwesterly right-of-way line of Parkway C (100' R/W) and said point being the True Point of beginning;

Thence following said right-of-way line of Millside Parkway the following courses and distances: South 03 degrees 36 minutes 25 seconds East a distance of 52.00 feet to a point; thence running along an curve to the right an arc distance of 15.77 feet, said arc having a radius of 61.00 feet and a chord which bears South 40 degrees 39 minutes 37 seconds West a distance of 15.73 feet to a point; thence running South 48 degrees 02 minutes 17 seconds West a distance of 524.23 feet to a point;

Thence leaving said R/W line of Millside Parkway South 41 degrees 59 minutes 37 seconds East for a distance of 705.75 feet to a point;

Thence North 48 degrees 00 minutes 23 seconds East for a distance of 79.83 feet to a point;

Thence South 41 degrees 59 minutes 37 seconds East for a distance of 828.43 feet to a point;

Thence North 45 degrees 06 minutes 33 seconds East for a distance of 6.62 feet to a point;

Thence North 48 degrees 28 minutes 15 seconds East for a distance of 72.91 feet to a point;

Thence North 47 degrees 29 minutes 27 seconds East for a distance of 52.10 feet to a point;

Thence North 40 degrees 41 minutes 10 seconds East for a distance of 65.05 feet to a point;

Thence North 48 degrees 12 minutes 38 seconds East for a distance of 61.93 feet to a point;

Thence North 55 degrees 41 minutes 01 seconds East for a distance of 45.39 feet to a point;

Thence South 81 degrees 43 minutes 26 seconds East for a distance of 12.90 feet to a point;

Thence South 70 degrees 40 minutes 23 seconds East for a distance of 77.98 feet to a point;

Thence South 52 degrees 33 minutes 14 seconds East for a distance of 72.45 feet to a point;

Thence South 41 degrees 18 minutes 42 seconds East for a distance of 72.80 feet to a point;

Thence South 27 degrees 09 minutes 25 seconds East for a distance of 125.74 feet to a point;

Thence South 78 degrees 39 minutes 01 seconds East for a distance of 107.11 feet to a point;

Thence South 88 degrees 54 minutes 13 seconds East for a distance of 46.33 feet to a point;

Thence North 72 degrees 08 minutes 04 seconds East for a distance of 54.76 feet to a point;

Thence North 77 degrees 13 minutes 08 seconds East for a distance of 16.23 feet to a point;

Thence South 42 degrees 04 minutes 15 seconds East for a distance of 300.30 feet to a point;

Thence South 47 degrees 55 minutes 45 seconds West for a distance of 10.00 feet to a point;

Thence South 42 degrees 04 minutes 15 seconds East for a distance of 207.99 feet to a point;

Thence North 47 degrees 55 minutes 45 seconds East for a distance of 10.00 feet to a point;

Thence South 42 degrees 04 minutes 15 seconds East for a distance of 493.97 to a point and said point being the TRUE POINT OF BEGINNING.

Said Tract or Parcel containing 17.09 acres of land.

All that tract or parcel of land lying and being in Land Lot 25, 8th Land District, City of Gainesville, Hall County, Georgia as shown on a Sketch and description prepared by Patton



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Land Surveying, LLC, for Butler Property, LLC, dated March 29th, 2018 and being more particularly described as follows:

**BEGINNING** at the Southerly mitered right-of-way corner at the Northeasterly intersection of Millside Parkway (varying width right-of-way) & Old Oakwood Road (varying width right-of-way) as recorded in Deed Book 8027, Pages 437-443 and shown on Plat Book 875, Page 229, Hall County Georgia records and located at Georgia State Plane Coordinate Northing 1544833.48, Easting 2388397.69, Georgia West Zone, North American Datum of 1983/2007 adjustment; Thence North 42 degrees 09 minutes 32 seconds East for a distance of 1,771.51 feet to a point on the Westerly right-of-way line of said Old Oakwood Road and said point being the TRUE POINT OF BEGINNING;

Thence North 31 degrees 11 minutes 18 seconds West for a distance of 1214.88 feet to a 1/2" open top pin found; Thence North 26 degrees 22 minutes 17 seconds East for a distance of 618.67 feet to a point on the Southwesterly right-of-way line of Mountain View Road (50' wide right-of-way);

Thence following said Mountain View Road the following courses:

Thence along a curve to the left having a radius of 1455.11 feet and an arc length of 211.39 feet, being subtended by a chord of South 55 degrees 04 minutes 53 seconds East for a distance of 211.21 feet to a point; Thence South 62 degrees 40 minutes 46 seconds East for a distance of 30.37 feet to a point; Thence South 61 degrees 58 minutes 40 seconds East for a distance of 126.90 feet to a point; Thence along a curve to the left having a radius of 1580.90 feet and an arc length of 142.80 feet, being subtended by a chord of South 65 degrees 11 minutes 04 seconds East for a distance of 142.75 feet to a point;

Thence leaving said Mountain View Road the following courses:

Thence South 17 degrees 51 minutes 40 seconds East for a distance of 54.39 feet to a point; Thence South 17 degrees 22 minutes 20 seconds East for a distance of 30.67 feet to a point; Thence South 13 degrees 32 minutes 49 seconds East for a distance of 112.08 feet to a point; Thence South 16 degrees 44 minutes 41 seconds East for a distance of 80.91 feet to a point; Thence South 15 degrees 44 minutes 58 seconds East for a distance of 61.60 feet to a point; Thence South 05 degrees 08 minutes 53 seconds East for a distance of 53.40 feet to a point; Thence South 05 degrees 15 minutes 36 seconds West for a distance of 54.69 feet to a point; Thence South 05 degrees 56 minutes 43 seconds East for a distance of 117.69 feet to a point; Thence South 11 degrees 50 minutes 14 seconds East for a distance of 43.86 feet to a point; Thence South 26 degrees 52 minutes 23 seconds East for a distance of 43.43 feet to a point on the Westerly right-of-way line of said Old Oakwood Road;

Thence following said Old Oakwood Road the following courses:

Thence along a curve to the left having a radius of 596.55 feet and an arc length of 61.01 feet, being subtended by a chord of South 15 degrees 19 minutes 36 seconds West for a distance of 60.99 feet to a point; Thence along a curve to the left having a radius of 806.43 feet and an arc length of 53.82 feet, being subtended by a chord of South 11 degrees 09 minutes 42 seconds West for a distance of 53.81 feet to a point; Thence South 10 degrees 25 minutes 44 seconds West for a distance of 134.64 feet to a point; Thence along a curve to the right having a radius of 1260.51 feet and an arc length of 159.08 feet, being subtended by a chord of South 15 degrees 02 minutes 26 seconds West for a distance of 158.97 feet to a point; Thence along a curve to the right having a radius of 1172.82 feet and an arc length of 101.87 feet, being

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subtended by a chord of South 21 degrees 16 minutes 45 seconds West for a distance of 101.84 feet to a point; Thence South 23 degrees 46 minutes 13 seconds West for a distance of 99.75 feet to a point; Thence along a curve to the left having a radius of 1945.43 feet and an arc length of 132.51 feet, being subtended by a chord of South 22 degrees 33 minutes 57 seconds West for a distance of 132.49 feet to a point and said point being the POINT OF BEGINNING.

Said property contains 17.25 acres more or less.

### **SECTION II.**

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

### **SECTION III.**

If any portion of this Ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair the remaining portions unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional.

### **SECTION IV.**

This Ordinance is enacted as an amendment to the Code of the City of Gainesville, Georgia, and is to be codified as a part of Section 9-1-1-5.

### **SECTION V.**

The effective date of this Ordinance shall be upon approval by the governing body of the City of Gainesville, Georgia.

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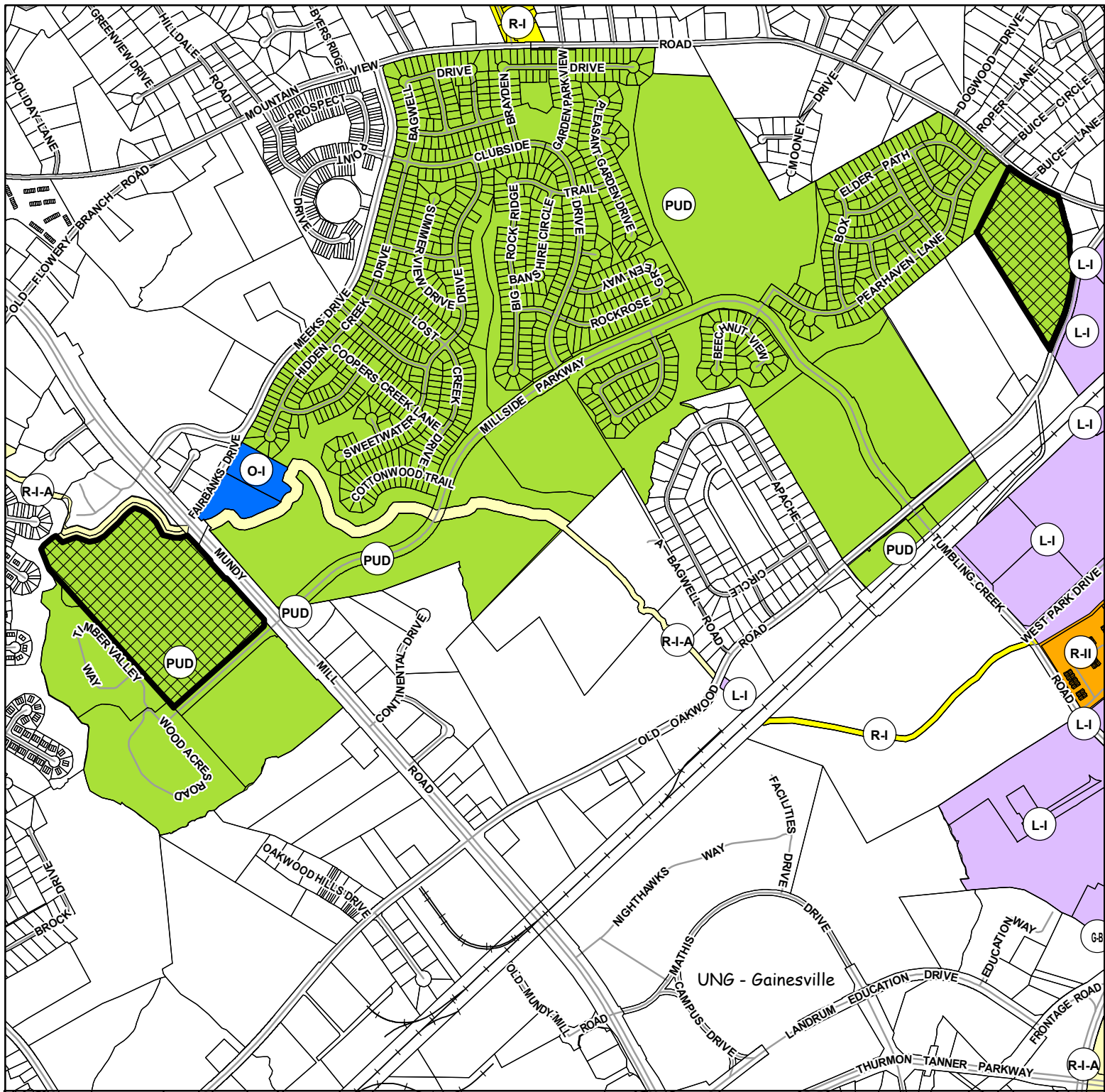
**C. Danny Dunagan, Jr., Mayor**

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this ordinance was adopted as stated and will be recorded in the official minutes.

**ATTEST:**

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**Denise O. Jordan, City Clerk**



Applicant:

**SCOTT STRINGER**

## ZONING AMENDMENT REQUEST

**Request:**

Amend a portion of an existing Planned Unit Development (PUD) zoning totaling 57.29+/- acres for multi-family apartments and industrial/office/warehouse

**Subject Property Address:**

0 Mundy Mill Road, SW and  
0 Old Oakwood Road, SW

**Tax Parcel:**

08-043-000-078 and  
08-024-005-363

Meeting Date: 01/12/2021

Map Prepared: 12/11/2020

 Subject Property



0 720 1,440 2,160 2,880 Feet

1" = 1,200'



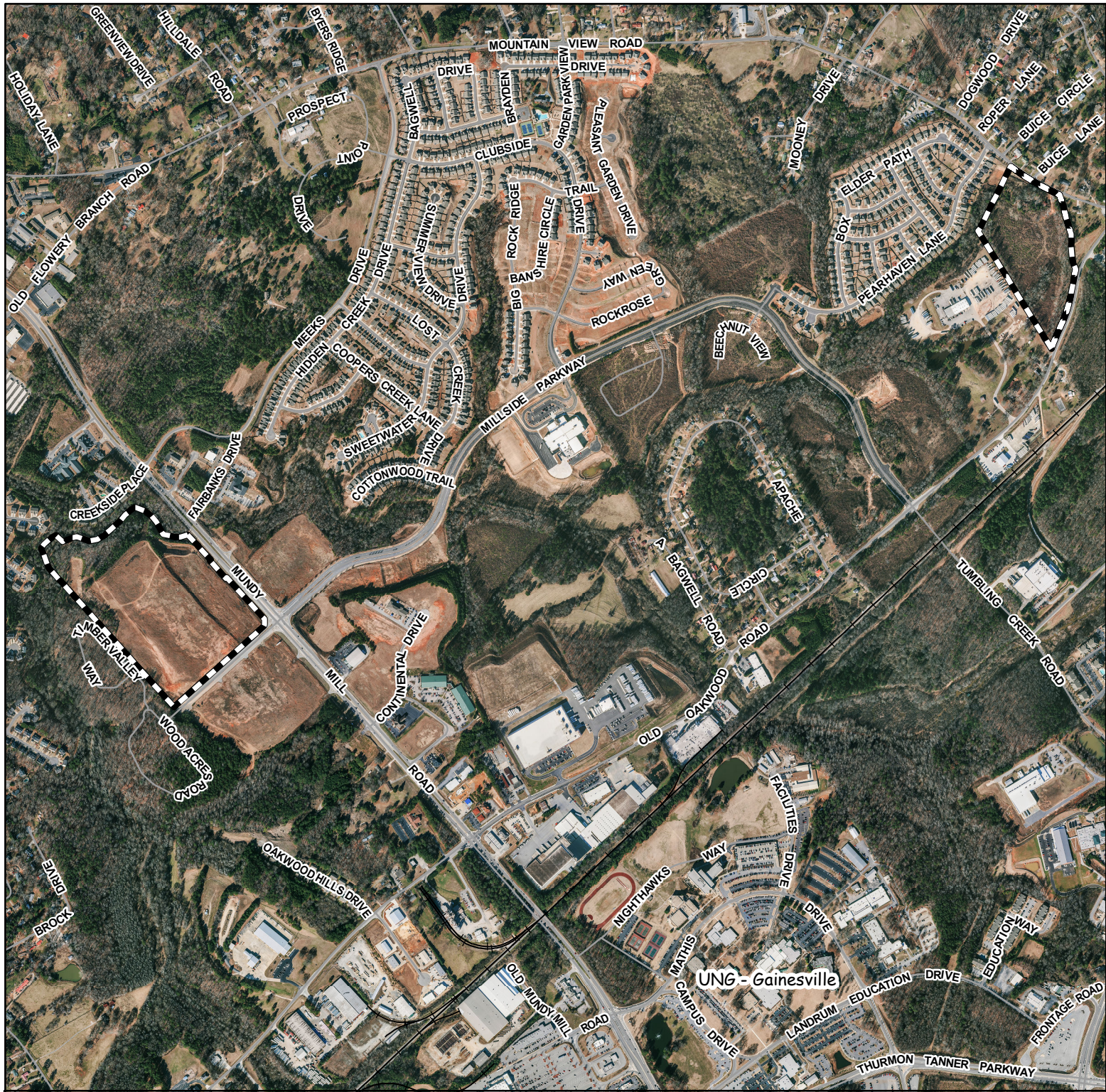
CITY OF

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COMMUNITY AND ECONOMIC DEVELOPMENT







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**Map Prepared:** 12/11/2020



Subject Property

Aerial from 2018

0 720 1,440 2,160 2,880 Feet



1" = 1,200'



CITY OF

**GAINESVILLE**

COMMUNITY AND ECONOMIC DEVELOPMENT





## ZONING AMENDMENT REQUEST FOR MUNDY MILL PUD

The proposed zoning amendment would allow already approved multi-family units within the Mundy Mill PUD to be constructed on a portion of the current Comm-1 parcel as depicted on current master plan.

Current zoning for Mundy Mill PUD is shown on the attached concept plan.

With respect to current zoning, we desire to relocate a portion of the existing approved multi-family density for the Mundy Mill PUD from the current multi-family parcels to a portion of parcel Comm-1 which fronts Mundy Mill Rd. After careful evaluation it is believed that there is demand for multifamily product in this area, but the existing multi-family parcels lack the necessary visibility and access needed to put those parcels into production for residential uses at this time. The portion of Comm-1 that is being requested to allow for multi-family development has already been prepped for development and benefits from an existing road, with pending traffic signal, and visibility on a major thoroughfare. This parcel is primed for development and can be put into production much earlier, bringing more energy to the PUD and increasing the viability for retail development on the parcel as well.

Carter seeks to develop multi-family units on a portion of the Comm-1 parcel, while maintaining a significant portion of the parcel for commercial or retail uses that would front Mundy Mill Rd. All units Carter seeks to build are already entitled under the Mundy Mill PUD and this Zoning Amendment seeks to allow a portion of these exiting multi-family units to be constructed on a more desirable development parcel within the PUD. Allowing some existing multi-family units to be constructed on a portion of this parcel can improve residential density in a manner that we believe will make the retail outparcels along Mundy Mill more enticing to retailers and should help move these outparcels more quickly and for higher land values based on the increased unit count in this portion of the PUD.

With the relocation of a portion of the multi-family units there would be increased utilization for the traffic signal planned for the intersection of Mundy Mill Rd. and Millside Pkwy. The presence of this light would also increase the marketability for the retail along Mundy Mill, providing easier access to the outparcels.

We also ask that the current zoning of the MF-5 parcel be amended so as to accommodate industrial/office/warehouse uses which are more consistent with nearby parcels. Design Controls for the impacted parcels are shown on exhibits to the Application for Zoning Actions.

In summary, we believe these requested changes will provide a significant benefit to the PUD, the City of Gainesville and marketability for retail along Mundy Mill Rd. The total number of multi-family units within the PUD will remain unchanged from what has previously been approved.

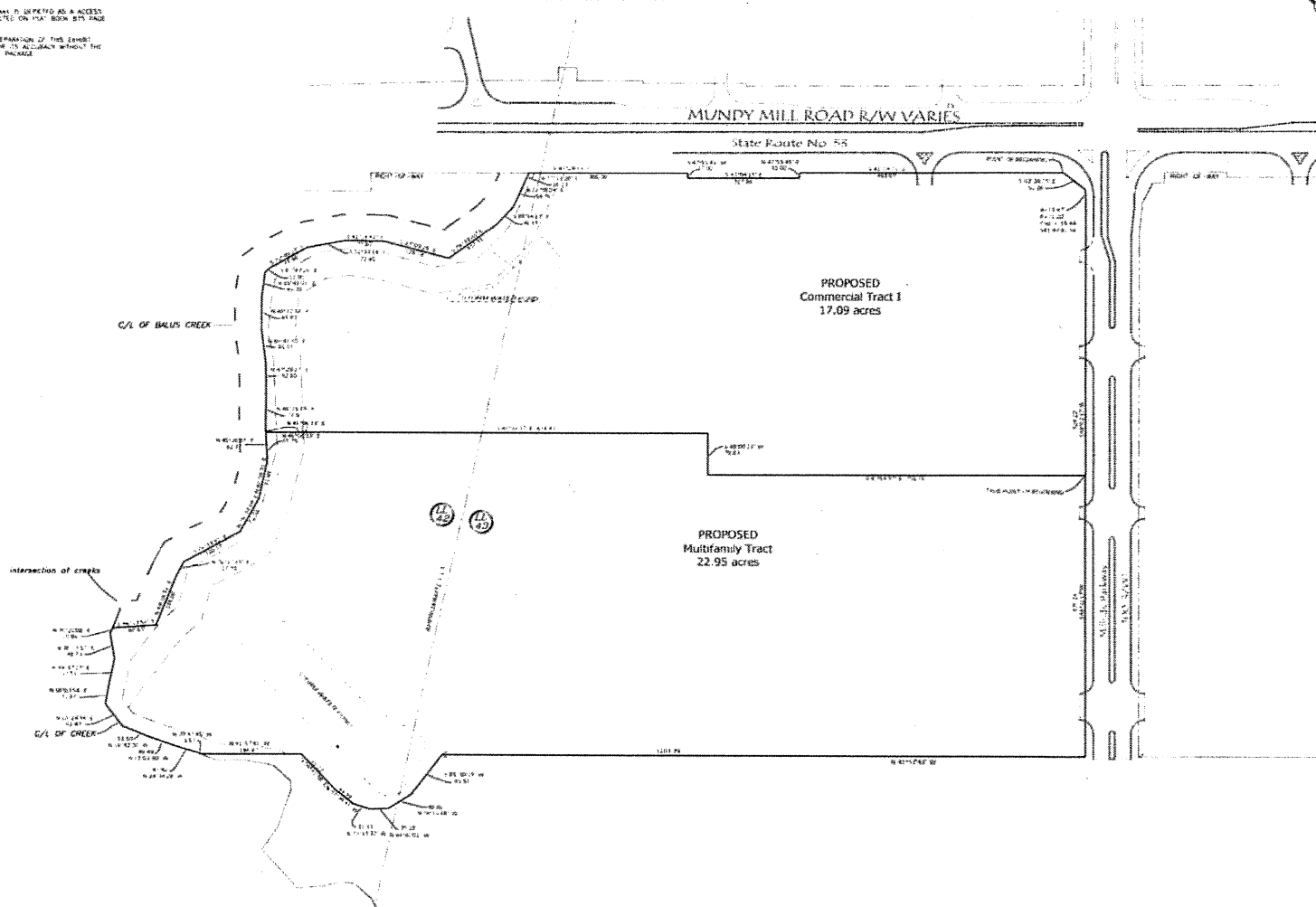
Based on these proposed changes, zoning conditions will need to be modified to provide for the following:

Attached single-family condominiums, fee simple townhomes or apartments shall not exceed 1,235 total units to include 460 units for Pod's J and K and 775 units for all other Pods and approved areas within Pods that allow attached single-family condominiums, fee simple townhomes or apartments.

# EXHIBIT NOTES:

1. THIS EXHIBIT IS NOT TO BE CONSIDERED A BOUNDARY SURVEY. THE EXHIBIT IS PREPARED FROM INFORMATION OF RECORD.
2. THE ROADWAY SHOWN HEREON AS WELL AS PARKWAYS THEREON ARE SHOWN AS ACCESS PARTIAL PER ACCESS EASEMENT AGREEMENT AS DEPICTED ON PLAT BOOK SIX PAGE 6.
3. NO TITLE WORK HAS BEEN PROVIDED FOR THE PREPARATION OF THIS EXHIBIT AND THE PREPARER ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY WITHOUT THE BENEFIT OF A CURRENT SURVEY AND TITLE REVEALMENT POLARIS.

## MUNDY MILL PLAT



REGISTERED PROFESSIONAL  
LAND SURVEYORS



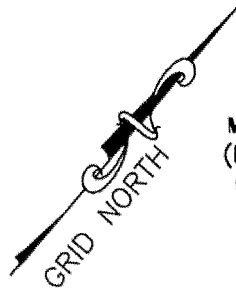
COMPLETED BY: J.C.P.  
SURVEYED BY: J.C.P.  
DRAWN BY: J.C.P.  
CHECKED BY: J.C.P.

THANK YOU  
**CARTER**  
LAND LOTS 42 & 43  
8TH LAND DISTRICT  
CITY OF GAINESVILLE  
HALL COUNTY, GEORGIA

| REVISIONS |             |
|-----------|-------------|
| NO.       | DESCRIPTION |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |
|           |             |

SHEET NUMBER  
**1** of **1**  
SCALE: 1" = 100'  
SURVEY DATE: 11/18/2020  
PLAT DATE: 11/20/2020  
JN 20 266

**FINAL PLAT OF  
MUNDY MILL-POD E-PHASE 1**  
(PLAT BOOK 853, PAGES 247-250)  
(PLAT BOOK 854, PAGES 1 & 2)  
OPEN SPACE TRACT



P/L

1/2" O.T.F.

N 26°22'17" E 618.67'

C.P.  
(TYPICAL)E MOUNTAIN VIEW ROAD  
(50' R/W)

**SITE AREA:  
17.25 Acres**

- N/F -  
BUTLER PROPERTY, LLC  
(DEED BOOK 6749, PAGE 226-240)

- N/F -  
TONY MCGUIRE  
(DEED BOOK 5504, PAGE 648)  
(PLAT SLIDE 486, PAGE 192A)

**POINT OF COMMENCEMENT**  
N 42°09'32" E 1771.51'  
(FROM THE SOUTHERLY MITERED  
R/W CORNER AT THE NORTHEASTERLY  
INTERSECTION OF MILLSIDE PARKWAY &  
OLD OAKWOOD ROAD)  
N:1544833.48  
E:2388397.69

1/2" R.B.F.  
(5.7' SOUTH,  
ON P/L  
EXTENDED)

NAIL FOUND  
(2.8' NORTH,  
ON P/L)

C.P.  
(TYPICAL)

OLD OAKWOOD ROAD  
(VARYING WIDTH R/W)

- N/F -  
ARACELY SALINAS &  
JOSE D. SALINAS  
(DEED BOOK 5817, PAGES 189-191)

- N/F -  
JAMES T. RIDINGS  
(DEED BOOK 7311, PAGES 462 & 463)



SHEET 1 OF 4



**PATTON**  
LAND SURVEYING, LLC  
REGISTERED PROFESSIONAL  
LAND SURVEYORS

P.O. BOX 256  
GAINESVILLE, GA. 30503  
PHONE: (770) 532-6492  
FAX: (770) 532-1995  
www.pattonsurveying.com



HALL COUNTY SURVEYOR

SKETCH &amp; DESCRIPTION FOR:

**BUTLER PROPERTY, LLC**

- LOCATED IN -

**LAND LOT 25  
8TH LAND DISTRICT  
CITY OF GAINESVILLE  
HALL COUNTY, GEORGIA**

SCALE:  
1" = 200'

DATE:  
04/03/2018

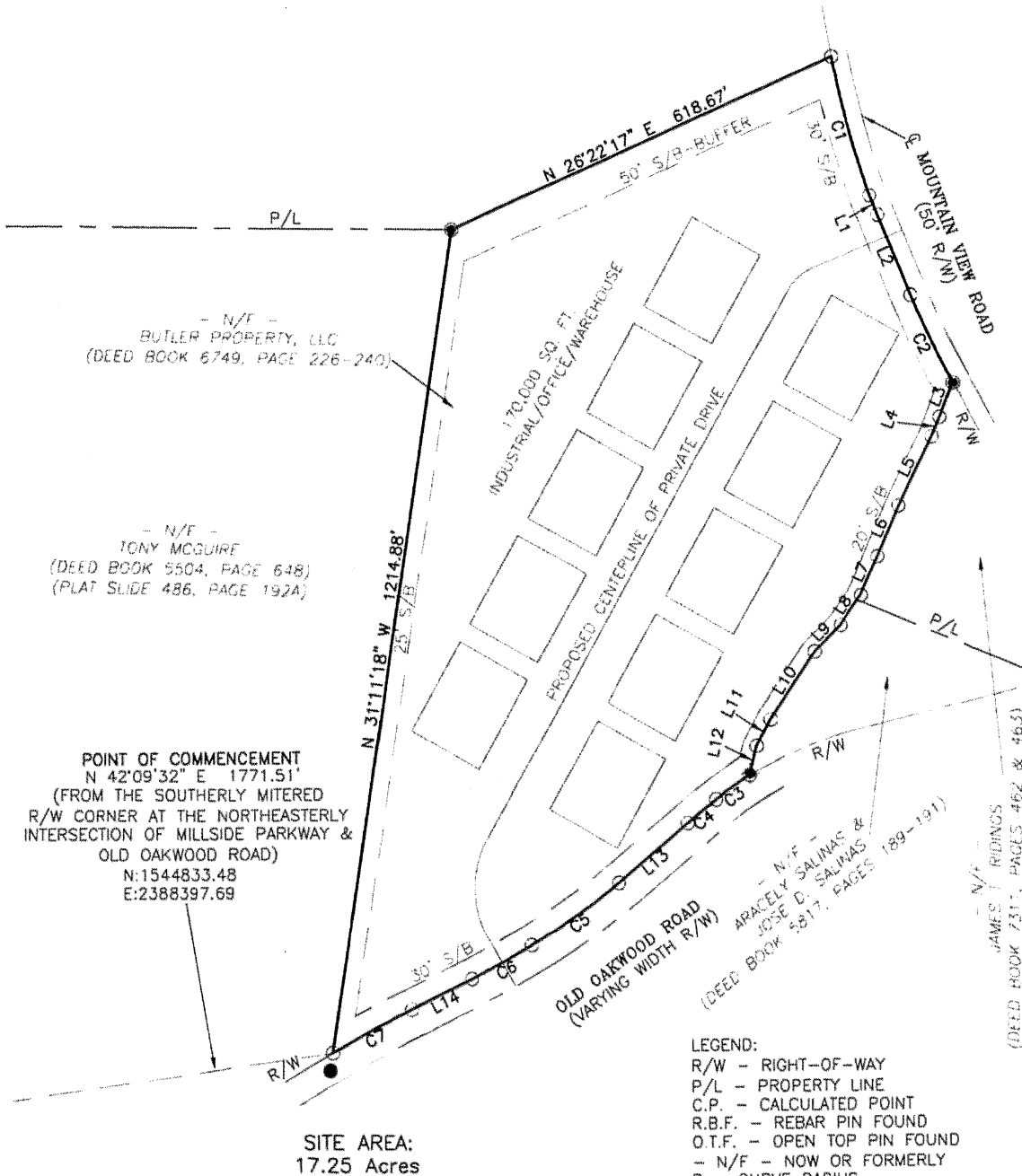
Sketch-description-Multi-Family-Parcel-5.dwg  
JN. 13-099 Page 171 of 179

MUNDY MILL  
Site Plan





# SITE PLAN (INDUSTRIAL/OFFICE/WAREHOUSE)

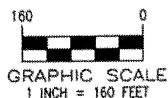


- LEGEND:**
- R/W - RIGHT-OF-WAY
  - P/L - PROPERTY LINE
  - C.P. - CALCULATED POINT
  - R.B.F. - REBAR PIN FOUND
  - O.T.F. - OPEN TOP PIN FOUND
  - N/F - NOW OR FORMERLY
  - R - CURVE RADIUS
  - L - CURVE LENGTH
  - Δ - CURVE DELTA ANGLE
  - C BRG - CURVE CHORD BEARING
  - C DIST - CURVE CHORD DISTANCE
  - C.M.F. - CONCRETE MONUMENT FOUND
  - R.B.S. - REBAR PIN SET



**PATTON**  
LAND SURVEYING, LLC  
REGISTERED PROFESSIONAL  
LAND SURVEYORS

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GAINESVILLE, GA. 30503  
PHONE: (770) 532-6492  
FAX: (770) 532-1995  
www.pattonsurveying.com



SITE PLAN FOR:  
**BUTLER PROPERTY, LLC**

- LOCATED IN -  
**LAND LOT 25  
8TH LAND DISTRICT  
CITY OF GAINESVILLE  
HALL COUNTY, GEORGIA**

REVISIONS

SCALE: 1" = 160'

PLAN DATE: 12/14/2020

Concept Plan-Multi-Family-Parcel-5.dwg

JN. 13-059

# MUNDY MILL

## Proposed PUD Master Plan

### LAND USE CHART

| POD | APPROX AC | USE                                    | Approx. sf or units |
|-----|-----------|----------------------------------------|---------------------|
| A   | 221.19    | SF Detached                            | 756 units           |
| B   | 12.89     | Office/Warehouse Commercial and Retail | 87,200 sf           |
| C   | 45.82     | Apartments (MF) w/ Detached Garages    | -                   |
| D   | 38.07     | SF Detached                            | 90 units            |
| E   | 17.27     | Industrial/Office/Warehouse            | 170,000 sf          |
| F   | 18.93     | Office Commercial                      | 263,000 sf          |
| G   | 19.23     | Commercial                             | 84,000 sf           |
| H   | 2.07      | Commercial                             | 10,000 sf           |
| I   | 65.7      | Commercial/Apartments (MF)             | 580,000 sf          |
| J   | 22.6      | SF Attached Condo Townhome/Apartins    | -                   |
| K   | 17.9      | SF Attached Condo Townhome/Apartins    | -                   |
| L   | 23.78     | SF Attached                            | 104 units           |
| M   | 70.13     | SF Attached                            | 256 units           |
| N   | 26.80     | School Site (to be dedicated)          |                     |

(\*) Signifies the Pods where multifamily units (apartments and SF attached condos/townhomes) are allowed. The total number of multi-family units allowed in all multi-family pods shall not exceed 1,235 units.



### DESIGN CONTROLS

| SETBACKS                 | PERIMETER SETBACK | Front (INTERNAL)                            | Rear (INTERNAL) | Side/Corner Side     |
|--------------------------|-------------------|---------------------------------------------|-----------------|----------------------|
| Commercial               | 30'               | 25'                                         | 30'             | 10'                  |
| Office                   |                   | 25'                                         | 30'             | 10'                  |
| SF Detached              |                   | 20'                                         | 20'             | 0', 10' b/w building |
| SF Attached TH           |                   | 10'                                         | 10'             | 10'                  |
| Multi Family A All Condo |                   | 10' ADJACENT TO ALL INTERNAL PROPERTY LINES |                 |                      |

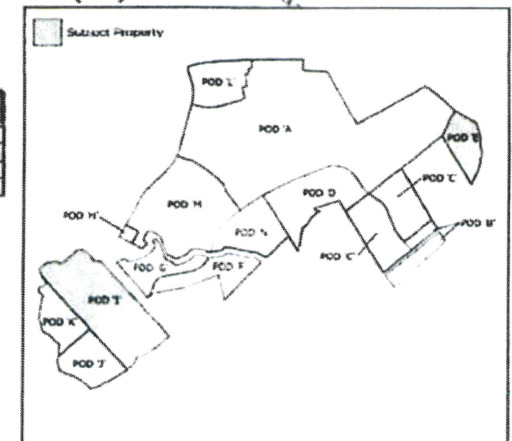
| UNIT LOT CHART            | Minimum Lot/Unit Area | Minimum Lot/Unit Width    | Minimum Lot/Unit Frontage |
|---------------------------|-----------------------|---------------------------|---------------------------|
| Commercial                | NONE                  | NONE                      | NONE                      |
| Office                    | NONE                  | NONE                      | NONE                      |
| SF Detached               | 6,000 sf              | 50' width at setback line | 20'                       |
| Multi Family Condo, SF TH | NONE                  | 10' minimum unit width    | 16'                       |

### BUILDING SEPARATION FOR MIX TI-FAMILY AND CONDO

|                    |     |
|--------------------|-----|
| FRONT TO FRONT     | 40' |
| REAR TO REAR       | 40' |
| FRONT/REAR TO SIDE | 30' |
| SIDE TO SIDE       | 20' |

### NOTE:

1. Free simple townhomes may be subdivided on (non-public road standard) private streets.
1. A 20' buffer will be provided around boundary of property except along Mundy Mill Road.





# MUNDY MILL

## Existing PUD Master Plan





# MUNDY MILL

## Clubhouse Rendering





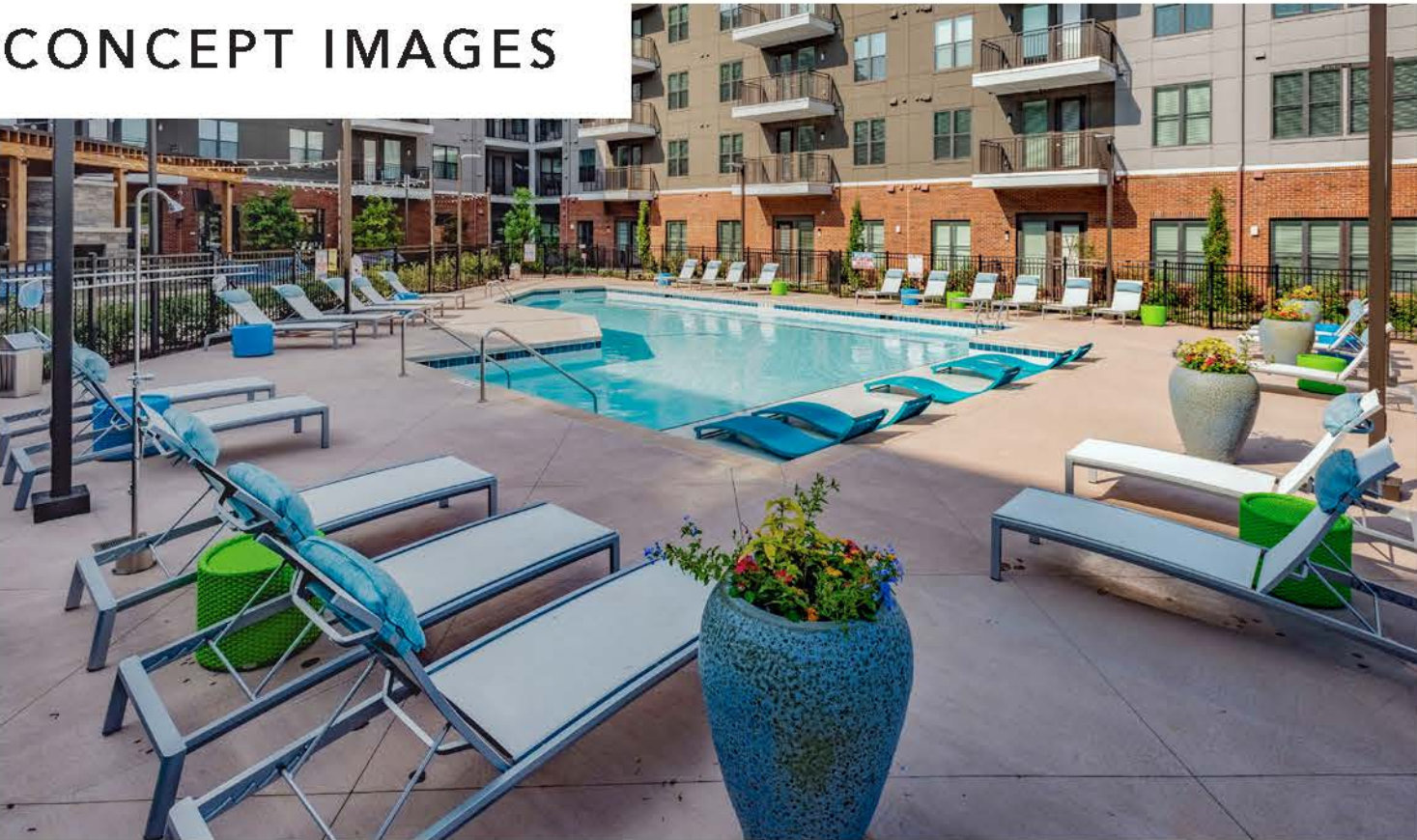
# MUNDY MILL

## Multifamily Rendering





CONCEPT IMAGES





CONCEPT IMAGES

