

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.  
JOEL L. LARKIN  
PARKS F. HUFF  
JAMES A. BALLI

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376 POWDER SPRINGS STREET  
MARIETTA, GEORGIA 30064-3448

770•422•7016  
TELEPHONE  
770•426•6583  
FACSIMILE

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ADAM J. ROZEN

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WWW.SLHB-LAW.COM

July 14, 2017

## VIA HAND DELIVERY

Mr. Ken Suddreth, Director  
Community Development Department  
City of Smyrna  
3180 Atlanta Road  
Smyrna, GA 30080

Re: Applications of Westplan Investors Acquisitions, LLC, to Annex and Rezone an approximate 8.7 Acre Tract from O&I (Cobb County) and NS (City of Smyrna) to Conditional – MU (City of Smyrna); Land Lots 880 and 881; 17<sup>th</sup> District, 2<sup>nd</sup> Section, City of Smyrna, Cobb County, Georgia.

Dear Ken:

This firm has been engaged by and represents the Applicant, Westplan Investors Acquisitions, LLC (“Westplan”) and the Property Owner, Accent Cumberland Apartments, LP which purchased the Subject Property in May of 2017.

With respect to the foregoing, enclosed please find the Applications for Rezoning and Annexation and the requisite number of copies of same, including the following:

1. A Limited Warranty Deed reflecting the current record Titleholder.
2. Legal descriptions concerning the Subject Property as contained within the Limited Warranty Deed.
3. Copies of paid tax receipts concerning the Subject Property.
4. The requisite number of full-sized and 11” x 17” sized copies of the current proposed Site Plan prepared by Summit Engineering Consultants, Inc. and an 8½” x 11” copy of the site plan.
5. Because this is a developed site, the submission of a Tree Protection/Replacement Plan is not required; however, included with this submission is a Tree Assessment Analysis prepared by Arbor Guard, dated February 27, 2015.

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6. Renderings/elevations depicting the architectural style and composition of the proposed buildings.
7. A Consolidated Impact Statement.
8. A Constitutional Challenge.
9. A disc containing a pdf copy of this submittal and the overall legal description in Word format.
10. A check made payable to the City of Smyrna in the sum of \$2,000.00 representing the Application fee.

Assuming that these Applications are deemed complete, it is my understanding that the Applications will be scheduled to be heard and considered by the Planning & Zoning Board on August 14, 2017 and, thereafter, heard and considered for final action by the Mayor and City Council on September 18, 2017.

I will, of course, be contacting you and Senior Planner Rusty Martin to establish a dialogue regarding the Annexation and Rezoning requests and to address any concerns which you may have regarding the Applications. In the interim, please do not hesitate to contact me should you have any questions whatsoever regarding these matters. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS, Jr./klk  
Enclosures

cc: Listed on next page

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

## VIA HAND DELIVERY

Mr. Kenneth Suddreth, Director  
Community Development Department  
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cc: Honorable Mayor A. Max Bacon, Mayor (via email w/attachments)  
Mr. Derek Norton, City Council Member (via email w/attachments)  
Members, City of Smyrna City Council (via email w/attachments)  
Members, City of Smyrna Planning & Zoning Board (via email w/attachments)  
Ms. Tammi Saddler Jones, Interim City Administrator (via email w/attachments)  
Scott A. Cochran, Esq. (via email w/attachments)  
Mr. Eric Randall, P.E., City Engineer (via email w/attachments)  
Mr. Scott Stokes, Public Works Director (via email w/attachments)  
Mr. Timothy Grubaugh, Fire Marshall (via email w/attachments)  
Ms. Terri Graham, City Clerk (via email w/attachments)  
Mr. Russell Martin, AICP, Senior City Planner (via email w/attachments)  
Mr. Bradley Johnson, Principal, Westplan Investors Acquisitions, LLC (via email w/attachments)  
Mr. Abdul Amer, P.E., A&R Engineering, Inc. (via email w/attachments)  
Mr. Chris Rumney, Project Manager, Summit Engineering Consultants, Inc. (via email w/attachments)  
Mr. Christopher K. Harrell, P.E., Summit Engineering Consultants, Inc. (via email w/attachments)

**APPLICATION FOR REZONING  
TO THE CITY OF SMYRNA**

*Type or Print Clearly*

(To be completed by City)

**Ward:** \_\_\_\_\_

**Application No:** \_\_\_\_\_

**Hearing Date:** \_\_\_\_\_

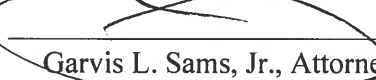
**APPLICANT:** Westplan Investors Acquisitions, LLC

Name: Garvis L. Sams, Jr. (Sams, Larkin, Huff & Balli, LLP)  
(Representative's name, printed)

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

Business Phone: 770-422-7016 Cell Phone: 404-975-7772 Fax Number: 770-426-6583

E-Mail Address: gsams@slhb-law.com

Signature of Representative:   
Garvis L. Sams, Jr., Attorney for Applicant

**TITLEHOLDER**

Name: Accent Cumberland Apartments, LP  
(Titleholder's name, printed)

Address: One Glenlake Parkway, Suite 127, Atlanta, GA 30328

Business Phone: 770-390-9378 Cell Phone: 404-483-9388 Home Phone: \_\_\_\_\_

E-mail Address: b.johnson@westplan.com

Signature of Titleholder: See attached  
(Attach additional signatures, if needed)

(To be completed by City)

Received: \_\_\_\_\_

Heard by P&Z Board: \_\_\_\_\_

P&Z Recommendation: \_\_\_\_\_

Advertised: \_\_\_\_\_

Posted: \_\_\_\_\_

**Approved/Denied:** \_\_\_\_\_

**APPLICATION FOR REZONING  
TO THE CITY OF SMYRNA**

*Type or Print Clearly*

(To be completed by City)

**Ward:** \_\_\_\_\_

**Application No:** \_\_\_\_\_

**Hearing Date:** \_\_\_\_\_

**APPLICANT:** Westplan Investors Acquisitions, LLC

Name: Garvis L. Sams, Jr. (Sams, Larkin, Huff & Balli, LLP)  
(Representative's name, printed)

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

Business Phone: 770-422-7016 Cell Phone: 404-975-7772 Fax Number: 770-426-6583

E-Mail Address: gsams@slhb-law.com

Signature of Representative: \_\_\_\_\_  
Garvis L. Sams, Jr., Attorney for Applicant

**TITLEHOLDER**

Name: Accent Cumberland Apartments, LP  
(Titleholder's name, printed)

Address: One Glenlake Parkway, Suite 127, Atlanta, GA 30328

Business Phone: 770-390-9378 Cell Phone: 404-483-9388 Home Phone: \_\_\_\_\_

E-mail Address: b.johnson@westplan.com

Signature of Titleholder: *R. Carter, Manager*  
(Attach additional signatures, if needed)

(To be completed by City)

Received: \_\_\_\_\_

Heard by P&Z Board: \_\_\_\_\_

P&Z Recommendation: \_\_\_\_\_

Advertised: \_\_\_\_\_

Posted: \_\_\_\_\_

**Approved/Denied:** \_\_\_\_\_

**ZONING REQUEST**

From O&I (Cobb County) & NS (Smyrna) to Mixed Use (MU) - Smyrna  
Present Zoning Proposed Zoning

**LAND USE**

From Regional Activity Center (Cobb County) to Regional Activity Center (Smyrna)  
Present Land Use Proposed Land Use

For the Purpose of Mixed Use Development

Size of Tract 8.7 acres

Location An assemblage of parcels on the south side of Spring Road and the north side of I-285 (2800 and 2810 Spring Road)  
(Street address is required. If not applicable, please provide nearest intersection, etc.)

Land Lot (s) 880 & 881 District 17th

We have investigated the site as to the existence of archaeological and/or architectural landmarks. I hereby certify that there are no X there are      such assets. If any, they are as follows:

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(To be completed by City)

Recommendation of Planning Commission:

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Council's Decision:

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**CONTIGUOUS ZONING**

**North:** NS (Smyrna)

**East:** GC (Cobb County)

**South:** I-285 & RRC (Cumberland Mall)

**West:** O&I (Smyrna)

**CONTIGUOUS LAND USE**

**North:** Neighborhood Activity Center (Smyrna)

**East:** Regional Activity Center (Cobb County)

**South:** Regional Activity Center (Cobb County)

**West:** Community Activity Center (Smyrna)

**INFRASTRUCTURE**

**WATER AND SEWER**

A letter from Scott Stokes, Director of Public Works Department is required stating that water is available and the supply is adequate for this project.

A letter from Scott Stokes, Director of Public Works Department is required stating that sewer is available and the capacity is adequate for this project.

- If it is Cobb County Water, Cobb County must then furnish these letters.

Comments:

Attached are comments from the Cobb County Water System regarding the availability and accessibility to water and sewer for the site.

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**TRANSPORTATION**

Access to Property? Via Spring Road

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Improvements proposed by developer? A mixed use development consisting of a total building area of 527,333 sq. ft., including: 6 story hotel (200 rooms); 7,500 sq. ft. retail; 3,500 sq. ft. restaurant space; 65,000 sq. ft. of future office space, a 5 story building with 282,000 net rentable sq. ft. for total of 310 "Class A" amenitized multi-family units.

Parking: 738 spaces required (692 spaces in deck and 46 surface spaces provided).

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Comments:

The Annexation/Rezoning proposal, which represents less than the thresholds of the Atlanta Regional Commission ("ARC"), is not a Development of Regional Impact ("DRI"). Presently, the property is located within a Regional Activity Center ("RAC") in Unincorporated Cobb County and is located within a sub-area which includes office and retail utilization.

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**ZONING DISCLOSURE REPORT**

Has the applicant\* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

No

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If so, the applicant\* and the attorney representing the applicant\* must file a disclosure report with the Mayor and City Council of the City of Smyrna, within 10 days after this application is filed.

**Please supply the following information, which will be considered as the required disclosure:**

The name of the Mayor or member of the City Council or Planning and Zoning Board to whom the campaign contribution or gift was made:

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The dollar amount of each campaign contribution made by the applicant\* to the Mayor or any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application, and the date of each such contribution:

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An enumeration and description of each gift having a value of \$250 or more by the applicant\* to the Mayor and any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application:

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Does the Mayor or any member of the City Council or Planning and Zoning Board have a property interest (direct or indirect ownership including any percentage of ownership less than total) in the subject property?

No

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If so, describe the nature and extent of such interest: \_\_\_\_\_

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**ZONING DISCLOSURE REPORT (CONTINUED)**

Does the Mayor or any member of the City Council or Planning and Zoning Board have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is 10% or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?

No

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If so, describe the nature and extent of such interest:

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Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No

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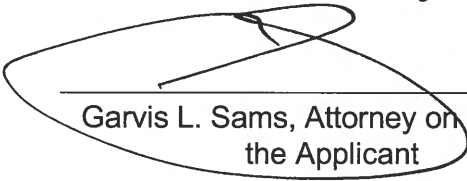
If so, describe the relationship and the nature and extent of such interest:

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If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application\*\*. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 12 day of July, 2017.

  
\_\_\_\_\_  
Garvis L. Sams, Attorney on behalf of  
the Applicant

Notes

\* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

\*\* Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

**CAMPAIGN DISCLOSURE REPORT<sup>1</sup>**  
**BY ATTORNEY FOR APPLICANT<sup>2</sup>**

Has the Applicant made, within two (2) years immediately preceding the filing of this Application for rezoning, campaign contributions aggregating two hundred fifty dollars (\$250.00) or more or made gifts having in the aggregate a value of two hundred fifty dollars (\$250.00) or more to a member or members of the Smyrna City Council or Planning Commission who will consider the Application?

Yes

If so, the Applicant and the attorney representing the Application must file a disclosure report with the Smyrna City Council within ten (10) days after this Application is first filed.

Please supply the following information which will be considered as the required disclosure:

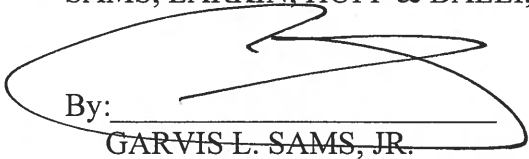
The name of the member(s) of the Smyrna City Council or Planning Commission to whom the campaign contribution or gift was made: Max Bacon; Ron Fennel; Doug Stoner; and, Derek A. Norton

The dollar amount of each campaign contribution made by the Applicant to the member(s) of the Smyrna City Council or Planning Commission during the two (2) years immediately preceding the filing of this Application and the date of each such contribution: Max Bacon - \$2,500.00 on 7/23/15; Doug Stoner - \$1,000.00 on 7/24/15 and \$1,500.00 on 10/23/15; Ron Fennel - \$2,500.00 on 8/27/15; and, Derek Norton (Mayoral Candidate) - \$2,000.00 on 6/15/17.

An enumeration and description of each gift having a value of two hundred fifty dollars (\$250.00) or more made by the Applicant to the member(s) of the Smyrna City Council or Planning Commission during the two (2) years immediately preceding the filing of this Application: N/A

I certify that the foregoing information is true and correct, this the 12 day of July, 2017.

SAMS, LARKIN, HUFF & BALLI, LLP

By:   
GARVIS L. SAMS, JR.  
Attorney for Applicant

<sup>1</sup>If the answer to any of the above is "Yes", then the member of the Smyrna City Council or Planning Commission must immediately disclose the nature and extent of such interest, in writing to the Smyrna City Council. A copy should be filed with this Application. Such disclosures shall be a public record and available for public inspection at any time during normal working hours.

<sup>2</sup>Applicant means any person who applies for a rezoning action and any attorney, or other person representing or acting on behalf of a person who applies for a rezoning action.

**DISCLOSURE**

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES", YOU MAY BE REQUIRED UNDER O.C.G.A. §36-67A-3 TO PROVIDE FURTHER INFORMATION:

- A) ARE YOU, OR ANYONE ELSE WITH A PROPERTY INTEREST IN THE SUBJECT PROPERTY, A MEMBER OF THE CITY OF SMYRNA PLANNING COMMISSION OR CITY OF SMYRNA MAYOR AND COUNCIL? **NO**
  
- B) DOES AN OFFICIAL OF SUCH PUBLIC BODIES HAVE ANY FINANCIAL INTEREST IN ANY BUSINESS ENTITY WHICH HAS A PROPERTY INTEREST IN THE SUBJECT PROPERTY? **NO**
  
- C) DOES A MEMBER OF THE FAMILY OF SUCH OFFICIALS HAVE AN INTEREST IN THE SUBJECT PROPERTY AS DESCRIBED IN (A) AND (B)? **NO**
  
- D) WITHIN TWO (2) YEARS IMMEDIATELY PRECEDING THIS APPLICATION, HAVE YOU MADE CAMPAIGN CONTRIBUTION(S) OR GIVEN GIFTS TO SUCH PUBLIC OFFICIALS AGGREGATING \$250.00 OR MORE? **YES**

SAMS, LARKIN, HUFF & BALLI, LLP

By: \_\_\_\_\_

Garvis L. Sams, Jr.  
Attorney for Applicant

7-12-17

DATE

**REZONING ANALYSIS**

Section 1508 of the Smyrna Zoning Code details nine zoning review factors which must be evaluated by the Planning and Zoning Board and the Mayor and Council when considering a rezoning request. Please provide responses to the following using additional pages as necessary. **This section must be filled out by the applicant prior to submittal of the rezoning request.**

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

The Annexation and Rezoning proposal will permit uses which are suitable in view of the uses and development of adjacent and nearby properties. A preponderance of the area consisting of the Subject Property is located within a RAC under Cobb County's Future Land Use Map ("FLUM") which contemplates the type of uses proposed by the Applicant. The proposal promotes the idea of a live, work, play and new urbanistic development which follows the recommendations of the Spring Road Corridor LCI Master Plan ("LCI Master Plan").

2. Whether the zoning proposal or the use proposed will adversely affect the existing use or usability of adjacent or nearby property.

The Annexation and Rezoning proposal will not have an adverse impact upon the usability of adjacent or nearby properties. In fact, the proposed development as a unified mixed use plan is preferable to a multiplicity of separate uses and developments. Master planning the Subject Property into one comprehensive development reduces the potential problems in the future regarding drainage, stormwater management, access, utilities, etc. The Annexation and Rezoning proposal incorporates a unified mixed use plan to develop the property and incorporates appropriate uses adjacent to major transit corridors consisting of I-285, I-75 and Cobb Parkway.

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

The Subject Property in its O&I classification does not have a reasonable economic use considering the context of market conditions and in accordance with the LCI Master Plan. Additionally, with the advent of the Braves' SunTrust Park and the accompanying 2,300,000 square foot mixed use development (The Battery) has changed the nature and character of this area dramatically with respect to existing and proposed uses.

**REZONING ANALYSIS (CONTINUED)**

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

The Annexation and Rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. These opinions are supported by recent developments and proposed new development areas including SunTrust Park and The Battery and are supported by the recently adopted (April 2017) LCI Master Plan.

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5. Whether the zoning proposal is in conformity with the policy and intent of the land use plan.

The Annexation and Rezoning proposal is in conformity with the policy and intent of Cobb County's Comprehensive Land Use Plan and its FLUM. Similarly, the Rezoning proposal is in conformity with the City's LCI Master Plan, the City's Comprehensive Plan and the City's FLUM. Moreover, the Annexation and Rezoning proposal meets all of the components of mixed use developments by providing a plan which includes commercial, residential, future office space, retail, restaurant and recreational uses for the Subject Property.

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

There are existing and changing conditions affecting the use and development of the Subject Property which give supporting grounds for the Annexation and Rezoning proposal. Moreover, Westplan's proposal constitutes a suitable use of the Subject Property which will not adversely affect adjacent properties and which will be beneficial to the City of Smyrna as a strategic expansion of the City's boundaries. The Annexation and Rezoning proposal will continue to encourage other mixed use developments within this sub-area of the City and Cobb County and will also emulate the spirit and intent of the LCI Master Plan and of the Cumberland Regional Activity Center by providing mixed uses and incorporating a greater unified sense of place which will attract a multiplicity of demographics.

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**REZONING ANALYSIS (CONTINUED)**

7. Whether the development of the property under the zoning proposal will conform to, be a detriment to or enhance the architectural standards, open space requirements and aesthetics of the general neighborhood, considering the current, historical and planned uses in the area.

The Annexation and Rezoning proposal will comprehensively enhance architectural standards and aesthetics of the general area in which the Subject Property is situated. Additionally, the proposed Annexation and Rezoning will constitute an event which will precipitate additional and appropriate commercial, retail, restaurant, office and residential development along both the Spring Road Corridor and Cobb Parkway as envisioned by the LCI Master Plan.

8. Under any proposed zoning classification, whether the use proposed may create a nuisance or is incompatible with existing uses in the area.

The proposed zoning classification of Conditional - MU is substantially similar to the mixed use classifications within Unincorporated Cobb County; therefore, the uses proposed will not create a nuisance; are consistent with the existing Regional Activity Center; consistent with the LCI Master Plan; and, are compatible with existing uses in the area particularly in consideration of the presence of SunTrust Park & The Battery, Cumberland Center and other progressive and impactful developments located at three of the four quadrants at the confluence of Cobb Parkway and I-285.

9. Whether due to the size of the proposed use, in either land area or building height, the proposed use would affect the adjoining property, general neighborhood and other uses in the area positively or negatively.

The proposed Annexation and Rezoning will positively affect the trend of development within this sub-area of the City and will encourage other compatible mixed use projects in this area of both the City of Smyrna and Unincorporated Cobb County and is in keeping with the LCI Master Plan.

## Karen King

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**From:** Davidson, Timothy <Timothy.Davidson@cobbcounty.org>  
**Sent:** Tuesday, January 27, 2015 11:21 AM  
**To:** Karen King  
**Subject:** RE: Request for comment  
**Attachments:** 2810 Spring Road.pdf

Water service for this property can be provided by the CCWS 8-inch line in Spring Road .

Wastewater flow from the site is treated at the R.L. Sutton WRF where there currently is sufficient capacity. Permit issuances are subject to continued WRF compliance with EPD discharge requirements.

Because CCWS will continue to own and maintain water and sewer facilities in public rights-of-way and public easements, there would be no infrastructure loss.

Tim Davidson  
Cobb County Water System  
660 South Cobb Drive  
Marietta, GA 30060  
770-419-6312



## Annexation Application Form Check List

Using this checklist as a guide, please review application materials with applicant or representative **before** accepting application.

### 1. APPLICATION FORM

- X   Correct Application Form Used (for 60% method or 100% method as applicable)
- X   Original form with original signature(s), address(es) and telephone number(s) obtained
- X   Check to make certain all signatures can be read. If signature(s) is/are illegible, make certain the applicant names are typed or legibly printed near the corresponding signature. (the notation "L.S." on the form stands for *legal signature*)
- X   All legal owners of the property have signed the application form

### 2. LEGAL DESCRIPTION

- X   Legal description of the subject property accompanies application
- X   Ask the applicant or representative if an electronic copy of the legal description is available; if so, make arrangements for the electronic information to be furnished to either the Community Development Department or City Clerk's Office

### 3. SECTION 5 VOTING RIGHTS ACT QUESTIONNAIRE

- NA   Completed *Section 5 Voting Rights Act Questionnaire* accompanies application

### 4. MAP OF PROPERTY TO BE ANNEXED

- X   A tax plat, map or other graphic representation of the subject parcel(s) accompanies the application

I have reviewed the annexation application with the applicant(s) and/or representative(s) and have found the submitted paperwork to be complete and in good order.

\_\_\_\_\_  
City staff member signature

\_\_\_\_\_  
Date

This completed form should accompany annexation application materials submitted to the City Clerk's office.

2017 SUBMISSION UNDER SECTION 5  
OF THE VOTING RIGHTS ACT  
FOR THE CITY OF SMYRNA, GEORGIA

Map Designation# \_\_\_\_\_ LL/Parcel# 880 & 881, 17th District

City Ward# (1) Norton Census Tract# \_\_\_\_\_

Copies of annexation ordinance (council meeting minutes) are attached, marked:  
Exhibit\_\_

Responsible body: Mayor and Council of the City of Smyrna  
P.O. Box 1226  
Smyrna, GA 30081  
Telephone (770) 434-6600

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*THIS SECTION TO BE COMPLETED BY APPLICANT. PLEASE BE SURE THIS  
INFORMATION IS ACCURATE – IT WILL BE USED TO ESTABLISH EMERGENCY  
SERVICE THROUGH OUR 911 SYSTEM.*

1. Is the property to be annexed vacant? Yes[ ] No
2. If NO, name of resident(s): Remaining tenants within commercial buildings
3. Complete street address: Numerous parcels with access to Spring Road & Spring Hill Pkwy.
4. Telephone Number Bradley G. Johnson (404-483-9388) and Garvis L. Sams, Jr. (770-422-7016)
5. Number of registered voters before annexation: None  
Number and type of minorities or minority language groups: None
6. Number of registered voters after annexation: None  
Number and type of minorities or minority language groups: None
7. Use of property before annexation (i.e., vacant, business, residential): Commercial/Business/Office
8. Zoning classification before annexation: Office and Institutional ("O&I")
9. Use of property after annexation (i.e., vacant, business, residential). If residential, please state proposed number of dwelling units: Mixed use development consisting of retail/commercial, hotel, restaurants, future office space and multi-family residential.
10. Zoning classification being requested (if any): MU - Conditional
11. Effect of change on members of racial or minority groups: None
12. Total number of acres being annexed: 5.9 (out of total site acreage of 8.7 acres)

City of Smyrna  
Application for Annexation

We, the undersigned, who constitute sixty percent (60%) of the electors resident and sixty percent (60%) of the owners of the land by acreage, as described below, which is unincorporated and contiguous to the City of Smyrna, hereby apply to have said area annexed into the City of Smyrna under the provisions of laws of the State of Georgia, said property being annexed being described as follows:

WHEREFORE, THE UNDERSIGNED HEREBY APPLY FOR SUCH ANNEXATION.

Witness the hands and seals of 60% of the electors resident in the annexed area:

\_\_\_\_\_(L.S.) \_\_\_\_\_(L.S.)  
Name/Date Name/Date

\_\_\_\_\_  
Address Telephone# Address Telephone#

\_\_\_\_\_(L.S.) \_\_\_\_\_(L.S.)  
Name/Date Name/Date

\_\_\_\_\_  
Address Telephone# Address Telephone#

Witness the hands and seals of 60% of the record title holders of the land described above:

\_\_\_\_\_(L.S.) \_\_\_\_\_(L.S.)  
Name/Date Name/Date

City of Smyrna  
Application for Annexation

We, the undersigned, who constitute one hundred percent (100%) of the owners of the land by acreage, as described below, which is unincorporated and contiguous to the City of Smyrna, hereby apply to have said area annexed into the City of Smyrna under the provisions of laws of the State of Georgia, said property being annexed being described as follows:

WHEREFORE, THE UNDERSIGNED HEREBY APPLY FOR SUCH ANNEXATION.

Accent Cumberland Apartments, LP

Owner's Printed Name

Owner's Printed Name

One Glenlake Pkwy, Atlanta, GA 30328

770-390-9378

Address

Telephone#

Address

Telephone#

Kate Edwards

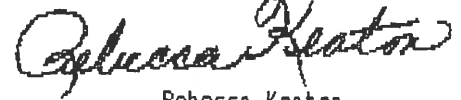
Witness the hands and seals of 100% of the record title holders of the land described above:

R. Carter 7/11/17

Owner's Legal Signature/Date

Owner's Legal Signature/Date

Deed Book 15438 Pg 3882  
Filed and Recorded May-02-2017 02:04pm  
2017-0048105  
Real Estate Transfer Tax \$7,200.00  
0332017009755




Rebecca Keaton  
Clerk of Superior Court Cobb Cty. Ga.

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This instrument prepared by and return to:

Ron Ben-Moshe, Esquire  
McClure & Kornheiser, LLC  
6400 Powers Ferry Road, Suite 150  
Atlanta, Georgia 30339

After recording return to:  
Calloway Title & Escrow, LLC  
 **David W. Dudley 2-32627**  
4170 Ashford Dunwoody Rd. Ste. 525  
Atlanta, Georgia 30319

**LIMITED WARRANTY DEED**

THIS INDENTURE, made and entered into as of the 1<sup>st</sup> day of May, 2017, by and between **NILHAN DEVELOPERS, LLC**, a Georgia limited liability company (hereinafter called "Grantor"), and **ACCENT CUMBERLAND APARTMENTS, LP**, a Georgia limited partnership (hereinafter called "Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, sold, aliened and conveyed and by these presents does grant, bargain, sell, alien and convey unto Grantee, its successors and assigns, all that tract or parcel of land, and/or interests in land, lying and being in Cobb County, Georgia described in **Exhibit "A"**, attached hereto and by this reference incorporated herein.


TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of Grantee, its successors and assigns, forever, IN FEE SIMPLE; subject, however, to the matters set forth in **Exhibit "B"**, attached hereto and by this reference incorporated herein.

And the said Grantor, for itself, its successors, legal representatives and assigns does warrant and will forever defend the right to the aforescribed premises unto the said Grantee, its successors and assigns, against the lawful claims of all persons by, through or under Grantor, except as to claims arising from matters set forth in said **Exhibit "B"**.

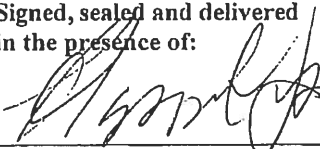
This Limited Warranty Deed is conveyed pursuant to the Order Granting Motion To Authorize Sale, as set forth in Exhibit "C", attached hereto and by this reference incorporated herein, in Case No.: 15-58440-wlh in the United States Bankruptcy Court Northern District of Georgia, Atlanta Division, whereby the Court has authorized the transfer of the Property to Grantee free and clear of liens.

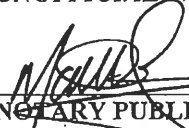
IN WITNESS WHEREOF, Grantor, acting by and through its duly authorized general partner, has caused this indenture to be executed under seal as of the date first above written.

**NILHAN DEVELOPERS, LLC,**  
a Georgia limited liability company

By:  (seal)  
Chitranjan "Chuck" Thakkar  
Manager

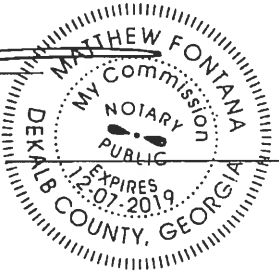
Signed, sealed and delivered  
in the presence of:

  
UNOFFICIAL WITNESS

  
NOTARY PUBLIC

My Commission expires:

(Affix Notarial Seal here)



## EXHIBIT "A"

## Legal Description

All that tract or parcel of land lying and being located in Land Lots 880 and 881, of the 17th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:  
BEGINNING at an iron pin found (#4 rebar) located on the southeasterly right-of-way of Spring Road (AKA New Spring Road (Variable Right-of-Way), said iron pin being located 299.60 feet from the intersection of the said southeasterly right-of-way of Spring Road and the easterly right-of-way of Hargrove Road (80' Right-of-Way as measured in a northeasterly direction along and following the said southerly right-of-way of Spring Road, having thus established the TRUE POINT OF BEGINNING, leaving said iron pin and running N53°02'30"E along the northeasterly right-of-way of Spring Road for a distance of 64.75 feet to an iron pin found (#4 rebar); thence running S36°57'30"E and continuing along the southeasterly right-of-way of New Spring Road for a distance of 50.00 feet to an iron pin found (#4 rebar); thence running N52°57'11"E and continuing along the southeasterly right-of-way of Spring Road for a distance 347.95 feet to an iron pin found (#4 rebar); thence leaving said right-of-way and running S37°03'13"E for a distance of 198.58 feet to an iron pin found (#4 rebar); thence running N52°56'47"E for a distance of 251.89 feet to an iron pin found (#4 rebar); thence running S36°58'42"E for a distance of 445.13 feet to an iron pin found (#4 rebar) located on the northwesterly right-of-way of Interstate 285 (Variable Right-of-Way); thence running S27°58'56"W along the northwesterly right-of-way of Interstate 285 for a distance of 527.06 feet to an iron pin found (#4 rebar) located on the northeasterly right-of-way of Spring Hill Parkway (fka Curtis Drive) (Variable Right-of-Way); thence leaving said Interstate 285 right-of-way and running N68°37'31"W along the northeasterly right-of-way of Spring Hill Parkway for a distance of 188.47 feet to an iron pin found (#4 rebar); thence leaving said right-of-way and running N20°27'53"E for a distance of 208.75 feet to an iron pin found (#4 rebar); thence running N69°38'24"W for a distance of 208.85 feet to an iron pin found (#4 rebar); thence running N69°33'57"W for a distance of 218.39 feet to an iron pin found (#4 rebar); thence running N20°26'02"E for a distance of 20.00 feet to an iron pin found (#4 rebar); thence running N69°58'41"W for a distance of 25.87 feet to an iron pin found (#4 rebar); thence running N62°32'07"W for a distance of 115.80 feet to an iron pin found (#4 rebar); thence running N43°06'18"W for a distance of 48.39 feet to an iron pin found (#4 rebar); thence running N26°25'37"W for a distance of 100.09 feet to an iron pin found (#4 rebar) located on the southeasterly right-of-way of Spring Road which is the TRUE POINT OF BEGINNING. Said tract contains 8.709 acres (379,343 sq. ft.).

**EXHIBIT "B"**

**PERMITTED TITLE EXCEPTIONS**

1. All taxes for the year 2017 and subsequent years, not yet due and payable.
2. Easement from Charles L. Vaughn to Georgia Power Company, dated March 3, 1970, filed for record April 20, 1970 at 2:45 p.m., recorded in Deed Book 1152, Page 592, Records of Cobb County, Georgia.
3. Grant of Easement from Atlanta Venture #1 to Cobb County, a political subdivision of the State of Georgia, dated February 19, 1973, filed for record April 5, 1974 at 12:20 p.m., recorded in Deed Book 1515, Page 343, aforesaid Records.
4. Option Grant of Easement to Atlanta Gas Light Company, filed for record October 29, 1982 at 9:41 a.m., recorded in Deed Book 2615, Page 209, aforesaid Records.
5. Right of Way Easement from The Emerson Center Co. to Southern Bell Telephone and Telegraph Company, filed for record August 21, 1987 at 10:37 a.m., recorded in Deed Book 4612, Page 418, aforesaid Records.
6. Easement Agreement by and between Emerson Center Office Park, LLC, a Georgia limited liability company, Conyers Professional Building, LLC, a Georgia limited liability company and The Shops at Emerson Center, LLC, a Georgia limited liability company, dated December 29, 2005, filed for record February 7, 2006 at 1:41 p.m., recorded in Deed Book 14286, Page 3706, aforesaid Records.
7. Easement from Nilhan Developers, LLC to Georgia Power Company, a Georgia corporation, dated March 12, 2009, filed for record April 6, 2009 at 4:04 p.m., recorded in Deed Book 14680, Page 5656, aforesaid Records.
8. All those matters as disclosed by that certain plat recorded in Plat Book 61, Page 17, aforesaid Records.



EXHIBIT "C"

ORDER GRANTING MOTION TO AUTHORIZE SALE

SEE ATTACHED



IT IS ORDERED as set forth below:

Date: April 28, 2017

*Wendy L. Hagenau*

Wendy L. Hagenau  
U.S. Bankruptcy Court Judge

---

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re: ) Chapter 11  
)  
BAY CIRCLE PROPERTIES, LLC, *et al.*<sup>1</sup> ) Case No.: 15-58440-wlh  
) (Jointly Administered)  
Debtors. )  
)

---

**ORDER GRANTING MOTION TO AUTHORIZE SALE**

Debtor's Motion to Authorize Sale pursuant to 11 U.S.C. § 363 [Doc. No. 634] (the "Motion") came before this Court for hearing on April 24 and 27, 2017, upon proper notice. Nilhan Developers, LLC seeks an order authorizing it to sell the

---

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are Bay Circle Properties, LLC (1578), DCT Systems Group, LLC (6978), Sugarloaf Centre, LLC (2467), Nilhan Developers, LLC (6335), and NRCT, LLC (1649).

real property and improvements located at 2800 and 2810 Spring Road, Smyrna, Cobb County, Georgia ("Property") to Westplan Investors Acquisitions, LLC or its assignee for \$7,000,000 free and clear of all liens, claims and encumbrances and remit the net sale proceeds to Bay Point Capital Partners, LP. Bay Point Capital Partners, LP, Good Gateway, LLC and SEG Gateway, LLC objected to the sale and appeared at the hearings in opposition. Bay Point Capital Partners, LP submitted a credit bid for the Property. At the Court's direction the parties conducted an auction which at the conclusion resulted in an offer from Westplan Investors Acquisitions, LLC of \$7.2 million otherwise in accordance with the proposed contract and \$7.3 million from Bay Point Capital Partners, LP otherwise in accordance with the proposed Westplan contract, but without the repurchase option for the hotel, office and retail portions of the Property. At the conclusion of the evidentiary hearing and closing arguments, the Court announced its finding of fact and conclusion of law. Upon consideration of the Motion, the arguments presented at the hearings, the record of this case, and based on the Court's statements on the record, it is hereby:

ORDERED that the Motion is GRANTED as conditioned herein:

(1) Debtor Nilhan Developers, LLC is authorized pursuant to Section 363 of the Bankruptcy Code to sell the Property to Westplan Investors Acquisitions, LLC or its assignee for the purchase price of \$7,200,000 free and clear of any and all liens,

claims, encumbrances, and other interests pursuant to the Standard Form Contract of Sale attached to the Motion.

(2) As a condition of the sale, Chuck Thakkar or a non-debtor party on his behalf shall pay \$100,000 at the closing such that the total proceeds paid to Bay Point Capital Partners, LP from the sale are \$7,300,000. The Debtor is authorized to pay the \$7,300,000 to Bay Point Capital Partners, LP.

(3) The Debtor is also authorized to execute and deliver any and all documents and instruments necessary to effectuate the sale of the Property and to take such other actions as is necessary to consummate the sale of the Property. It is further

ORDERED that pursuant to Bankruptcy Rule 6004(h), this Order shall be effective immediately upon entry and Debtor and Westplan Investors Acquisitions, LLC are authorized to close the sale of the Property immediately upon entry of this Order and upon receipt of the \$7,300,000, Bay Point Capital Partners, L.P. shall release and cancel of record all security instruments held by it that relate to the Property and return to the Debtor the original of the deed in lieu of foreclosure for the Property delivered to it pursuant to the Settlement Agreement dated November 18, 2015 between the Debtor and Wells Fargo Bank, National Association approved by this Court. It is further

ORDERED that the Court finds that the purchaser in the transaction authorized by this Order is a good faith purchaser as contemplated by 11 U.S.C. § 363(m).

[END OF DOCUMENT]

Prepared and presented by:

/s/ John A. Christy  
JOHN A. CHRISTY  
Georgia Bar No. 125518  
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Suite 800  
Atlanta, Georgia 30309-4516  
(404) 681-3450

DISTRIBUTION LIST

Thomas W. Dworschak  
Office of the U.S. Trustee  
Suite 362 Richard Russell Building  
75 Ted Turner Drive, SW  
Atlanta, Georgia 30303

John A. Christy – Via ECF  
J. Carole Thompson Hord – Via ECF  
Schreeder, Wheeler & Flint, LLP  
1100 Peachtree Street, N.E.  
Suite 800  
Atlanta, Georgia 30309-4516

Deed Book 15438 Pg 3891  
Rebecca Keaton  
Clerk of Superior Court Cobb Cty. Ga.

John F. Isbell – Via ECF  
Thompson Hine LLP  
Two Alliance Center  
3560 Lenox Road, Suite 1600  
Atlanta, Georgia 30326

Walter E. Jones -- Via ECF  
Balch & Bingham, LLP  
30 Ivan Allen Jr., Blvd  
Suite 700  
Atlanta, GA 30308

## OVERALL LEGAL DESCRIPTION

### Tract 1 - 2800 Spring Road

All that tract or parcel of land lying and being in land lot 880 of the 17th District of the 2nd Section of Cobb County, Georgia and being more particularly described as follows: To arrive at the true point of beginning of Tract 1 start at the point of commencement at the southeasterly right of way of New Spring Road and at the easterly right of way line of Hargrove Road (80 foot right of way) running thence northeasterly along the southeasterly right of way line of New Spring Road 299.60 feet to an iron pin found; continuing thence along said right of way of New Spring Road north 53 degrees 02 minutes 30 seconds east 64.75 feet to an iron pin found; thence leaving said right of way south 36 degrees 57 minutes 30 seconds east 50.00 feet to an iron pin found and the true point of beginning; thence along the southeasterly right of way line of New Spring Road north 53 degrees 02 minutes 30 seconds east 348.28 feet to an iron pin found; thence leaving right of way south 36 degrees 56 minutes 24 seconds east 198.58 feet to an iron pin found; running thence south 53 degrees 02 minutes 30 seconds west 324.46 feet to an iron pin placed; running thence north 43 degrees 25 minutes 25 seconds west 199.85 feet to an iron pin found on the southeasterly right of way line of New Spring Road and the true point of beginning containing 66,921 square feet (1.54 acres) according to plat of survey by A.S. Giometti & Associates, Inc. dated November 28, 2005.

### Tract 2 - 2800 Spring Road

All that tract or parcel of land lying and being in land lot 880 and 881 of the 17th District of the 2nd Section of Cobb County, Georgia and being more particularly described as follows: To arrive at the true point of beginning of Tract 2 start at the point of commencement at the southeasterly right of way of New Spring Road and at the easterly right of way line of Hargrove Road (80 foot right of way) running thence northeasterly along the southeasterly right of way line of New Spring Road 299.60 feet to an iron pin found at the true point of beginning; continuing thence along the southeasterly right of way line of New Spring Road north 53 degrees 02 minutes 30 seconds east 64.75 feet to an iron pin found; thence leaving said right of way south 36 degrees 57 minutes 30 seconds east 50.00 feet to an iron pin found; and running thence south 43 degrees 25 minutes 25 seconds east 199.85 feet to an iron pin placed; running thence north 53 degrees 02 minutes 30 seconds east 324.46 feet to an iron pin found; continuing thence north 53 degrees 02 minutes 30 seconds east 251.78 feet to an iron pin found; running thence south 36 degrees 57 minutes 34 seconds east 445.39 feet to an iron pin found; running thence south 28 degrees 04 minutes 33 seconds west 527.06 feet to an iron pin found; running thence north 68 degrees 22 minutes 42 seconds west 188.47 feet to an iron pin found; running thence north 20 degrees 26 minutes 02 seconds east 208.75 feet to an iron pin found; running thence north 69 degrees 38 minutes 24 seconds west a distance of 208.75 feet to a point running thence north 69 degrees 33 minutes 57 seconds west 218.39 feet to an iron pin found; running thence north 20 degrees 25 minutes 53 seconds east 20.00 feet to an iron pin found; running thence north 69 degrees 39 minutes 21 seconds west 25.50 feet to an iron pin found; running thence north 62 degrees 37 minutes 44 seconds west 116.15 feet to a point; running thence north 43 degrees 06 minutes 18 seconds west 48.39 feet to an iron pin found; running thence north 26 degrees 25 minutes 37 seconds west 100.09 feet to New Spring Road and the true point of beginning; containing 312,389 square feet (7.17 acres) according to plat of survey by A. S. Giometti & Associates, Inc. dated November 28, 2005, last revised December 29, 2005.



Printed: 7/10/2017

## Cobb County Online Tax Receipt

Thank you for your payment!

**CARLA JACKSON** TAX COMMISSIONER  
**CHELLY MCDUFFIE** CHIEF DEPUTY  
Phone: 770-528-8600  
Fax: 770-528-8679

Payer:  
SALONI THAKKAR

**NILHAN DEVELOPERS LLC**

**Payment Date: 4/3/2017**

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2016	17088000030	10/17/2016	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$2,242.58	\$3,221.40	\$0.00	\$0.00	\$69,891.98	\$0.00



Scan this code with your  
mobile phone to view  
this bill!





Printed: 7/10/2017

### Cobb County Online Tax Receipt

Thank you for your payment!

**CARLA JACKSON** TAX COMMISSIONER  
**CHELLY MCDUFFIE** CHIEF DEPUTY  
 Phone: 770-528-8600  
 Fax: 770-528-8679

Payer:

**NILHAN DEVELOPERS LLC**

**Payment Date: 1/1/0001**

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2016	17088000190	4/15/2017	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$613.92	\$881.88	\$53.00	\$0.00		\$0.00



Scan this code with your mobile phone to view this bill!

07/11/2017 15:48  
mhickenbottom

City of Smyrna  
Real Estate Tax Statement

P 1  
txtaxstm

PARCEL: 17-0880-0-0190

LOCATION: 2800 SPRING RD

CURRENT OWNER:  
NILHAN DEVELOPERS LLC  
5875 PEACHTREE INDUSTRIAL BLVD SUITE 340  
NORCROSS GA 30092

CURRENT STATUS:  
ACRES: 1.560  
LAND VALUATION: 1,379,970  
BUILDING VALUATION: 329,760  
EXEMPTIONS: 0  
TAXABLE VALUATION : 1,709,730

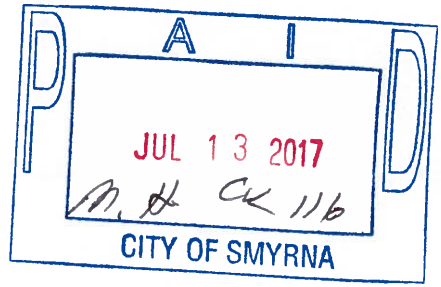
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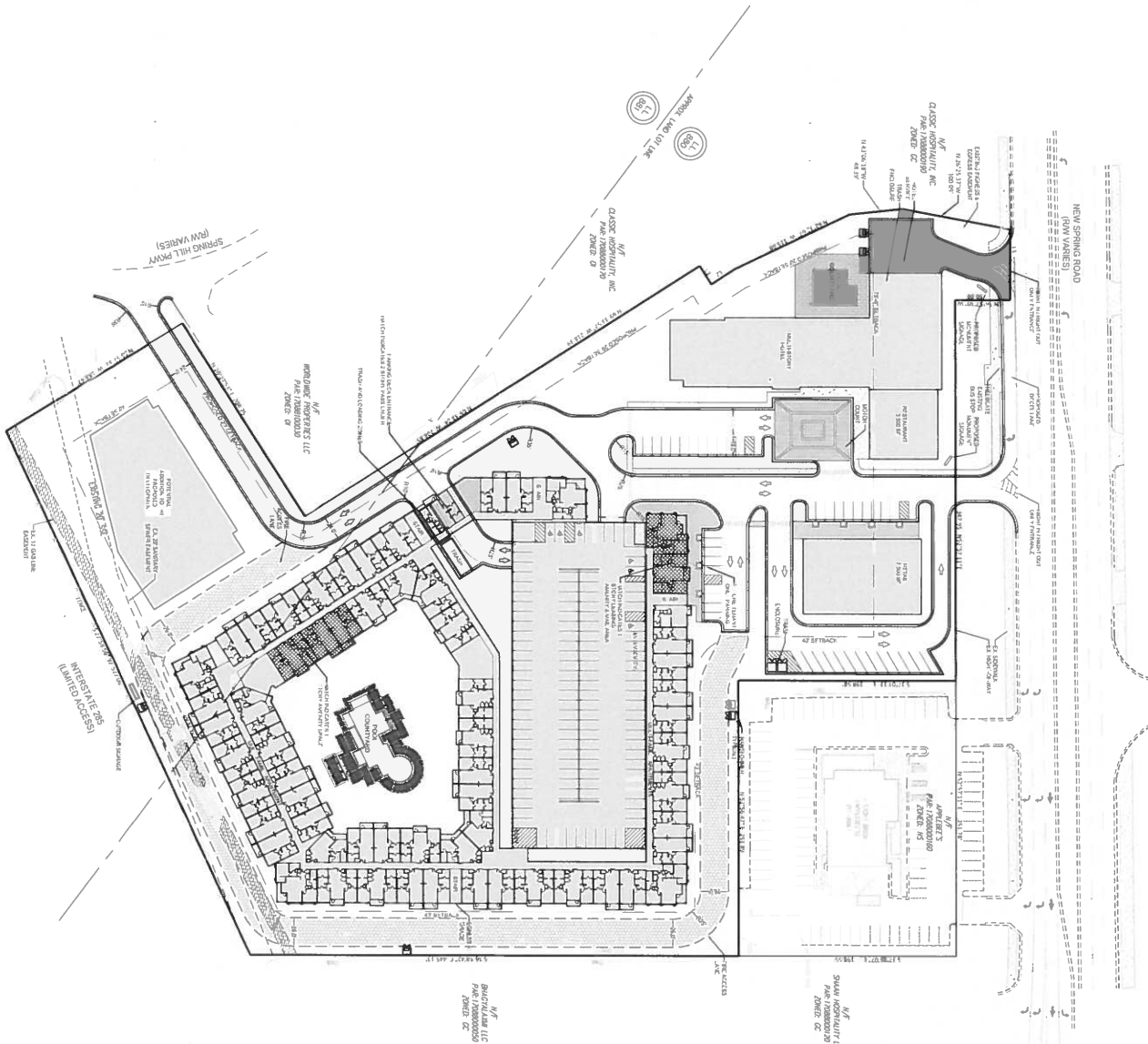
DEED DATE:		BOOK/PAGE:	INTEREST DATE: 07/11/2017			
YEAR	TYPE	BILL INST CHARGE	BILLED	PRIN DUE	INT DUE	TOTAL DUE
2016	RE-R	11596				
	1	REAL PROPE	6,148.19	6,148.19	272.98	6,421.17
		PENALTY	307.41	307.41	.00	307.41
		FIFA	25.00	25.00	.00	25.00
		NSF CHECK	25.00	25.00	.00	25.00
			6,505.60	6,505.60	272.98	6,778.58
			6,505.60	6,505.60	272.98	6,778.58
GRAND TOTALS			6,505.60	6,505.60	272.98	6,778.58

*PAID in Full  
7-13-17*

*Mike Hulbert*

*2800 King Street*





**GEORGIA 811**  
 Call before you dig. 800-4-A-DAWN  
 www.811.com



GRAPHIC SCALE  
 1" = 10'

THIS PLAN IS THE PROPERTY OF WESTPLAN INVESTORS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS PLAN WITHOUT THE WRITTEN CONSENT OF WESTPLAN INVESTORS IS STRICTLY PROHIBITED. WESTPLAN INVESTORS ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR VERIFYING THE ACCURACY OF ALL INFORMATION PROVIDED HEREON.

ITEM	DESCRIPTION	AMOUNT
1	ASPHALT DRIVEWAY	12,000 SF
2	ASPHALT DRIVEWAY	12,000 SF
3	ASPHALT DRIVEWAY	12,000 SF
4	ASPHALT DRIVEWAY	12,000 SF
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97	ASPHALT DRIVEWAY	12,000 SF
98	ASPHALT DRIVEWAY	12,000 SF
99	ASPHALT DRIVEWAY	12,000 SF
100	ASPHALT DRIVEWAY	12,000 SF

**ZONING SITE PLAN**  
**EMERSON CENTER**  
 LAND LOTS 880 & 881  
 17th DISTRICT, 2nd SECTION  
 COBB COUNTY GEORGIA

Project No.	Date	Revision
6-15-17	06-15-17	01
6-15-17	06-15-17	02
6-15-17	06-15-17	03
6-15-17	06-15-17	04
6-15-17	06-15-17	05
6-15-17	06-15-17	06
6-15-17	06-15-17	07
6-15-17	06-15-17	08
6-15-17	06-15-17	09
6-15-17	06-15-17	10
6-15-17	06-15-17	11
6-15-17	06-15-17	12
6-15-17	06-15-17	13
6-15-17	06-15-17	14
6-15-17	06-15-17	15
6-15-17	06-15-17	16
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6-15-17	06-15-17	39
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**WESTPLAN INVESTORS**  
 One Glenlake Parkway  
 Suite 1275  
 Atlanta, GA 30328



Drawing No. 1 of 1  
 S-15422222



# Emerson Center Office Park *Tree Assessment*

## Atlanta

Arboguard, Inc.

P.O. Box 477

Avondale Estates, GA 30002

Phone 404-299-5555

Fax 404-294-0090

For:

Kelly Keappler

Quintus Development

1827 Powers Ferry Rd., SE

2-200

Atlanta, GA 30339

## Charlotte

Arboguard, Inc.

P.O. Box 26767

Charlotte, NC 28221

Phone 704-688-7237

Fax 704-688-7238

[www.arboguard.com](http://www.arboguard.com)

By:

David Dechant LEED® AP

Senior Consulting Arborist

Certificate #SO-5335A

February 26<sup>th</sup>, 2015



No trees were harvested to make this paper

## Tree Assessment

### Assignment

Survey and record the following data per the City of Smyrna Tree Ordinance for oak and beech trees  $\geq 24$ " DBH, ash, cedar, fir, maple, pecan, black gum, persimmon and spruce trees  $\geq 30$ " DBH, Pine, poplar and sweet gum trees  $\geq 36$ " DBH and flowering understory trees  $\geq 10$ " DBH: tree number, diameter, species, condition, and other comments relative to condition.

### Methods

Information for the following parameters was recorded for each tree and provided in the following survey.

Term	Description
Tree No.	All trees were tagged on the side of the trunk with an aluminum tag, bearing a unique number to identify trees, at about 5 feet.
Species	Listed as the North American common name.
DBH	Diameter of trunk in inches, measured at 4.5' feet above average soil level. Measurements were taken using a forestry diameter tape.
Condition	<p>Good ..... Tree has excellent vigor and is actively growing without any serious pathogenic problems. Tree exhibits a structural form that is safe and typical of the species.</p> <p>Fair ..... Tree is in moderate health, but may have a minor pathogenic problem. Some insects and disease could be present. Tree may have minor structural defects, but does not exhibit optimal form for the species in an urban environment. A tree in fair condition may not react favorably to site developments or additional stress.</p> <p>Poor ..... Tree's vigor is low to moderate. It may also have moderate to severe structural defects or a form that is undesirable for the species. Some trees in poor condition are not recoverable and could degrade into a state of advanced decline leading to death.</p> <p>Dead ..... Tree is dead.</p> <p>Invasive.... Trees that are non-indigenous to the Atlanta area, Piedmont region.</p> <p>Hazardous. Tree with uncorrectable defects severe enough to pose present danger to people or buildings under normal conditions, as determined by a City Arborist or City Forester.</p>
Comments	Additional information regarding health and condition of the trees.

### Tree Assessment Data

TAG#	DBH	SPECIES	CONDITION	NOTES
112	11	Ornamental Cherry	Poor	Basal cavity at root crown, multiple large exposed surface root with mechanical damage
113	113	Ornamental Cherry	Fair	Multiple exposed surface roots with mechanical damage
114	25	Shumard Oak	Fair	Approximately 40% of Critical Root Zone (CRZ) impounded by wall, approximate 10% Mistletoe infestation, approximately 10% canopy die-back, few dead limbs
115	25	Shumard Oak	Good	Approximately 30% of CRZ overlain by impervious surface, few dead limbs
116	29	Shumard Oak	Fair	Approximately 50% of CRZ overlain by impervious surface, multiple dead limbs
117	30	Shumard Oak	Good	The tree is located at the top edge of a very steep eroding slope
118	11	Ornamental Cherry	Poor	Large basal wound from root crown to approximately 4', approximately 40% of CRZ impounded by wall, presence of black knot canker, stub pruning cuts, approximately 30% canopy die-back
119	13	Ornamental Cherry	Poor	Approximately 40% of CRZ impounded by wall, presence of black knot canker, multiple stub cuts, approximately 30% canopy die-back, multiple dead limbs
120	13	Ornamental Cherry	Poor	Approximately 40% of CRZ impounded by wall, presence of black knot canker, multiple stub cuts, approximate 30% canopy die-back, multiple dead limbs
121	10	Ornamental Cherry	Poor	Multiple basal wounds on lower stem, presence of black knot canker, multiple dead limbs
122	27	Shumard Oak	Poor	Approximately 60% of CRZ overlain by impervious surface and impounded by curb, approximate 30% canopy die-back, multiple dead limbs
123	25	Shumard Oak	Fair	Approximate 3% Mistletoe infection, few dead limbs
124	24	Shumard Oak	Fair	Approximately 70% of CRZ impounded by curb, overlain by impervious surface

125	6,11,12	Ornamental Cherry	Poor	Multi-stem at root crown, approximately 90% of CRZ impounded by retaining wall and overlain with impervious surface
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### **Summary**

14 trees were tagged on this site.

2 trees are in Good condition

5 trees are in Fair condition

7 trees are in Poor condition









PROJECT 14455



**WESTPLAN EMERSON**  
PERSPECTIVE RENDERING

MARCH 03, 2016



[www.dwelldesignstudio.com](http://www.dwelldesignstudio.com)

## CONSOLIDATED IMPACT STATEMENT

### **APPLICATIONS OF WESTPLAN INVESTORS ACQUISITIONS, LLC TO ANNEX AND REZONE AN APPROXIMATE 8.7 ACRE TRACT FROM O&I (COBB COUNTY) TO CONDITIONAL-MU (CITY OF SMYRNA); LAND LOTS 880 AND 881 OF THE 17<sup>TH</sup> DISTRICT, 2<sup>ND</sup> SECTION, COBB COUNTY, GEORGIA**

#### INTRODUCTION

Westplan Investors Acquisitions, LLC (“Westplan”) proposes to Annex and Rezone an approximate 8.7 Acre Tract to allow for the construction and development of a mixed-use project which will include 310 “Class A” Amenitized Multi-family Apartment Homes; Future Office Space consisting of 65,000 square feet of Executive Offices; a Six-Story Hotel consisting of 200 rooms; 7,500 square feet of Retail Space; and 3,500 square feet of Restaurant space.

The preponderance of the Subject Property, consisting of 5.9 acres, is located in Unincorporated Cobb County; whereas, the balance of the tract (consisting of 2.8 acres) is located within the City Limits of Smyrna, Georgia, all of which has direct access to Spring Road and distinct visibility from I-285. The Subject Property is located within the confines of the Cumberland Regional Activity Center (“RAC”); within a sub-designation under the Future Land Use Map (“FLUM”) denominated for offices/retail; and, is in an area envisioned for the type of development proposed as reflected in the Spring Road Corridor LCI Master Plan, adopted by the City of Smyrna in April, 2017 (“LCI Master Plan”).

Presently, there are buildings located on the Subject Property which will be demolished, including the long-standing Emerson Center Office Building which fronts on and is oriented to I-285. As a result of the anticipated surge of redevelopment within this sub-area of the County and the City of Smyrna, following the trends attributable to the Braves' SunTrust Park and the adjacent mixed-use development of The Battery which includes approximately 2 million square feet of mixed-use development, the assembled properties will constitute one of the main "Gateways" to the City of Smyrna.

The Applications for Annexation and Rezoning represent a significant shift in the proposed uses within the area in terms of densification and appropriateness in scope and scale. This dynamic shift, when viewed in concert with the sense of place and character which it will establish, along with the ability to attract the appropriate demographics, Westplan's proposal is in keeping with the revitalization of properties within this sub-area of the City of Smyrna and provides a strategic expansion of the City's boundaries.

Westplan's proposed Annexation and Rezoning will enhance architectural standards and aesthetics in the general neighborhood based upon the stipulations and conditions of zoning which will ultimately be self-imposed and/or added by the City's Community Development Staff in terms of architecture, landscaping and upgraded infrastructure. Additionally, the proposed Annexation and Rezoning will constitute events which will encourage appropriate commercial, office, restaurant, and higher density residential development along the Spring Road Corridor and Cobb Parkway, respectively. At the build-out of the development, access to the site is proposed to be located from Spring Road and Spring Hill Parkway.

This Consolidated Impact Statement is being submitted contemporaneously with the Applications for Annexation and Rezoning. Also submitted concurrently herewith are architectural renderings/elevations depicting the architectural style and composition of the proposed buildings. Previously submitted and relied upon in connection with this Consolidated Impact Statement and incorporated herein by reference is the Traffic Impact Study prepared by A&R Engineering, Inc. which was previously submitted in connection with No. Z15-005.

### **TRAFFIC IMPACT ANALYSIS**

It is well known that Spring Road, Cumberland Boulevard, Spring Hill Parkway and Cobb Parkway are all well studied traffic corridors which are denominated as either Arterial or Major Collector rights-of-way. The subject property will have substantial frontage on Spring Road with points of ingress/egress situated thereon. Once the Applications for Annexation and Rezoning are approved, the access onto Spring Road will meet sight distance requirements. Moreover, the overall mixed-use development, in consideration of the roads and rights-of-way mentioned above, are anticipated to meet acceptable Levels of Service (“LOS”). The mixture of commercial, office, residential and retail uses in and along both Spring Road and Cobb Parkway provide a variety of uses which, even taking into consideration a 4.5 percent (4.5%) increase in traffic volume each year, has minimal impact upon the City’s current infrastructure with respect to required road and operational improvements.

Taking into account the existing 2017 peak hour traffic volumes and increasing those at 4.5 percent (4.5%) per year for 2 years to account for background growth and traffic within this sub-area of the City of Smyrna, the affected intersections, particularly focusing on the intersections of Spring Road with Cobb Parkway and Spring Road with Cumberland Boulevard, will maintain satisfactory LOS in both a.m. and p.m. peak hours.

Assuming that the Applications for Annexation and Rezoning for the subject property are approved in order to allow for the construction and development of the various components mentioned above and based upon the Institute Transportation Engineer's ("ITE") Trip Generation Manual, the proposed trips which will be generated by the proposed development based upon a full build-out (in 2020), it is anticipated the trip generation distribution will not impair LOS conditions during a.m. and p.m. peak hours. This LOS analysis is used to describe the operating characteristics of these segments of the Cobb Parkway, Spring Road and Cumberland Boulevard Corridors and their respective intersections at various nearby local roads in relation to capacity and is defined as a qualitative measure which describes operational conditions and motorists' perceptions within a traffic stream.

The Highway Capacity Manual defines six levels of service ranging from A through F, with "A" being the best and with "F" being the worst. For more detailed analysis in terms of specific LOS with respect to the Levels of Service Analysis for the subject property, this analysis may be supplemented for the proposed project in "build" and "no-build" scenarios.

The recommendations and conclusions of this analysis are that Westplan will voluntarily donate and convey sufficient right-of-way along Spring Road (to the extent that such additional right-of-way may be required) so that the City can achieve the appropriate amount of right-of-way from the roadway's centerline and/or median. Westplan will be responsible for operational improvements which will include the restoration or the installation of sidewalk, curb and gutter on the Spring Road frontage where same may be impaired during the construction process.

### **WATER & SEWER ANALYSIS**

Cobb County provides both water and sewer to the site. More specifically, water service for the subject property is provided by the Cobb County Water System's 8" line which is located in Spring Road. Whereas, sewage or waste water flow from the site will be treated at the R. L. Sutton Water Reclamation Facility ("WRF") where there is currently sufficient capacity. Of course, permit issuances are subject to continued WRF compliance and with EPD discharge requirements.

Because the Cobb County Water System will continue to own and maintain water and sewer facilities in public rights-of-way and public easements, there will be no infrastructure loss.

Pursuant to Cobb County regulations, sewer and water taps are the responsibility of Westplan, including elevations. Although not anticipated under the circumstances with the subject property being under consideration for annexation and rezoning, with respect to the availability and accessibility of water and sewer, Westplan may be required to conduct a Fire Flow test which will be submitted during the Plan Review Process. In that regard, although same is not anticipated, there may be a requirement to install/upgrade water mains based upon the Fire Flow test results or Fire Department Codes.

Concerning the availability and accessibility of sewer, it appears that both line and plant capacities are available and that no off-site easements will be required. Additionally, Westplan will be responsible for connecting to the existing water and sewer systems; installing and/or upgrading all outfalls and water mains; obtaining on-site and/or off-site easements (apparently not applicable under these circumstances); and, the dedication of on-site and/or off-site water and sewer as may be required.

The approval of Westplan's Applications for Annexation and Rezoning does not guarantee water or sewer availability or capacity beyond the extent stated so it writing by the Cobb County Water System and all permit issuances are subject to continued Treatment Plant compliance and with EPD discharge requirements.



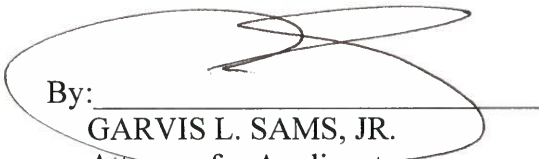
**SCHOOL IMPACT ANALYSIS**

The proposed Applications for Annexation and Rezoning will increase the number of residential units and the commercial and retail square footage but will be encouraging demographics within this sub-area of the City of Smyrna which will have a minimal impact upon schools. More specifically, the target market demographic will be upwardly mobile professionals, “millennials”, white-collar executives, and other potential purchasers identified as having little or no impact upon the school system consisting of Argyle Elementary, Campbell Middle School and Campbell High School.

Approval of the Applications for Annexation and Rezoning is unlikely to adversely impact the above-mentioned elementary, middle and high schools within this sub-area of the City of Smyrna. Moreover, with an upper scale residential and commercial scenario, the core facilities such as school media centers, athletic facilities, cafeterias and other components of the school system will not be unduly burdened and will, in fact, greatly benefit with the dramatic change in demographics.

Respectfully submitted, this the 12 day of July, 2017.

SAMS, LARKIN HUFF & BALLI, LLP

By:   
GARVIS L. SAMS, JR.  
Attorney for Applicant  
Ga. Bar No. 623950

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TO THE MAYOR AND CITY COUNCIL  
CITY OF SMYRNA

**CONSTITUTIONAL CHALLENGE**

COMES NOW, Westplan Investors Acquisitions, LLC, hereinafter referred to as the "Applicant", and asserts the following, to wit:

1.

By application to which this exhibit relates, the Applicant has applied for a rezoning of certain real property lying and being in the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application for Zoning of the property seeks a rezoning from the existing category of NS, as established by the governing authority of the City of Smyrna, Georgia to the zoning category of Conditional-MU.

3.

The current NS zoning classification of the property and all intervening classifications between same and Conditional-MU are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning classification of NS and all intervening classifications between same and Conditional-MU as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classifications are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The City of Smyrna Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 12 day of July 2017.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

GARVIS L. SAMS, JR.  
Attorney for Applicant  
Ga. Bar No. 623950