

SAMS LARKIN HUFF & BALLI, LLP

A LIMITED LIABILITY PARTNERSHIP

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ADAM J. ROZEN

WWW.SLHB-LAW.COM

September 11, 2015

VIA HAND DELIVERY

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

Re: Applications of Nilhan Developers, 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); Application No. Z15-005.

Dear Ken:

You will recall that this firm has been engaged by and represents Nilhan Developers, LLC (“Nilhan”) which is the property owner and Westplan Investors Partners, LP (“Westplan”), the Master Developer concerning the above captioned Applications. The Applications were previously scheduled to be heard and considered by the Planning & Zoning Board and by the Mayor and City Council; however, the Application was deemed to be “incomplete” by you and your staff and thus tabled until all of the components of the proposal were in place.

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

1. Deeds reflecting the current record title holder.
2. Legal descriptions concerning the subject property.
3. Copies of the paid tax receipts concerning the subject property.
4. The requisite number of full-sized and 11”x17” number of copies of the current proposed site plan entitled “Zoning Site Plan – Emerson Center” prepared by Summit Engineering Consultants, Inc.

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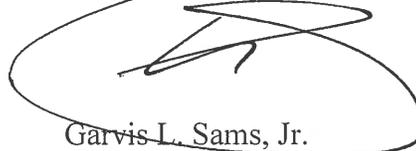
Mr. Ken Suddreth, Director
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Page 2

5. Because this is a developed site, the submission of the Tree Protection/Replacement Plan is not required for this Amendment to the original Application. However, included is a Tree Assessment Analysis prepared by Arbor Guard, dated February 26, 2015.
6. Renderings/elevations depicting the architectural style and composition of the proposed buildings.
7. A Consolidated Impact Statement.
8. Constitutional Challenge regarding that portion of the subject property (2.8 acres) which is already located within the City of Smyrna.
9. A disc containing a pdf copy of this submittal and legal descriptions in Word format.
10. A check made payable to the City of Smyrna in the sum of Twenty-Three Hundred Dollars (\$2,300.00) representing the Application fee was previously submitted under separate cover on March 13, 2015.

Assuming that these Applications are deemed complete, it is my understanding that the Applications will be heard and considered by the Planning & Zoning Board on October 12, 2015 and, thereafter, heard and considered for final action by the Mayor and City Council on November 16, 2015. I will, of course, be contacting you, Rusty Martin and the balance of your staff to continue our dialogue regarding the Annexation and Rezoning Requests and to address any concerns which you may have regarding these 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

GLS/dsj
Enclosures

SAMS LARKIN HUFF & BALLI, LLP

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. Ken Suddreth, Director
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cc: Honorable A. Max Bacon, Mayor (via hand delivery w/encs.)
Ms. Melleny Pritchett, City Council Member (via hand delivery w/encs.)
Members, City of Smyrna City Council (via hand delivery w/encs.)
Members, City of Smyrna Planning & Zoning Board (via hand delivery w/encs.)
Mr. Russell Martin, AICP, Senior Planner (via hand delivery w/encs.)
Mr. Eric Randall, P.E., City Engineer (via hand delivery w/encs.)
Mr. Scott Stokes, Public Works Director (via hand delivery w/encs.)
Ms. Terri Graham, City Clerk (via hand delivery w/encs.)
Scott A. Cochran, Esq. (via hand delivery w/encs.)
Mr. Chuck Thakkar, Nilhan Developers, LLC (via email w/attachments)
Mr. Bradley G. Johnson, Principal, Westplan Investors Partners, L.P.
(via email w/attachments)

2014 SUBMISSION UNDER SECTION 5
OF THE VOTING RIGHTS ACT
FOR THE CITY OF SMYRNA, GEORGIA

Map Designation# _____ LL/Parcel# 880 & 881 of the 17th District

City Ward# Pritchett 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

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 [X]
2. If NO, name of resident(s): Tenants within commercial buildings
3. Complete street address: Numerous parcels with access to Spring Road
Bradley G. Johnson (Westplan) - (770) 390-9378
4. Telephone Number 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 & 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, Offices 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 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:

The legal description of the subject property is attached hereto as Exhibit A.

WHEREFORE, THE UNDERSIGNED HEREBY APPLY FOR SUCH ANNEXATION.

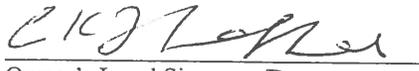
Nilhan Developers, LLC

Owner's Printed Name
5875 Peachtree Industrial Blvd., Ste. 340
Norcross, GA 30092 (678) 488-6957
Address Telephone#

Owner's Printed Name

Address Telephone#

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



Owner's Legal Signature/Date
Chittranjan K. Thakkar

Owner's Legal Signature/Date

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.

EXHIBIT "A"

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

- Correct Application Form Used (for 60% method or 100% method as applicable)
- Original form with original signature(s), address(es) and telephone number(s) obtained
- 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*)
- All legal owners of the property have signed the application form

2. LEGAL DESCRIPTION

- Legal description of the subject property accompanies application
- 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

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

4. MAP OF PROPERTY TO BE ANNEXED

- 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.

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

Type or Print Clearly

(To be completed by City)

Ward: _____

Application No: _____

Hearing Date: _____

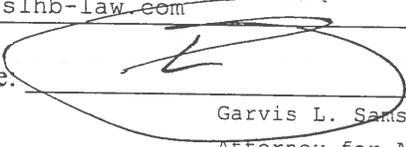
APPLICANT: NILHAN DEVELOPERS, LLC

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

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064-3448

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

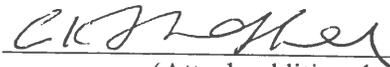
TITLEHOLDER

Name: Nilhan Developers, LLC
(Titleholder's name, printed)

Address: 5875 Peachtree Industrial Boulevard, Suite 340, Norcross, GA 30092

Business Phone: 678-488-6957 Cell Phone: _____ Home Phone: _____

E-mail Address: cthakkar@dctsystems.net

Signature of Titleholder:  Chittranjan K. "Chuck" Thakkar
(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
(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:

(To be completed by City)

Recommendation of Planning Commission:

Council's Decision:

CONTIGUOUS ZONING

North: NS (Smyrna)

East: GC (Cobb County)

South: I-285 & RRC (Cumberland Mall)

West: OI (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 of
 and accessibility to water and sewer to the site.

TRANSPORTATION

Access to Property? via Spring Road

A Mixed-Use Development consisting of a total building area of 527,790 sq. ft., including: Five story hotel (200 rooms); a six-story office building (65,000 sq. ft.; Over-Podium Retail (13,000 sq. ft.; five-story Multi-Family (367,335 total gross sq. ft. and 265,500 total net rentable sq. ft. for a total of 300 "Class A" Amenitized Multi-Family units). Parking: total spaces required 1,122 parking spaces with a total provided parking spaces being 1,150 parking spaces.

Comments:

The Annexation and Rezoning proposal, which represents less than the thresholds contemplated by the Atlanta Regional Commission ("ARC") is not a Development of Regional Importance ("DRI") according to discussions and conversations with ARC's Principal Planner. Presently, the property is located within a Regional Activity Center in unincorporated Cobb County and is located within a sub-area denominated for Office use.

Karen King

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

From: Karen King [<mailto:kking@slhb-law.com>]
Sent: Tuesday, January 27, 2015 11:10 AM
To: Davidson, Timothy
Subject: Request for comment

Re: Possible annexation into the City of Smyrna – **2800 and 2810 Spring Road**

Tim:

We will need a “blurb” from you to confirm that water and sewer services are available to the site from Cobb County. I have attached a drawing for additional location purposes.

Thank you in advance for your assistance,



Karen King
Legal Assistant
Sams, Larkin, Huff & Balli, LLP
376 Powder Springs Street, Suite 100
Marietta, GA 30064
(770) 422-7016 office (770) 426-6583 fax
(678) 594-2213 direct kking@slhb-law.com

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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

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:

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:

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:

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

If so, describe the natural and extent of such interest: _____

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

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

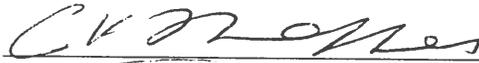
Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No

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

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 13th day of March, 2015.


(Applicant's Signature)
Chittranjan K. "Chuck" Thakkar


(Attorney's Signature, if applicable)
Garvis L. Sams, Jr.

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.

ATTORNEY FOR APPLICANT

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

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:

A. Max Bacon, Melleny Pritchett and Ron Fennel

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:

A. Max Bacon - \$2,500 (7/23/15); Melleny Pritchett - \$2,500 (7/23/15); and, Ron Fennel - \$2,500 (8/27/15)

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:

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

If so, describe the natural and extent of such interest: _____

ATTORNEY FOR APPLICANT
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

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

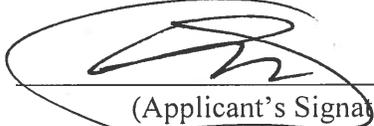
Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No

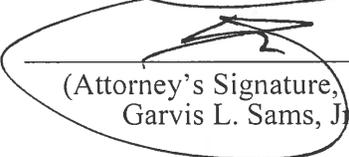
If so, describe the relationship and the nature and extent of such interest:

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 11th day of September, 2015.



(Applicant's Signature)



(Attorney's Signature, if applicable)
Garvis L. Sams, Jr.

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.

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 and with respect to adjacent and nearby properties are located within a Regional Activity Center ("RAC") under Cobb County's Future Land Use Map which contemplates the type of uses proposed by the Applicant. The proposal promotes the idea of a live, work, play and new urbanistic development.

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 affect upon the usability of adjacent or nearby property. In fact, developing the subject property as a unified development is preferable to a multiplicity of separate uses and developments. Master planning the subject property into one comprehensive development reduces potential problems in the future regarding drainage, 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 Office & Institutional classification does not have a reasonable economic use considering the context of current market conditions. Additionally, with the advent of the Brave's SunTrust and the accompanying 2,300,000 square foot development Mixed-Use Development 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 an use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. These opinions are supported by recent development and proposed new development in the area including the Brave's SunTrust Stadium and attendant mixed-use development consisting of approximately 2,300,000 square feet of mixed-use development.

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 the Cobb County Comprehensive Land Use Plan and its Future Land Use Map. Similarly, the Rezoning proposal is in conformity with the City of Smyrna's Comprehensive Plan and Future Land Use Map. Moreover, the Annexation and Rezoning proposal meets all of the components of a mixed-use development by providing a plan which includes commercial, residential, office, retail and recreational uses for the subject property.

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 gives supporting grounds for supporting the Annexation and Rezoning proposal. Moreover, the 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 projects within this area and will also emulate the spirit and intent of the Cumberland Galleria Regional Activity Center by providing mixed-uses and incorporating a greater unified sense of place which will attract millennial demographics.

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 activity center 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, office and residential development along both the Spring Road Corridor and Cobb Parkway.

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; and, are not incompatible with existing uses in the area particularly in consideration of the presence of the Cumberland Galleria Activity area which is located across 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 of Smyrna and will encourage other compatible mixed-use projects in the area.



Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

Prepared by and After Recording Return to
SLUTZKY, WOLFE AND BAILEY, LLP
2255 Cumberland Parkway
Building 1300
Atlanta, Georgia 30339

LIMITED WARRANTY DEED

THIS INDENTURE, made this 22 day of January, 2008, between **THE SHOPS AT EMERSON CENTER, LLC**, a Georgia limited liability company, as party of the first part, hereinafter called "Grantor", and **NILHAN DEVELOPERS, LLC**, a Georgia limited liability company, as party of the second part, hereinafter called "Grantee" (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH THAT: Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt, adequacy and sufficiency of which being hereby acknowledged by Grantor, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, all that tract or parcel of land containing approximately 1.54 acres of land and located at 2800 Spring Road, NW, Smyrna, Cobb County, Georgia, and being more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD the said tract or parcel of land, 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 the said Grantee forever in **FEE SIMPLE**.

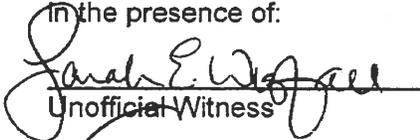
Grantor will warrant and forever defend the right and title to the above-described property unto the said Grantee against the claims of all persons, claiming by, through or under Grantor.

IN WITNESS WHEREOF, Grantor has signed this deed, under seal, the date and year first above written.

GRANTOR:

THE SHOPS AT EMERSON CENTER, LLC,
a Georgia limited liability company

Signed, sealed and delivered
in the presence of:


Unofficial Witness

Notary Public

By: 
Stacy Glickman-Fialkow
Manager



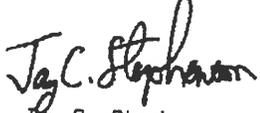
**EXHIBIT A
LEGAL DESCRIPTION**

Deed Book 14574 Pg 3294
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

**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.


Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

61
Prepared by and After Recording Return to
SLUTZKY, WOLFE AND BAILEY, LLP
2255 Cumberland Parkway
Building 1300
Atlanta, Georgia 30339

LIMITED WARRANTY DEED

THIS INDENTURE, made this 22 day of January, 2008, between **EMERSON CENTER OFFICE PARK, LLC**, a Georgia limited liability company, and **CONYERS PROFESSIONAL BUILDING, LLC**, a Georgia limited liability company, as tenants-in-common, as party of the first part, hereinafter called "Grantor", and **NILHAN DEVELOPERS, LLC**, a Georgia limited liability company, as party of the second part, hereinafter called "Grantee" (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH THAT: Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt, adequacy and sufficiency of which being hereby acknowledged by Grantor, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, all that tract or parcel of land containing approximately 7.17 acres of land and located at 2810, 2812, 2814 Spring Road, NW, Atlanta, Cobb County, Georgia, and being more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD the said tract or parcel of land, 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 the said Grantee forever in **FEE SIMPLE**.

Grantor will warrant and forever defend the right and title to the above-described property unto the said Grantee against the claims of all persons, claiming by, through or under Grantor.

IN WITNESS WHEREOF, Grantor has signed this deed, under seal, the date and year first above written.

GRANTOR:

Signed, sealed and delivered
in the presence of:

Janet E. W. [Signature]
Unofficial Witness

[Signature]
Notary Public

[NOTARIAL SEAL]



EMERSON CENTER OFFICE PARK, LLC,
a Georgia limited liability company

By: *[Signature]*
Emanuel S. Fialkow
Manager

CONYERS PROFESSIONAL BUILDING, LLC,
a Georgia limited liability company

By: *[Signature]*
Emanuel S. Fialkow
Manager

EXHIBIT A
LEGAL DESCRIPTION

Deed Book 14574 Pg 3288
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

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.

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: 1/26/2015 3:55:14 PM

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:
 Niloy Thakkar

NILHAN DEVELOPERS LLC

Payment Date: 10/9/2014

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2014	17088000190	10/15/2014	Pay:	N/A or	17711.70
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$17,711.70	\$17,711.70	\$0.00



Printed: 1/26/2015 3:56:22 PM

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:
 Chittranjan Thakkar

NILHAN DEVELOPERS LLC

Payment Date: 10/9/2014

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2014	17088000030	10/15/2014	Pay:	N/A or	68292.80
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$68,292.80	\$66,926.65	\$0.00

Emerson Center





Emerson Center Office Park *Tree Assessment*

Atlanta

Arboguard, Inc.

P.O. Box 477

Avondale Estates, GA 30002 For:

Phone 404-299-5555

Fax 404-294-0090

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

By:

David Dechant LEED® AP

Senior Consulting Arborist

Certificate #SO-5335A

February 26th, 2015

Tree Assessment

Assignment

Survey and record the following data per the City of Smyrna Tree Ordinance for oak and beech trees ≥ 24 " DBH, ash, cedar, fir, maple, pecan, black gum, persimmon and spruce trees ≥ 30 " DBH, Pine, poplar and sweet gum trees ≥ 36 " DBH and flowering understory trees ≥ 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



CONSOLIDATED IMPACT STATEMENT

APPLICATION OF NILHAN DEVELOPERS, 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 17TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA

INTRODUCTION

Nilhan Developers, LLC (“Nilhan”) proposes to Annex and Rezone an approximate 8.7 Acre Tract to allow for the construction and development of a mixed-use development which will include the following: 300 “Class A” Amenitized Multi-family Units; Six-Story Office Building consisting of 65,000 square feet of Executive Office Space; Five-Story Hotel consisting of 200 rooms; and, 13,000 square feet of Over-Podium Retail/Commercial Space, including Restaurants and Retail.

A 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 a direct access to Spring Road. The subject property is located within the confines of the Cumberland Regional Activity Center (“RAC”) and within a sub-designation under the Future Land Use Map denominated for offices. 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 which is largely attributable to the Braves’ SunTrust Park and the adjacent mixed-use development which will include 2,430,000 square feet of mixed-use development, the assembled properties which constitute the subject matter of these applications,

particularly when added to other parcels which are situated within unincorporated Cobb County, will become one of the main “Gateways” to the City of Smyrna.

Clearly, the Applications for Annexation and Rezoning do not present a significant shift in the proposed use of the property in terms of its appropriateness. However, it is a 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. In fact, Nilhan’s proposal is in keeping with the City’s Comprehensive Plan for the area and allows for the revitalization of properties with aging commercial and office space in order to precipitate additional development and redevelopment within the City of Smyrna and provide for a strategic expansion of the City’s boundaries.

Nilhan’s proposed Annexation and Rezoning proposal 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 Mayor and City Council in terms of architecture, landscaping and upgraded infrastructure. Additionally, the proposed Annexation and Rezoning will constitute an event which will encourage appropriate commercial, office and residential development along Spring Road, Spring Hill Parkway, Cumberland Boulevard and Cobb Parkway, respectively. At the build-out of the development, access to the site is proposed to be located solely from Spring Road until such time as additional properties are added which may provide direct access to Cobb Parkway, Cumberland Boulevard 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. These Applications are being filed in order to be heard and considered by the Smyrna Planning & Zoning Board on October 12, 2015. Thereafter, the Applications will be heard and considered for final action by the Mayor and City Council on November 16, 2015.

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 a median-divided point 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 2015 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 2017), 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 Nilhan 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. Nilhan 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 Nilhan, 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, Nilhan 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, Nilhan 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 Nilhan'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.

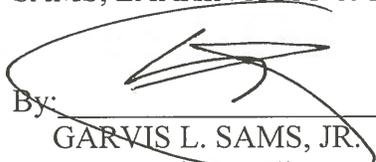
SCHOOL IMPACT ANALYSIS

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 11th day of September, 2015.

SAMS, LARKIN HUFF & BALLI, LLP

By: 

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

TO THE MAYOR AND CITY COUNCIL

CITY OF SMYRNA

CONSTITUTIONAL CHALLENGE

COMES NOW, NILHAN DEVELOPERS, LLC, hereinafter referred to as the "Applicant", and asserts the following, to wit:

1.

By application to which this exhibit relates, 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. There is also a component of the Application which seeks an Annexation and Rezoning which is not a part of this Challenge.

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.

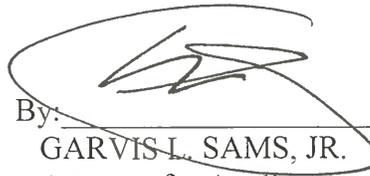
The zoning classification of NS and all intervening classifications between same and Conditional-MU as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, 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 11th day of September, 2015.

SAMS, LARKIN, HUFF & BALLI, LLP

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