

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

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

SUITE 100  
376 POWDER SPRINGS STREET  
MARIETTA, GEORGIA 30064-3448

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

ADAM J. ROZEN

WWW.SLHB-LAW.COM

November 9, 2018

## VIA HAND DELIVERY & EMAIL

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

Re: Rezoning Application of MCP III Real Estate, LLC to Rezone a 0.99 ± Acre Tract from OI to TS; Land Lot 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 MCP III Real Estate, LLC (“MCP”) concerning the above-captioned Rezoning Application. By meeting today’s deadline, it is my understanding that the Application will be heard by the Planning & Zoning Board on December 10, 2018, and thereafter heard by the Mayor and City Council on January 21, 2019.

With respect to the foregoing, enclosed please find the original and five (5) copies of the above-captioned Rezoning Application and supplemental documentation as follows:

1. Titleholder signature and paid tax receipts indicating that taxes are paid on the Subject Property with respect to both the City of Smyrna and Cobb County. Also, enclosed are the Warranty Deed and Quit Claim Deed reflecting the current Titleholder.
2. A legal description is included in the above referenced deeds. Also provided is an overall legal description in Word format.
3. A full-sized copy; an 11” x 17” sized copy; and, an 8½” x 11” copy of the proposed Site Plan.
4. A full-sized copy; an 11” x 17” sized copy; and, an 8½” x 11” copy of the Tree Protection/Replacement Plan.
5. A full-sized copy; an 11” x 17” sized copy; and, an 8½” x 11” copy of an As-built Survey of the subject property.

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## VIA HAND DELIVERY & EMAIL

Mr. Kenneth Suddreth, Director  
Community Development Department  
November 9, 2018  
Page 2

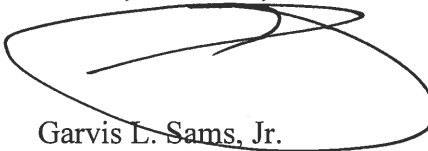
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5. Rendering/elevations depicting the architectural style and composition of the proposed building.
6. A Water/Sewer Availability letter from Mr. Tim Davidson of the Cobb County Water System.
7. A Consolidated Impact Statement.
8. A Constitutional Challenge.
9. A check made payable to the City of Smyrna in the sum of \$1,400.00 representing the Application fee and Tree Protection Plan Review fee; and, a check for \$500.00 for the Land Use Change fee.
10. A flash drive containing a pdf copy of this submittal and the legal description in Word format.

I will be contacting you and your Senior Planner Rusty Martin in order to discuss potential stipulations/conditions of the Rezoning Request and to address any concerns which you or the staff may have regarding the Application. In the interim, should you have any questions or need any additional documentation or information, please do not hesitate to contact me.

Sincerely,

SAMS, LARKIN, HUFF & BALLI, LLP



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

GLS, Jr./klk  
Enclosures

cc: Honorable Mayor A. Max Bacon, Mayor (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, City Administrator (via email w/attachments)

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

## **VIA HAND DELIVERY & EMAIL**

Mr. Kenneth Suddreth, Director  
Community Development Department  
November 9, 2018  
Page 3

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Scott A. Cochran, Esq. (via email w/attachments)  
Mr. Kevin Moore, P.E., City Engineer (via email w/attachments)  
Mr. Ernest Frank Martin, 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. Sachin Desai, Buckhead America Hospitality (via email w/attachments)  
Mr. Chetan Patel, Buckhead America Hospitality (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:** MCP III Real Estate, 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: 

**TITLEHOLDER**

Name: See Attached  
(Titleholder's name, printed)

Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Signature of Titleholder: \_\_\_\_\_  
(Attach additional signatures, if needed)

(To be completed by City)

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

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

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

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

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

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

Titleholder Signature Page

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

*Type or Print Clearly*

(To be completed by City)

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

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

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

**APPLICANT:** MCP III Real Estate LLC

Name: Chetan N Patel  
(Representative's name, printed)

Address: 2875 Spring Hill Parkway Smyrna GA 30080

Business Phone: 678-424-8275 Cell Phone: 404 392 1992 Fax Number: N/A

E-Mail Address: cpatel@buckheadamerica.com

Signature of Representative: C.N. Patel

**TITLEHOLDER**

Name: MCP III Real Estate III  
(Titleholder's name, printed)

Address: 2875 Spring Hill Parkway SE Smyrna, GA 30080

Business Phone: (678) 424-8275 Cell Phone: (404) 324-1898 Home Phone: (678) 477-2554

E-mail Address: dipan@buckheadamerica.com / cpatel@buckheadamerica.com

Signature of Titleholder: C.N. Patel  
(Attach additional signatures, if needed)

(To be completed by City)

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

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

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

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

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

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



**CONTIGUOUS ZONING**

**North:** Cobb County - O&I

**East:** Cobb County - O&I

**South:** TS - City of Smyrna

**West:** OI - City of Smyrna

**CONTIGUOUS LAND USE**

**North:** Cobb County - Regional Activity Center

**East:** Cobb County - Regional Activity Center

**South:** City of Smyrna - Regional Activity Center

**West:** City of Smyrna - Regional Activity Center

**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:

See attached letter from Mr. Tim Davidson, Cobb County Water System

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**TRANSPORTATION**

Access to Property? Spring Hill Pkwy.

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Improvements proposed by developer? Construction and development of a 7 story, 103,685 square foot hotel (exclusive of structured parking, canopy and patio).

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Comments:

The subject property is located within a Regional Activity Center ("RAC") and is properly positioned for this proposed land-use.

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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:

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

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If so, describe the natural 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

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

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 1<sup>st</sup> day of November, 2018.



(Applicant's Signature)

\_\_\_\_\_  
(Attorney's Signature, if applicable)

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: 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: On 2/21/18, a check in the sum of \$2,000.00 to the Committee to Elect Derek Norton, Mayor.

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 9 day of NOV., 2018.

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:

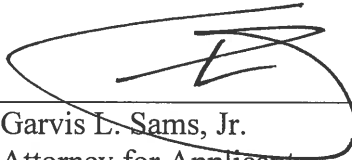
- A) ARE YOU, OR ANYONE ELSE WITH A PROPERTY INTEREST IN THE SUBJECT PROPERTY, A MEMBER OF THE CITY OF SMYRNA PLANNING COMMISSION OR CITY OF SMYRNA MAYOR AND COUNCIL? **NO**
  
- B) DOES AN OFFICIAL OF SUCH PUBLIC BODIES HAVE ANY FINANCIAL INTEREST IN ANY BUSINESS ENTITY WHICH HAS A PROPERTY INTEREST 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

11-9-18

DATE

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

  
Garvis L. Sams, Jr.  
Attorney for Applicant

**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 Rezoning proposal will permit a use which is 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 areas designated as Regional Activity Center on both the City of Smyrna and Cobb County Future Land Use Maps which contemplates the type of use proposed by the Applicant.

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

The Rezoning proposal will not have an adverse impact upon the usability of adjacent or nearby properties. The Applicant proposes a nationally branded 7-story Hotel which will accommodate approximately 136 rooms with associated structured parking. The adjacent properties include a Holiday Inn Express Hotel and a Hyatt Place Hotel along with other commercial and office uses.

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

The subject property in its OI classification does not have a reasonable economic use considering the context of market conditions and with the development of Braves' Sun Trust Park and The Battery the conditions have changed the nature and character of this area.

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**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 Rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

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

The Rezoning proposal is in conformity with the policy and intent of the City's LCI Master Plan and the City's Comprehensive Plan and FLUM. The subject property is further defined as being within a Key Development Node identified as "The South Spring " area (Figure 1.2b: Spring Road Corridor Key Development Nodes).

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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 Rezoning proposal. Moreover, MCP'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.

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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 Rezoning proposal will comprehensively enhance architectural standards and aesthetics of the area in which the subject property is situated.

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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 TS classification will not create a nuisance; is consistent with the existing Regional Activity Center designation; consistent with the LCI Master Plan; and, is compatible with existing uses in the area.

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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 Rezoning will positively affect the trend of development within this sub-area of the City and will encourage other compatible uses in this area of both the City of Smyrna and Unincorporated Cobb County.

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This is a "printer friendly" page. Please use the "print" option in your browser to print this screen.



**Smyrna, City of, GA**

**Real Estate Tax**

<b>Confirmation Number:</b>	09992D
<b>Payment Date:</b>	Friday, October 26, 2018
<b>Payment Time:</b>	03:07PM ET

**Payer Information**

Name:	Chetan Patel
Street Address:	695 Glenairy Dr Atlanta, GA 30328 United States
Daytime Phone Number:	(404) 392 - 1992
E-mail Address:	cpatel@buckheadamerica.com
Bill Number:	821
Bill Year:	2018
Account Number:	17088100030
Customer ID:	52618
Session ID:	687332231~2

**Card Information**

Card Type:	Visa
Card Number:	*****9110
Card Verification Number:	****

**Payment Information**

Payment Type:	Real Estate Tax
Payment Amount:	\$3,955.60
Convenience Fee:	\$100.87
Total Payment:	\$4,056.47

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# ✔ Your Payment Was Submitted



Transaction ID: AJ3J0F813FC7  
 Transaction Time: 10/26/2018 02:56 PM  
 Total Paid: \$13,060.56

Item	Amount
Website Payment	\$12,779.76
Item Number: 44518C	
Jurisdiction: 000	
TaxYear: 2018	
RollType: RE	
ParcelID: 17088100030	
RecordType: ORG	
<b>Transaction Fee</b>	<b>\$280.80</b>
<b>Total</b>	<b>\$13,060.56</b>

We will receive notification of your online payment at the time that it is made and we will credit your payment as of that day. However, you will not see the payment on your account for approximately 48-72 hours due to the time that it takes to get those funds into our bank account.



REBECCA KEATON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Prepared By:  
Kumar, Prabhu, Patel & Banerjee  
Samir Patel, Esq.  
1117 Perimeter Center West, Suite W311  
Atlanta, Georgia 30338  
KPPB 1026.021

After recording please return to:  
Republic Commercial Title Company  
Rayan Hart-Culbertson  
6111 Peachtree Dunwoody Road  
Building D  
Atlanta, Georgia 30328  
RCTC130331

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**STATE OF GEORGIA  
COUNTY OF FULTON**

**LIMITED WARRANTY DEED**

**THIS INDENTURE** is made this 21<sup>st</sup> day of November, 2013, by and between **WORLDWIDE PROPERTIES GROUP, LLC**, a Georgia limited liability company (hereinafter called "Grantor") and **MCP III REAL ESTATE, LLC**, a Georgia limited liability company (hereinafter called "Grantee"). The words "Grantor" and "Grantee" include the neuter, masculine and feminine genders, and the singular and the plural.

**WITNESSETH:**

**FOR AND IN CONSIDERATION** of the sum of Ten Dollars (\$10.00) in hand paid to Grantor by Grantee at and before the execution, sealing and delivery hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee, and the successors, legal representatives and assigns of Grantee, all that certain real property lying and being in Cobb County, Georgia, located at 2875 Springhill Parkway, Smyrna, Georgia 30080, being more particularly described on Exhibit "A", attached hereto and incorporated herein by reference.

**TO HAVE AND TO HOLD** said real property, together with any and all of 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 forever, in fee simple; and

**GRANTOR SHALL WARRANT** and forever defend the right and title to said real property unto Grantee, and the successors, legal representatives and assigns of Grantee, against the claims of all persons claiming by, through or under Grantor, but not otherwise, subject to the matters set forth on Exhibit "B", attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this indenture, to affix its seal hereto and to deliver this indenture to Grantee, all the day and year first written above.

Signed, sealed and delivered in the presence of:

*[Handwritten signature]*

Unofficial Witness

*Cathy A. Harris*  
Notary Public

My Commission Expires



GRANTOR:

WORLDWIDE PROPERTIES GROUP, LLC  
a Georgia limited liability company

By: *[Handwritten signature]*  
Name: Antonio Dozier  
Its: Sole Member

EXHIBIT "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot 881 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia and being more particularly described as follows:

**BEGINNING** at a point on the northeastern side of Spring Road (Also known as Curtis Drive) 190 feet northwesterly as measured along the northeastern side of Spring Road from the point formed by the intersection of the northwestern side of Interstate Highway # 1-285 with the northeastern side of Spring Road; running thence northwesterly along the northeastern side of Spring Road 208.75 feet to a point; running thence north 19 degrees 00 minutes east, 208.75 feet to a point; running thence south 71 degrees 00 minutes east, 208.75 feet to a point; running thence south 19 degrees 00 minutes west, 208.75 feet to a point on the northeastern side of Spring Road and the point of beginning; said tract being more fully shown on Plat Survey by Joe W. Arnold Co., dated March 27, 1967.

**EXHIBIT "B"**  
**Exceptions**

1. All ad valorem real estate property taxes for the year 2014 and subsequent years, not yet due and payable.
2. Easement from C.A. Jones and W.L. Jones to Georgia Power Company, dated July 30, 1962, recorded in Deed Book 659, Page 230, aforesaid records.
3. The following matters affecting the subject property as shown on that ALTA survey prepared for 2875 Spring Hill Parkway, for property in Land Lots 880 & 881, 17th District, 2<sup>nd</sup> Section, Cobb County, Georgia by Land Answers Surveyors, certified by Brian Dobbins, LS, GRLS #3167, dated October 22, 2013:
  - a. Chainlink fence running along the northeastern and southeastern property lines;
  - b. 8 inch corrugated metal pipe with drop inlet located in the southern portion of caption;
  - c. Overhead electric line located in the southwestern portion of caption;
  - d. Sewer line located in southeastern portion of caption.



REBECCA KEATON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Prepared By:  
Kumar, Prabhu, Patel & Banerjee  
Samir Patel, Esq.  
1117 Perimeter Center West, Suite W311  
Atlanta, Georgia 30338  
KPPB 1026.021

After recording please return to:  
Republic Commercial Title Company  
Rayan Hart-Culberson  
6111 Peachtree Dunwoody Road  
Building D  
Atlanta, Georgia 30328  
RCTC130331

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**QUIT CLAIM DEED**

STATE OF GEORGIA  
COUNTY OF FULTON

THIS DEED ("Deed") made this the 21<sup>st</sup> day of November, 2013, by **WORLDWIDE PROPERTIES GROUP, LLC**, a Georgia limited liability company, as party of the first part, hereinafter called Grantor and **MCP III REAL ESTATE, 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 Dollars (\$10.00) and other good and valuable consideration, cash in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, by these presents does grant, bargain, sell, alien, convey, remise, release and forever quit-claim to the Grantee, their heirs and assigns, all the right, title, interest, claim or demand which the Grantor, either jointly or individually, have or may have had in and to the following described real property (the "Property"):

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the Property with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, unto the Grantee, their successors, heirs and assigns, so that neither the said Grantor nor their successors, nor any other person claiming under them shall at any time, claim or demand any right, title or interest to the Property or its appurtenances.

IN WITNESS WHEREOF, Grantor has executed this Deed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

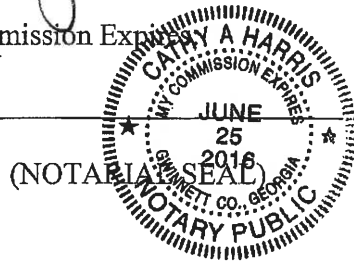
[Signature]

Unofficial Witness

Cathy A. Harris

Notary Public

My Commission Expires



**GRANTOR:**

**WORLDWIDE PROPERTIES GROUP, LLC**  
a Georgia limited liability company

By: [Signature]

Name: Antonio Dozier

Its: Sole Member

EXHIBIT A

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 880 AND LAND LOT 881 OF THE 17TH DISTRICT, 2ND SECTION OF COBB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN SIDE OF SPRING HILL PARKWAY 190 FEET NORTHWESTERLY AS MEASURED ALONG THE NORTHEASTERN SIDE OF SPRING ROAD FROM THE POINT FORMED BY THE INTERSECTION OF THE NORTHWESTERN SIDE OF INTERSTATE 285 WITH THE NORTHEASTERN SIDE OF SPRING ROAD, SAID POINT BEING THE POINT OF BEGINNING; RUNNING THENCE NORTH 71 DEGREES 40 MINUTES 22 SECONDS WEST ALONG THE NORTHEASTERN SIDE OF SPRING ROAD 208.45 FEET TO A POINT; RUNNING THENCE NORTH 18 DEGREES 57 MINUTES 03 SECONDS EAST, 208.63 FEET TO A #4 REBAR FOUND; RUNNING THENCE SOUTH 71 DEGREES 02 MINUTES 03 SECONDS EAST, 208.85 FEET TO A #4 REBAR FOUND; RUNNING THENCE SOUTH 19 DEGREES 03 MINUTES 56 SECONDS WEST, 206.30 FEET TO A #4 REBAR FOUND ON THE NORTHEASTERN SIDE OF SPRING ROAD AND THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 43,286 SQ. FT. OR 0.99 ACRES

As shown on that certain survey prepared by Brian Douglas Dobbins, GRLS No. 3167 of Land Answers Surveying LLC dated October 22, 2013 for MCP III Real Estate, LLC, Georgia Commerce Bank and Republic Commercial Title Company.



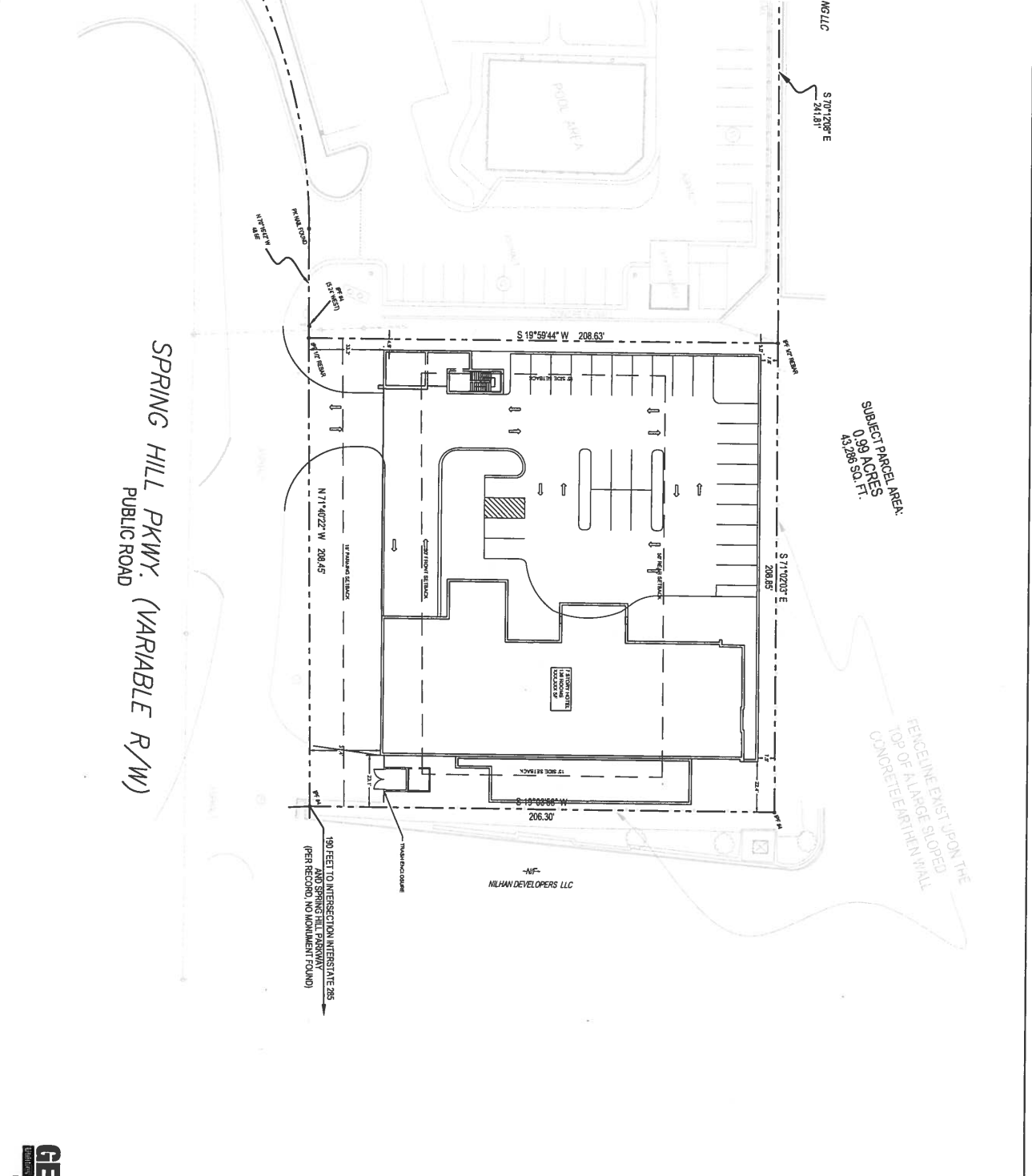
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SAID PARCEL CONTAINS 43,286 SQ. FT. OR 0.99 ACRES

This document, together with the concepts and designs presented herein, is an instrument of service as intended only for the specific purpose and client for which it was prepared. Review of and approval reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



SPRING HILL PKWY. (VARIABLE R/W)  
PUBLIC ROAD

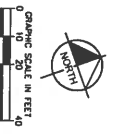
NG LLC  
S 70° 12' 08" E  
241.81'  
SUBJECT PARCEL AREA:  
0.39 ACRES  
43,298 SQ. FT.

FENCE LINE EXISTS UPON THE  
TOP OF A LARGE SLOPED  
CONCRETE RETAINING WALL

-NF-  
NIHON DEVELOPERS LLC

190 FEET TO INTERSECTION INTERSTATE 285  
AND SPRING HILL PARKWAY  
(PER RECORD, NO MONUMENT FOUND)

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**SITE ZONING NOTES:**

PROJECT ADDRESS	2875 SPRING HILL PARKWAY
CURRENT ZONING	OT
PROPOSED ZONING	IS
ADJACENT ZONING	SPRING ROAD COMMON
ADJACENT ZONING	7 (DOWNTOWN HOTEL) (150 ROOMS)
TOTAL BUILDING AREA	100,000 SQ FT
PARKING DATA	138 ROOMS x 0.75 VEHICULAR = 104 SPACES
13 ZONING DATA	
BUILDING HEIGHT	50' MAX / 7.5'
SETBACKS	50' SIDE / 25'
REAR	50' MIN / 7'
LOT COVERAGE	100% MAX / 75% APPROX
MINIMUM	138 ROOMS x 0.75 VEHICULAR = 104 SPACES

\*VARIANCE REQUIRED

PROJECT	2875 SPRING HILL PARKWAY, SMYRNA, GA 30080
CLIENT	BUCKHEAD AMERICA HOSPITALITY
TITLE	ZONING SITE PLAN - GROUND
DATE	
DESIGNED BY	MAL
CHECKED BY	KRT
SCALE	AS SHOWN
DRAWN BY	JRN
DATE	
SHEET NUMBER	03/07/000
PROJECT NUMBER	CO-10

2875 SPRING HILL PARKWAY  
SMYRNA, GA 30080

SCALE: AS SHOWN

DRAWN BY: JRN

DESIGNED BY: MAL

CHECKED BY: KRT

**Kimley-Horn**

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617 W. PEACHTREE STREET, NW  
THE BILTMORE, SUITE 601  
ATLANTA, GEORGIA 30308  
PHONE (404) 419-8700  
WWW.KIMLEY-HORN.COM

7			
6			
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4			
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2			
1			
No.	REVISIONS	DATE	BY











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## COBB COUNTY WATER SYSTEM

Customer Services Facility  
660 South Cobb Drive  
Marietta, Georgia 30060-3105  
770-419-6200  
www.cobbwater.org

Stephen D. McCullers, P.E.  
Director

*Divisions*  
Business Services  
Customer Services  
Engineering & Records  
Stormwater Management  
System Maintenance  
Water Protection

October 30, 2018

Kate Triplett, P.E. (NC, GA)  
Kimley-Horn  
817 West Peachtree St., Suite 601  
Atlanta, GA 30308

Re: Proposed 115 to 120-room hotel  
Spring Hill Parkway, +/- 1 acre  
Land Lot 881, 17<sup>th</sup> District,  
Rottenwood Creek Basin, R.L. Sutton WRF

To Whom It May Concern:

Current Cobb County policy is to provide wastewater treatment capacity for approved zonings. Therefore, we will be able to provide capacity for your approved zoning classification with the following stipulations as set forth by the Cobb County Board of Commissioners:

→The developer has 150 days from this date to present plans for review and approval. Water and sewer fees must be paid and construction started within 90 days after plan approval.

→Should you fail to meet this stipulation, this letter of allocation is invalid and you must reapply to this department for capacity. No preference will be given and your request will be placed at the bottom of the request list.

→This letter is only valid for the project referenced. It is non-renewable, non-transferable, non-extendible and does not guarantee that sewer lines are at the site. Upgrades to existing water distribution and wastewater collection facilities may be required of the Developer if the demands of this proposal exceed the capacity limits of our existing or proposed facilities.

Water service is currently available via the existing 8-inch water main on Spring Hill Parkway. A passing fire flow test is a requirement of approval of construction plans by this department.

Sincerely,

**COBB COUNTY WATER SYSTEM**

A handwritten signature in black ink, appearing to read "Tim Davidson".

Tim Davidson  
Engineering & Records Division

cc: file

Equal Opportunity Employer

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www.cobbcounty.org

## **CONSOLIDATED IMPACT STATEMENT**

### **APPLICATION OF MCP III REAL ESTATE, LLC TO REZONE AN APPROXIMATE 0.99 ACRE TRACT FROM OI TO TS; LAND LOT 881 OF THE 17<sup>TH</sup> DISTRICT, 2<sup>ND</sup> SECTION, CITY OF SMYRNA, COBB COUNTY, GEORGIA**

#### **INTRODUCTION**

MCP III Real Estate, LLC (“MCP”) proposes to Rezone an approximate 0.99 Acre Tract of land (“Subject Property”) to allow for the construction and development of a 7-story, 103,685 square foot nationally branded Hotel (exclusive of structured parking, canopy and patio).

The subject property, is located within the City Limits of Smyrna, and has direct access to Spring Hill Parkway and turning movements thereon in order to gain access to Spring Road and Cumberland Boulevard. The subject property is located within the confines of the Cumberland – Galleria Regional Activity Center (“RAC”) and within sub-designations under the Future Land Use Map (“FLUM”) denominated for office and office services type utilization.

The buildings located on the subject property will be demolished, including offices and office services oriented to Spring Hill Parkway. As a result of the surge of redevelopment within this sub-area of the City of Smyrna, largely attributable to recent development including the Braves’ SunTrust Park and The Battery, an adjacent mixed-use development which includes approximately 3 million square feet of various uses.

This Application for Rezoning does not present a significant shift in the proposed use of the property in terms of its appropriateness. However, it is dynamic when viewed in concert with the “sense of place” and character which will continue to be established and with the ability to target demographics within the travelling public. MCP’s proposal is in keeping with the City’s Comprehensive Plan for the area; its LCI Study adopted in 2017; and, allows for the revitalization of properties with aging commercial and office space in order to precipitate additional development and redevelopment within the City to provide a strategic expansion of quality, nationally branded uses.

MCP’s proposed Rezoning will enhance architectural standards and aesthetics in this general neighborhood based upon the stipulations and conditions of zoning which will ultimately be self-imposed and/or added by the City of Smyrna in terms of architecture, landscaping and upgraded infrastructure. Additionally, the proposed Rezoning will constitute an event which will encourage appropriate commercial, office and other non-residential development along the Spring Road, Spring Hill Parkway, and Cumberland Boulevard Corridors, respectively. At the build-out of the development, access to the site is proposed to be from Spring Hill Parkway with the later possibility of inter-parcel access with adjacent properties as same are assembled and developed.

This Consolidated Impact Statement is being submitted concurrently with MCP's Application for Rezoning and architectural renderings/elevations and actual photographs of this nationally branded Hotel product which accurately depict the proposed architectural style and composition of the Hotel. This Application is being filed in order to be heard and considered by the Smyrna Planning Commission on December 10, 2018. Thereafter, the Application will be heard and considered for final action by the Mayor and City Council on January 21, 2019.

### **TRAFFIC IMPACT ANALYSIS**

It is clear that Spring Hill Parkway, Spring Road and Cumberland Boulevard are well studied traffic corridors which are denominated as either Arterial or Major Collector rights-of-way. The subject property has substantial frontage on Spring Hill Parkway with access ultimately to Cumberland Boulevard and Spring Road by way of Spring Hill Parkway. Once the Application for Rezoning is approved, the access onto Spring Hill Parkway will meet sight distance requirements and distancing/positioning from nearby crossroads and signalized intersections. Moreover, the proposed development, in consideration of the roads mentioned above, are anticipated to meet acceptable Levels of Service ("LOS"). The mixture of commercial, office, higher density residential and retail uses in and along both the Spring Hill Parkway and the Spring Road Corridors, respectively, provide a variety of uses which, taking into consideration a five percent (5%) increase in traffic volume each year, will have minimal impact upon the City's current and planned infrastructure with respect to road and operational improvements, with most of those improvements to Spring Road and its adjacent intersections having been approved, undertaken and completed within the past 24 months.

Taking into account the existing 2018 peak hour traffic volumes and increasing those at five percent (5%) per year for 2 years to account for background growth and traffic within this sub-area of the City, the affected intersections, particularly focusing on the intersection Spring Hill Parkway and Spring Road, will maintain satisfactory LOS in both a.m. and p.m. peak hours.

Assuming the Application for Rezoning for the subject property is approved and in order to allow for the construction and development of the nationally branded Hotel mentioned above and based upon the Institute Transportation Engineer's ("ITE") Trip Generation Manual, the proposed trips which will be generated by this Hotel development, based upon a full build-out (in 2020), it is anticipated that 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 Spring Hill Parkway and Spring Road 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, as well as those of the travelling public.



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 a more detailed analysis in terms of specific LOS analyzes regarding the subject property, this analysis may be supplemented under separate cover with traffic generation figures in a “build” and a “no-build” scenario.

The recommendations and conclusions of this analysis are that MCP will voluntarily donate and convey sufficient right-of-way on Spring Hill Parkway (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 centerline. MCP will be responsible for operational improvements (if any are required) which will include the restoration or the installation of sidewalk, curb and gutter on the subject property’s Spring Hill Parkway frontage where same may be deficient or where same may be impaired during the construction process.

### **WATER & SEWER ANALYSIS**

Cobb County provides both water and sewer to the subject property. More specifically, water service for the subject property is provided by the Cobb County Water System’s eight inch (8”) water line which is located within Spring Hill Parkway right-of-way. 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 within the public rights-of-way and public easements, there will be no infrastructure loss or problems incurred in the development of the property for the purposes sought.

Pursuant to Cobb County regulations, sewer and water taps are the responsibility of MCP, including elevations. Although not anticipated under the circumstances with the subject property being under consideration for Rezoning, with respect to the availability and accessibility of water and sewer, MCP 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 based upon Fire Marshall directives.

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, MCP 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 easements which may be required.

It is understood that the approval of MCP's Application for 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 Application for Rezoning will encourage the type of demographics within this sub-area of the City of Smyrna which will have no impact whatsoever upon schools. More specifically, the target market demographic will be white collar professionals, traveling "millennials", upwardly mobile professionals and executives and other guests who will have no impact upon the school system which consists currently of Argyle Elementary, Campbell Middle School and Campbell High School.

Moreover, the core facilities such as school media centers, athletic facilities, cafeterias and other components of the school system will not be burdened and will, in fact, benefit from the subject property being developed for the purpose of a nationally branded, high-end Hotel.

Respectfully submitted, this the 9<sup>th</sup> day of November, 2018.

~~SAMS, LARKIN, HUFF & BALLI, LLP~~

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

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

SAMS, LARKIN, HUFF  
& BALLI, LLP  
A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW  
SUITE 100  
376 POWDER SPRINGS ST.  
MARIETTA, GA 30064  
770.422.7016

TO THE MAYOR AND CITY COUNCIL  
CITY OF SMYRNA, GEORGIA

**CONSTITUTIONAL CHALLENGE**

COMES NOW, MCP III REAL ESTATE, LLC, hereinafter referred to as the "Applicant" for Rezoning 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 Office-Institutional ("OI"), as established by the governing authority of the City of Smyrna, Georgia to the zoning category of Tourist Services ("TS") for the purposes of a Nationally Branded Hotel.

3.

The current OI zoning classification of the property and all intervening classifications between same and TS 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 OI and all intervening classifications between same and TS as they presently exist violate the Applicant's rights 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 classification is unconstitutional in that it is 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 in many instances controlled by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 9<sup>th</sup> day of Nov., 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

GARVIS L. SAMS, JR.

Attorney for Applicant

Ga. Bar No. 623950