

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF

SAMS, LARKIN & HUFF

A LIMITED LIABILITY PARTNERSHIP SUITE 100 376 POWDER SPRINGS STREET MARIETTA, GEORGIA 30064-3448 770•422•7016 TELEPHONE 770•426•6583 FACSIMILE

August 25, 2020

VIA EMAIL

Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna 3180 Atlanta Road Smyrna, GA 30080

Re: Application of Martinello Group, LLC to Rezone a $1.6 \pm \text{Acre Tract from RM-}10$

and R-15 to Conditional RDA (No. Z20-004)

Dear Rusty:

You will recall that this firm represents Martinello Group, LLC concerning the above-captioned Application for Rezoning. The application is scheduled to be heard and considered by the City of Smyrna Planning Commission on September 14, 2020. Thereafter, the case will be heard and considered for final action by the Mayor and City Council on October 19, 2020.

The Application for Rezoning was originally filed on February 14, 2020; however, because of the confluence of the pandemic with other issues relative to the development and design of the Subject Property, the application was indefinitely tabled/continued on March 24, 2020. In the interim, the Martinello Group and its individual representatives have redesigned the number of homes and thus the layout; reduced the density; changed from attached to single-family detached homes; and, has revised its proposal to more closely comport with the City's policy initiatives.

Martinello Group's proposal seeking approval of a single-family detached residential development consisting of twelve (12) homes on 1.6 acres is at a density of 7.5 units per acre, and is a "down-zoning" of those portions of the Subject Property which are zoned for apartment/multi-family utilization under the RM-10 district. The multi-family classification is simply not compatible with the properties surrounding the Subject Property.



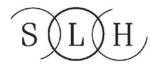
Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna August 25, 2020 Page 2

During the pendency of this application, representatives of the Martinello Group have had an opportunity to establish a dialogue with the City's professional staff and have discussed this proposal with area homeowners and business owners. In that regard, this letter will serve as Martinello Group's expression of agreement with following stipulations which, upon the application being approved, shall become conditions and a part of the grant of the requested Rezoning and binding upon the Subject Property thereafter.

The referenced stipulations are as follows:

- 1. The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned application.
- 2. The Rezoning of the Subject Property shall be from RM-10 & R-15 to Conditional RDA in substantial conformity to that certain revised site plan which was submitted under separate cover on August 17, 2020, a copy of which is attached hereto.
- 3. The Subject Property shall be developed for the construction of twelve (12) custom, quality-built single-family detached homes upon 1.6 acres at a density of 7.5 units per acre.
- 4. The size of the homes shall range from a minimum of 2,500 square feet and upwards and will contain 3 4 full bedrooms and 2.5 3 baths.¹
- 5. The architectural style and composition of the homes shall be in substantial conformity to the architectural photographs which are being submitted concurrently herewith. The composition of said homes shall meet City Code requirements on all four (4) sides and shall consist of a mixture of either brick, stacked stone, cedar/hardi shake and/or hardi plank siding.
- 6. Each of the homes shall have, at a minimum, an attached, two-car garage which shall be designed at all times to accommodate at least two (2) vehicles. The driveways shall be a minimum of twenty-two feet (22') in length to accommodate the parking of two (2) additional vehicles.

 $^{^{1}\,}$ Price points are anticipated ranging from \$450,000.00 to \$550,000.00 and greater.



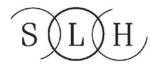
Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna August 25, 2020 Page 3

7. The homes which Martinello Group will build will be conveniently located and in close proximity to Smyrna Market Village; all of the amenities and common municipal features of the City; and, in an area wherein City policy concerns and guidelines advance the type of single-family detached residential development as requested.

8. All of the homes within the proposed residential community shall be "For Sale" homes which shall be reflected in the Mandatory Homeowners Association ("HOA") and the Declaration of Covenants, Conditions and Restrictions ("CCRs") which shall include, among other components, strict architectural controls.

The Mandatory HOA shall be responsible for the upkeep and maintenance of all common areas, tree preservation areas, community Open Space, the stormwater management facility (detention/water quality) and landscaping.

- 9. A third-party management company shall be hired to manage the day-to-day operations of the HOA. The third-party management company shall also be responsible for the management of all association monies as well as ensuring that the association is properly insured until such time as the HOA makes a determination that it can undertake such responsibilities.
- 10. The submission of a Landscape Plan during the Plan Review process which shall be subject to staff review and approval and which shall include, but not necessarily be limited to, the following:
 - a. The Landscape Plan shall be prepared, stamped and signed by a Georgia Registered Landscape Architect or a degreed Horticulturist for common areas and other components of the residential community which shall be identified during the Plan Review process.
 - b. All HVAC systems and home utilities within the community shall either be underground or screened from view by way of fencing and/or landscaping.
 - c. The installation of sod in the front, side and rear yards.



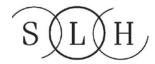
Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna August 25, 2020 Page 4

d. The stormwater management facilities shall be landscaped and positioned appropriately in order to be attractive to homes inside and outside of the proposed residential community.

- e. Compliance with the City's current Tree Preservation & Replacement Ordinance and substantial conformity to the Tree Survey/Tree Protection/Tree Replacement plans which were submitted concurrently with the Application for Rezoning. All required tree protection measures shall be adhered to during the construction and the buildout of the proposed residential community.
- 11. As a part of this proposal, the Martinello Group submitted a Letter of Intent ("LOI") to the City Attorney on January 15, 2020 regarding the ultimate purchase of a small surplus tract of property which is owned by the City and which was conveyed to the City on December 23, 1998. A copy of said Letter of Intent is attached hereto.
- 12. Subject to recommendations from the City Engineer concerning hydrology, stormwater management and downstream considerations, including recommendations regarding the ultimate positioning and configuration of on-site detention and water quality. Additionally, detention for the community shall be designed to meet all of the City's stormwater codes, and subject to review and approval by the City Engineer.

Also, subject to the following additional engineering considerations:

- a. Providing the City Engineer with a conceptual Hydrology Plan for the subject property prior to these applications being heard and considered by the Mayor and City Council.
- b. Verifying points of discharge with respect to detention/water quality.
- 13. Compliance with the City of Smyrna's Public Works Director's comments and recommendations concerning water and sewer service and sewer capacity.

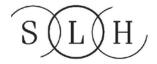


Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna August 25, 2020 Page 5

14. Compliance with the City of Smyrna Fire Marshall's recommendations with respect to Life-Safety and Fire Prevention issues, including the following:

- a. Providing a turning model for the site to ensure that Fire Trucks are able to access the subject property.
- b. Compliance with the City's turning performance analysis utilized for this type of single-family detached residential development.
- 15. The Community Development Director or his designee shall have the authority to approve minor modifications with respect to the site plan, the architectural style and composition of the homes and the other issues within these stipulations as the development proposal proceeds through the Plan Review Process and thereafter, except for those that:
 - a. Increase the density of the residential community.
 - b. Reduce the size of an approved buffer adjacent to property which is zoned the same or in a more restrictive zoning district.
 - c. Relocate a structure closer to the property line of an adjacent property which is zoned the same or in a more restrictive district.
 - d. Increase the height of a building which is adjacent to a property which is zoned in the same or a more restrictive zoning district.
 - e. Change access locations to a different right-of-way.

These stipulations represent Martinello Group's acknowledgement that this proposed single-family residential development is in keeping with the City's plans for the future of the Subject Property. In that regard, the Rezoning request to allow the proposed community is entirely appropriate from a land use planning perspective.



Mr. Russell G. Martin, AICP, Director Community Development Department City of Smyrna August 25, 2020 Page 6

Please do not hesitate to contact me should you or your staff require further information or documentation prior to the formulation of the Staff Analysis and Recommendations and the application being heard and considered. With kinds regards I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP

and

Garvis L. Sams, Jr. gsams@samslarkinhuff.com

GLS, Jr./klk Attachments

cc: Honorable Derek Norton, Mayor (via email w/attachments)

Members, City of Smyrna City Council (via email w/attachments)

Ms. Tammi Saddler Jones, City Administrator (via email w/attachments)

Members, City of Smyrna Planning Commission (via email w/attachments)

Ms. Heather Peacon-Corn, City Clerk (via email w/attachments)

Scott A. Cochran, Esq. (via email w/attachments)

Mr. Kevin Moore, P.E., City Engineer (via email w/attachments)

Mr. Frank Martin, Director of Public Works (via email w/attachments)

Ms. Ashley White, Assistant City Engineer (via email w/attachments)

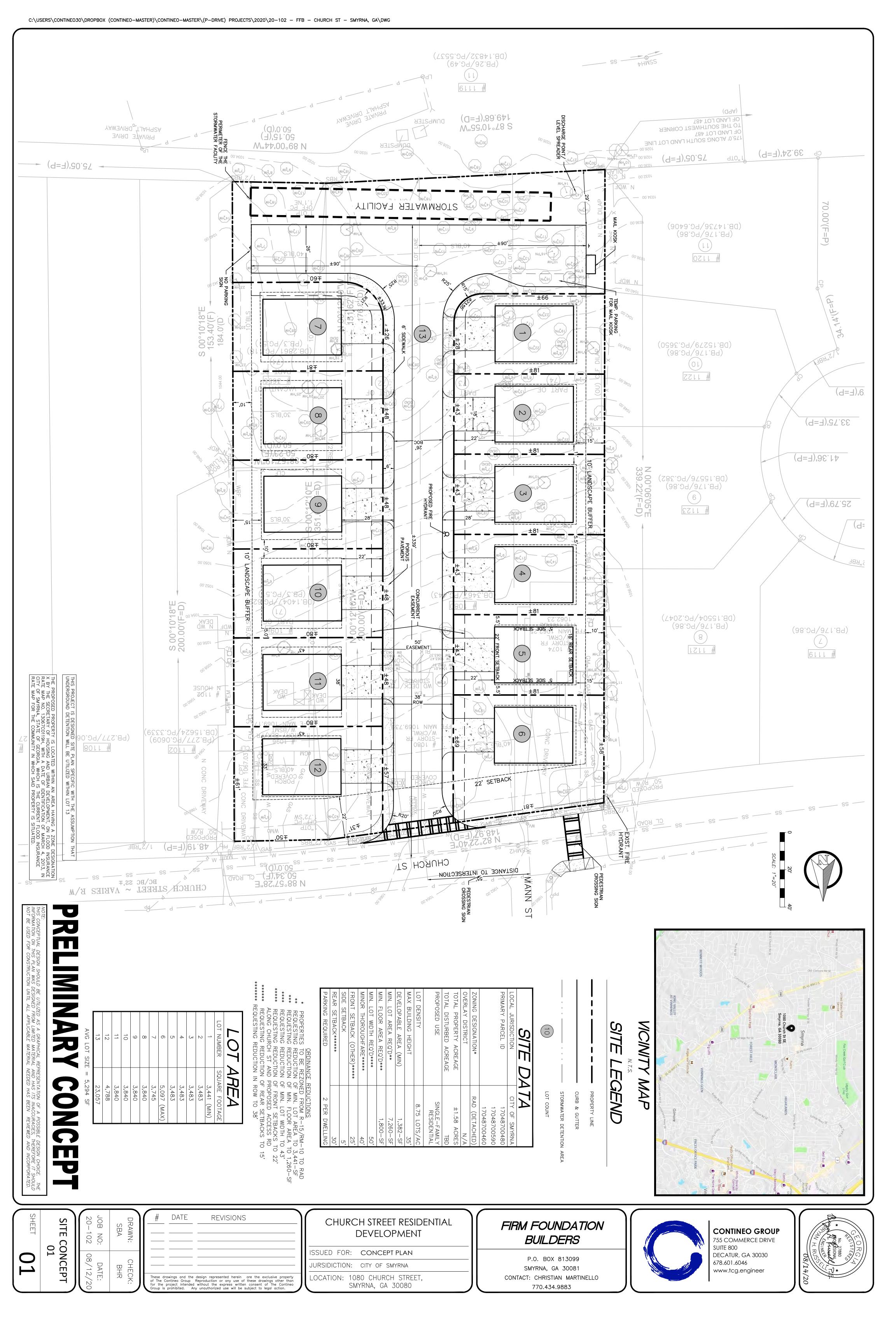
Mr. Timothy Grubaugh, Deputy Fire Marshall (via email w/attachments)

Mr. Joey Staubes, AICP, Planner II (via email w/attachments)

Mr. Joe Romano, Martinello Group, LLC (via email w/attachments w/attachments)

Mr. Christian Martinello, Martinello Group, LLC (via email w/attachments)

Mr. Bryan Russell, P.E., Contineo Group (via email w/attachments)

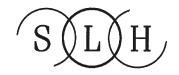












GARVIS L. SAMS, JR.
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ADAM J. ROZEN

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A LIMITED LIABILITY PARTNERSHIP SUITE 100 376 POWDER SPRINGS STREET MARIETTA, GEORGIA 30064-3448 770•422•7016 TELEPHONE 770•426•6583 FACSIMILE

January 15, 2020

VIA EMAIL:

Scott A. Cochran, Esq. Cochran & Edwards, LLC 2950 Atlanta Road Smyrna, GA 30080

Re:

3655 Love Street (City of Smyrna/PIN 17048700460)

Dear Scott:

This firm has been engaged by and represents The Martinello Group, LLC ("MG") concerning the above-captioned property. In that regard, MG is interested in purchasing the above-captioned property in order to add to an assemblage of contiguous parcels for the purposes of an entitlement of the property ("Subject Property") and in order to allow for the construction and development of a single-family, detached, custom-built Residential Community. In that regard, on December 11, 2019, representatives of MG (consisting of Joe Romano and Christian Martinello) and I met with Community Development Director Rusty Martin and Economic Development Director Tom Boland concerning the Subject Property. To that end, this letter constitutes the submission of an unsolicited offer to purchase the Subject Property.

As my client and I understand the present circumstances, the Subject Property appears to be unneeded "surplus property" which is owned by the City of Smyrna. This Letter of Intent ("LOI") outlines the general basis under which my client would enter into a Purchase and Sale Agreement ("PSA") with the City of Smyrna (the "Seller") concerning the Subject Property:

1. THE SUBJECT PROPERTY – The Subject Property consists of a small platted lot which is split-zoned RM-10 (Multi-Family) and R-15 (Single-Family) and is located within an area under the City of Smyrna's Future Land Use Map ("FLUM") which allows Medium-Density Residential ("MDR") development at a density equal to or less than six units per acre (6 u.p.a.). The property is currently undeveloped; however as mentioned above, MG's intent is to add it to an assemblage of properties specifically for purposes of a single-family detached Residential Community at or below the density outlined by the City's FLUM. Attached is a copy of the Warranty Deed vesting title in the City of Smyrna.



Scott A. Cochran, Esq. Cochran & Edwards, LLC January 15, 2020 Page 2

- 2. <u>PURCHASE PRICE</u> Subject to the assumptions and conditions set forth below, the purchase price for a 100% fee simple interest in and to the Subject Property will be Ten Thousand Dollars (\$10,000.00), paid all cash at the Closing.
- 3. EARNEST MONEY DEPOSITED Upon the full execution and delivery of the PSA, MG (the "Buyer") will deliver an Earnest Money Deposit in the sum of Twenty-Five Hundred Dollars (\$2,500.00) (the "Deposit") to Haven Title Services, LLC as the Escrow Agent. The Deposit shall be held in an interest bearing account and shall be fully refundable to the Buyer until the end of the Due Diligence Period, after which the Deposit shall be non-refundable except for the satisfaction of the obligations of the Seller as otherwise set forth in the PSA.
- 4. <u>CONTRACT/CLOSING</u> Upon the acceptance of this LOI by the Seller, the parties will commence with a negotiation of a mutually beneficially acceptable PSA (the "Contract"). The Closing shall occur 30 days after Buyer's Due Diligence concerning the Subject Property.
- 5. <u>DUE DILIGENCE</u> The Buyer shall have Ninety (90) days after the execution date of the PSA in order to perform its Due Diligence (the "Due Diligence"). The Seller shall provide the Buyer and its authorized agents and/or representatives with access to the Subject Property during the Due Diligence timeframe in order to inspect the Subject Property and to conduct such investigations as the Buyer deems appropriate including, without limitation to, engineering studies, environmental studies, real estate studies, tax studies and the Buyer's review of title to the Subject Property, surveys, zoning and legal compliance documentation and information. The Seller agrees to provide to the best of its ability true and complete copies of the Due Diligence items and documents requested by the Buyer.
- 6. ADDITIONAL EARNEST MONEY In the event that the Buyer shall fail to terminate this Agreement prior to the end of the Due Diligence Period, Buyers shall deliver to Escrow Agent, as Additional Earnest Money, an additional check in the amount of Twenty-Five Hundred Dollars (\$2,500.00) at the conclusion of the Due Diligence Period. In the event that the Buyer fails to make any such Deposit of Additional Earnest Money within ten (10) days following written notice of such effect to Seller, Seller shall have the right to terminate this Agreement by written notice to the Buyer and the Escrow Agent, whereupon the Escrow Agent shall deliver the initial Earnest Money and any Additional Earnest Money paid to date, together with accrued interest thereon to Seller and this



Scott A. Cochran, Esq. Cochran & Edwards, LLC January 15, 2020 Page 3

Agreement shall terminate and become null and void and neither the Buyer nor the Seller shall have any further rights, duties or obligations hereunder.

- 7. <u>SURVEY/TITLE/ZONING</u> At its own expense, the Buyer has commissioned a Site Plan which is satisfactory to it. The purchase of the Subject Property shall be subject to said Site Plan which is being prepared by Contineo Group for Firm Foundation Builders, a copy of which will be provided under separate cover and concurrently with the PSA. The Seller shall provide a title insurance policy in a form and substance satisfactory to the Buyer.
- 8. CONDITIONS TO CLOSING The Closing of this transaction is subject to an acceptable Due Diligence Review and the property being delivered free and clear of any mortgage indebtedness and any other liens not specifically approved by the Buyer and the Seller. The Buyer acknowledges and agrees that, upon the successful completion of its Due Diligence, the Earnest Money deposited hereunder shall be non-refundable (except in the event of the Seller's default or a failure of a condition specified hereinabove) and applicable to the purchase price. The transaction is all cash and not conditioned or predicated upon the Buyer securing financing.

In addition to the foregoing, the Seller shall facilitate a down-zoning of the Subject Property from the split zoning of RM-10 & R-15 to RAD Conditional consistent with the MDR designation under the City's FLUM. With respect to any utility which the Subject Property may provide to or for the City, the Seller and Buyer will agree, as a part of the overall transaction, to a Reciprocal Easement Agreement ("REA"), if needful or necessary.

- 9. BROKER INVOLVEMENT Buyer acknowledges that it has neither worked with nor retained the services of any real estate broker in connection with this transaction. In that regard, the Buyer further covenants and agrees to indemnify and hold the Seller harmless against any loss, liability, costs, claims, demands, damages, actions, causes of actions and/or suit arising out of or in any manner related to the alleged employment or use of any real estate broker or agent in connection with its purchase of the Subject Property contemplated in this Agreement. The Seller will be responsible for any commissions associated with its use of its agents or brokers in connection with this transaction.
- 10. <u>CLOSING COSTS/PRORATIONS</u> Closing Costs shall be allocated per the custom of the Metropolitan Atlanta, Georgia area. The Seller agrees to pay the Transfer Taxes on this transaction.



Scott A. Cochran, Esq. Cochran & Edwards, LLC January 15, 2020 Page 4

11. <u>ASSIGNMENT</u> – The Buyer shall have the right to assign the PSA to an entity controlled or owned by the Buyer or any of its affiliated and/or related entities.

12. EXCLUSIVE PERIOD — By executing this LOI, the parties agree to proceed with diligence toward the preparation and signing of a PSA and an expeditious Closing of the transaction. The Seller recognizes that the Buyer has incurred and will be incurring significant costs in completing its Due Diligence for this transaction. In consideration of these costs, the Seller agrees to cease and/or not commence any marketing efforts or negotiations with other parties for the sale of the Subject Property from the date of the execution of this LOI through the Due Diligence Period.

Scott, you have had an opportunity to review this letter with the City Administrator, the Mayor and/or Smyrna City Council Members, please request that the Smyrna City Council grant authority to the Mayor to indicate the Seller's acceptance of these terms by executing a copy of this letter and returning it to me. With kind regards, I am

Very truly yours,

Garvis L. Sams, Jr.

gsams@samslarkinhuff.com

AMS, LARKIN & HUFF, LLP

GLS, Jr./dls Attachment

cc: Honorable Derek Norton, Mayor (via email w/attachment)

Ms. Tammi Sadler Jones, City Administrator (via email w/attachment)

Mr. Russell G. Martin, AICP, Director Smyrna ComDev (via email w/attachment)

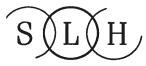
Mr. Joe Romano (via email w/attachment)

Mr. Christian Martinello (via email w/attachment)



Scott A. Cochran, Esq. Cochran & Edwards, LLC January 15, 2020 Page 5		
Accepted and agreed to as of the following date:		
The, 2020.		
BUYER: THE MARTINELLO GROUP, LLC		
By: JOE ROMANO		
By: CHRISTIAN MARTINELLO		
Signature of Notary Public	Date	
(Notary Seal)		

SIGNATURES CONTINUED



Scott A. Cochran, Esq.
Cochran & Edwards, LLC
January 15, 2020
Page 6
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SELLER: THE CITY OF SMYRNA

By:		
Signature of Notary Public	Date	
(Notary Seal)		



Scott A. Cochran, Esq. Cochran & Edwards, LLC January 15, 2020 Page 7

Deed Book 12022 Pg 7
Filed and Recorded Dec-23-1998 03:84pa
1998-0269731
Real Estate Transfer Tax \$1.00
Jay C. Stephenson
Clerk of Superior Court
Cobb County, Beorgia

10,00

Warranty Deed

STATE OF GEORGIA COUNTY OF COBB

After Recordation return to: Charles E. Camp, Beq. Cochran, Camp, & Snipes 2950 Atlanta Street, SE Smyrna, Georgia 30080

THIS INDENTURE, Made the 09th day of December, in the year One Thousand Nine Hundred Ninety-Eight, between D. L. EUBANKS of the County of COBB, and State of GEORGIA, as party of the first part, hereinafter called Grantor, and CITY OF SMYRNA as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

All that tract or parcel of land lying and being in Land Lot 487 of the 17th District and 2nd Section of Cobb County, Georgia; and being part of Lot 71 of the Reed and Walker Subdivision as is shown by plat of the same recorded in Plat Book 3, Page 51, Cobb County Records, and being more particularly described as follows:

Beginning at a point 325 feet east of the intersection of Land Lots 450, 487, 451, & 486. Running thence northerly a distance of 176.8 feet to a point thence easterly a distance of 50 feet to a point thence southerly a distance of 184 feet to a point, thence westerly a distance of 50 feet to the POINT OF BEGINNING.

TO HAVE AND TO HOLD the said tract or parcel of land, 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.

AND THE SAID 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 whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and scaled this deed, the day and year above written.

Signed, scaled and delivered in presence of:

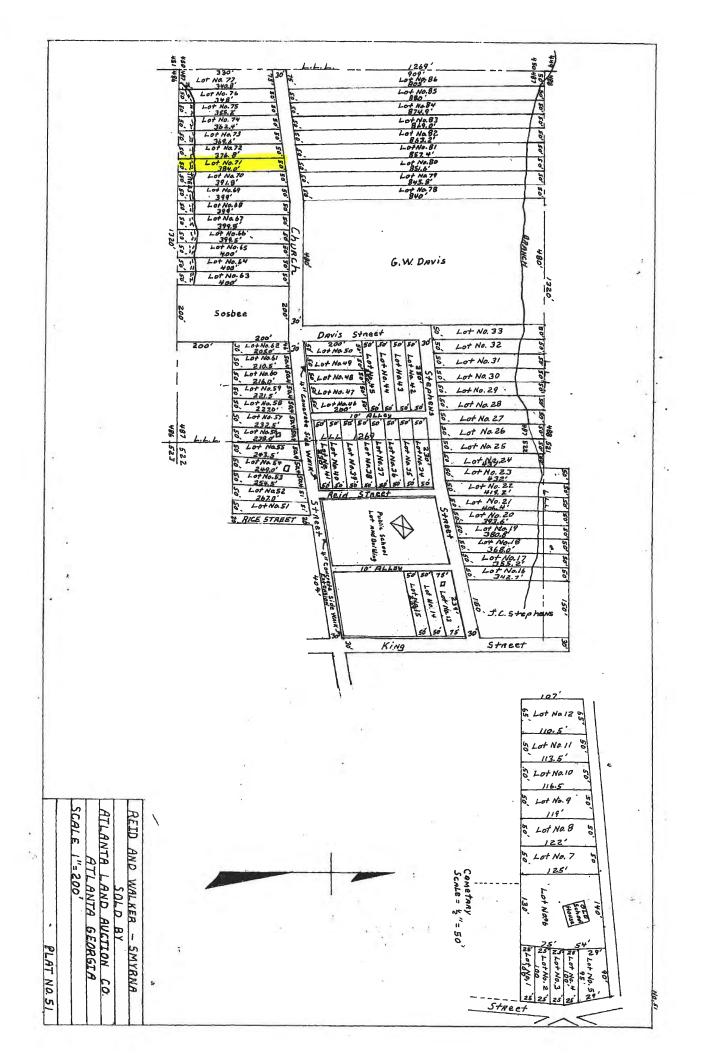
WITNESS

D L Eubanks

(SEAL)

Janka.

NOTARY PUBLE





CARLA JACKSON HEATHER WALKER Phone: Fax:

TAX COMMISSIONER CHIEF DEPUTY 770-528-8600 770-528-8679 Printed: 12/16/2019

Cobb County Online Tax Receipt

Thank you for your payment!

Payer:

CITY OF SMYRNA

Payment Date: 1/1/0001

Tax Year	Parcel ID	Due Date		Appeal Amount		Taxes Due
2000	17048700460	10/15/2000	Pay:	N/A	or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid		Balance
\$0.00	\$0.00	\$0.00	\$0.00			\$0.00



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

aPublic.net Cobb County, GA

Composite Summary

17048700460
3655 LOVE ST SE
E1 - Exempt - Public Property
0.2
8712
06179990 - EXEMPT OR PUBLIC UTILITY PROPERTY
(6) SIMYRNA
9990-OUT LOTS NOT IN A SUBDIVISION Parcel Number Location Address Location Address Property Class Total Acres Total Land SqFt Neighborhood Tax District Subdivision



Owner

Smyrna City Of 2800 KING ST 5MYRNA GA 30080

Appraised Values

Year	Property Class	LUC	Appraised Land	Building Value	Appraised Value
2019	E1	600	\$5,000	\$0	\$5,000
		Show H	Historical Appraised Values		
Assessed Values					
	Assessed		Assessed Building		Total Assessed
Year	Land		Value		Value
2019	\$2,000		\$0		\$0

Show Historical Assessed Values

Photos



No data available for the following modules: Upcoming Visits, Summary - Personal Property, Appraised Values - Personal Property, Notice of Assessment, Residential Improvement Information, Commercial Improvement Information, Accessory Information, Permits, Sales Information, Sketches, Additions.

User Privacy Policy GDPR Privacy Notice

Last Data Upload: 12/16/2019, 6:50:23 AM

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