



**City of Flowery Branch
City Council Meeting
Thursday, June 02, 2022, 6:00 PM
City of Flowery Branch City Hall
5410 West Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

AWARDS CEREMONY - LIFE SAVING AWARDS PRESENTATIONS

PUBLIC HEARING:

- A public hearing to consider a request from Milstead Homes, LLC to rezone a .36 +/- acre tract known as 5224 Chattahoochee Street, also identified as tax parcel identification number 08112 012008, from Residential, Detached Single-Family, Low-Density District (R-1) to Residential Multi-Family District (R-3).
[Re-Zoning Application - 5224 Chattahoochee St.pdf](#)
- A public hearing to consider a request from Chattahoochee Construction Managers, LLC/MQ Development, LLC to rezone two tracts of land from Residential, Detached Single-Family, Moderate-Density District (R-2) to Residential Multi-Family District (R-3). Tract one is a 3.52+/- acre tract of land identified as 5674 Mulberry Street, tax parcel number 08116 000023, tract two is a 4.7+/- acre tract of land identified as 5740 Mulberry Street, tax parcel number 08116 000022.
[Mulberry Townhomes Parcel 1.pdf](#)
[Mulberry Townhomes Parcel 2.pdf](#)

UNFINISHED BUSINESS - WORK SESSION:

NEW BUSINESS -WORK SESSION:

- Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant
[Letter to Commission Nunn.pdf](#)
[Executive Summary - Rural Downtown Grant application.pdf](#)

DEPARTMENT REPORTS: -

- a. City Manager Report
- b. City Clerk Report
- c. Finance Director Report
- d. Planning Department Report
- e. Police Report
- f. Attorney Report
- g. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA**CALL VOTING SESSION TO ORDER:**

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider Mayor Asbridge Per Diem for April 2022 and May 2022
[Mayor Per Diem April 2022.pdf](#)
[Mayor Per Diem May 2022.pdf](#)
- Consider May 19, 2022 Minutes
[May 19, 2022 Minutes.pdf](#)
- Consider Public Hearing May 26, 2022 Minutes
[May 26, 2022 Minutes.pdf](#)

UNFINISHED BUSINESS - VOTING SESSION:

- Consideration of Resolution 22-012 - To adopt the Fiscal Year 2023 Annual Budget
[FY2023 Budget Executive Summary.pdf](#)
[Resolution 22-012 To Adopt FY2023 Annual Budget.pdf](#)
[5-Year Proposed CIP Plan.pdf](#)
[FY 2023 Proposed Budget All Funds.pdf](#)
- Consideration of Second Reading of Ordinance 660 - A request from Lights Ferry Partners, LLC and Diego Fracasso to Rezone 5908 Lights Ferry Road, a 1.92+/- acre of land also known as Tax Parcel Identification Number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND)
[Lights Ferry Rezoning Ordinance 660.pdf](#)
[Staff Report Lights Ferry.pdf](#)

NEW BUSINESS - VOTING SESSION:

- Consideration of executing a Lease Agreement for Suite 102 at 5519 Main Street with 4 Elephants Catering, LLC.
[4 Elephants Catering, LLC Lease Updated 5.25.2022 unsigned.pdf](#)
[Executive Summary - lease 4 Elephants.pdf](#)
- Consider ratifying the signing of a Master Services Agreement and Service Advantage Work Order with VC3, Inc. for Information Technology (IT) Services.
[Signed Service Advantage Work Order.pdf](#)
[Signed MSA Flowery Branch.pdf](#)
[Executive Summary - VC3 contract.pdf](#)
- Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant
[Letter to Commission Nunn.pdf](#)
[Executive Summary - Rural Downtown Grant application.pdf](#)

EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: A public hearing to consider a request from Milstead Homes, LLC to rezone a .36 +/- acre tract known as 5224 Chattahoochee Street, also identified as tax parcel identification number 08112 012008, from Residential, Detached Single-Family, Low-Density District (R-1) to Residential Multi-Family District (R-3).

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

Schedule:

June 2 Public Hearing

July 21 First Vote

August 4 Work Session (if requested)

August 18 Second Vote

FACTS AND ISSUES:

The request is to rezone a small downtown parcel to R-3 with the intent to develop three townhomes.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

No action at this time

SAMPLE MOTION:

No vote at this time - public hearing only.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Re-Zoning Application - 5224 Chattahoochee St.pdf](#)

April 15th, 2022

City of Flowery Branch
Community Development
Rich Atkinson
PO Box 757
Flowery Branch, GA 30542

RE: Chattahoochee Overlook (Parcel 08112 012008)

Dear Mr. Atkinson & Council

Please let this letter serve as our letter of intent and written analysis comparing the proposed action with the criteria contained in the Flowery Branch Code of Ordinances regarding the Rezoning Application for the proposed project located off Chattahoochee St, in the City of Flowery Branch, Hall County, Georgia. The current use of this property is vacant land with a Residential-1 (R1) zoning, which we are requesting a Rezoning to Residential-3 (R3) for the purpose of building 3 Townhomes.

1. Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
 - a. We believe that the requested proposal will permit a use that is suitable for this parcel given its location and proximity to existing townhomes across the street.
2. Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.
 - a. We suggest the proposal would positively impact the adjacent properties by increasing home values, increasing overall beauty, and improving liveability of Downtown Flowery Branch.
3. Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has a reasonable economic use as currently zoned.
 - a. The property has been a vacant R1 lot for many years, allowing 3 modern townhomes will improve its overall economic use while creating a beauty and aesthetic that is cohesive with Downtown Flowery Branch.
4. Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
 - a. The current site plan of the proposed project will utilize the existing road infrastructure along Chattahoochee St., with no additional modifications needed. We believe that the existing road, infrastructure, and school systems are equipped to handle this small scale project.

5. Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.
 - a. We believe the extension of R3 Zoning to this lot would meet the future land use plan set forth by the city. Allowing this development would create a positive economic impact and enhance the community on multiple facets.
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 proposal.
 - a. We are currently in a housing shortage crisis, with some estimates showing our current home shortage to be above 5 Million Units. A housing project like we are proposing is exactly what our local community and economy need. While also providing a higher energy efficient home that is technology driven.
7. Existing use(s) and zoning of the subject property and nearby properties.
 - a. The adjacent properties across the street are already zoned R3, along with several properties on adjacent streets. We are requesting an extension of this zoning across Chattahoochee St.
8. Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district; and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.
 - a. The property has sat vacant for numerous years due to the unviability of building 1 single family home. Which is not the highest and best use for this land. The proposed R3 zoning would produce multiples much higher on an economic scale than it's current zoning.
9. Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
 - a. The adjacent properties are a mix between multi-family and single family. Creation of this project would positively impact home values and livability of the neighboring properties.
10. The possible creation of an isolated zoning district unrelated to the adjacent and nearby districts.
 - a. The adjacent properties directly across the street are zoned R3. While the property at 106 Robertson Ct. NW, will likely be a future development. This will not create an isolated zoning district.

11. Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.
 - a. The proposed zoning amendment would be consistent with the character of the adjacent R3 zoning development.
12. The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.
 - a. The project is being designed with McWhorter and Anderson to ensure the highest level of quality. While we are developing all appropriate measures will be taken to eliminate potential run-off and erosion. This project will include over 8k sqft of landscaped greenspace.
13. The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.
 - a. The proposed rezoning complies with the purpose of the overall zoning scheme and the purposes of the zoning ordinance in that the change to R3 Zoning will promote responsible growth compatible with the adjoining property zoned R3 directly across Chattahoochee St. Without impacting other developed properties in the surrounding area that are zoned for other uses.

City of Flowery Branch Staff and/or City Council are permitted and authorized to inspect the subject property as needed for the rezoning process.

We sincerely appreciate the consideration and review of the rezoning application by The City of Flowery Branch, Staff, and City Council. We look forward to working together on this exciting new project for Flowery Branch. Please do not hesitate to reach out to us to discuss the application and attachments in further detail if you have any questions or comments.

Sincerely,

Tyler D. Milstead

Managing Partner

Milstead Homes LLC

4435 Palmetto Lane | Cumming, GA 30041



REZONING APPLICATION

Date: March 9, 2022

Address of Request: 5224 Chattahoochee St, Flowery Branch GA

Tax Map # 08112012008 Current Zoning: R1

Is this site located within the boundaries of the historic district? No

Currently a conforming use? N/A

Any conditions of zoning, CUP's, etc.? N/A

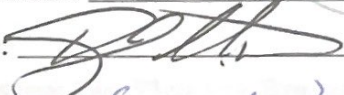
Applicant Information

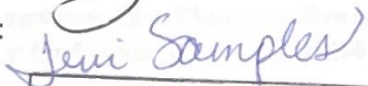
Name: Milstead Homes LLC

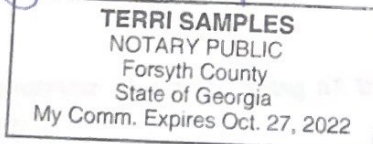
Address: Tyler Milstead - 4435 Palmetto Lane, Cumming GA 30041

E-mail address: Tyler@MilsteadHomes.com

Phone number: 770-846-6444

Signature: 

Notary: 





Property owner information (if different than the applicant)

Property owner (please print): _____

Signature of property owner: _____

Notary: _____

Property Information

Tax Map Number: 08112012008

Current Zoning: R1 Total Acres: 0.359

Is this property located within the city-limits of Flowery Branch? Yes

Proposed City of Flowery Branch Zoning: R3

Current Use: Vacant Land

Please review the Flowery Branch Code of Ordinances, Appendix C, "Zoning Ordinance", Article 34, for complete requirements.

Please provide the following at time of submittal in (one hard copy and digitally):

- Legal description
- Current survey of property



- Site plan shall meet the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.5
- Development statistics per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.6
- Analysis requirements per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.7
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)
- Names and addresses of adjoining property owners
- Reasons for requesting rezoning
- Signed statement authorizing City of Flowery Branch staff and/or City Council to inspect the **subject property**

Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

None

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

None

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

None



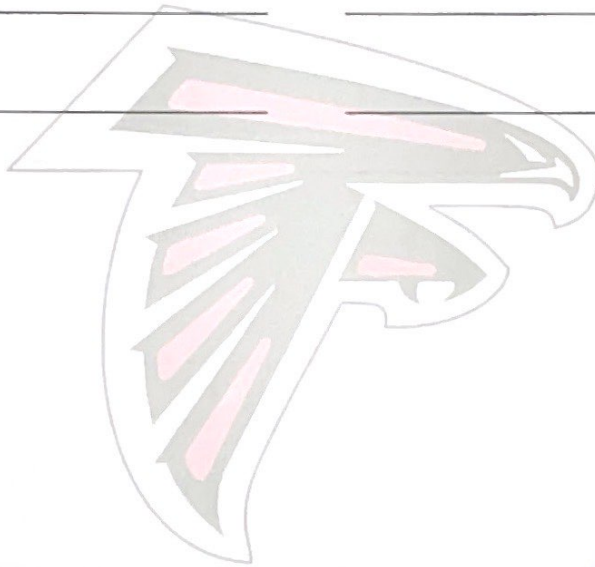
Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

None



CITY STAFF ONLY

Application Received By: _____

Date: _____ Total Fee: _____



Date March 9th, 2022

Address of Requester

3224 Charleston St. Flowery Branch

Tax Map # 06112042008

Zone R1

Please select at least one of the

types you selected on page

1. Value of Improvements
2. Determine the value of the improvements if you have a recent appraisal or a recent construction of improvements
3. Schedule of the improvements: months, years of construction
4. Anticipated total number of units
5. Total acreage covered
6. Total acreage for right-of-way
7. Total acreage of open space/conservation area (including wetlands, riparian areas, etc.)
8. Acreage required for buffer and watershed protection

Does the buffer comply with the current City ordinance?

Do individual property lines for lots extend into the buffer?

Does the Developer intend to remove any of the site area to the City? If so, for what purpose?



REZONING ADDITIONAL INFORMATION REQUIREMENT

Date: March 9th, 2022

Address of Request:

5224 Chattahoochee St, Flowery Branch

Tax Map # 08112012008 Current Zoning: R1

Please submit an analysis of the proposed project including: **Please see attached exhibit**

1. Value of improvements upon complete build out.
2. Property tax valuation based upon existing millage rate (indicate total tax expectation if project is phased).
3. Schedule of the total build out (showing a timeline of construction in months/years if project is phased).
4. Anticipated total square footage (heated) to be built in the requested number of units.
5. Total acreage developed with units.
6. Total acreage for right of way and roads.
7. Total acreage of open space/common area (include plan for maintenance of open space/common area).
8. Acreage required for buffer and watershed protection.
 - Does the buffer comply with the current City ordinance?
 - Do individual property lines for lots extend into the buffer?
 - Does the Developer intend to dedicate any of the site area to the City? If so, for what purpose?



9. Does your proposal consider Multi Transportation alternatives? (Please describe in detail)
10. Please identify all amenities and total number of acres they incorporate by complete description.
11. Number of street lights and separation table as proposed on your site plan.
12. Will Technology Development be included in this development?
13. List the total linear feet and cubic yards for sidewalks.
14. Are appropriate storm water controls provided in your proposal? Are these controls completely and accurately reflected on all drawings and plans?
15. Has a transportation/traffic study been done to predict the impact of anticipated traffic? Has the project been reviewed by all appropriate County and State agencies relating to transportation issues?
16. Does the proposal provide for utilization of "reuse" water? Is this depicted on the plans? Do the plans provide for storage of "reuse" water?
17. What is the total capacity for daily Wastewater Management?
18. What is the anticipated maximum daily water consumption? Are low flow fixtures required by the development?
19. Has a slope and grade study been done on this development? Does the study reflect density placement?
20. Please identify what public safety needs are being considered for the project?
21. Has the Hall County School System been notified of the proposed density for this project?
22. Please provide a copy of all private covenants and/or architectural guidelines to be filed regarding this development.



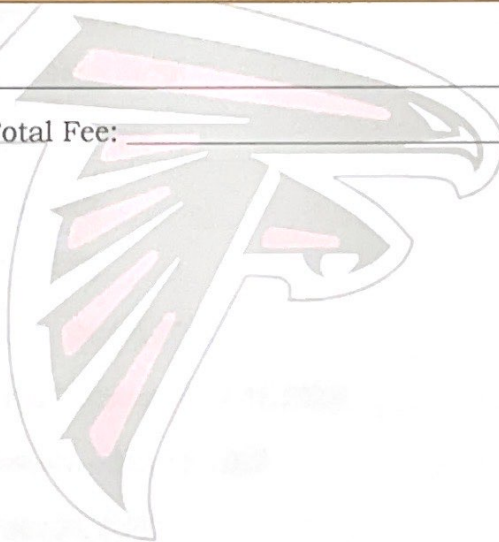
Flowery Branch

23. Information as required under Ordinance No. 349 for preliminary plat approval if rezoning involves subdivision. Ordinance No. 349 can be found at www.flowerybranchga.org

CITY STAFF ONLY

Permit Issued By: _____

Date: _____ Total Fee: _____



Re-Zoning Application - Additional Information - 5224 Chattahoochee St, Flowery Branch

1. Value of improvements upon complete build out.
 - a. \$1,500,000
2. Property Tax Valuation based upon existing millage rate
 - a. \$4,250 per unit - \$12,752 combined yearly
3. Schedule of the total build out - Construction Timeline (Approx. 5-6 Months)
 - a. Permitting - Aug 1, 2022
 - b. Grading & Slab Form - Aug 5, 2022
 - c. Framing - Aug 19, 2022
 - d. Mechanical Rough-In - Sep 14, 2022
 - e. Siding and Windows - Sep 14, 2022
 - f. Insulation & Drywall - Oct 1, 2022
 - g. Tile Installation - Oct 12, 2022
 - h. Interior Trim - Oct 19, 2022
 - i. Painting - Oct 25, 2022
 - j. Flooring - Oct 28, 2022
 - k. Cabinet Installation - Nov 4, 2022
 - l. Final Plumbing and Electrical - Nov 11, 2022
 - m. Countertop Installation - Nov 18, 2022
 - n. Landscaping - Nov 25, 2022
 - o. Final Clean & Walk-Thru - Dec 2, 2022
4. Anticipated total square footage heated
 - a. 1964 sqft (per unit)
 - b. Total (3-units) - 5,892 sqft
5. Total acreage developed with units

Re-Zoning Application - Additional Information - 5224 Chattahoochee St, Flowery Branch

- a. 0.359 Total Acres
- 6. Total acreage for right of way and roads
 - a. N/A
- 7. Total Acreage of Open Space / Landscaped Area
 - a. Approx. 10,000 sqft
- 8. Acreage required for buffer and watershed protection
 - a. N/A
- 9. Does your proposal consider Multi Transportation alternatives?
 - a. No
- 10. Please identify all amenities and total number of acres they incorporate by complete description.
 - a. Approx 10,000 sqft of landscaped greenspace
- 11. Number of street lights and separation table as proposed on your site plan.
 - a. N/A
- 12. Will technology development be included in the development?
 - a. Smart home technology integration
- 13. List the total linear feet and cubic yards for sidewalks.
 - a. Approximately 40 LF of sidewalk
- 14. Are appropriate storm water controls provided in your proposal? Are these controls completely and accurately reflected on the drawings and plans?
 - a. N/A
- 15. Has a transportation/traffic study been done to predict the impact of anticipated traffic?

Has the project been reviewed by all appropriate county and state agencies relating to transportation issues?
 - a. N/A
- 16. Does the proposal provide for utilization of "reuse" water?

Re-Zoning Application - Additional Information - 5224 Chattahoochee St, Flowery Branch

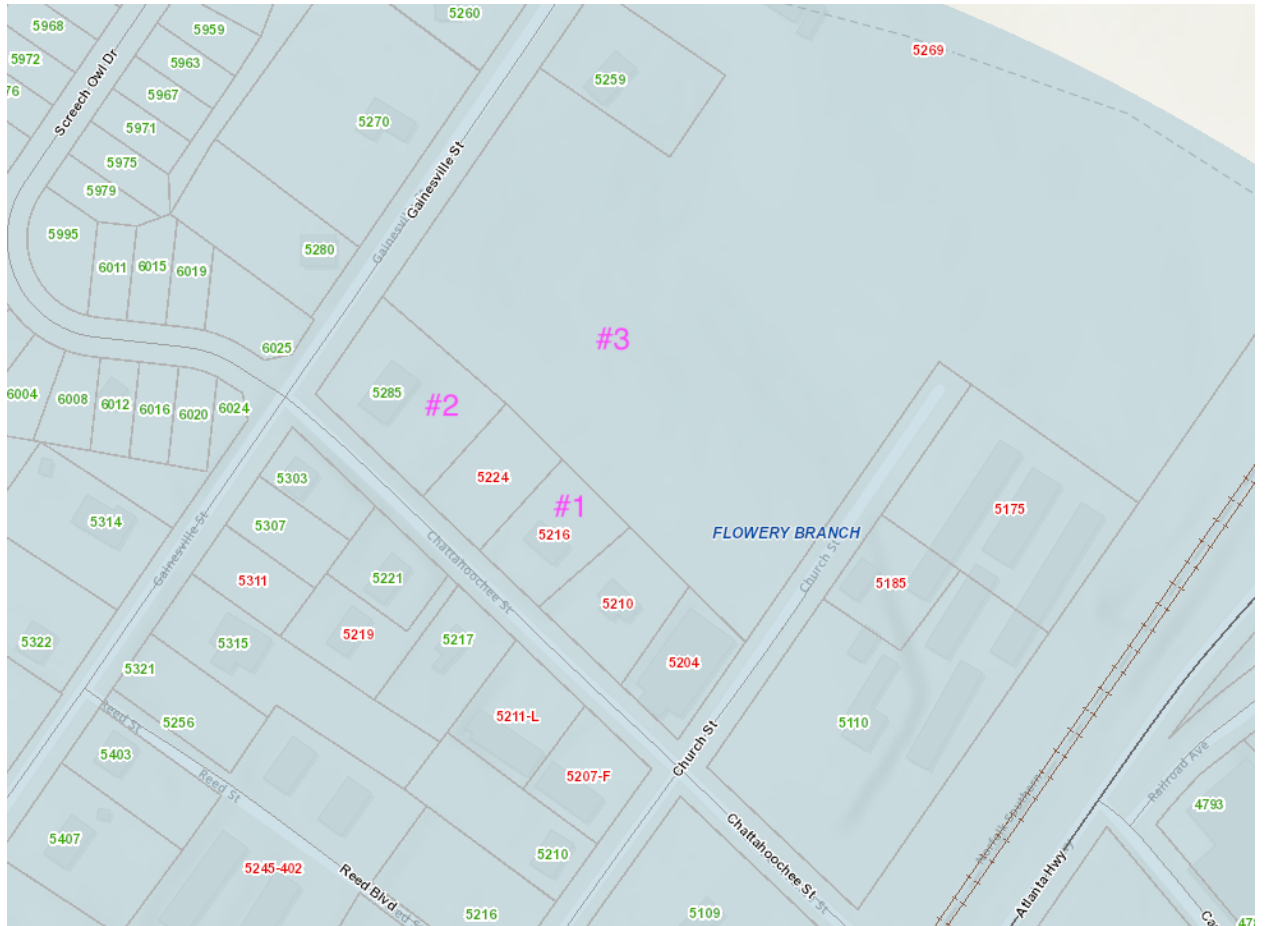
- a. No
- 17. What is the total capacity for daily wastewater management?
 - a. Approx. 450 gal/per day
- 18. What is the anticipated maximum daily water consumption? Are low flow fixtures required by the development?
 - a. 450 gal/per day
 - b. Yes some low-flow fixtures will be used
- 19. Has a slope grade study been done on this development? Does the study reflect density placement?
 - a. Not at this time - lot topography is flat / minimal slope
- 20. Please identify what public safety needs are being considered for the project?
 - a. N/A
- 21. Has the Hall County School System been notified of the proposed density for this project?
 - a. No - Only 3 Townhomes
- 22. Please provide a copy of all private covenants and/or architectural guidelines to be filed regarding this development.
 - a. N/A

Names and Addresses of Adjoining Property Owners

- 1. 5216 Chattahoochee St - Steven Hutson & Nadine Hutson
- 2. 5285 Gainesville St - Linda Millwood

Re-Zoning Application - Additional Information - 5224 Chattahoochee St, Flowery Branch

3. 106 Robertson Ct. NW - Mildred Butler



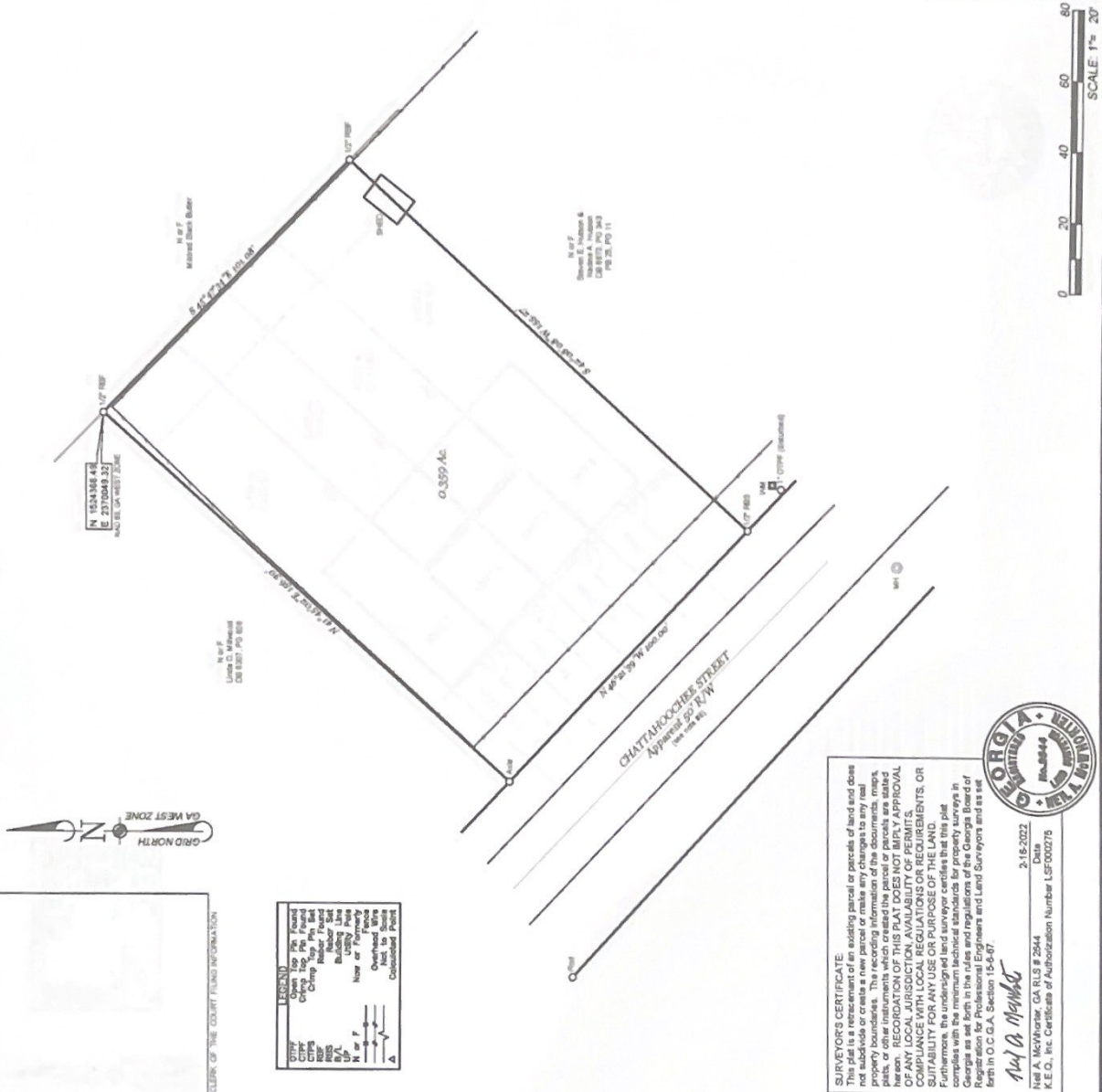
Notes:

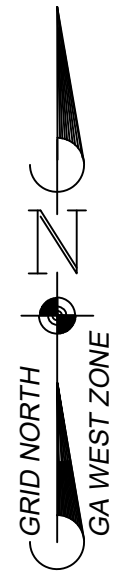
1. The comments were taken with a Leica TS-12 on 2-16-2002.
2. The comments were taken with a Leica TS-12 on 2-16-2002 and were obtained using the Compass Rule.
3. Bearings are based on Grid North, the West Zone and established using the U.S. Leica TS 12, using Universal GPS Network.
4. The Precision is 17.38, 18.65.
5. The photographs referenced herein reflect only those records necessary to establish the boundaries herein, and for reference to the same does not and is not intended to constitute a full search or title opinion.
6. This property is not located in Special Flood Hazard Insurance District as shown on FEMA Flood Insurance Rate Map (FIRM), No. 17130-0003, dated 4-2-2018.
7. Subdivisions and buffers are not shown herein. Subdivisions and buffers are governed by the local jurisdiction (City of Flower Branch/Kent County) and should be confirmed prior to planning or construction of any improvements. Boundaries shown are based on the best available information found. The old-survey deed was not found by this firm.

1. Out Claim Deed to Steven E. Hutson & Nadine A. Hutson, recorded in Deed Book 6873, Page 339.

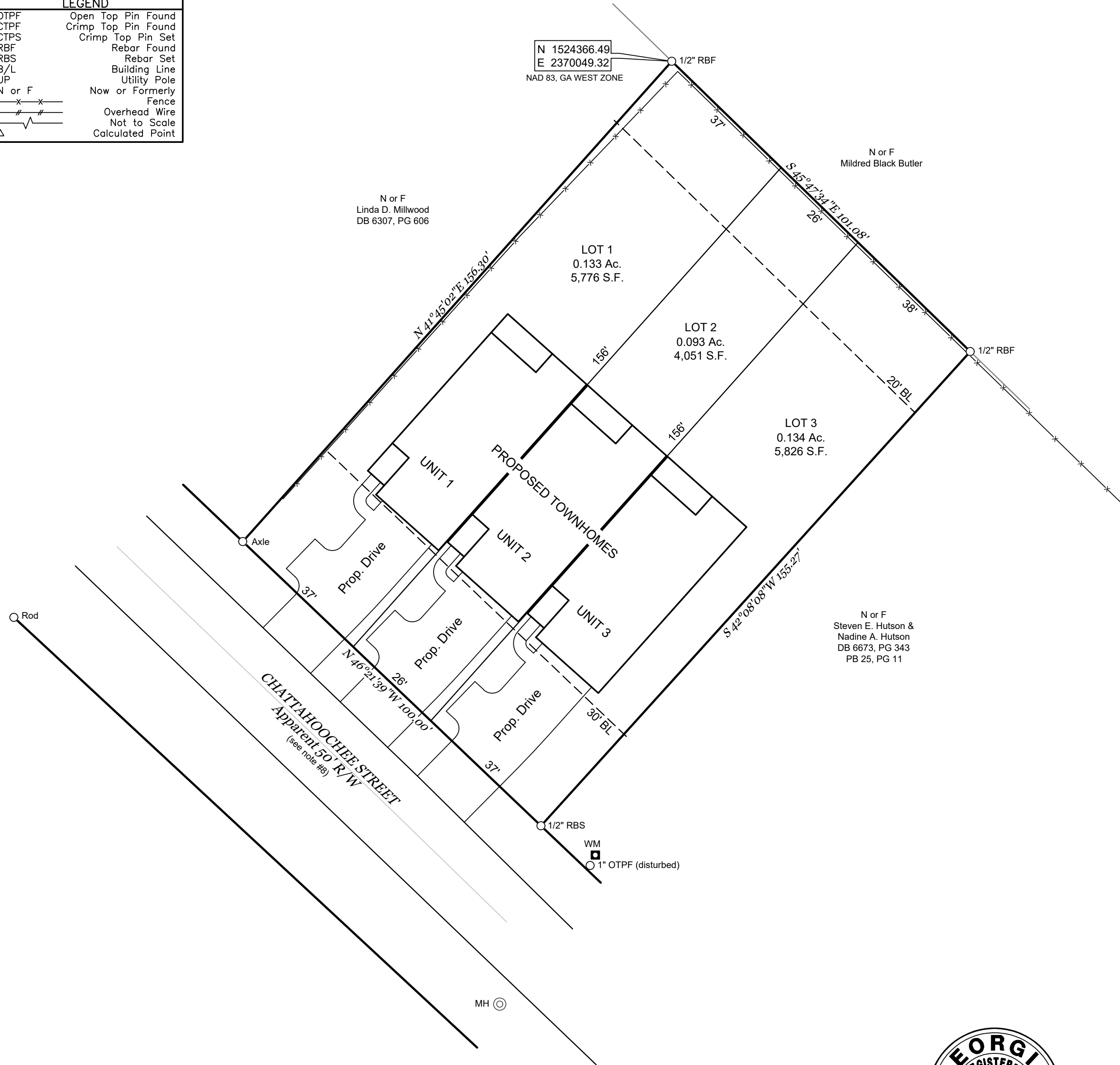
Survey of Lot 7, Mr. & Mrs. T. Stanley Perry S/O for
TYLER & BRITTANY MILSTEAD
MILSTEAD HOMES LLC
 Land Lot 112, 8th District
 City of Flowery Branch, Hall County, Georgia
 2-16-2022

Howhorter & Anderson
CIVIL ENGINEERS & SURVEYORS
416 Pride Ferry Road
Building H, Unit 300
Cumming, GA 30040
(770) 899-9430
www.hga-se.com
o K.E.O., Inc. 2022
FILE: 12529





LEGEND	
OTPF	Open Top Pin Found
CTPF	Crimp Top Pin Found
CTPS	Crimp Top Pin Set
RBF	Rebar Found
RBS	Rebar Set
B/L	Building Line
UP	Utility Pole
N or F	Now or Formerly
---	Fence
---	Overhead Wire
---	Not to Scale
Δ	Calculated Point



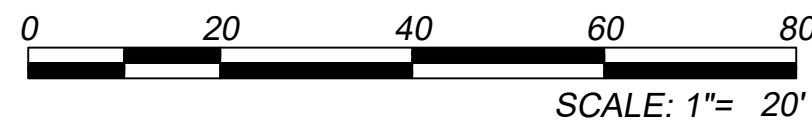
NOTES:
Boundary Survey information shown as per Survey for Tyler & Brittany Milstead, Milstead Homes LLC, by McWhorter and Anderson, dated 2-16-2022.

Site layout shown hereon is for zoning purposes only and is not an engineered document.

Current Zoning: R-1
Proposed Zoning: R-3
Total Area: 0.359 Acres
Total Lots: 3
Density: 8.4 Lots/Ac.

Minimum Lot Size: 2,000 SF
Minimum Lot Width: 20'
Maximum Height: 45'
Maximum Building Coverage: 40%
Lot 1 - Max. = 2,310 SF Proposed= 1,380 SF
Lot 2 - Max. = 1,620 SF Proposed= 1,390 SF
Lot 3 - Max. = 2,330 SF Proposed= 1,380 SF
Minimum Heated Floor Space: 1,000 SF
Minimum Landscaped area: 15%
Lot 1 - Min. = 866 SF Proposed= 2,974 SF
Lot 2 - Min. = 608 SF Proposed= 1,303 SF
Lot 3 - Min. = 874 SF Proposed= 2,907 SF

TOTAL AREA
0.359 Ac.



4-14-2022 Revise to show 3 units.

Zoning Site Plan for:
TYLER & BRITTANY MILSTEAD
MILSTEAD HOMES LLC
Land Lot 112, 8th District
City of Flowery Branch, Hall County, Georgia
3-7-2022

Mcwhorter & Anderson
LAND SURVEYING & CIVIL ENGINEERING
416 Pirkle Ferry Road
Building H, Unit 300
Cumming, GA 30040
(770) 889-9430
www.mga-se.com
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FILE: 12528Z



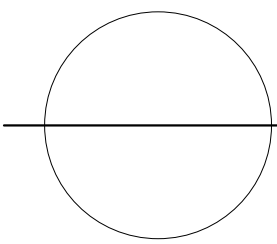
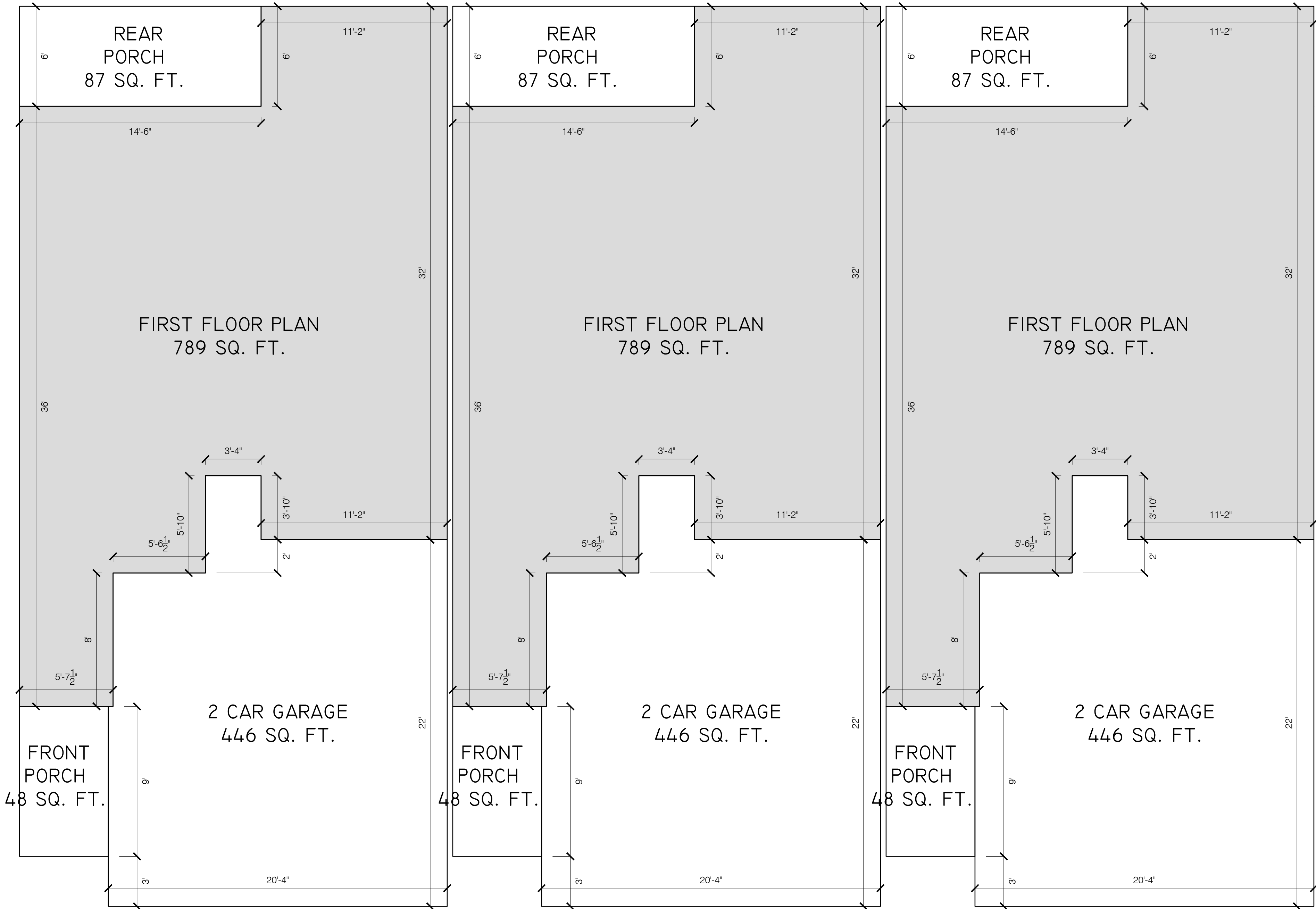












FIRST FLOOR PLAN
1/4" = 1'-0" AT 36"X24"

THE MILSTEAD
TEAM

© 2022 ALL RIGHTS RESERVED

PROJECT NAME:
TRIPLEX PLAN
5224 CHATTAHOOCHEE ST.
FLOWERY BRANCH, GA

REVIEWS:

No.	DATE	DESCRIPTION
01	04/08/22	FLOOR PLAN STUDY

PROJECT #:	TRIPLEX PLAN
DRAWN BY:	AV
CHECKED BY:	
CAD DWG FILE:	

SHEET TITLE
SQUARE FOOTAGE

A 1.1



PROJECT NAME:

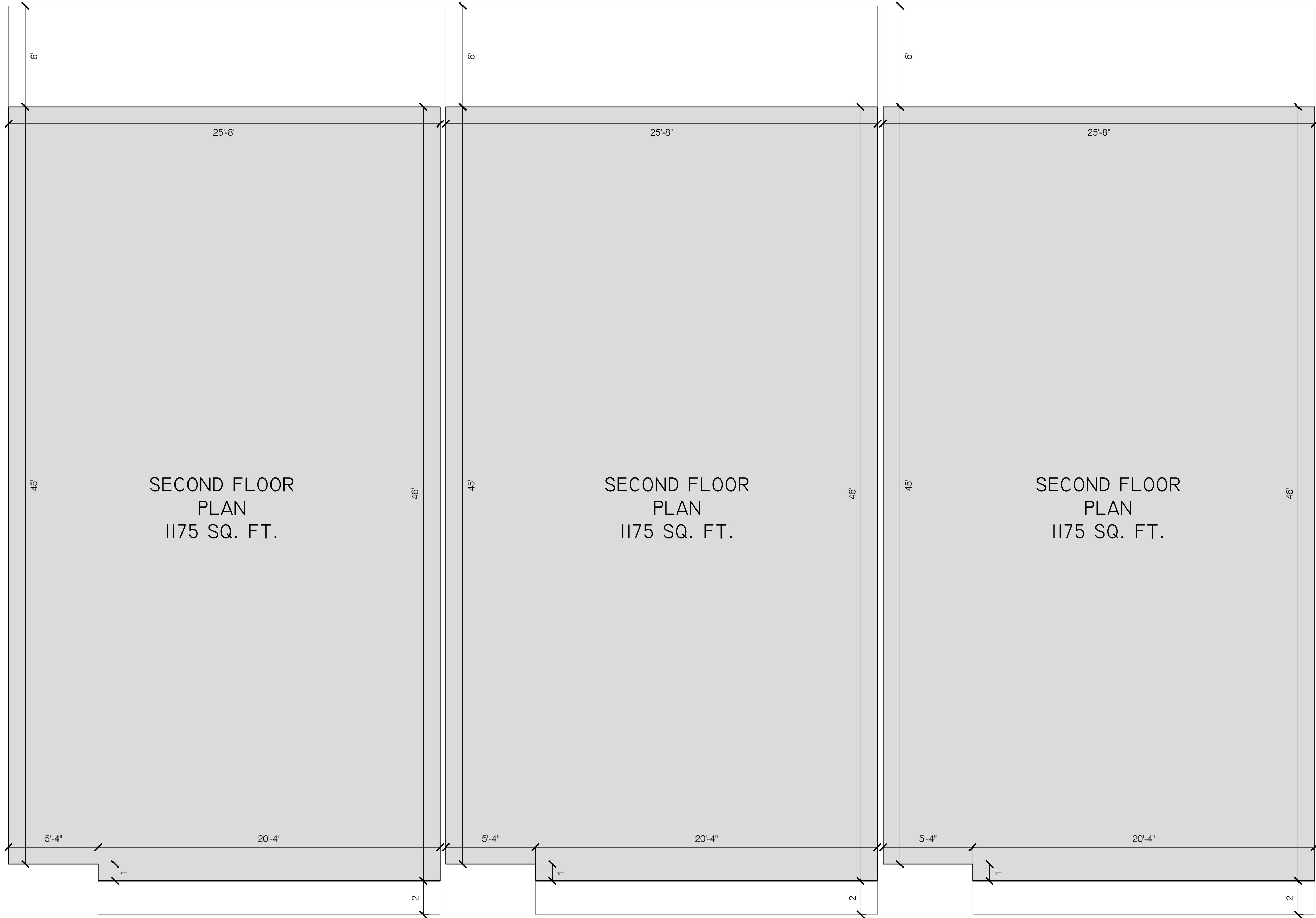
TRIPLEX PLAN
5224 CHATTAHOOCHEE ST.
FLOWERY BRANCH, GA

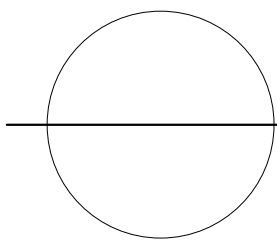
REVIEWS:		
No.	DATE	DESCRIPTION
01	04/08/22	FLOOR PLAN STUDY
PROJECT #: TRIPLEX PLAN		
DRAWN BY: AV		
CHECKED BY:		
CAD DWG FILE:		

SHEET TITLE

SQUARE FOOTAGE

A 1.2



 SECOND FLOOR PLAN

1/4" = 1'-0" AT 36"X24"



DOOR SCHEDULE SYMBOL
2668 REPRESENTS A 2'4\"/>

FIRST FLOOR PLAN
1/4" = 1'-0" AT 36"X24"

THE MILSTEAD
TEAM

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PROJECT NAME:
TRIPLEX PLAN
5224 CHATTAHOOCHEE ST.
FLOWERY BRANCH, GA

REVIEWS:

No.	DATE	DESCRIPTION
01	04/08/22	FLOOR PLAN STUDY

PROJECT #: TRIPLEX PLAN
DRAWN BY: AV
CHECKED BY:
CAD DWG FILE:

SHEET TITLE

FIRST FLOOR PLAN -
3-PLEX

A 1.8



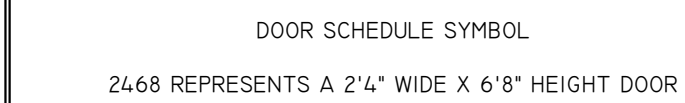
2022 ALL RIGHTS RESERVED

**TRIPLEX PLAN
5224 CHATTAHOOCHEE ST.
FLOWERY BRANCH, GA**

[illegible]

SHEET TITLE

A 1.9



1/4" = 1'-0" AT 36"X24"

LEGEND

CWP	Open Top Pin Found
CWP	Close Top Pin Found
CWP	Open Top Pin Set
RSP	Rubber Found
RSP	Rubber Set
B/L	Building Line
UP	Utility Pole
N or F	Now or Formerly
F	Fence
O	Overhead Wire
A	Not to Scale
P	Calculated Point

NOTES:
Boundary Survey information shown as per Survey for Tyler & Brittany Milstead, Milstead Homes LLC, by McWhorter and Anderson, dated 3-16-2022.
Site layout shown herein is for zoning purposes only and is not an engineered document.

**Current Zoning: R-1
Proposed Zoning: R-3**
Total Area: 0.359 Acres
Total Lots: 3
Density: 6.4 Lots/Ac.

**Minimum Lot Size: 2,000 SF
Minimum Lot Width: 20'
Maximum Height: 40'
Maximum Building Coverage: 40%**

Lot	Area	Sq Ft	Proposed
Lot 1 - Max	2,310	SF	Proposed= 1,360 SF
Lot 2 - Max	1,620	SF	Proposed= 1,360 SF
Lot 3 - Max	2,300	SF	Proposed= 1,360 SF

Minimum Landscaped Area: 10%

Lot	Min	Sq Ft	Proposed
Lot 1 - Min	660	SF	Proposed= 2,974 SF
Lot 2 - Min	660	SF	Proposed= 1,303 SF
Lot 3 - Min	674	SF	Proposed= 2,967 SF

TOTAL AREA: 0.359 AC.

4-14-2022 Revise to show 3 units

**Zoning Site Plan Per:
TYLER & BRITTANY MILSTEAD
MILSTEAD HOMES LLC
Land Lot 112, 8th District
City of Flowery Branch, Paul County, Georgia
3-7-2022**

**McWhorter & Anderson
CIVIL SURVEYING &
LAND SURVEYING &
ENGINEERING**
416 Pickle Ferry Road
Building H, Unit 820
Cumming, GA 30040
(770) 889-9430
www.mca-survey.com
© K.E.O., Inc. 2022
FILE: 12822



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: A public hearing to consider a request from Chattahoochee Construction Managers, LLC/MQ Development, LLC to rezone two tracts of land from Residential, Detached Single-Family, Moderate-Density District (R-2) to Residential Multi-Family District (R-3). Tract one is a 3.52+/- acre tract of land identified as 5674 Mulberry Street, tax parcel number 08116 000023, tract two is a 4.7+/- acre tract of land identified as 5740 Mulberry Street, tax parcel number 08116 000022.

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

Schedule:

June 2 Public Hearing

July 21 First Vote

August 4 Work Session (if requested)

August 18 Second Vote

FACTS AND ISSUES:

A request to rezone two parcels of land off of Mulberry Street totalling 8 +/- acres with the intent to develop a fifty-five townhome subdivision.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

No action at this time.

SAMPLE MOTION:

No vote at this time - public hearing only.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Mulberry Townhomes Parcel 1.pdf](#)
- [Mulberry Townhomes Parcel 2.pdf](#)



Mulberry Street Townhomes

Parcel 08116 000023

Chattahoochee Construction Managers

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Letter of Intent

4/11/2022

City of Flowery Branch
Community Development
PO Box 757
Flowery Branch, Georgia 30542

Rich Atkinson
Director of Planning and Community Development:

Mulberry Street Tract (Parcel Numbers 08116 000022, 08116 000023)

Dear Mr. Atkinson:

Please let this letter serve as our letter of intent to accompany our Rezoning Application for the project located at 5674 & 5740 Mulberry Street. The proposed use for the property is for an 8-acre attached townhome development. We are proposing 55 attached townhomes, yielding a density of 6.875 units per acre. We are requesting the subject property to be rezoned from the existing R2- Residential to R3 Residential Multi-Family District.

Architecture	• Brick, stone, and/or concrete siding will be used on all facades. • A minimum of 2 feet of brick or stone above the ground line is required • Architectural Shingles • Two Car Garage Minimum
Driveways	• Driveway width minimum 16 feet
Landscape Strip	• 10-foot landscape strip alongside Mulberry Street w/ shrubs and trees every 50 feet
Landscaping	• A mandatory HOA provides all grass and common area upkeep. • Front, Rear, and Side yards shall be sodded • Landscape Entrance
Proposed Amenities	• Common Areas • Park Area
Proposed Buffer	• 20 Foot Natural Undisturbed Buffer adjacent to residentially zoned properties as shown on the Zoning Exhibit

Setbacks Minimum Lot & Square Footage	Townhome- As shown on concept plan, 1800 SF
Sidewalks	Internal streets will be five feet wide.
Townhome Square Footage	1,800 Square Feet Minimum

We feel that our project supports the recommendations laid out in the Comprehensive Plan by providing an affordable 55-unit townhome community that incorporates design elements that embrace the historical foundation of the City of Flowery Branch.

We appreciate your time and thought in considering this rezoning proposal, and please do not hesitate to contact us with any concerns.

Sincerely,

Chris Fowler



Rezoning Application: City of Flowery Branch Mulberry Street



REZONING APPLICATION

Date: 4/11/2022

Address of Request:

Mulberry Street Tract (Parcel Numbers 08116 000023)

Tax Map # See Above **Current Zoning:** R2

Is this site located within the boundaries of the historic district? No

Currently a conforming use? Yes

Any conditions of zoning, CUP's, etc.? N/A

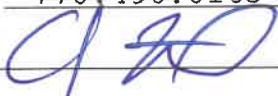
Applicant Information

Name: Chattahoochee Construction Managers, LLC / MQ Development, LLC

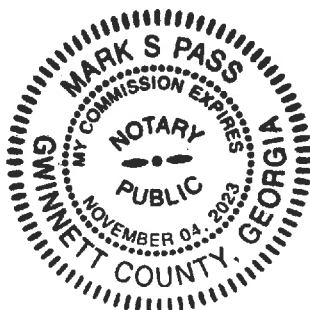
Address: 4111 Commerce St. Suite 400 Flowery Branch, Ga 30542
4111 Commerce St. Suite 400 Flowery Branch, Ga 30542

E-mail address: cfowler316@aol.com mqdev86@gmail.com

Phone number: 770.490.0163 678.617.5844

Signature:  

Notary:



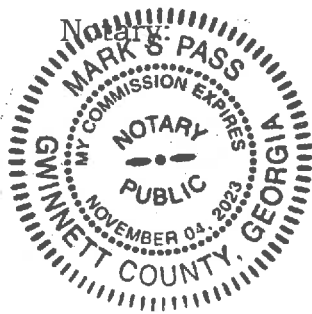
Mark S. Pass
4-11-22



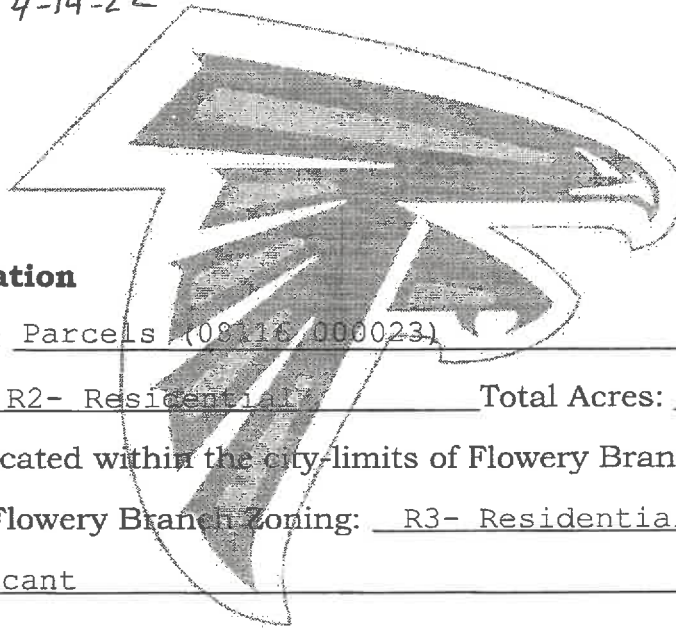
Property owner information (if different than the applicant)

Property owner (please print): Charles D & Shirley L Titshaw Family, LP

Signature of property owner: Shirley L. Titshaw General Partner



Mark S. Pass
4-14-22



Property Information

Tax Map Number: Parcels (08116 000023)

Current Zoning: R2- Residential Total Acres: 3.314

Is this property located within the city-limits of Flowery Branch? Yes

Proposed City of Flowery Branch Zoning: R3- Residential

Current Use: Vacant

Please review the Flowery Branch Code of Ordinances, Appendix C, "Zoning Ordinance", Article 34, for complete requirements.

Please provide the following at time of submittal in (one hard copy and digitally):

- Legal description
- Current survey of property



- Site plan shall meet the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.5
- Development statistics per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.6
- Analysis requirements per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.7
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)
- Names and addresses of adjoining property owners
- Reasons for requesting rezoning
- Signed statement authorizing City of Flowery Branch staff and/or City Council to inspect the subject property

Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

None

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

None

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

None



Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

None _____

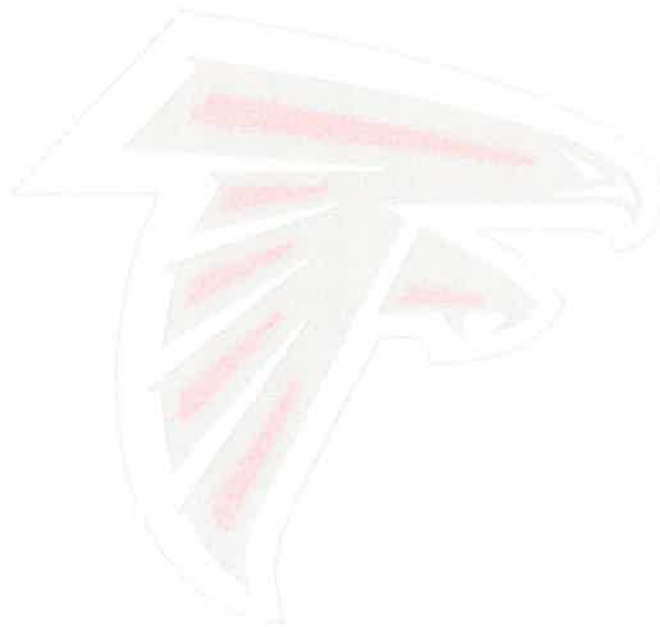
CITY STAFF ONLY

Application Received By: _____

Date: _____ Total Fee: _____



Flowerly Branch



Legal Description

Legal Description 08116 000023

All that tract or parcel of land lying and being located in Tax Parcel No. 08116 000023 of the City of Flowery Branch, Hall County, Georgia containing 4.686 acres according to a survey for C.S Titshaw Estate, prepared by Venable & Associates, Inc, by Allen L. Venable, LS (Georgia Registered Land Surveyor No. 1761) dated December 27th, 2000, and being more particularly described according to said survey as follows.

Beginning at the Marker Found inside the R/W at the corner of the property; Thence North 24° 26' 50" West a distance of 11.1 feet; Thence North 24° 26' 50" West a distance of 389.15 feet; Thence North 53° 17' 37" East a distance of 406.64 feet; Thence a curve to the right, having a LC of 120.06 feet and a bearing of 46° 37' 35"; Thence South 44° 45' 57" East a distance of 126.05 feet; Thence South 38° 43' 02" West a distance of 545.17 feet, to the point of beginning; Containing 3.314 acres.

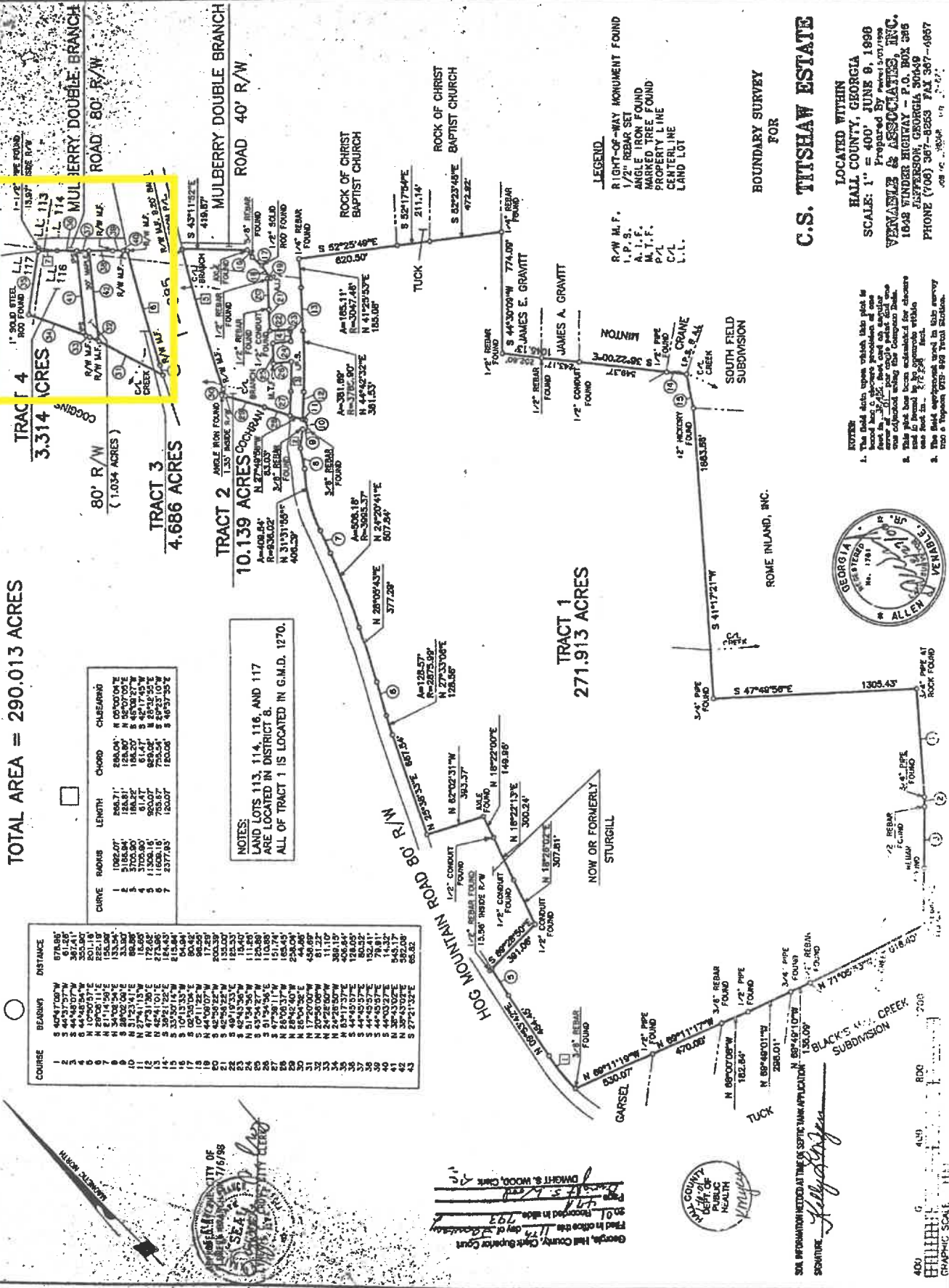
Survey

TOTAL AREA = 290.013 ACRES

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	1082.07'	286.04'	286.04'	N 0°00'00"E
2	5106.94'	128.80'	128.80'	N 32°07'00"E
3	3700.80'	128.80'	128.80'	N 32°07'00"E
4	3700.80'	128.80'	128.80'	N 32°07'00"E
5	11304.16'	920.07'	920.07'	N 28°12'55"E
6	11035.16'	753.57'	753.57'	N 28°12'55"E
7	2377.83'	120.07'	120.07'	N 46°37'35"E

NOTES:
LAND LOTS 113, 114, 116, AND 117
ARE LOCATED IN DISTRICT 8.
ALL OF TRACT 1 IS LOCATED IN G.M.D. 1270.

COURSE	BEARING	DISTANCE
1	S 80°47'00"W	878.98'
2	S 30°17'20"W	361.26'
3	S 44°45'00"W	355.90'
4	S 44°45'00"W	355.90'
5	N 10°00'00"E	201.18'
6	N 10°00'00"E	155.00'
7	N 31°23'14"E	153.94'
8	N 34°02'54"E	153.94'
9	N 37°21'15"W	15.00'
10	N 47°31'20"E	172.65'
11	N 47°31'20"E	172.65'
12	N 35°12'15"E	144.45'
13	N 35°12'15"E	144.45'
14	N 35°12'15"E	144.45'
15	N 35°12'15"E	144.45'
16	N 35°12'15"E	144.45'
17	N 35°12'15"E	144.45'
18	N 35°12'15"E	144.45'
19	N 35°12'15"E	144.45'
20	N 35°12'15"E	144.45'
21	N 35°12'15"E	144.45'
22	N 35°12'15"E	144.45'
23	N 35°12'15"E	144.45'
24	N 35°12'15"E	144.45'
25	N 35°12'15"E	144.45'
26	N 35°12'15"E	144.45'
27	N 35°12'15"E	144.45'
28	N 35°12'15"E	144.45'
29	N 35°12'15"E	144.45'
30	N 35°12'15"E	144.45'
31	N 35°12'15"E	144.45'
32	N 35°12'15"E	144.45'
33	N 35°12'15"E	144.45'
34	N 35°12'15"E	144.45'
35	N 35°12'15"E	144.45'
36	N 35°12'15"E	144.45'
37	N 35°12'15"E	144.45'
38	N 35°12'15"E	144.45'
39	N 35°12'15"E	144.45'
40	N 35°12'15"E	144.45'
41	N 35°12'15"E	144.45'
42	N 35°12'15"E	144.45'



LEGEND
RIGHT-OF-WAY MONUMENT FOUND
1/2" REBAR SET
ANGLE IRON FOUND
MARKED TREE FOUND
PROPERTY LINE
CENTERLINE
LAND LOT

BOUNDARY SURVEY
FOR
C.S. TITSHAW ESTATE

LOCATED WITHIN
HALL COUNTY, GEORGIA
SCALE: 1" = 400'
Prepared by JUNE 9, 1990
VENABLE & ASSOCIATES, INC.
1643 VINDER HIGHWAY - P.O. BOX 285
JEFFERSON, GEORGIA 30649
PHONE (706) 387-8253 FAX 387-4857



NOTES:
1. The field data upon which this plat is based has been checked and found to be correct. The plat is a true and correct representation of the field data.
2. This plat has been submitted for change and is being held for 30 days.
3. The field data was taken in this survey and a Trough 075-8253 Trough Station.

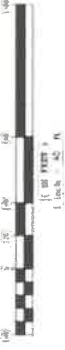
SEA INFORMATION PROVIDED AT THE SEPTIC TANK APPLICATION
SIGNATURE: *Allen S. Venable*
DATE: 6/9/90
GRAPHIC SCALE: 1" = 400'

Site Plan

GENERAL NOTES:

1. TOTAL ACREAGE - 8.0 ACRES
2. PROPOSED UNITS - 55
3. DENSITY - 4.75 UNITS/ACRE
4. EXISTING ZONING - R3
5. PROPOSED ZONING - R3 TOWNHOMES

GRAPHIC SCALE



BLDG	UNIT	AREA
A	1	10
B	1	10
C	1	10
D	1	10
E	1	10
F	1	10
G	1	10
H	1	10
I	1	10
J	1	10
K	1	10
TOTAL		55



34.6 Development Statistical Requirements

Development Statistical Requirements

- a) Maximum and proposed height of any structure

30'/28'

- b) Maximum and proposed gross square footage of the building area (nonresidential only)

N/A

- c) Color renderings of any proposed structures

Renderings attached

- d) Material list (with percentages) of any proposed structures

Masonry: 10%, Hardy Plank: 66%, Glass: 24%

- e) Maximum and proposed number of dwelling units and minimum and proposed square footage of heated floor area for any dwelling unit (residential only)

55 Units/ 1800 SF

- f) Maximum and proposed lot coverage of building area (square feet and percent)

1200 SF, 19% per lot. 1200 SF x 55 Lots = 66,000 SF

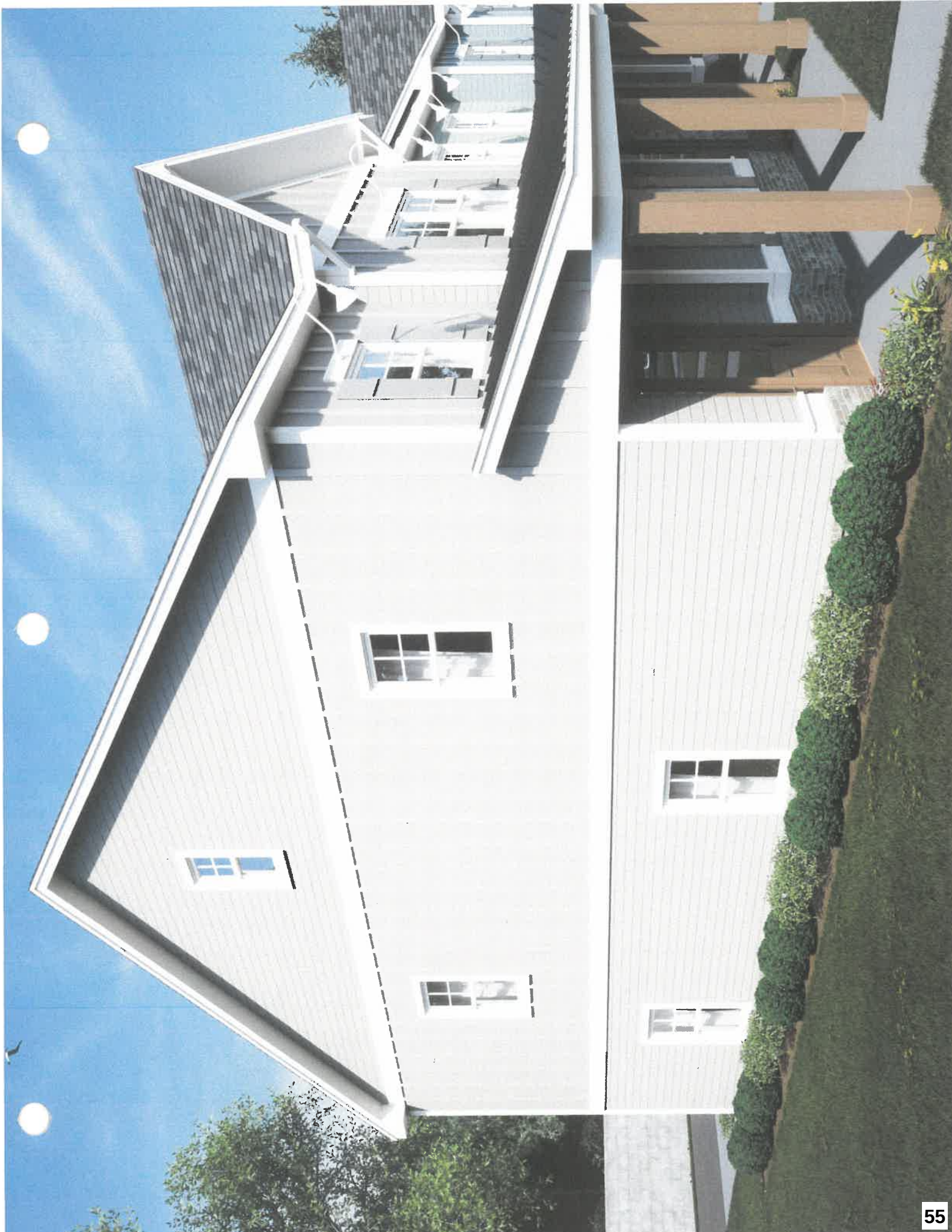
- g) Minimum and proposed square footage of landscaped area (square feet and percent)

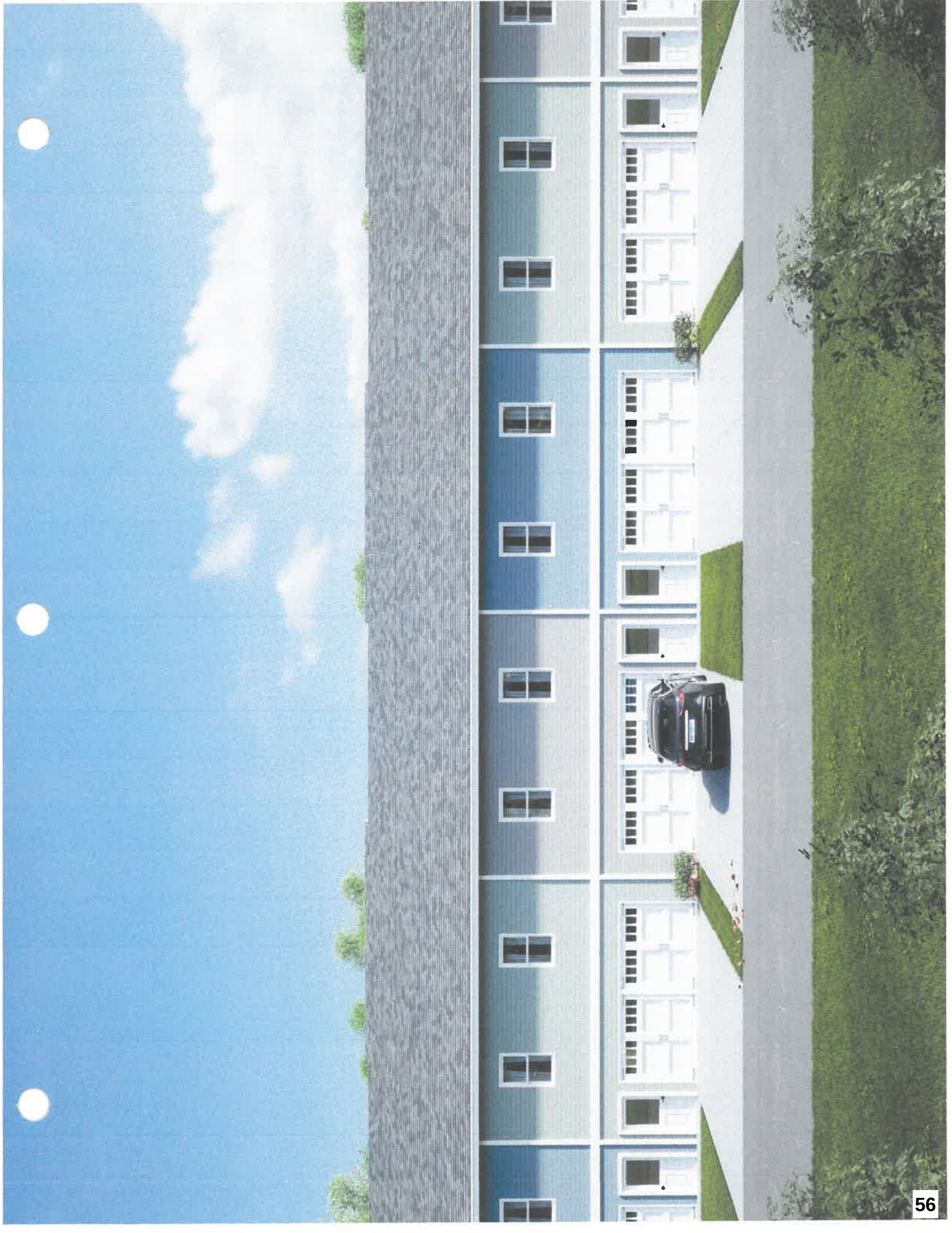
153,182 SF out of 348,480 SF, 44%

- h) Minimum, maximum, and proposed number of parking spaces.

31 Proposed parking spaces









34.7 Analysis Requirements

Analysis Requirements

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

The adjacent property is R3 and the proposed R3 is suitable of nearby property.

- b) Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.

The planned R3 zoning will have no negative impact on the neighboring property's current use.

- c) Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has a reasonable economic use as currently zoned.

No, the land is currently designated R2 and does not have a reasonable economic purpose.

- d) Whether the 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 proposed zoning of R3, for a planned 55 townhomes development, would not result in an excessive or burdensome use of roadways, infrastructure, utilities, or schools.

- e) Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.

The City's Comprehensive Plan shows the area being mixed use and would be consistent with the overall plan.

- f) 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 proposal.

This development will help grow the community and give Flowery Branch visibility from the Interstate.

- g) Existing use(s) and zoning of the subject property and nearby properties.

Within the Immediate Area, there are both commercial and residential uses.

- h) Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.

The property has been vacant, due to the topography, lot size, and layout.

- i) Whether a proposed zoning map amendment or conditional use

approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.

This development would not prevent neighboring properties from being improved. It will expand Flowery Branch's housing possibilities.

- j) The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.

This would not create an isolated zoning district. This development will be zoned the same as its adjoining properties.

- k) Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.

There would be no negative effects in change to zoning map or use.

- l) The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.

The development will be designed in accordance with the Georgia Soil and Water Conservation Commission and would have minimal effects.

m) The relation that the proposed map amendment or conditional use bears

to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

This region is designated as mixed-use on the Comprehensive Map. The suggested plan will fulfill the zoning ordinance's objectives.

Adjacent Property Owners

Adjacent Property Owners

Mulberry Street Rezoning

R2-R3

08117 002001

ADVENTURES REAL ESTATE LLC

6000 WELLSRING TRAIL

GAINESVILLE, GA 30506

Additional Information Requirement



REZONING ADDITIONAL INFORMATION REQUIREMENT

Date: 4/11/2022

Address of Request:

5674 & 5740 Mulberry Street

Tax Map # 08116 000022 & 08116 000023 Current Zoning: R2- Residential

Please submit an analysis of the proposed project including:

1. Value of improvements upon complete build out.
Approximately \$13,750,000
2. Property tax valuation based upon existing millage rate (indicate total tax expectation if project is phased).
3. Schedule of the total build out (showing a timeline of construction in months/years if project is phased).

Approximately 24 months

4. Anticipated total square footage (heated) to be built in the requested number of units.

Approximately 99,000 sf for 55 units

5. Total acreage developed with units.

8.00 Acres

6. Total acreage for right of way and roads.

1610 LF x 50 foot ROW= 80,500 SF = 1.8480257 acres in ROW This ROW is already owned by City of Flowery Branch



7. Total acreage of open space/common area (include plan for maintenance of open space/common area).

4.97 acres

8. Acreage required for buffer and watershed protection.
- Does the buffer comply with the current City ordinance? Yes
 - Do individual property lines for lots extend into the buffer? - Does the Developer intend to dedicate any of the site area to the City? If so, for what purpose?

No

9. Does your proposal consider Multi Transportation alternatives? (Please describe in detail)

None

10. Please identify all amenities and total number of acres they incorporate by complete description.

Park, natural areas, open space 4.97 acres

11. Number of streetlights and separation table as proposed on your site plan.
- Approximately 17

12. Will Technology Development be included in this development?

Internet/Fiber/TV

13. List the total linear feet and cubic yards for sidewalks.

1610 LF x 2 LF= 3220 LF x 5 LF =16,100 SF X .33 FT = 197 CY

14. Are appropriate storm water controls provided in your proposal? Are these controls completely and accurately reflected on all drawings and plans?

Yes, conceptual ponds only, remaining to be finalized after rezoning.



15. Has a transportation/traffic study been done to predict the impact of anticipated traffic? Has the project been reviewed by all appropriate County and State agencies relating to transportation issues?

No

16. Does the proposal provide for utilization of “reuse” water? Is this depicted on the plans? Do the plans provide for storage of “reuse” water?

No

17. What is the total capacity for daily Wastewater Management?

300 GPD/unit

18. What is the anticipated maximum daily water consumption? Are low flow fixtures required by the development?

300 GPD/unit

19. Has a slope and grade study been done on this development? Does the study reflect density placement?

Preliminary site plan with topo

20. Please identify what public safety needs are being considered for the project?

N/A

21. Has the Hall County School System been notified of the proposed density for this project?

No

22. Please provide a copy of all private covenants and/or architectural guidelines to be filed regarding this development.

Included in letter of intent.



23. Information as required under Ordinance No. 349 for preliminary plat approval if rezoning involves subdivision. Ordinance No. 349 can be found at www.flowerlybranchga.org

CITY STAFF ONLY

Permit Issued By: _____

Date: _____ Total Fee: _____

Inspection Form

I, Shirley L Titshaw, General Partner for Charles D & Shirley L Titshaw Family, L
owner of parcels 08116 000022 & 08116 000023, hereby grant the City of Flowery Branch Staff
and/or City Council to inspect the above Subject Property as necessary for rezoning application
process.

Shirley L Titshaw

Printed Name:

Shirley L Titshaw

4-14-22

Signature, Date:



Mark S. Pass
4-14-22



Mulberry Street Townhomes

Parcel 08116 000022

Chattahoochee Construction Managers

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Letter of Intent

4/11/2022

City of Flowery Branch
Community Development
PO Box 757
Flowery Branch, Georgia 30542

Rich Atkinson
Director of Planning and Community Development:

Mulberry Street Tract (Parcel Numbers 08116 000022, 08116 000023)

Dear Mr. Atkinson:

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Architecture	• Brick, stone, and/or concrete siding will be used on all facades. • A minimum of 2 feet of brick or stone above the ground line is required • Architectural Shingles • Two Car Garage Minimum
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Sidewalks	Internal streets will be five feet wide.
Townhome Square Footage	1,800 Square Feet Minimum

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We appreciate your time and thought in considering this rezoning proposal, and please do not hesitate to contact us with any concerns.

Sincerely,

Chris Fowler



Rezoning Application: City of Flowery Branch Mulberry Street



REZONING APPLICATION

Date: 4/11/2022

Address of Request:

Mulberry Street Tract (Parcel Numbers 08116 000022)

Tax Map # See Above **Current Zoning:** R2

Is this site located within the boundaries of the historic district? No

Currently a conforming use? Yes

Any conditions of zoning, CUP's, etc.? N/A

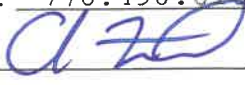
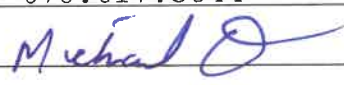
Applicant Information

Name: Chattahoochee Construction Managers, LLC / MQ Development, LLC

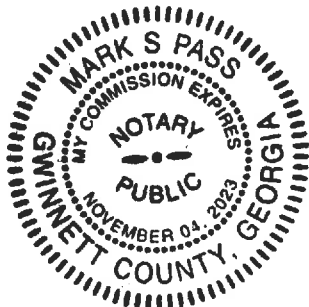
Address: 4111 Commerce St. Suite 400 Flowery Branch, Ga 30542
4111 Commerce St. Suite 400 Flowery Branch, Ga 30542

E-mail address: cfowler316@aol.com mqdev86@gmail.com

Phone number: 770.490.0163 678.617.5844

Signature:  

Notary:



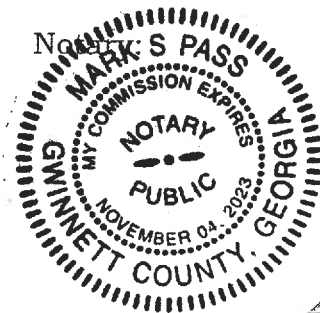
Mark S. Pass
4-11-22



Property owner information (if different than the applicant)

Property owner (please print): Charles D & Shirley L Titshaw Family, L P

Signature of property owner: Shirley L. Titshaw General Partner



Mark S. Pass
4-14-22

Property Information

Tax Map Number: Parcels (08116 000022)

Current Zoning: R2- Residential Total Acres: 4.686

Is this property located within the city limits of Flowery Branch? Yes

Proposed City of Flowery Branch Zoning: R3- Residential

Current Use: Vacant

Please review the Flowery Branch Code of Ordinances, Appendix C, "Zoning Ordinance", Article 34, for complete requirements.

Please provide the following at time of submittal in (one hard copy and digitally):

- Legal description
- Current survey of property



- Site plan shall meet the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.5
- Development statistics per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.6
- Analysis requirements per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.7
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)
- Names and addresses of adjoining property owners
- Reasons for requesting rezoning
- Signed statement authorizing City of Flowery Branch staff and/or City Council to inspect the subject property

Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

None

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

None

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

None



Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

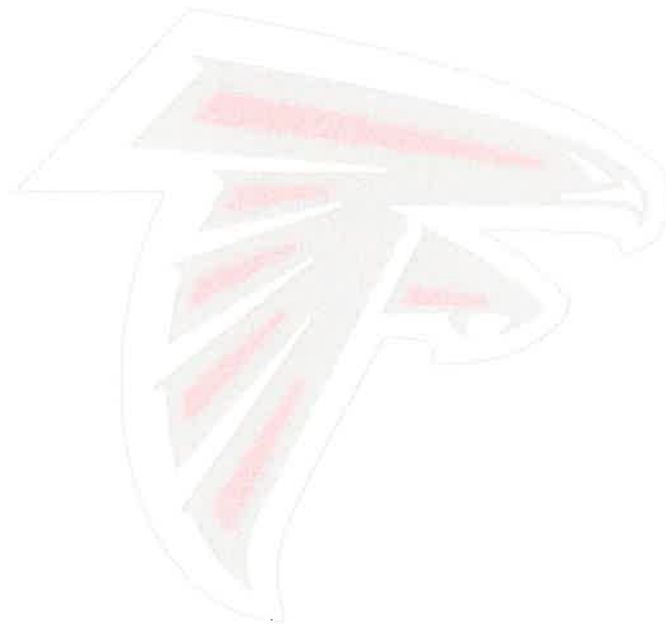
Amount of Description of Gift

None

CITY STAFF ONLY

Application Received By: _____

Date: _____ Total Fee: _____



Legal Description

Legal Description Parcel 08116 000022

All that tract or parcel of land lying and being located in Tax Parcel No. 08116 000022 of the City of Flowery Branch, Hall County, Georgia containing 4.686 acres according to a survey for C.S Titshaw Estate, prepared by Venable & Associates, Inc, by Allen L. Venable, LS (Georgia Registered Land Surveyor No. 1761) dated December 27th, 2000, and being more particularly described according to said survey as follows.

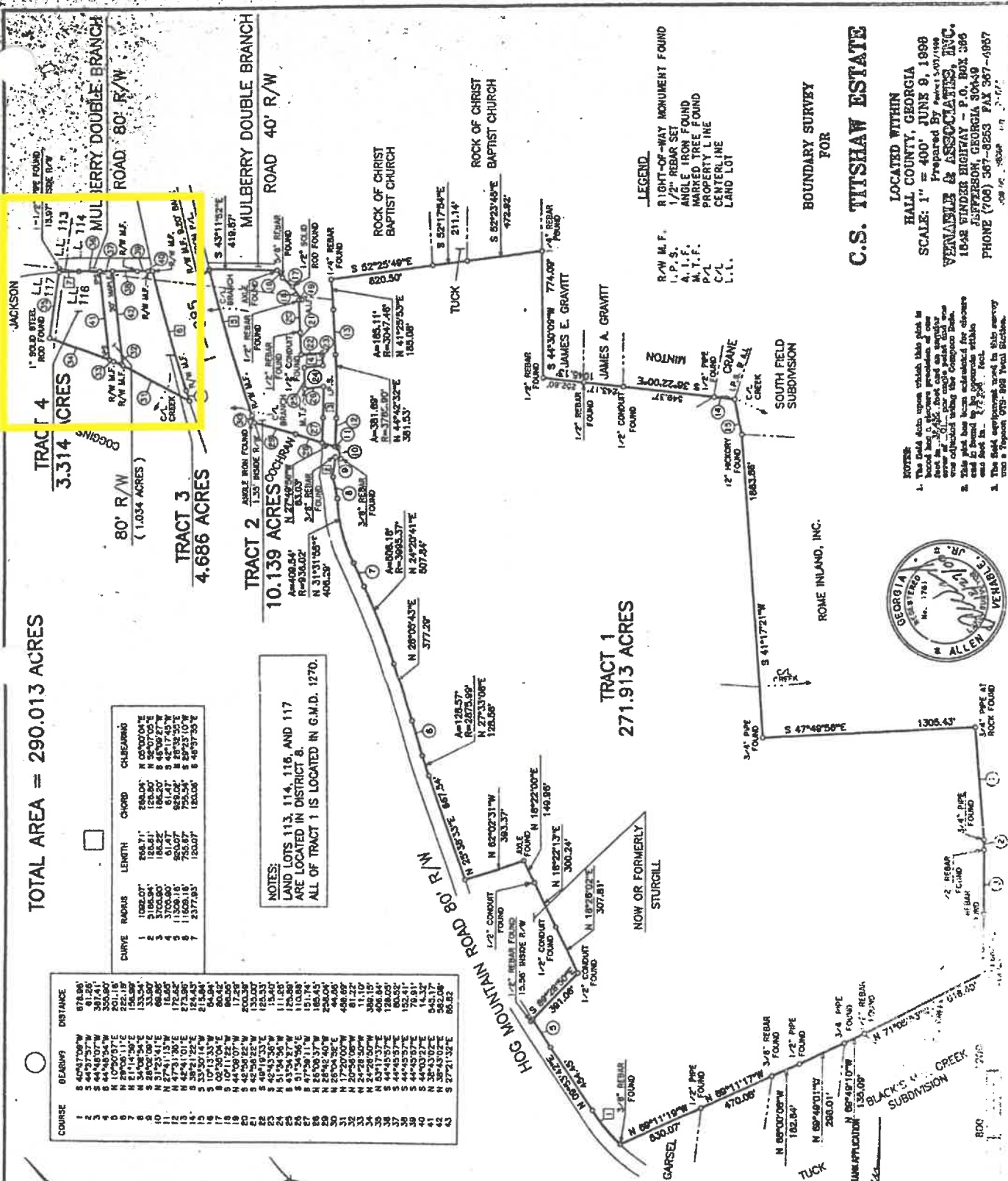
Beginning at the Marker Found inside the DOT R/W of I- 985 at the corner of the property Thence a curve to the left, having a LC of 755.67 feet and a bearing of 29° 23' 10"; Thence South 27° 21' 32" West a distance of 65.82 feet; Thence North 17° 20' West a distance of 456.69 feet; Thence North 38° 43' 02" East a distance of 582.08 feet; Thence South 44° 45' 57" East a distance of 152.41 feet; Thence South 44° 45' 57" East a distance of 79.91 feet; Thence South 44° 03' 27" East a distance of 14.32 feet, to the point of beginning; Containing 4.686 acres.

Survey

TOTAL AREA = 290.013 ACRES

COURSE	BEARING	DISTANCE
1	S 40°37'00"W	878.96'
2	S 81°41'00"W	381.41'
3	S 44°40'00"W	355.00'
4	N 10°00'00"E	100.00'
5	N 24°00'00"E	333.54'
6	N 34°00'00"E	333.54'
7	N 47°31'30"E	172.42'
8	N 47°31'30"E	172.42'
9	N 47°31'30"E	172.42'
10	N 47°31'30"E	172.42'
11	N 47°31'30"E	172.42'
12	N 47°31'30"E	172.42'
13	N 47°31'30"E	172.42'
14	N 47°31'30"E	172.42'
15	N 47°31'30"E	172.42'
16	N 47°31'30"E	172.42'
17	N 47°31'30"E	172.42'
18	N 47°31'30"E	172.42'
19	N 47°31'30"E	172.42'
20	N 47°31'30"E	172.42'
21	N 47°31'30"E	172.42'
22	N 47°31'30"E	172.42'
23	N 47°31'30"E	172.42'
24	N 47°31'30"E	172.42'
25	N 47°31'30"E	172.42'
26	N 47°31'30"E	172.42'
27	N 47°31'30"E	172.42'
28	N 47°31'30"E	172.42'
29	N 47°31'30"E	172.42'
30	N 47°31'30"E	172.42'
31	N 47°31'30"E	172.42'
32	N 47°31'30"E	172.42'
33	N 47°31'30"E	172.42'
34	N 47°31'30"E	172.42'
35	N 47°31'30"E	172.42'
36	N 47°31'30"E	172.42'
37	N 47°31'30"E	172.42'
38	N 47°31'30"E	172.42'
39	N 47°31'30"E	172.42'
40	N 47°31'30"E	172.42'
41	N 47°31'30"E	172.42'
42	N 47°31'30"E	172.42'
43	N 47°31'30"E	172.42'

NOTES:
LAND LOTS 113, 114, 116, AND 117
ARE LOCATED IN DISTRICT 8.
ALL OF TRACT 1 IS LOCATED IN G.M.D. 1270.



LEGEND
RIGHT-OF-WAY MONUMENT FOUND
1/2\"/>

BOUNDARY SURVEY FOR

C.S. TITSHAW ESTATE

LOCATED WITHIN
HALL COUNTY, GEORGIA
SCALE: 1" = 400' JUNE 9, 1998
Prepared by: 10/1/98
VENABLE & ASSOCIATES, INC.
1048 VINDER HIGHTWAY - P.O. BOX 386
JACKSONVILLE, GEORGIA 30439
PHONE (706) 367-8253 FAX 367-6957

NOTES:
1. The field data upon which this plan is based has been obtained from a survey conducted by the Georgia Surveyors Association. The plan is based on the Georgia Surveyors Association's plan of the same area. The plan is based on the Georgia Surveyors Association's plan of the same area. The plan is based on the Georgia Surveyors Association's plan of the same area.



ALL INFORMATION HEREON IS THE PROPERTY OF VENABLE & ASSOCIATES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF VENABLE & ASSOCIATES, INC.

Georgia, Hall County, Clerk
Filed in office this 11th day of June 1998
Dwight S. Wood, Clerk



Site Plan

PLUG	UNITS
A	6
B	3
C	8
D	12
E	6
F	8
G	6
H	4
I	4
J	6
K	6
TOTAL	55

GENERAL NOTES:

1. TOTAL ACREAGE - 50 ACRES
2. PROPOSED UNITS - 55
3. DENSITY - 1.1 UNITS/ACRE
4. EXISTING ZONING - R2
5. PROPOSED ZONING - R3 TOWN



34.6 Development Statistical Requirements

Development Statistical Requirements

- a) Maximum and proposed height of any structure

30'/28'

- b) Maximum and proposed gross square footage of the building area (nonresidential only)

N/A

- c) Color renderings of any proposed structures

Renderings attached

- d) Material list (with percentages) of any proposed structures

Masonry: 10%, Hardy Plank: 66%, Glass: 24%

- e) Maximum and proposed number of dwelling units and minimum and proposed square footage of heated floor area for any dwelling unit (residential only)

55 Units/ 1800 SF

- f) Maximum and proposed lot coverage of building area (square feet and percent)

1200 SF, 19% per lot. 1200 SF x 55 Lots = 66,000 SF

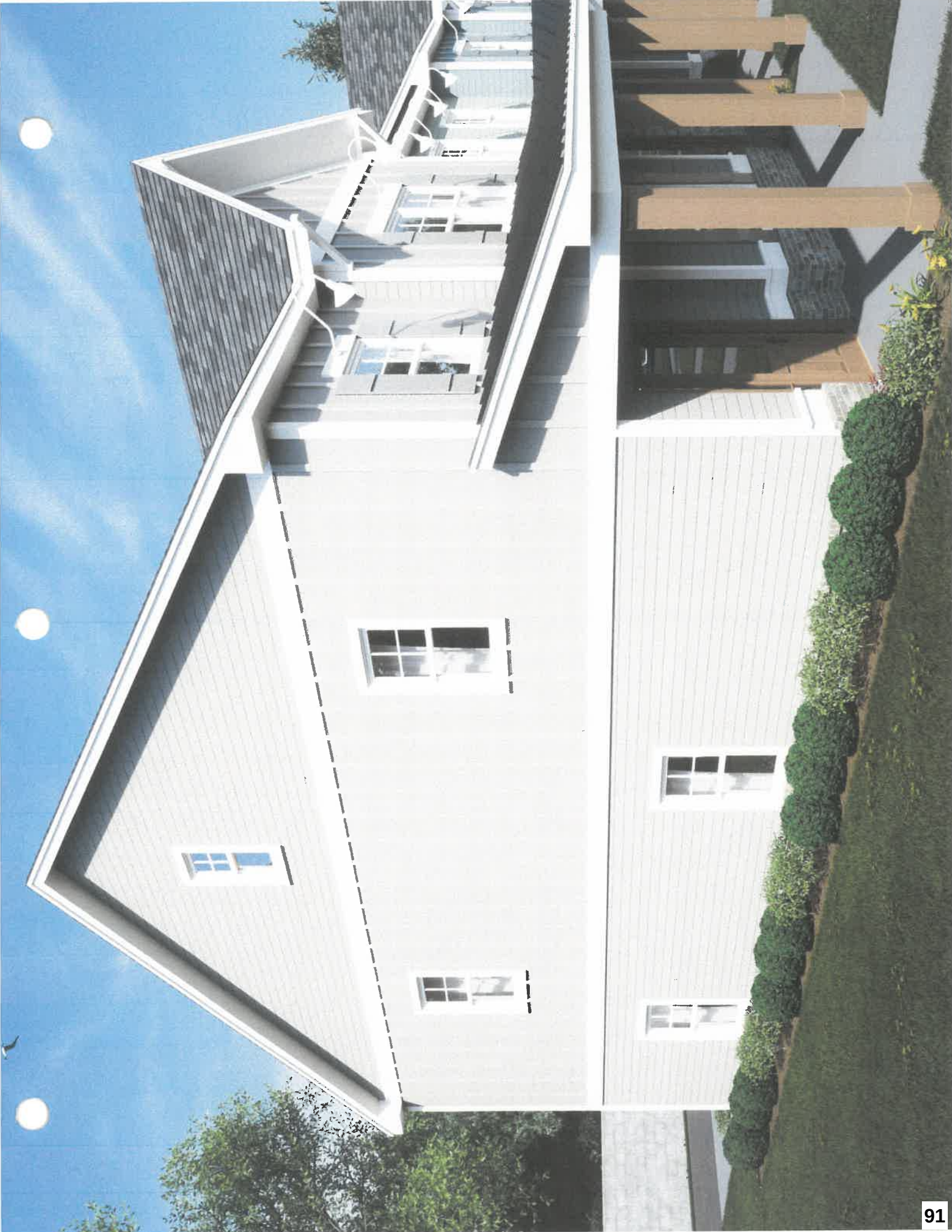
- g) Minimum and proposed square footage of landscaped area (square feet and percent)

153,182 SF out of 348,480 SF, 44%

- h) Minimum, maximum, and proposed number of parking spaces.

31 Proposed parking spaces









34.7 Analysis Requirements

Analysis Requirements

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

The adjacent property is R3 and the proposed R3 is suitable of nearby property.

- b) Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.

The planned R3 zoning will have no negative impact on the neighboring property's current use.

- c) Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has a reasonable economic use as currently zoned.

No, the land is currently designated R2 and does not have a reasonable economic purpose.

- d) Whether the 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 proposed zoning of R3, for a planned 55 townhomes development, would not result in an excessive or burdensome use of roadways, infrastructure, utilities, or schools.

- e) Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.

The City's Comprehensive Plan shows the area being mixed use and would be consistent with the overall plan.

- f) 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 proposal.

This development will help grow the community and give Flowery Branch visibility from the Interstate.

- g) Existing use(s) and zoning of the subject property and nearby properties.

Within the Immediate Area, there are both commercial and residential uses.

- h) Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.

The property has been vacant, due to the topography, lot size, and layout.

- i) Whether a proposed zoning map amendment or conditional use

approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.

This development would not prevent neighboring properties from being improved. It will expand Flowery Branch's housing possibilities.

- j) The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.

This would not create an isolated zoning district. This development will be zoned the same as its adjoining properties.

- k) Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.

There would be no negative effects in change to zoning map or use.

- l) The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.

The development will be designed in accordance with the Georgia Soil and Water Conservation Commission and would have minimal effects.

m) The relation that the proposed map amendment or conditional use bears

to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

This region is designated as mixed-use on the Comprehensive Map. The suggested plan will fulfill the zoning ordinance's objectives.

Adjacent Property Owners

Adjacent Property Owners

Mulberry Street Rezoning

R2-R3

08117 002001

ADVENTURES REAL ESTATE LLC

6000 WELLSRING TRAIL

GAINESVILLE, GA 30506

Additional Information Requirement



REZONING ADDITIONAL INFORMATION REQUIREMENT

Date: 4/11/2022

Address of Request:

5674 & 5740 Mulberry Street

Tax Map # (08116 000022 & 08116 000023) Current Zoning: R2- Residential

Please submit an analysis of the proposed project including:

1. Value of improvements upon complete build out.
Approximately \$13,750,000
2. Property tax valuation based upon existing millage rate (indicate total tax expectation if project is phased).
3. Schedule of the total build out (showing a timeline of construction in months/years if project is phased).
Approximately 24 months
4. Anticipated total square footage (heated) to be built in the requested number of units.
Approximately 99,000 sf for 55 units
5. Total acreage developed with units.
8.00 Acres
6. Total acreage for right of way and roads.
1610 LF x 50 foot ROW= 80,500 SF = 1.8480257 acres in ROW This ROW is already owned by City of Flowery Branch



7. Total acreage of open space/common area (include plan for maintenance of open space/common area).

4.97 acres

8. Acreage required for buffer and watershed protection.
- Does the buffer comply with the current City ordinance? Yes
 - Do individual property lines for lots extend into the buffer? - Does the Developer intend to dedicate any of the site area to the City? If so, for what purpose?

No

9. Does your proposal consider Multi Transportation alternatives? (Please describe in detail)

None

10. Please identify all amenities and total number of acres they incorporate by complete description.

Park, natural areas, open space 4.97 acres

11. Number of streetlights and separation table as proposed on your site plan.
- Approximately 17

12. Will Technology Development be included in this development?

Internet/Fiber/TV

13. List the total linear feet and cubic yards for sidewalks.

1610 LF x 2 LF = 3220 LF x 5 LF = 16,100 SF X .33 FT = 197 CY

14. Are appropriate storm water controls provided in your proposal? Are these controls completely and accurately reflected on all drawings and plans?

Yes, conceptual ponds only, remaining to be finalized after rezoning.



15. Has a transportation/traffic study been done to predict the impact of anticipated traffic? Has the project been reviewed by all appropriate County and State agencies relating to transportation issues?

No

16. Does the proposal provide for utilization of “reuse” water? Is this depicted on the plans? Do the plans provide for storage of “reuse” water?

No

17. What is the total capacity for daily Wastewater Management?

300 GPD/unit

18. What is the anticipated maximum daily water consumption? Are low flow fixtures required by the development?

300 GPD/unit

19. Has a slope and grade study been done on this development? Does the study reflect density placement?

Preliminary site plan with topo

20. Please identify what public safety needs are being considered for the project?

N/A

21. Has the Hall County School System been notified of the proposed density for this project?

No

22. Please provide a copy of all private covenants and/or architectural guidelines to be filed regarding this development.

Included in letter of intent.



23. Information as required under Ordinance No. 349 for preliminary plat approval if rezoning involves subdivision. Ordinance No. 349 can be found at www.flowerybranchga.org

CITY STAFF ONLY

Permit Issued By: _____

Date: _____ Total Fee: _____

Inspection Form

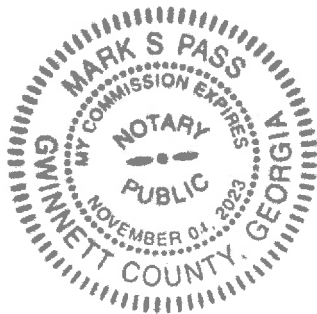
Shirley L Titshaw, General Partner for Charles D & Shirley L Titshaw Family, L
owner of parcels 08116 000022 & 08116 000023, hereby grant the City of Flowery Branch Staff
and/or City Council to Inspect the above Subject Property as necessary for rezoning application
process.

Shirley L Titshaw

Printed Name:

Shirley L Titshaw 4-14-22

Signature, Date:



Mark S. Pass
4-14-22



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

The City of Flowery Branch is applying for funding through the Rural Downtown Redevelopment Grant program offered through the Georgia Department of Community Affairs (DCA). DCA is seeking applications that will increase opportunities for private investment to be injected into areas of disinvestment. The funding shall increase commerce within the downtown, facilitate additional visitors/shoppers/activities within the downtown space, address workforce development and/or downtown housing needs that contribute to the overall revitalization of the community. Generally speaking, DCA is seeking to fund construction projects that have likely to have already undergone a large degree of planning by the community.

The City has planned for the Chestnut Street City Park and the multi-use trail but has not had funding for either project. The planning was far enough along to qualify for this grant as stated previously in what the DCA is looking for in this specific grant.

FACTS AND ISSUES:

DCA is establishing a maximum amount of grant request at \$5,000,000. A funding floor has also been established at \$1,000,000. DCA anticipates funding between five (5) and fifteen (15) applications. The minimum match requirement is generally no less than 10% of the total project cost.

Project: The City will be applying for funding to aid with Phase 2 of the “Old Town” Redevelopment Project. The scope of work includes the development of Chestnut Street City Park and the construction of a multi-use trail connecting key residential areas to Old Town. This project will compliment Phase 1 of the Old Town Redevelopment Project which is currently in process. The investment in this Phase 2 will yield additional amenities for residents and guests. Specifically, the Chestnut Street City Park will provide greenspace and recreational amenities to compliment the Phase 1 redevelopment project. In addition to providing a healthy, recreational amenity, the multi-use trails will provide an alternative means of transportation to Old Town for Flowery Branch residents, providing a solution to the limited parking issues. These projects align with the City’s Comprehensive Plan and Old Town Redevelopment Plan.

OPTIONS:

Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

Grant - \$2,833,501.50; and, Local Match \$314,833.50 (Local Resources Fund)

RECOMMENDATION:

Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

SAMPLE MOTION:

I move to send the letter of commitment, not to exceed \$314,833.50, and to make application to the Georgia Department of Community Affairs for the Downtown Redevelopment Grant.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Letter to Commission Nunn.pdf](#)
- [Executive Summary - Rural Downtown Grant application.pdf](#)



Mr. Christopher Nunn, Commissioner
Georgia Department of Community Affairs
60 Executive Park South, NE
Atlanta, GA 30329

Re: Letter of Financial Commitment
City of Flowery Branch – Downtown Redevelopment Project

Dear Commissioner Nunn:

This letter is to certify that the City of Flowery Branch will provide the matching funds for the above referenced project in the amount of \$314,833.50.

Thank you for your continued support of Georgia and our rural communities. This kind of project is truly transformational for our city. Should you have questions or require additional information, please feel free to contact me at (770) 967-6371.

Sincerely,

Ed Asbridge
Mayor

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

DATE: June 2, 2022

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

☐ **OTHER**

Total Amount of Grant Request: **\$2,833,501.50**

Total Project Cost: **\$3,148,335.00**

Cash Match (Can be In-Kind) Required: **\$314,833.50**

COUNCIL ACTION REQUESTED ON: June 2, 2022

PURPOSE: The City of Flowery Branch is applying for funding through the Rural Downtown Redevelopment Grant program offered through the Georgia Department of Community Affairs (DCA). DCA is seeking applications that will increase opportunities for private investment to be injected into areas of disinvestment. The funding shall increase commerce within the downtown, facilitate additional visitors/shoppers/activities within the downtown space, address workforce development and/or downtown housing needs that contribute to the overall revitalization of the community. Generally speaking, DCA is seeking to fund construction projects that have likely to have already undergone a large degree of planning by the community.

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FACTS AND ISSUES: DCA is establishing a maximum amount of grant request at \$5,000,000. A funding floor has also been established at \$1,000,000. DCA anticipates funding between five (5) and fifteen (15) applications. The minimum match requirement is generally no less than 10% of the total project cost.

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OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION: I move to send the letter of commitment, not to exceed \$314,833.50, and to make application to the Georgia Department of Community Affairs for the Downtown Redevelopment Grant.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Mayor Asbridge Per Diem for April 2022 and May 2022

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

Consent Agenda

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Mayor Per Diem April 2022.pdf](#)
- [Mayor Per Diem May 2022.pdf](#)



**City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay**

Name: Ed Asbridge Month/Year: April 2022

Meeting Date	Description of Meeting
April 26, 2022	Chamber – Transportation and Roads

My signature certifies that I am eligible to be paid for 1 meeting date, maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance Number 477. Total of **\$50.00** (\$50.00 per meeting).

Signature



**City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay**

Name: Ed Asbridge Month/Year: May 2022

Meeting Date	Description of Meeting
May 10, 2022	HCMPO Policy Committee
May 13, 2022	EDC & Investment Asst. Committee
May 24, 2022	Small Business Coalition 9am
May 24, 2022	Lost Negotiations 12:30pm
May 26, 2022	Chamber Board Meeting

My signature certifies that I am eligible to be paid for 5 meeting dates, maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance Number 477. Total of **\$250.00** (\$50.00 per meeting).

Signature



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider May 19, 2022 Minutes

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [May 19, 2022 Minutes.pdf](#)



**City of Flowery Branch
City Council Meeting Minutes
Thursday, May 19, 2022, 6:00 P.M.
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

Mayor Edward Asbridge called the council meeting to order at 6:03 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Finance Director Alisha Gamble, Planning Director Rich Atkinson, Police Chief Chris Hulsey, Public Works Director Bill Whidden and City Attorney Ron Bennett.

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

PROCLAMATION: NATIONAL SAFE BOATING WEEK

Mayor Asbridge presented a proclamation to Daniel Vaccaro with the U.S. Coast Guard Auxiliary in honor of National Safe Boating Week to promote safe boating on Lake Lanier.

NEW BUSINESS -WORK SESSION:

Consider Approval of Revize Web Services Sales Agreement

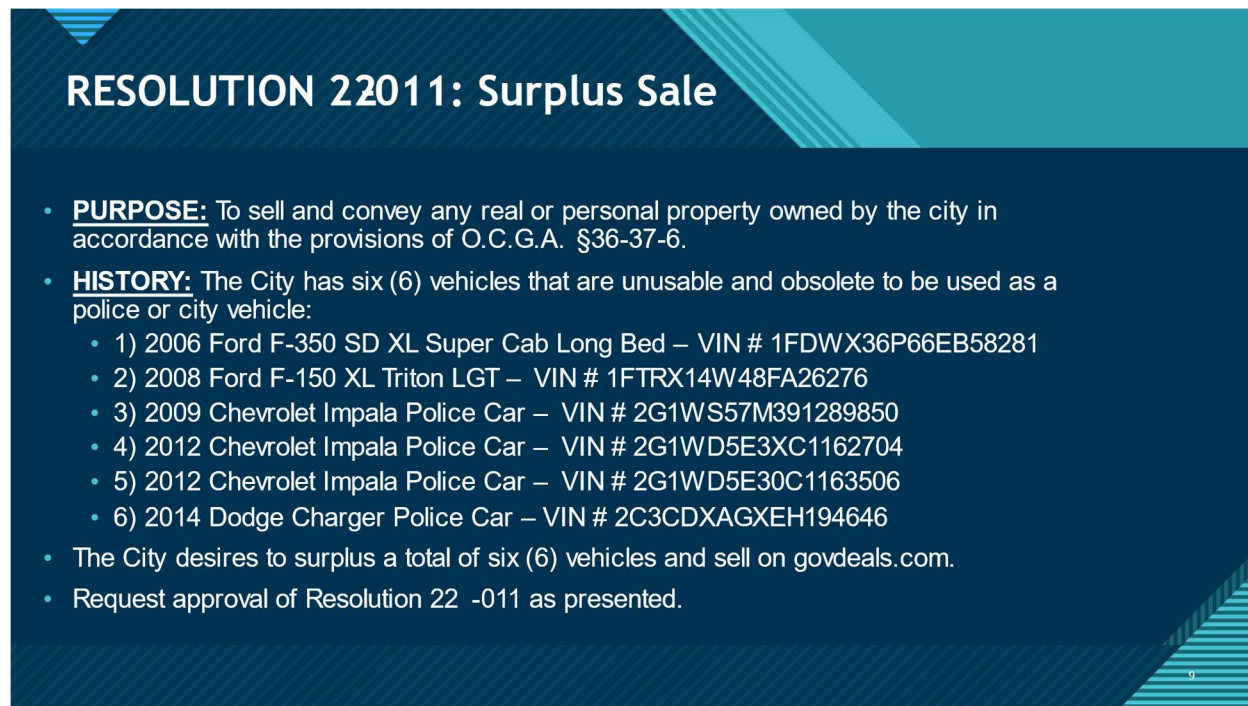
Budget Manager Krystle Hightower presented the Revize Web Services Sales Agreement. The City of Flowery Branch's website has not had a redesign since 2017 and there have been many changes in our City since then as well as in the area of content management systems. There were eleven responses to our Request for Proposal (RFP) and several staff members participated in demonstrations from five of the organizations that submitted bids. Revize, LLC was rated the highest among those that participated in the demonstrations which considered design, functionality, usability, ease of ongoing updates for the City, and several other important areas. The price for Revize, LLC is \$14,800 for the initial design of our website and an annual cost of \$2,900. This is a CIP Project for FY2023 and \$90,000 was budgeted for this project.

Council Member McClellan asked what the next highest bid was, and Budget Manager Hightower stated that the next highest bid was \$22,000 and that bids went as high as \$35,000.

Council Member McClellan stated that this website design is impressive, and the functionality is impressive as a user.

Consideration of Resolution 22-011: A Resolution authorizing and directing the sale of certain property owned by the City of Flowery Branch.

Finance Director Gamble presented Resolution 22-011 authorizing and directing the sale of certain property owned by the City of Flowery Branch.

A graphic with a dark blue background and teal geometric patterns. The title "RESOLUTION 22011: Surplus Sale" is in white. Below it is a bulleted list of details regarding the purpose, history, and specific vehicles for sale, along with a request for approval.

RESOLUTION 22011: Surplus Sale

- **PURPOSE:** To sell and convey any real or personal property owned by the city in accordance with the provisions of O.C.G.A. §36-37-6.
- **HISTORY:** The City has six (6) vehicles that are unusable and obsolete to be used as a police or city vehicle:
 - 1) 2006 Ford F-350 SD XL Super Cab Long Bed – VIN # 1FDWX36P66EB58281
 - 2) 2008 Ford F-150 XL Triton LGT – VIN # 1FTRX14W48FA26276
 - 3) 2009 Chevrolet Impala Police Car – VIN # 2G1WS57M391289850
 - 4) 2012 Chevrolet Impala Police Car – VIN # 2G1WD5E3XC1162704
 - 5) 2012 Chevrolet Impala Police Car – VIN # 2G1WD5E30C1163506
 - 6) 2014 Dodge Charger Police Car – VIN # 2C3CDXAGXE194646
- The City desires to surplus a total of six (6) vehicles and sell on govdeals.com.
- Request approval of Resolution 22 -011 as presented.

Consideration of whether the City of Flowery Branch should be in the solid waste collection business.

City Manager Parrish presented a discussion as to whether the City of Flowery Branch should be in the solid waste collection business. There were three responses to our RFP, Request for Proposal, for solid waste services. Our contract with our current provider, Red Oak Sanitation, expired on May 1, 2022, but they have extended the contract to June 30, 2022. The City held a mandatory pre-bid meeting and three providers came to the meeting, Red Oak, Waste Management and Waste Pro. One of the providers sent back a message that we need to revamp our solid waste collection business. The City does not bill or collect the services, but we do negotiate the contract on behalf of the citizens. The City receives complaints regarding the trash service.

Mayor Asbridge asked if the City gets anything from the bids. City Manager Parrish stated that was correct and that the bid prices are going up substantially from what they have been previously. She recited some of the prices and some of the services as an example.

Council Member McClellan asked how many bids were sent out and City Manager Parrish replied that we post RFPs to our website and to the Georgia Procurement Registry.

Council Member McClellan asked why the City gets complaint calls instead of Red Oak Sanitation and City Manager Parrish stated that she believes we are both getting complaint calls.

Council Member McClellan asked why the Staff is not transferring or forwarding the calls to Red Oak and the Mayor responded that was the original set up of the contract.

Council Member Anglin stated when Mayor and Council first looked at this issue with seeing the price increase, his first thought was to get out of the sanitation business but after more consideration he is concerned about inconsistencies with the service and so many different providers and having more trucks in the City picking up trash more days every week. He suggested that the City only negotiate the contract and not take any complaint calls. He further stated that one provider will be given to residents and if the citizen decides to not take the service, the resident has the option to take their trash to the satellite county compactor.

Council Member Mezzanotte stated he is concerned about the cost of the service. He is also concerned about illegal dumping if no service is provided to the residents.

DEPARTMENT REPORTS:

City Clerk Report:

City Clerk Cooper shared a Thank You card that was sent to the City by Boy Scout Troop 228.

Police Chief Report:

Chief Hulsey shared two weeks ago he awarded Corporal Brett Sweeney with the Flowery Branch Police Department Officer of the Year Award presented by the Optimist Club. Chief Hulsey stated that Corporal Sweeney is the most consistent person not just officer that the Chief has ever known. The Kiwanis Club presented Municipal Court Clerk Kelsey Cash with the John Jacob Senior Award which is an award of Excellence. Chief Hulsey stated that Ms. Cash is awesome and keeps the police department running smoothly.

Council Member Report:

Council Member Anglin is excited about the Block Parties starting back up soon and he appreciates all the work that is going into those. He is excited to see the progress going on in the City.

Mayor Report:

Mayor Asbridge stated he was at the award ceremony for the Municipal Court Clerk Cash and it was impressive to see so many men and women in blue get recognized.

ADJOURNMENT WORK SESSION:

Mayor Asbridge closed the work session at 6:31 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:31 p.m.

PUBLIC COMMENTS:

Charles Mull, 5918 Mitchell Street, Flowery Branch, GA 30542

Mr. Mull reported that the first block has been laid on the sidewalk on the Mitchell Street project. He offered to be a test volunteer for our new website.

CONSENT AGENDA:

- Consider Resolution 22-009: 3rd Quarter Amendment to the Budget for FY2022 as Previously Adopted on June 17, 2021.
- Consider May 5, 2022, City Council Meeting Minutes

There was a motion made to approve the consent agenda.

MOTION: Chris Mundy

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

NEW BUSINESS - VOTING SESSION:

Consideration of Second Reading of Ordinance 504B to amend the Alcoholic Beverage Ordinance to replace the City Clerk with the Police Chief

City Attorney Bennet read the caption to Ordinance 504B.

There was a motion made to approve the Second Reading of Ordinance 504B to amend the Alcoholic Beverage Ordinance to replace the City Clerk with the Police Chief.

MOTION: William McDaniel
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of Second Reading of Ordinance 662 - A rezoning request submitted by Mr. Chris Herrington.

City Attorney Bennett read the caption to Ordinance 662.

There was a motion made to approve the Second Reading of Ordinance 662.

MOTION: Joe Anglin
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of Resolution 22-011: A Resolution authorizing and directing the sale of certain property owned by the City of Flowery Branch.

City Attorney Bennett read the caption to Resolution 22-011.

There was a motion made to approve Resolution 22-011: A Resolution authorizing and directing the sale of certain property owned by the City of Flowery Branch.

MOTION: Oliver McClellan
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider Approval of Revise Web Services Sales Agreement

There was a motion made to approve Revise Web Services Sales Agreement.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Council Member Mundy suggested the Staff to accept Mr. Mull's offer to be a website test volunteer.

Consideration of Second Reading of Ordinance 660 - A request from Lights Ferry Partners, LLC and Diego Fracasso to Rezone 5908 Lights Ferry Road, a 1.92+/- acre of land also known as Tax Parcel Identification Number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND)

City Attorney Bennett read the caption to Ordinance 660.

There was a motion made to approve the Second Reading of Ordinance 660 - A request from Lights Ferry Partners, LLC and Diego Fracasso to Rezone 5908 Lights Ferry Road, a 1.92+/- acre of land also known as Tax Parcel Identification Number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND).

MOTION: Joe Anglin
SECOND: Chris Mundy

Council Member Mezzanotte stated he still has several questions about the project. There was a detailed discussion with Council, City Planner Atkinson, and the applicant.

There was a motion to withdraw the motion to approve the Second Reading of Ordinance 660.

MOTION: Joe Anglin
SECOND: Chris Mundy

There was a motion to Table the Second Reading of Ordinance 660 until June 2, 2022.

MOTION: Joe Anglin
SECOND: Joseph Mezzanotte
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of First Reading of Ordinance 239-L and 240-L to rezone tax parcel 15047 000885 from Planned Unit Development (PUD) to Planned Unit Development (PUD) with modified conditions.

City Attorney Bennett read the caption to Ordinances 239-L and 240-L.

There was a motion made to Table the First Reading of Ordinance 239-L and 240-L until June 16, 2022.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of whether the City of Flowery Branch should be in the solid waste collection business.

There was a motion made to remain in a contract with Red Oak Sanitation for one more year and to authorize City Manager Parrish to negotiate prices with Red Oak Sanitation and bring back the cost to Mayor and Council for review and vote.

MOTION: Joseph Mezzanotte
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of executing a lease agreement for Suite 101 at 5519 Main Street with El Sabor Costeno, LLC.

There was a motion made to approve execution of a lease agreement with El Sabor Costeno Taqueria, LLC for Suite 101 at 5519 Main Street in Flowery Branch, within the Shopping Center on Main Street.

MOTION: Chris Mundy
SECOND: Joseph Mezzanotte
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION:

There was a motion made to approve enter executive session at 7:22 p.m. for matters related to the acquisition/disposition of real estate.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

There was a motion made to exit executive session at 8:02 p.m.

MOTION: William McDaniel
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

ADJOURNMENT:

There was a motion made to adjourn at 8:02 p.m.

MOTION: Joseph Mezzanotte
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Ed Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Public Hearing May 26, 2022 Minutes

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [May 26, 2022 Minutes.pdf](#)



**City of Flowery Branch
Public Hearing Meeting
Thursday, May 26, 2022, 9:00 AM
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542**



CALL PUBLIC MEETING TO ORDER:

The public hearing was called to order at 9:00 am.

PLEDGE OF ALLEGIANCE:

Finance Director Gamble led the Pledge of Allegiance.

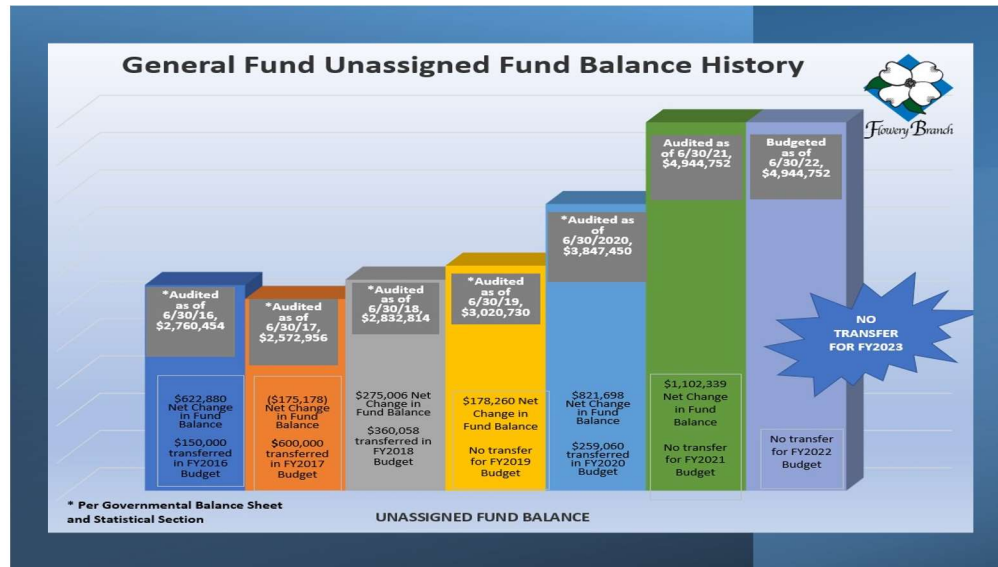
PUBLIC HEARING:

First Public Hearing – Resolution 22-012 – To adopt the Fiscal Year 2023 Annual Budget.

Finance Director Gamble presented Resolution 22-012. Property Tax is a top revenue source for general community service operations. The proposed budget for Fiscal Year 2023 the property tax is based on keeping the millage rate at 3.264 mills. New or improved properties are estimated to increase revenue by \$307,729 and reassessment of existing real estate property is estimated to increase revenue by \$354,999. The other major revenues categories are Local Options Sales Tax at 15%, TAVT at 35% and Franchise Taxes at 10%.

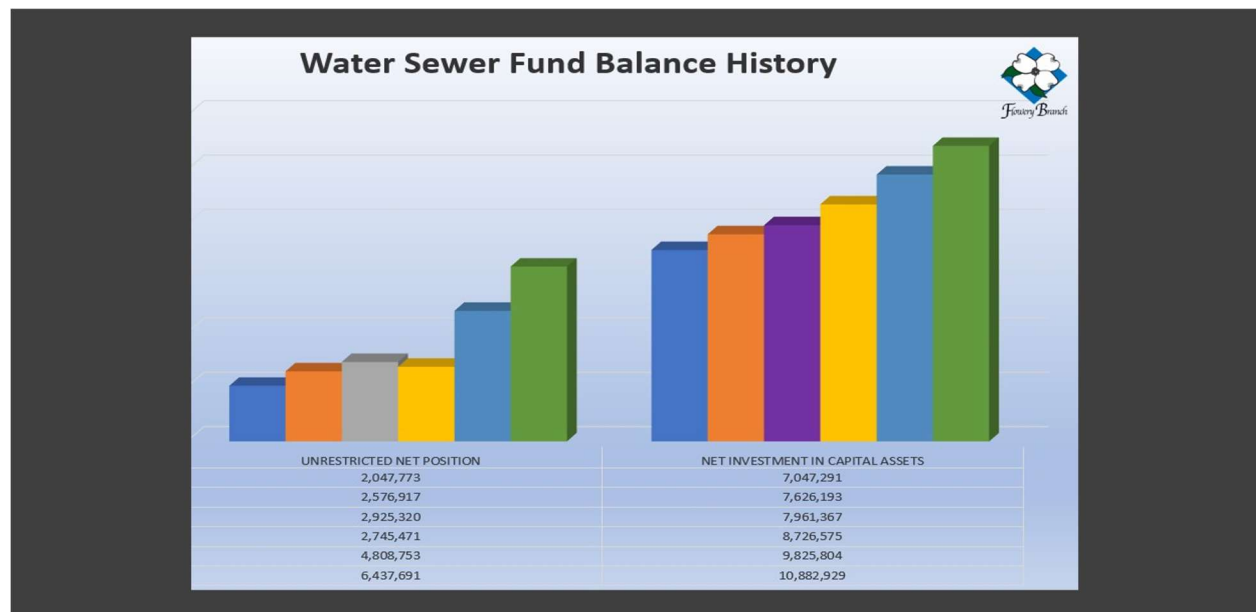
General fund expenditure changes include planned increases for current personnel, an addition of six new positions in the following departments: Finance (1), Police (3), Planning (2) and an additional \$825,000 transfer to capital projects for the community (road paving, stormwater, and sidewalk improvements). With these changes our overall general fund budget will increase by 18%.

Why not consider a millage decrease for Fiscal Year 2023? Collections of ARPA funding to date is \$1,554,429, and an additional proposed for July 2022 but this is not guaranteed. The City anticipates using these funds for capital projects throughout the community. Response times for police and public works services has declined as community demands have increased with growth, in turn creating the need for additional staff. Rapid growth in population equals more demand for quality City services.



The Government Finance Officer Association (GFOA) best practices recommend no less than a minimum of two months reserves of expenses, but our Council has elected a more conservative approach to maintain four- and one-half months reserve. The budget presented meets that requirement and we have not used budgeted fund balance to create a balanced budget with this proposal.

For water and wastewater operating fund revenues and expenses there is an increase as our community continues to grow with the collection of service charges and fees for water and sewer utility connections. Expenses are on the rise by two categories, planned increases for personnel and increased cost in sludge disposal, chemicals, and engineering costs.



Council voted to maintain six months of expenditure reserves for each year and this budget meets that requirement.



	Proposed <u>FY2023 Budget</u>	Approved <u>FY2022 Budget</u>	Increase / <u>(Decrease)</u>	Percentage <u>Change</u>
TAX ALLOCATION DISTRICT				
Total Revenues	\$ 5,687,550	\$ 5,275,519	\$ 412,031	7.81%
Total Expenditures	\$ 5,687,550	\$ 5,275,519	\$ 412,031	7.81%
HOTEL/MOTEL TAX FUND				
Total Revenues	\$ 210,000	\$ 154,000	\$ 56,000	36.36%
Total Expenditures	\$ 210,000	\$ 154,000	\$ 56,000	36.36%

There is a net increase in the Tax Allocation District of 7.81%. The Hotel Motel Fund budget increased 36.36%.

AMERICAN RESCUE PLAN ACT OF 2021 (CAPITAL IMPROVEMENT PLAN)				
	2023	2024	2025	2026
CAPITAL PROJECTS:				
ARPA:				
Interim Wastewater Plant Improvements	969,900			
Aerzen Blower Rentals - 2 Units	139,200			
ARPA Fund Reserves & Collections	445,329			
TOTAL CAPITAL PROJECTS:	1,554,429	-	-	-
SOURCE OF FUNDS:				
ARPA Fund Reserves	1,554,429			
TOTAL SOURCE OF FUNDS:	1,554,429	-	-	-

The American Rescue Plan Act of 2021 is recorded in a separate fund as required by State Law. So far, the City has allocated two projects to this fund: the interim Wastewater Plant improvements and the Aerzen blower rentals. These two projects recently started, and all other

funding will be allocated by Council to future projects as needed to help aid general services to our community.

TAX ALLOCATION DISTRICT (CAPITAL IMPROVEMENT PLAN)					
	2023	2024	2025	2026	2027
CAPITAL PROJECTS:					
Pine Street Park & Streetscaping	589,465				
Market Pavilion Park & Streetscaping	1,331,249				
Pine Street Improvements	586,932				
Old Town Bike-Pedestrian Path	692,362				
Mitchell Street Improvements	851,126				
Downtown Stormwater Improvements	714,866				
Tenant Improvements	445,000				
Professional Services - Development Agreement Payments	205,000	207,506	230,206	302,556	380,206
Revenue Bonds 2020 Debt Principal Payment	110,000	190,000	245,000	255,000	260,000
Revenue Bonds 2020 Debt Interest	158,800	155,494	149,794	142,444	134,794
Fiscal Agent Fees	2,750	-	-		
TAD Fund Reserves					
TOTAL CAPITAL PROJECTS	5,687,550	553,000	625,000	700,000	775,000
SOURCE OF FUNDS:					
TAD Collections	250,000	300,000	350,000	400,000	450,000
TAD Revenue Bonds Proceeds	5,250,550				
Transfer In - General Fund	185,000	250,000	275,000	300,000	325,000
Interest Revenue	2,000	3,000	-		
TAD Fund Reserves					
TOTAL SOURCE OF FUNDS:	5,687,550	553,000	625,000	700,000	775,000

The Tax Allocation District projects include all the downtown developments such as the Market Pavilion, Park and Streetscaping Project and the Mitchell Street Improvements. The downtown projects are expected to be completed by August 2022 so therefore it rolls forward into the FY 2023 budget. Phase II development along with the Old Town Bike Pedestrian path is in the planning stages and the bid preparation stage.

SPLOST VIII (CAPITAL IMPROVEMENT PLAN)								
	2021	2022	2023	2024	2025	2026	Project Budget	Total
CAPITAL PROJECTS:								
SPLOST VIII:								
<i>Roads, streets, bridges, sidewalks, and related improvements</i>								5,718,230
Exit 12 Improvements		300,000	1,000,000	700,000			2,000,000	
Old Town (General) Stormwater	550,000							550,000
Lights Ferry Culvert		550,000						550,000
East Main Culvert					550,000			550,000
Roads and Sidewalks	491,102	252,102	97,102	432,102	294,675	501,146	2,068,230	
<i>Public works facilities, land, vehicles and equipment</i>								383,384
Building						305,384	305,384	
Equipment	48,000	30,000					78,000	
<i>Parks and leisure facilities, land and equipment</i>								415,000
Property and Improvements					244,438	170,572	415,000	
<i>Public safety vehicles and equipment</i>	43,000	43,000		35,000	78,000	77,000	276,000	276,000
SPLOST Fund Reserves	348,565							348,565
TOTAL CAPITAL PROJECTS:	1,480,667	1,175,102	1,097,102	1,167,102	1,167,102	1,054,102		7,141,179
SOURCE OF FUNDS:								
SPLOST VII Collections	1,479,816	1,175,102	1,097,102	1,167,102	1,167,102	1,054,102		7,140,327
Interest Revenue	852							852
SPLOST Fund Reserves								-
TOTAL SOURCE OF FUNDS:	1,480,667	1,175,102	1,097,102	1,167,102	1,167,102	1,054,102		7,141,179

SPLOST VIII categories for the six-year program include roads, bridges, sidewalks, and related improvements for \$5,718,230. Public Works facilities, land, vehicle, and equipment for

\$383,384. Parks and leisure facilities, land, and equipment for \$415,000. Public safety vehicles and equipment for \$276,000. We will be rolling into the third year of the six-year term.

LOCAL RESOURCES FUND (CAPITAL IMPROVEMENT PLAN)							
	2023	2024	2025	2026	2027	2028	
CAPITAL PROJECTS:							
Paving Projects (Various Roads) 1.5 miles	878,252	556,695	724,084	499,076	499,076	-	
City Website & Rebranding	90,000						
IT Equipment Upgrades Annual Program	100,000	25,000	25,000	10,000	10,000		
City Buildings Generator Project							
Municipal Building Debt Service	341,026	341,026	342,917	344,818	346,823	348,841	
Local Resources Fund Reserves		127,699	(178,374)	371,375	57,728	709,039	
TOTAL CAPITAL PROJECTS	1,409,278	1,050,420	913,627	1,225,269	913,627	1,057,880	
SOURCE OF FUNDS:							
LOST Collections	419,178	419,178	419,178	419,178	419,178	419,178	
Transfer In - Fund Balance	200,000	200,000	200,000	200,000	200,000	200,000	
Transfer In - General Fund (.427 mills)	209,449	209,449	209,449	209,449	209,449	209,449	
Grant from LMIG (Paving Projects)	86,850	85,000	85,000	85,000	85,000	85,000	
Local Resources Fund Reserves	493,801	136,793		311,642		144,253	
TOTAL SOURCE OF FUNDS:	1,409,278	1,050,420	913,627	1,225,269	913,627	1,057,880	

The Local Resources Fund plans for various miles of road paving, City website and rebranding, and IT equipment upgrades annual program.

WATER SEWER CAPITAL PROJECTS FUND					
	2023	2024	2025	2026	2027
CAPITAL PROJECTS:					
WASTEWATER:					
Wastewater Effluent Discharge Force Main - Phase 2		750,000	750,000		
Wastewater Expansion Construction Management Services	393,000	393,000			
Wastewater Expansion Construction (Parallel Plant)	10,017,001	10,017,001			
Geotechnical for Construction Site Work	75,000	75,000			
Wastewater Pumping Station Modification		100,000			
WATER:					
Water Distribution at Railroad Crossings		250,000			
Water Line Improvements Planning & Design	300,000	140,000	140,000		
Water Distribution System Upgrade	200,000	200,000	200,000		
Atlanta Highway Water Line	140,000	140,000	140,000		
Lights Ferry Water Line	250,000	250,000			
Roberts Drive P.S. Reliability Project (Natural Gas)	250,000				
Purchase Well No. 4 and No. 5	650,000				
Install Pumps and Wellhouse for Well No. 4 and No. 5	475,000	475,000			
Modify Well Pumps and Wellhouse for Well No. 1 and No. 3	150,000				
Modify Well Pumps and Wellhouse for Well No. 4 and No. 5		150,000			
Improvements to SCADA System	50,000	50,000			
New 750,000 Ground Tank Construction	700,000	700,000			
Less: New Debt Payments	393,814	393,814	1,831,716	1,831,716	1,831,716
Water Sewer Capital Retained Earnings		1,745,288			
TOTAL CAPITAL PROJECTS	14,043,815	15,829,101	3,061,716	1,831,716	1,831,716
SOURCE OF FUNDS:					
TAP & Capacity Collections	719,048	824,378	484,811	529,809	579,237
Transfer In - Water Sewer Operating Fund	991,172	1,418,004	305,189	200,191	250,191
Add: New Debt Proceeds	9,745,001	13,586,719			
Water Sewer Capital Retained Earnings	2,588,594		2,271,716	1,041,716	992,288
TOTAL SOURCE OF FUNDS:	14,043,815	15,829,101	3,061,716	1,831,716	1,831,716

Water and Sewer Capital Projects Fund focus on the plant expansion and water line improvements projects.

TOTAL FOR ALL FUNDS:				
By Fund:	FY2021 Approved:	FY2022 Approved:	FY2023 Proposed:	Percent Change from FY2022 to FY2023:
General Fund	\$ 5,128,605	\$ 6,056,787	\$ 7,139,034	17.87%
American Rescue Plan Act of 2021	\$ -	\$ 1,554,429	\$ 1,554,429	0.00%
Tax Allocation District Fund*	\$ 5,477,044	\$ 5,275,519	\$ 5,687,550	7.81%
Hotel Motel Fund	\$ 38,692	\$ 154,000	\$ 210,000	36.36%
SPLOST Fund	\$ 1,132,102	\$ 1,175,103	\$ 1,097,102	-6.64%
Local Resources Fund	\$ 646,107	\$ 1,920,389	\$ 1,409,278	-26.61%
TOTAL GOVERNMENTAL FUNDS:	\$ 12,422,550	\$ 16,136,227	\$ 17,097,393	5.96%
Water/Wastewater Operating	\$ 2,301,337	\$ 3,135,350	\$ 3,185,862	1.61%
Water/Wastewater Capital**	\$ 647,416	\$ 13,380,001	\$ 14,043,815	4.96%
TOTAL ENTERPRISE FUNDS:	\$ 2,948,753	\$ 16,515,351	\$ 17,229,677	4.33%
TOTAL BUDGET BY FISCAL YEAR:	\$ 15,371,303	\$ 32,651,578	\$ 34,327,070	5.13%



* Includes TAD Debt proceeds of \$5.3 million for downtown developments.
 ** Includes anticipated GEFA Debt draws for water and sewer infrastructure/plant expansion improvements.

Resolution 22-012 To Adopt the FY2023 Annual Budget

Overall, the City wide budget increased 5.13%. We recommend approval of Resolution 22-012 to adopt the FY2023 Annual Budget.

PUBLIC COMMENT:

There were no public comments.

ADJOURNMENT:

The meeting was adjourned at 9:08 am.

Ed Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of Resolution 22-012 - To adopt the Fiscal Year 2023 Annual Budget

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

FACTS AND ISSUES:

O.C.G.A. § 36-81-3(b)(1) requires the City of Flowery Branch to adopt and operate under an annual balanced budget for the City's fiscal year, which runs from July 1st to June 30th of each year.

OPTIONS:

To adopt the FY2023 Annual Budget.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

n/a

RECOMMENDATION:

Approve Resolution 22-012 as presented.

SAMPLE MOTION:

I make a motion to approve Resolution 22-012 to adopt the FY2023 Annual Budget.

COLLABORATING DEPARTMENT:

Administration

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- [FY2023 Budget Executive Summary.pdf](#)
- [Resolution 22-012 To Adopt FY2023 Annual Budget.pdf](#)
- [5-Year Proposed CIP Plan.pdf](#)
- [FY 2023 Proposed Budget All Funds.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Resolution 22-012 – To Adopt the Fiscal Year 2023 Annual Budget

DATE: 05/17/2022

(X) RECOMMENDATION

() POLICY DISCUSSION

() STATUS REPORT

BUDGET INFORMATION:
ANNUAL-
CAPITAL-

COUNCIL ACTION REQUESTED ON: 06/02/2022

PURPOSE:

Resolution 22-012: To adopt the FY2023 Annual Budget.

HISTORY:

FACTS AND ISSUES:

O.C.G.A. § 36-81-3(b)(1) requires the City of Flowery Branch to adopt and operate under an annual balanced budget for the City's fiscal year, which runs from July 1st to June 30th of each year.

OPTIONS: To adopt the FY2023 Annual Budget.

RECOMMENDED SAMPLE MOTION:

I make a motion to approve Resolution 22-012 to adopt the FY2023 Annual Budget.

DEPARTMENT: Administration

Prepared by: Alisha Gamble

RESOLUTION NO. 22-012

TO ADOPT THE FISCAL YEAR 2023 ANNUAL BUDGET FOR EACH FUND OF THE CITY OF FLOWERY BRANCH, GEORGIA; TO APPROPRIATE THE AMOUNTS SHOWN IN EACH BUDGET AS EXPENDITURES OR EXPENSES; TO ADOPT THE SEVERAL ITEMS OF REVENUE ANTICIPATIONS; TO SET THE LEGAL LEVEL OF BUDGETARY CONTROL; TO PROHIBIT EXPENDITURES OR EXPENSES FROM EXCEEDING THE ACTUAL FUNDING AVAILABLE; TO PROHIBIT EXPENDITURES OR EXPENSES BEYOND THE FISCAL YEAR FOR WHICH THEY WERE APPROPRIATED; TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, sound governmental operations require a budget in order to plan the financing of services for the residents of the City of Flowery Branch; and

WHEREAS, O.C.G.A. § 36-81-3(b)(1) requires the City of Flowery Branch to adopt and operate under an annual balanced budget for the City's fiscal year, which runs from July 1st to June 30th of each year; and

WHEREAS, the Mayor and Council of the City of Flowery Branch have reviewed the proposed Fiscal Year 2023 Annual Budget, effective from July 1, 2022 to June 30, 2023 ; and

WHEREAS, the Mayor and Council of the City of Flowery Branch desire to adopt said proposed budget as the Fiscal Year 2023 Annual Budget, effective from July 1, 2022 to June 30, 2023.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Flowery Branch, Georgia, as follows:

Section 1. That the proposed Fiscal Year 2023 Annual Budget, attached hereto and incorporated by reference as if fully set forth herein, is hereby adopted as the Budget for the City of Flowery Branch, Georgia for the Fiscal Year 2023, which begins on July 1, 2022 and ends on June 30, 2023.

Section 2. That the several items of revenues, other financial resources, and sources of cash shown in the budget for each fund in the amounts shown anticipated are hereby adopted, and that the several amounts shown in the budget for each fund as proposed expenditures or expenses, and uses of cash are hereby appropriated to the departments named in each fund.

Section 3. That the "legal level of control" as defined by O.C.G.A. § 36-81-2(14) is set at the department level, meaning that the City Manager in her capacity as Budget Officer is authorized to move appropriations from one line item to another within a department.

Section 4. That under no circumstances shall expenditures or expenses exceed the amount appropriated without a further Budget amendment approved by the Mayor and Council.

Section 5. That all appropriations shall lapse at the end of the fiscal year.

Section 6. That this Resolution shall be and remain in full force and effect from and after its date of adoption.

SO RESOLVED this 2nd day of June, 2022.

Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

E. Ronald Bennett, Jr., City Attorney

5 - Year CIP Plan Details by Fund

5/10/2022

Account ID	Account Description	2022 Capital Costs	2023 Capital Costs	2024 Capital Costs	2025 Capital Costs	2026 Capital Costs	2027 Capital Costs	Total
230-0000-541000	Interim Wastewater Plant Improvements		\$969,900.00					\$ 969,900.00
230-0000-543000	Wastewater Treatment Plant (2) Blower Rentals		\$139,200.00	\$139,200.00				\$ 278,400.00
FUND 230 TOTAL		\$0.00	\$1,109,100.00	\$139,200.00	\$0.00	\$0.00	\$0.00	\$1,248,300.00
270-0000-541200	Pine Street Park & Streetscaping		\$589,465.00					\$ 589,465.00
270-0000-541220	Market Pavilion Park & Streetscaping		\$1,331,249.00					\$ 1,331,249.00
270-0000-541300	Tenant Improvements - Main St Building		\$445,000.00					\$ 445,000.00
270-0000-541410	Pine Street Improvements		\$586,932.00					\$ 586,932.00
270-0000-541420	Old Town Bike-Pedestrian Path		\$692,362.00					\$ 692,362.00
270-0000-541430	Mitchell Street Improvements		\$851,126.00					\$ 851,126.00
270-0000-541440	Downtown Stormwater Improvements		\$714,866.00					\$ 714,866.00
FUND 270 TOTAL		\$0.00	\$5,211,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,211,000.00
308-0000-541100	Water Line Improvements Planning & Design		\$300,000.00	\$140,000.00	\$140,000.00			\$ 580,000.00
308-0000-541510	Construction Management Services		\$393,000.00	\$393,000.00				\$ 786,000.00
308-0000-541520	Wastewater Expansion Construction (Parallel Plant)		\$10,017,001.00	\$10,017,001.00				\$ 20,034,002.00
308-0000-541525	Geotechnical for Construction Site Work		\$75,000.00	\$75,000.00				\$ 150,000.00
308-0000-541530	Wastewater Pump Station Modification			\$100,000.00				\$ 100,000.00
308-0000-541540	Roberts Drive Pump Station Reliability Project (Natural Gas)		\$250,000.00					\$ 250,000.00
308-0000-541550	Modify Well Pumps and Well House for Wells No. 1 and No. 3		\$150,000.00					\$ 150,000.00
308-0000-541610	Water Distribution at Railroad Crossings			\$250,000.00				\$ 250,000.00
308-0000-541610	Water Distribution System Upgrade		\$200,000.00	\$200,000.00	\$200,000.00			\$ 600,000.00
308-0000-541620	Lights Ferry Water Line		\$250,000.00	\$250,000.00				\$ 500,000.00
308-0000-541630	Purchase Well 4 & 5		\$650,000.00					\$ 650,000.00
308-0000-541640	Test Well 4 & 5	\$50,000.00						\$ 50,000.00
308-0000-541650	Install Pumps and Well House 4 & 5		\$475,000.00	\$475,000.00				\$ 950,000.00
308-0000-541660	SCADA System Improvements		\$50,000.00	\$50,000.00				\$ 100,000.00
308-0000-541670	New 250,000 Gallon Elevated Tank Construction		\$700,000.00	\$700,000.00				\$ 1,400,000.00
308-0000-542000	Wastewater Effluent Discharge Force Main - Phase 2			\$750,000.00	\$750,000.00			\$ 1,500,000.00
308-0000-543003	HACH Maintenance & Lab Management Software		\$25,000.00					\$ 25,000.00
FUND 308 TOTAL		\$50,000.00	\$13,535,001.00	\$13,400,001.00	\$1,090,000.00	\$0.00	\$0.00	\$28,075,002.00
320-0000-522250	VIII -Annual Road Paving & Sidewalks Program	\$552,102.00	\$1,097,102.00	\$1,132,102.00	\$294,675.00	\$501,146.00		\$ 3,577,127.00
320-0000-541002	VIII -Old Town (General) Stormwater		\$550,000.00					\$ 550,000.00
320-0000-541004	VIII - Lights Ferry Culvert		\$550,000.00					\$ 550,000.00
320-0000-541005	VIII - East Main Culvert				\$550,000.00			\$ 550,000.00
320-0000-541600	VII -Martin School Sanitary Sewer Replacement	\$21,000.00						\$ 21,000.00
320-0000-541700	CW Davis Pump Station Rehabilitation	\$36,230.00						\$ 36,230.00
320-0000-541800	VIII - Park Property and Improvements				\$244,428.00	\$170,572.00		\$ 415,000.00
320-0000-541900	VIII - Public Works Property					\$305,384.00		\$ 305,384.00

5 - Year CIP Plan Details by Fund

5/10/2022

Account ID	Account Description	2022 Capital Costs	2023 Capital Costs	2024 Capital Costs	2025 Capital Costs	2026 Capital Costs	2027 Capital Costs	Total
320-0000-542200	VIII -PD Vehicles & Equipment	\$43,000.00		\$70,000.00	\$43,000.00	\$77,000.00		\$ 233,000.00
320-0000-542300	VIII -Public Works Vehicles & Equipment	\$30,000.00						\$ 30,000.00
FUND 320 TOTAL		\$682,332.00	\$2,197,102.00	\$1,202,102.00	\$1,132,103.00	\$1,054,102.00	\$0.00	\$6,267,741.00
350-0000-522200	Annual Road Paving & Sidewalks Program	\$885,713.00	\$878,252.00	\$556,695.00	\$724,084.00	\$499,076.00		\$ 3,543,820.00
350-0000-522255	Mitchell St/Bassett Storwater Planning & Design	\$75,000.00						\$ 75,000.00
350-0000-541003	City-Wide Signage Project	\$130,000.00						\$ 130,000.00
350-0000-541004	Mitchell St Stormwater Infrastructure Imp - Phase1	\$400,000.00						\$ 400,000.00
350-0000-542400	IT Equipment Upgrades Annual Program		\$100,000.00	\$25,000.00	\$25,000.00	\$10,000.00	\$10,000.00	\$ 170,000.00
350-0000-542700	City Buildings Generator Project	\$50,000.00						\$ 50,000.00
350-0000-543001	Downtown Streetscapes/Parks Design Project		\$92,500.00					\$ 92,500.00
350-0000-543002	Website for City of Flowery Branch		\$90,000.00					\$ 90,000.00
FUND 350 TOTAL		\$1,540,713.00	\$1,160,752.00	\$581,695.00	\$749,084.00	\$509,076.00	\$10,000.00	\$4,551,320.00
Total		\$2,273,045.00	\$23,212,955.00	\$15,322,998.00	\$2,971,187.00	\$1,563,178.00	\$10,000.00	\$45,353,363.00

230 = American Rescue Plan Act
270 = Tax Allocation District Fund
308 = Water/Sewer Capital Projects Fund
320 = SPLOST Fund
350 = Local Resources Fund

General Fund

ACCOUNT ID	Description	FY2023 - FY23 (In Progress)
Revenues		
100-0000-311100	Real Prop Taxes - Current Year	\$2,431,961.00
100-0000-311150	Real Prop Taxes Curr Yr-Penalties	\$3,500.00
100-0000-311310	Motor Vehicle Taxes	\$7,500.00
100-0000-311311	TVAT Taxes	\$460,000.00
100-0000-311312	AAVT Taxes	\$5,000.00
100-0000-311320	Mobile Home Tax	\$1,200.00
100-0000-311340	Intangibles - Personal Property Tax	\$48,000.00
100-0000-311350	GA DOR - Railroad Equipment Taxes	\$500.00
100-0000-311500	Real Prop Taxes - Street Lights	\$9,110.00
100-0000-311600	Real Estate Transfer Taxes	\$5,600.00
100-0000-311710	Franchise Fees - GA Power	\$175,000.00
100-0000-311720	Franchise Fees - Jackson EMC	\$250,000.00
100-0000-311730	Franchise Fees - Southern Co. Gas	\$110,000.00
100-0000-311750	Franchise Fees - Charter Cable	\$20,000.00
100-0000-311760	Franchise Fees - BellSouth / AT&T	\$8,000.00
100-0000-311770	Franchise Fees - Others	\$7,000.00
100-0000-313100	LOST	\$1,500,000.00
100-0000-314200	Excise Tax - Distributors	\$263,000.00
100-0000-314300	Excise Tax - Restaurants	\$30,000.00
100-0000-314900	Excise Tax - Other	\$10,000.00
100-0000-316100	Business License (Occupational Tax)	\$50,000.00
100-0000-316200	Insurance Premium Tax	\$505,000.00
100-0000-316300	Financial Institution Tax	\$25,000.00
100-0000-321110	Licenses - Beer	\$20,000.00
100-0000-321120	Licenses - Wine	\$20,000.00
100-0000-321130	Licenses-Alcohol	\$50,000.00
100-0000-321131	Miscellaneous Fees - Rev	\$500.00
100-0000-321170	Vendor Fees	\$6,400.00
100-0000-321220	Business Taxes (Ins. Co_ \$50.00)	\$17,000.00
100-0000-321900	Yard Sale Permits	\$500.00
100-0000-321901	Business Licenses - Admin Fees	\$800.00
100-0000-322210	Zoning / Land Use Fees	\$2,500.00
100-0000-323100	Building & Sign Permits	\$345,000.00
100-0000-323900	Land Disturbance Fees	\$20,000.00
100-0000-323992	Plan Review Fees	\$20,000.00
100-0000-323995	PTV Regulatory Fees	\$300.00
100-0000-341320	Impact Fees (3% Admin. Fee)	\$15,000.00
100-0000-341400	Copies	\$150.00
100-0000-341910	Qualifying Fees (Elections)	\$720.00
100-0000-342120	Police Dept - Accident Reports	\$2,500.00
100-0000-342210	Police Dept. - False Alarms	\$1,000.00
100-0000-342310	Police Dept -Pouring/AlcoholPrints	\$5,400.00
100-0000-342900	Police Dept - Back Ground Checks	\$2,500.00
100-0000-346900	Police Dept - Alternative Sentencing Fees	\$7,500.00
100-0000-351100	Court Fines	\$350,000.00

100-0000-351200	GA Probation Fines	\$50,000.00
100-0000-351300	PD - State Asset Forfeitures	\$32,803.00
100-0000-361000	Interest Revenues	\$4,000.00
100-0000-371200	Police Dept - Shop with a Cop	\$7,000.00
100-0000-371210	Police Dept - Technology Fund	\$30,240.00
100-0000-380005	Surplus Sale of Equipment	\$500.00
100-0000-381100	Rent - Depot	\$5,000.00
100-0000-381110	Rent - Community Room	\$5,000.00
100-0000-381120	Rent - Main Street Rent	\$31,350.00
100-0000-382000	Rent - Cingular Tower	\$40,000.00
100-0000-391275	Transfer In - Hotel/Motel Rev	\$120,000.00
TOTAL		\$7,139,034.00
Expenses		
100-0000-579000	Contingency	\$134,248.00
TOTAL		\$134,248.00
Department: 1110 - Council		
100-1110-511100	Council / Salaries	\$36,000.00
100-1110-511101	Council / Meeting Per Diem	\$1,500.00
100-1110-512200	Council / FICA & Medicare	\$2,754.00
100-1110-521100	Council / Retreat	\$6,000.00
100-1110-523470	Council / Printing & Binding	\$1,000.00
100-1110-523500	Council / Travel Expense	\$2,000.00
100-1110-523700	Council / Edu. & Training	\$2,000.00
100-1110-531100	Council / Supplies & Material (EDC)	\$3,000.00
100-1110-531700	Council / Uniforms	\$250.00
TOTAL		\$54,504.00
Department: 1130 - City Clerk		
100-1130-511100	City Clerk / Salary	\$73,645.00
100-1130-512100	City Clerk / Health Insurance	\$11,707.00
100-1130-512200	City Clerk / FICA & Medicare	\$5,611.00
100-1130-512220	City Clk Long Term Disability	\$485.00
100-1130-512400	City Clerk / Retirement	\$7,753.00
100-1130-512600	City Clerk / GA SUI	\$4.00
100-1130-523220	City Clerk / Cell Phone	\$720.00
100-1130-523500	City Clerk / Travel Expenses	\$4,000.00
100-1130-523600	City Clerk / Dues & Fees	\$200.00
100-1130-523603	City Clerk / Muni Code	\$20,000.00
100-1130-523700	City Clerk / Education & Training	\$4,000.00
100-1130-531100	City Clerk / Supplies & Materials	\$1,500.00
100-1130-531600	City Clerk / Small Equipment	\$1,910.00
TOTAL		\$131,535.00

Department: 1310 - Mayor		
100-1310-511100	Mayor / Salary	\$9,000.00
100-1310-511101	Mayor / Meeting Per Diem	\$3,000.00
100-1310-512200	Mayor / FICA & Medicare	\$689.00
100-1310-521201	Mayor / Public Relations	\$500.00
100-1310-523221	Mayor / Cell Phone	\$700.00
100-1310-523500	Mayor / Travel Expense	\$2,000.00
100-1310-523700	Mayor / Education & Training	\$1,500.00
100-1310-531700	Mayor / Uniforms	\$100.00
TOTAL		\$17,489.00
Department: 1320 - City Manager		
100-1320-511100	City Manager/ Salary	\$67,776.00
100-1320-512100	City Manager / Health Insurance	\$1,031.00
100-1320-512200	City Manager/ FICA & Medicare	\$5,185.00
100-1320-512220	City Manager / Long Term Disability	\$271.00
100-1320-512400	City Manager / Retirement	\$5,351.00
100-1320-512600	City Manager/ GA SUI	\$2.00
100-1320-512910	City Manager / Car Allowance	\$3,000.00
100-1320-523220	City Manager / Cell Phone	\$960.00
100-1320-523500	City Manager / Travel Expenses	\$3,000.00
100-1320-523600	City Manager/ Dues & Fees	\$1,500.00
100-1320-523700	City Manager / Edu. & Train.	\$3,000.00
100-1320-531100	City Manager / Supplies & Materials	\$500.00
TOTAL		\$91,576.00
Department: 1400 - Elections		
100-1400-511200	Elections / Poll Workers	\$2,000.00
100-1400-523300	Elections / Advertising	\$200.00
100-1400-531100	Elections / Supplies & Materials	\$1,000.00
TOTAL		\$3,200.00
Department: 1500 - General Administration		
100-1500-511100	Admin / Salaries	\$203,708.00
100-1500-511300	Admin / Overtime	\$11,091.00
100-1500-512100	Admin / Health Insurance	\$50,029.00
100-1500-512200	Admin / FICA & Medicare	\$16,361.00
100-1500-512220	Admin - Long Term Disability	\$1,101.00
100-1500-512400	Admin / Retirement	\$21,434.00
100-1500-512600	Admin / GA SUI	\$12.00
100-1500-512700	Admin / Workers Comp.	\$100,000.00
100-1500-521105	Admin / E-Verify & SAVE Fees	\$500.00
100-1500-521204	Admin / Prof. Svs / Eng / Appraisals	\$10,000.00
100-1500-521240	Admin / Legal Fees	\$40,000.00
100-1500-521245	Admin / Annual Audit Fees	\$35,000.00
100-1500-521297	Admin / Surplus Sale Action	\$500.00
100-1500-521300	Admin / Website & Software Maintenance	\$12,000.00
100-1500-521310	Admin / IT Services	\$17,000.00
100-1500-523200	Admin / Communications	\$2,500.00
100-1500-523201	Admin / Cell Phones	\$1,320.00
100-1500-523250	Admin / Shipping & Postage	\$5,000.00

100-1500-523300	Admin / Advertising	\$3,000.00
100-1500-523400	Admin / Printing & Binding	\$5,000.00
100-1500-523500	Admin / Travel Expenses	\$10,000.00
100-1500-523600	Admin / Dues & Fees	\$5,000.00
100-1500-523700	Admin / Education & Training	\$10,000.00
100-1500-531100	Admin / Supplies & Materials	\$3,500.00
100-1500-531110	Admin / Office Supplies	\$4,000.00
100-1500-531400	Admin / Books & Periodicals	\$1,000.00
100-1500-531600	Admin / Small Equipment	\$12,000.00
TOTAL		\$581,056.00
Department: 1555 - Risk Management		
100-1555-523190	Risk Mgmt - Property & Liability	\$112,000.00
100-1555-531100	Risk Mgmt - Safety Coordinator	\$1,500.00
TOTAL		\$113,500.00
Department: 1565 - General Government Building and Plant		
100-1565-521010	City Hall & Bldg's / Security	\$9,500.00
100-1565-522100	City Hall & Bldg's / Cleaning	\$19,500.00
100-1565-522140	City Hall & Bldg's / Lawn Maintenance	\$12,000.00
100-1565-522200	City Hall & Bldg's / Repairs & Maintenance	\$35,000.00
100-1565-522210	City Hall & Bldg's / Pest / Termite	\$5,500.00
100-1565-522220	City Hall & Bldg's / AC Repairs & Maint.	\$10,000.00
100-1565-523200	City Hall & Bldg's / Communications	\$25,000.00
100-1565-523900	Leasing Services - Commissions	\$105,000.00
100-1565-531100	City Hall & Bldg's/ Supplies & Materials	\$4,000.00
100-1565-531211	City Hall & Bldg's / Water & Sewer	\$8,000.00
100-1565-531230	City Hall & Bldg's / Electricity	\$35,000.00
100-1565-531700	City Hall & Bldg's - Other Expenses	\$20,000.00
100-1565-541300	Capital Outlays - City Hall	\$40,000.00
TOTAL		\$328,500.00
Department: 1570 - Public Information		
100-1570-523202	GA Mtn Regional Commission	\$9,000.00
TOTAL		\$9,000.00
Department: 1580 - Records Management		
100-1580-523950	Records Management - Destruction	\$600.00
TOTAL		\$600.00
Department: 2650 - Municipal Court		
100-2650-511100	Court Clerk / Salary	\$98,895.00
100-2650-511300	Court Clerk / Overtime	\$2,746.00
100-2650-512100	Court Clerk / Health Insurance	\$11,783.00
100-2650-512200	Court Clerk / FICA & Medicare	\$7,730.00
100-2650-512220	Court - Long Term Disability	\$842.00
100-2650-512400	Court Clerk / Retirement	\$10,390.00
100-2650-512600	Court Clerk / GA SUI	\$8.00
100-2650-521201	Solicitor	\$20,800.00
100-2650-521202	Public Defender	\$1,336.00
100-2650-521203	Judge	\$11,700.00
100-2650-521300	Court / CJT & SSI Software & Support	\$35,000.00
100-2650-523500	Court / Travel Expenses	\$500.00

100-2650-523700	Court / Education & Training	\$1,300.00
100-2650-523850	Translator	\$4,940.00
100-2650-531705	Prison Costs	\$10,000.00
TOTAL		\$217,970.00
Department: 3210 - Police Administration		
100-3210-511100	PD Admin / Salaries	\$179,659.00
100-3210-511300	PD Admin / Overtime	\$2,055.00
100-3210-512100	PD Admin / Health Insurance	\$39,722.00
100-3210-512200	PD Admin / FICA & Medicare	\$13,855.00
100-3210-512220	PD Admin / Long Term Disability	\$1,439.00
100-3210-512400	PD Admin/ Retirement	\$18,926.00
100-3210-512600	PD Admin / GA SUI	\$8.00
100-3210-521110	PD / Drug Testing	\$2,500.00
100-3210-521201	PD Admin / Public Relations	\$5,000.00
100-3210-521230	PD / State Forfeiture Materials & Equipment	\$32,800.00
100-3210-521267	PD / Firing Range Repairs/Maint	\$500.00
100-3210-521291	PD / Shop with a Cop	\$8,000.00
100-3210-521292	PD / Technology Fund Expense	\$30,240.00
100-3210-521300	PD/ Website & Software Maintenance	\$11,000.00
100-3210-521310	PD / IT Services	\$17,000.00
100-3210-522205	PD / Vehicle Repairs & Maint.	\$30,000.00
100-3210-522206	PD / Towing of Vehicles	\$300.00
100-3210-523200	PD / Communications	\$10,000.00
100-3210-523203	PD / Radio's for Vehicles	\$10,000.00
100-3210-523221	PD / Cell Phones	\$11,000.00
100-3210-523250	PD Admin/ Shipping & Postage	\$1,000.00
100-3210-523300	PD / Advertising	\$600.00
100-3210-523400	PD/ Printing & Binding	\$2,500.00
100-3210-523601	PD / Dues & Fees / TLO / GTA	\$1,800.00
100-3210-523700	PD / Education & Training	\$10,000.00
100-3210-531100	PD/ Supplies & Materials	\$7,000.00
100-3210-531110	PD/ Office Supplies	\$3,000.00
100-3210-531270	PD / Gasoline	\$68,000.00
100-3210-531400	PD/ Books & Periodicals	\$200.00
100-3210-531600	PD / Small Equipment	\$18,000.00
100-3210-531620	PD / Safety Vests/ B.P.	\$5,000.00
100-3210-531795	PD / Uniforms	\$14,000.00
TOTAL		\$555,104.00
Department: 3223 - Patrol		
100-3223-511100	Patrol/ Salaries	\$1,138,519.00
100-3223-511300	Patrol/ Overtime	\$27,961.00
100-3223-511301	Patrol / Event Support Overtime	\$3,000.00
100-3223-512100	Patrol / Health Insurance	\$262,891.00
100-3223-512200	Patrol / FICA & Medicare	\$89,425.00
100-3223-512220	Patrol / Long Term Disability	\$9,322.00
100-3223-512400	Patrol / Retirement	\$115,129.00
100-3223-512410	Patrol / Peace Officers Annuity Fund	\$3,900.00
100-3223-512600	Patrol / GA SUI	\$73.00

TOTAL		\$1,650,220.00
Department: 4210 - Highways & Street Administration		
100-4210-511100	PW / Salaries	\$304,789.00
100-4210-511300	PW / Overtime	\$5,364.00
100-4210-511301	PW - Event Support Overtime	\$600.00
100-4210-512100	PW / Health Insurance	\$63,144.00
100-4210-512200	PW / FICA & Medicare	\$23,603.00
100-4210-512220	PWs / Long Term Disability	\$1,695.00
100-4210-512400	PW / Retirement	\$32,045.00
100-4210-512600	PWs / GA SUI	\$21.00
100-4210-521200	PWs / Legal Fees	\$25,000.00
100-4210-521204	PWs / Prof. Services	\$12,000.00
100-4210-521300	PWs / Website & Software Maintenance	\$11,000.00
100-4210-521311	PWs / IT Services	\$17,000.00
100-4210-522115	PWS / Land Fill Costs	\$5,000.00
100-4210-522200	PWs / Repairs & Maintenance	\$7,500.00
100-4210-522205	PWs / Vehicle Repairs & Maint.	\$12,000.00
100-4210-522250	PWs / Roads - Repairs & Maintenance	\$60,000.00
100-4210-522252	PWs / Signage Installation & Maintenance	\$5,000.00
100-4210-522260	PWs / Stormwater Management	\$135,061.00
100-4210-523221	PWs / Cell Phones	\$2,600.00
100-4210-523600	PWs / Dues and Fees	\$250.00
100-4210-523700	PWs / Education & Training	\$5,000.00
100-4210-531100	PWs / Supplies & Material	\$10,000.00
100-4210-531270	PWs / Gasoline	\$20,000.00
100-4210-531600	PWs / Small Equipment	\$25,000.00
100-4210-531790	PW / Uniforms	\$9,000.00
100-4210-542100	PWs / Capital Purchases	\$45,000.00
TOTAL		\$837,672.00
Department: 4260 - Street Lighting		
100-4260-531232	Street Lights / Electricity	\$70,000.00
100-4260-531233	Street Lights - Madison Creek	\$2,800.00
100-4260-531235	FB Welcome Sign - Electricity	\$500.00
TOTAL		\$73,300.00
Department: 4270 - Traffic Engineering		
100-4270-523210	Traffic Signal / AT&T	\$3,000.00
100-4270-531231	Traffic Signal / Electricity	\$2,500.00
TOTAL		\$5,500.00
Department: 4900 - Maintenance and Shop		
100-4900-522200	PWs / Shop - Repairs & Maintenance	\$3,000.00
100-4900-531100	Shop/ Supplies & Materials	\$1,000.00
TOTAL		\$4,000.00

Department: 5530 - Community Center / Depot		
100-5530-522100	Depot & Comm Room / Cleaning	\$6,000.00
100-5530-522200	Depot & Comm Rm/Caboose Repairs & Maint.	\$55,500.00
100-5530-523200	Depot / Communications	\$4,200.00
100-5530-531100	Depot & Comm Room/ Supplies & Materials	\$3,000.00
100-5530-531230	Depot/Caboose Electricity	\$5,700.00
TOTAL		\$74,400.00
Department: 6100 - Railroad Right-Of-Way		
100-6100-522310	RR / Lease Pmt. Right-Aways	\$4,500.00
100-6100-522350	RR / Improvements to Right-Aways	\$4,300.00
100-6110-523600	C&R / Dues & Fees (ASCAP)	\$350.00
TOTAL		\$9,150.00
Department: 6200 - Parks		
100-6200-522200	Parks / Repairs & Maintenance	\$10,000.00
TOTAL		\$10,000.00
Department: 7400 - Planning & Community Development		
100-7400-511100	PCD/ Salaries	\$442,155.00
100-7400-511300	PCD/ Overtime	\$10,415.00
100-7400-512100	PCD/ Health Insurance	\$69,663.00
100-7400-512200	PCD/ FICA & Medicare	\$31,633.00
100-7400-512220	PCD - Long Term Disability	\$3,420.00
100-7400-512400	PCD/ Retirement	\$46,546.00
100-7400-512600	PCD/GA SUI	\$23.00
100-7400-521201	PCD / Professional Sys & Projects	\$100,000.00
100-7400-521202	PCD / MS4 Reporting	\$20,000.00
100-7400-521207	PCD/ GIS Permitting Sys - Hall Co.	\$19,500.00
100-7400-521209	PCD / Contracted Services (S&E)	\$85,000.00
100-7400-521240	PCD/ Legal Fees	\$40,000.00
100-7400-521247	PCD / Plan Review Expenses	\$25,000.00
100-7400-521275	PCD/ Zoning Plan	\$75,000.00
100-7400-521300	PCD / Website & Software Maintenance	\$22,000.00
100-7400-521310	PCD / IT Services	\$17,000.00
100-7400-522205	PCD / Vehicle Repairs & Maint	\$3,500.00
100-7400-523200	PCD/ Communications	\$500.00
100-7400-523221	PCD/ Cell Phones	\$2,600.00
100-7400-523250	PCD / Shipping & Postage	\$1,000.00
100-7400-523300	PCD/ Advertising	\$5,000.00
100-7400-523400	PCD/ Printing & Binding	\$1,000.00
100-7400-523500	PCD/ Travel Expenses	\$4,150.00
100-7400-523600	PCD/ Dues & Fees	\$1,000.00
100-7400-523700	PCD/ Education & Training	\$6,000.00
100-7400-531100	PCD / Supplies & Materials	\$2,000.00
100-7400-531110	PCD/ Office Supplies	\$1,200.00
100-7400-531270	PCD/ Gasoline	\$5,000.00
100-7400-531400	PCD/ Books & Periodicals	\$150.00
100-7400-531600	PCD / Small Equipment	\$8,000.00
100-7400-531790	PCD/ Uniforms	\$500.00
TOTAL		\$1,048,955.00

Department: 7520 Economic Development		
100-7520-521201	Professional Services & Projects	\$10,000.00
100-7520-531100	Development Auth. Supplies & Matls	\$7,000.00
100-7520-572000	E. D. C. Contract	\$25,000.00
TOTAL		\$42,000.00
Department: 7540 - Tourism		
100-7540-511100	Tourism / Salaries	\$76,974.00
100-7540-512100	Tourism / Health Insurance	\$11,708.00
100-7540-512200	Tourism / FICA & Medicare	\$5,866.00
100-7540-512220	Tourism / Long Term Disability	\$609.00
100-7540-512400	Tourism / Retirement	\$8,105.00
100-7540-512600	Tourism / GA SUI	\$4.00
100-7540-521201	Tourism / Public Relations	\$3,000.00
100-7540-521310	Tourism / IT Services	\$17,000.00
100-7540-523200	Tourism / Communications	\$3,112.00
100-7540-523201	Tourism / Cell Phone	\$720.00
100-7540-523300	Tourism / Advertising	\$3,000.00
100-7540-523400	Tourism / Printing & Binding	\$3,000.00
100-7540-523500	Tourism / Travel Expenses	\$3,000.00
100-7540-523700	Tourism / Training	\$3,000.00
100-7540-531190	Tourism / Concert Expenses	\$7,500.00
100-7540-531191	Tourism / Christmas Decorating	\$55,000.00
100-7540-531192	Tourism / Events Support	\$42,500.00
100-7540-531193	Tourism / Community Art Fund	\$5,000.00
100-7540-531600	Tourism / Small Equipment	\$330.00
100-7540-531700	Tourism / Uniforms	\$500.00
TOTAL		\$249,928.00
Department: 9000 - Non-Departmental		
100-9000-611270	Transfer Out 270 - TAD Fund	\$70,000.00
100-9000-611350	Transfer Out 350 - Local Resources Fund	\$825,627.00
TOTAL		\$895,627.00
TOTAL General Fund Budget Expenses		\$7,139,034.00

Water/Wastewater Fund

ACCOUNT ID	Description	FY2023 - FY23 (In Progress)
Revenues		
505-0000-344210	Water Charges	\$946,000.00
505-0000-344220	Meter Set Fees	\$87,000.00
505-0000-344232	Admin. Fees	\$82,000.00
505-0000-344253	Sewer Charges - Billed By Gainesville	\$947,512.00
505-0000-344254	Sewer Charges	\$1,022,000.00
505-0000-380000	Penalties / Reconnect Fees	\$48,000.00
505-0000-380100	W&S Miscellaneous Revenue	\$3,500.00
505-0000-380500	S / F.O.G. & Pre-Treatment Permits	\$7,850.00
505-0000-389000	WI Rebates from Gainesville 5%	\$42,000.00
TOTAL		\$3,185,862.00
Expenses		
Department: 9000 - Non-Departmental		
505-0000-579000	Contingency	\$5,061.00
505-0000-581100	2014 Sewer Revenue Bonds - Principal	\$285,000.00
505-0000-581300	GEFA Debt - Principal	\$72,103.00
505-0000-582100	2014 Sewer Revenue Bonds - Interest	\$69,226.00
505-0000-582101	Water Sewer Debt - Fees	\$5,745.00
505-0000-582300	GEFA Debt - Interest	\$13,931.00
505-0000-582400	GEFA CW2020010 - Interest	\$100,000.00
505-0000-582500	GEFA DW2020020 - Interest	\$50,000.00
TOTAL		\$601,066.00
Department: 1500 - General Administration		
505-1500-511100	W/S Admin / Salaries	\$249,483.00
505-1500-511300	W/S Admin / Overtime	\$8,598.00
505-1500-512100	W/S Admin / Health Insurance	\$46,397.00
505-1500-512200	W/S Admin I FICA & Medicare	\$19,666.00
505-1500-512220	Admi - Long Term Disability	\$1,248.00
505-1500-512400	W/S Admin / Retirement	\$18,464.00
505-1500-512600	W/S Admin / GA SUI	\$13.00
505-1500-521204	Admin - Professional Services	\$30,000.00
505-1500-521240	W/S Admin / Legal Fees	\$25,000.00
505-1500-521300	W/S Admin / Website & Software Maintenance	\$12,000.00
505-1500-521310	W/S Admin / IT Services	\$17,000.00
505-1500-523210	W/S Admin - Call Notifications Expense	\$1,000.00
505-1500-523250	W&S Admin Shipping & Postage	\$10,000.00
505-1500-523310	W/S Admin - Advertising	\$2,000.00
505-1500-523400	W&S Printing	\$3,000.00
505-1500-531110	W/S Office Supplies	\$1,500.00
505-1500-531600	W&S Admin - Small Equipment	\$3,000.00
TOTAL		\$448,369.00
Department: 4300 - Wastewater		
505-4300-511100	S/ Salaries	\$253,737.00
505-4300-511300	S/ Overtime	\$6,889.00
505-4300-512100	S/ Health Insurance	\$58,345.00

505-4300-512200	S/ FICA & Medicare	\$19,835.00
505-4300-512220	S/ - Long Term Disability	\$1,246.00
505-4300-512400	S/ Retirement	\$16,044.00
505-4300-512600	S/ GA SU1	\$17.00
505-4300-521204	S / Engineering Fees	\$25,000.00
505-4300-521310	S/ Sewage Testing	\$5,000.00
505-4300-521315	S/ EPD Compliance & Fines	\$6,000.00
505-4300-522110	S/ Sludge Disposal	\$275,000.00
505-4300-522200	S/ Repairs & Maintenance	\$100,000.00
505-4300-522205	S/ Vehicle Repairs & Maintenance	\$2,500.00
505-4300-523200	S/ Communications	\$5,520.00
505-4300-523221	S/ Cell Phones	\$2,900.00
505-4300-523250	S / Shipping & Postage	\$250.00
505-4300-523500	S/ Travel Expenses	\$1,500.00
505-4300-523600	S/ Dues & Fees	\$3,500.00
505-4300-523700	S/ Education & Training	\$2,500.00
505-4300-531100	S/ Supplies & Materials	\$25,000.00
505-4300-531110	S/ Office Supplies	\$4,000.00
505-4300-531120	S/ Chemicals	\$140,000.00
505-4300-531230	S/ Electricity	\$141,000.00
505-4300-531270	S/ Gasoline & Diesel	\$10,000.00
505-4300-531600	S/ Small Equip. & Lab Equip.	\$15,000.00
505-4300-531790	S/ Uniforms	\$7,500.00
TOTAL		\$1,128,283.00
Department: 4334 Sewer Lift Stations		
505-4334-522200	L/S Repairs & Maint.	\$45,000.00
505-4334-523200	L/S Communications	\$3,300.00
505-4334-531210	L/S Water	\$23,500.00
505-4334-531230	L/S Electricity	\$46,000.00
505-4334-531240	L/S Propane Gas	\$3,500.00
TOTAL		\$121,300.00
Department: 4400 - Water		
505-4400-511100	W/ Salaries	\$452,868.00
505-4400-511300	W/ Overtime	\$10,197.00
505-4400-512100	W/ Health Insurance	\$111,605.00
505-4400-512200	W/ FICA & Medicare	\$35,216.00
505-4400-512220	W/ - Long Term Disability	\$2,095.00
505-4400-512400	W/ Retirement	\$29,128.00
505-4400-512600	W / GA SUI	\$35.00
505-4400-521204	W / Engineering Fees	\$25,000.00
505-4400-521300	W/ Water Testing & Storm Wtr Monit	\$9,000.00
505-4400-521313	W/ WaterShed Protection Plan	\$15,000.00
505-4400-521315	W/ EPD Compliance - Audits & Repts	\$3,000.00
505-4400-522200	W/ Repairs & Maintenance	\$10,000.00
505-4400-522205	W / Vehicle Repairs & Maintenance	\$2,500.00
505-4400-523200	W/ Communications	\$500.00
505-4400-523221	W/ Cell Phones	\$2,000.00
505-4400-523250	W / Shipping & Postage	\$600.00

505-4400-523400	W / Printing & Binding	\$600.00
505-4400-523500	W/ Travel Expenses	\$500.00
505-4400-523600	W/ Dues & Fees	\$3,500.00
505-4400-523700	W/ Education & Training	\$2,500.00
505-4400-531100	W/ Supplies & Materials	\$2,500.00
505-4400-531110	W / Meter Purchases	\$50,000.00
505-4400-531270	W/ Gasoline & Diesel	\$15,000.00
505-4400-531600	W/ Small Equipment	\$5,000.00
505-4400-531790	W/ Uniforms	\$12,500.00
TOTAL		\$800,844.00
Department: 4420 - Water Supply		
505-4420-522200	Well Buildings - Repairs/Maint	\$2,000.00
505-4420-523900	Wells & Water Tanks R&M/Inspections	\$25,000.00
505-4420-531230	Wells & Water Tanks - Electricity	\$49,000.00
505-4420-531990	Wells & Water Tanks - Chemicals	\$10,000.00
TOTAL		\$86,000.00
TOTAL Water/Wastewater Fund Budget Expenses		\$3,185,862.00

American Rescue Plan Act Fund

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
230-0000-332100	American Rescue Plan Act of 2021	\$1,554,429.00
230-0000-399900	Budgeted Fund Balance	\$1,554,429.00
TOTAL		\$3,108,858.00
Expenses		
230-0000-540000	Capital Outlay	\$2,063,108.00
230-0000-541000	Interim WWTP Improvements	\$969,900.00
230-0000-543000	Two (2) Blower Lease	\$75,850.00
TOTAL		\$3,108,858.00

Tax Allocation District Fund

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
270-0000-311100	TAD - Revenue - Hall Co Portion	\$250,000.00
270-0000-361000	Interest Revenue	\$2,000.00
270-0000-391100	Transfer in 100 - General Fund	\$185,000.00
270-0000-399900	Budgeted Fund Balance	\$5,250,550.00
TOTAL		\$5,687,550.00
Expenses		
270-0000-521201	TAD - Professional Svs & Proj	\$205,000.00
270-0000-541200	Pine Street Park & Streetscaping	\$589,465.00
270-0000-541220	Market Pavilion Park & Streetscaping	\$1,331,249.00
270-0000-541300	Tenant Improvements - Main St Building	\$445,000.00
270-0000-541410	Pine Street Improvements	\$586,932.00
270-0000-541420	Old Town Bike-Pedestrian Path	\$692,362.00
270-0000-541430	Mitchell Street Improvements	\$851,126.00
270-0000-541440	Downtown Stormwater Improvements	\$714,866.00
270-0000-581000	TAD Development Revenue Bond - Principal	\$110,000.00
270-0000-582100	TAD Development Revenue Bond - Interest	\$158,800.00
270-0000-583000	TAD Development Revenue Bond - Fees	\$2,750.00
Total		\$5,687,550.00

Hotel Motel Fund

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
275-0000-314100	CVB Hotel Tax Rev - City's Portion	\$85,000.00
275-0000-314200	Tourism Product Development	\$40,000.00
275-0000-391275	CVB Hotel Tax Rev - CVB's Portion	\$85,000.00
TOTAL		\$210,000.00
Expenses		
275-7540-572000	Convention Visitors Bureau	\$85,000.00
275-7540-611100	Trans Out 100 - General Fund	\$125,000.00
TOTAL		\$210,000.00

SPLOST FUND

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
320-0000-313508	SPLOST VIII	\$1,097,102.00
TOTAL		\$1,097,102.00
Expenses		
320-0000-522250	VIII -Roads & Sidewalk Improvements	\$1,097,102.00
TOTAL		\$1,097,102.00

Local Resources Capital Projects Fund

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
350-0000-334100	LMIG Revenue	\$85,000.00
350-0000-389200	Reserves	\$421,028.00
350-0000-391100	Transfer in 100 - General Fund	\$903,250.00
TOTAL		\$1,409,278.00
Expenses		
350-0000-522200	Paving/Repairs & Maintenance - Roads	\$878,252.00
350-0000-542400	IT Equipment Upgrades Annual Program	\$100,000.00
350-0000-543002	Website Upgrades	\$90,000.00
350-0000-581000	City Hall & Plaza Revenue Bond - Principal	\$300,035.00
350-0000-582100	City Hall & Plaza Revenue Bond - Interest	\$40,991.00
TOTAL		\$1,409,278.00

Water/Wastewater Capital Projects Fund

ACCOUNT ID	Description	FY2023 - FY23 Finalized
Revenues		
308-0000-344230	Residential Sewer Development Charges	\$249,524.00
308-0000-344231	Residential Water Development Charges	\$249,524.00
308-0000-344233	Commercial Water Development Charges	\$100,000.00
308-0000-344234	Commercial Sewer Development Charges	\$100,000.00
308-0000-344235	Residential Irrigation Meters	\$10,000.00
308-0000-344236	Commercial Irrigation Meters	\$10,000.00
308-0000-393100	GEFA Debt Proceeds - DW2020020	\$1,515,000.00
308-0000-393200	GEFA Debt Proceeds - CW2020010	\$8,230,001.00
308-0000-399900	Budgeted Retained Earnings	\$3,579,766.00
TOTAL		\$14,043,815.00
Expenses		
308-0000-541100	Water Line Improvements Planning & Design	\$300,000.00
308-0000-541100	Atlanta Highway Water Line	\$140,000.00
308-0000-541510	Construction Management Services	\$393,000.00
308-0000-541520	Wastewater Expansion Construction (Parallel Plant)	\$10,017,001.00
308-0000-541525	Geotechnical for Construction Site Work	\$75,000.00
308-0000-541540	Roberts Dr Pump Station Reliability (Natural Gas)	\$250,000.00
308-0000-541550	Modify Well Pumps & Well House #1 & #3	\$150,000.00
308-0000-541610	Water Distribution System Upgrade	\$200,000.00
308-0000-541620	Lights Ferry Water Line	\$250,000.00
308-0000-541630	Purchase Well 4 & 5	\$650,000.00
308-0000-541650	Install Pumps and Well House 4 & 5	\$475,000.00
308-0000-541660	SCADA System Improvements	\$50,000.00
308-0000-541670	New 750,000 Ground Tank Construction	\$700,000.00
308-0000-611505	Transfer out 505 - WS Revenue Fund	\$393,814.00
TOTAL		\$14,043,815.00



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consideration of Second Reading of Ordinance 660 - A request from Lights Ferry Partners, LLC and Diego Fracasso to Rezone 5908 Lights Ferry Road, a 1.92+/- acre of land also known as Tax Parcel Identification Number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND)

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

This is the second and final read of ordinance 660.

FACTS AND ISSUES:

A request from Lights Ferry Partners, LLC and Diego Fracasso to rezone 5908 Lights Ferry Road a 1.92+/- acre of land also known as tax parcel identification number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND) with the intent to subdivide, develop, and construct seven (7) detached single family homes.

This request is in compliance with the Flowery Branch Comprehensive Plan. The request, if approved, shall meet the requirements set forth in the Flowery Branch Zoning Ordinance including, but not limited to, Articles 7 and 12. Article 7 is the "Traditional Neighborhood Development District" and Article 12 is the newly updated "Requirements for Specific Residential Principal Buildings and Uses".

Staff recommends approval.

Proposed Schedule

March 3, 2022 – Public Hearing

April 21, 2022 – First Read and Vote

May 5, 2022 - Work Session (if requested)

June 2, 2022 – Second Read and Final Vote

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve second read of ordinance 660

SAMPLE MOTION:

I make a motion to approve Ordinance 660 .

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Lights Ferry Rezoning Ordinance 660.pdf](#)
- [Staff Report Lights Ferry.pdf](#)

ORDINANCE 660

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF FLOWERY BRANCH, GEORGIA, BY REZONING A 1.92 +/- ACRE PARCEL OF REAL PROPERTY OWNED BY LIGHTS FERRY PARTNERS, LLC. IDENTIFIED AS 5908 LIGHTS FERRY ROAD, TAX PARCEL NO. 08112 027019, AS SHOWN ON EXHIBIT “A”, AND AS DESCRIBED ON EXHIBIT “B”, FROM RESIDENTIAL, DETACHED SINGLE-FAMILY, LOW DENSITY (R-1) TO TRADITIONAL NEIGHBORHOOD DEVELOPMENT DISTRICT (TND) SUBJECT TO THE CONDITIONS SET FORTH ON EXHIBIT “C”; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Lights Ferry Partners, LLC. owns the 1.92 +/- acre parcel of land known as 5908 Lights Ferry Road, identified as Parcel Tax Identification No. 08112 027019, as shown on Exhibit “A” and as described on Exhibit “B”; and

WHEREAS, Lights Ferry Partners, LLC. submitted to the City of Flowery Branch, Georgia, a written and signed application and affidavit showing consent to being rezoned; and

WHEREAS, a survey and complete description of the land to be rezoned is included in the application; and

WHEREAS, the City Council held a public hearing at the meeting of March 3, 2022, duly noticed as prescribed by law and published in the Gainesville Times, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds that the proposed rezoning from Residential, Detached Single-Family, Low Density (R-1) to Traditional Neighborhood Development District (TND) is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of the Zoning Ordinance as identified below.

1. The proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
2. The proposal is not expected to adversely affect the existing use or usability of adjacent or nearby property.
3. The property could be used in accordance with the existing regulations and has a reasonable economic use as currently zoned; however, an alternative use is appropriately considered.

4. The development if approved and constructed is not expected to result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
5. The proposal is generally in conformity with the policy and intent of the comprehensive plan including the character area map and future land use plan map.
6. The proposal is considered appropriate in view of existing use(s) and zoning of the subject property and nearby properties.
7. No determination has been made by staff with regard to the value differential between development under the current zoning as opposed to TND (Traditional Neighborhood Development District).
8. A proposed development will not be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
9. There are no known adverse effects that would result from the change in zoning district map, or change in use, on the character of a zoning district.
10. Development as proposed is not expected to impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality. Compliance with city subdivision and land development regulations will be required, which include but are not limited to soil erosion and sedimentation, stormwater, and flood damage prevention.

SECTION 2. REZONING.

The .1.92 +/- acre parcel of land known as 5908 Lights Ferry Road, identified as Parcel Tax Identification No.08112 027019 as shown on Exhibit “A”, and legally described in Exhibit “B”, is hereby rezoned from Residential, Detached Single-Family, Low Density (R-1) to Traditional Neighborhood Development District (TND) subject to the conditions set forth on Exhibit “C”. Said Exhibits are incorporated by reference.

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SECTION 3. AMENDMENT OF THE ZONING MAP.

This Ordinance is enacted as an amendment to the Zoning Map of Flowery Branch, Georgia. Accordingly, the Zoning Administrator is hereby authorized to update the Official Map consistent with Article 3 of the Zoning Ordinance.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published 02/02/22
Public Hearing 03/03/22

First Reading 04/21/22
Adopted 06/02/22

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be June 2, 2022.

SECTION 6. REPEALER.

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

Approved this 19th day of May 2022.

Edward R. Asbridge, Mayor

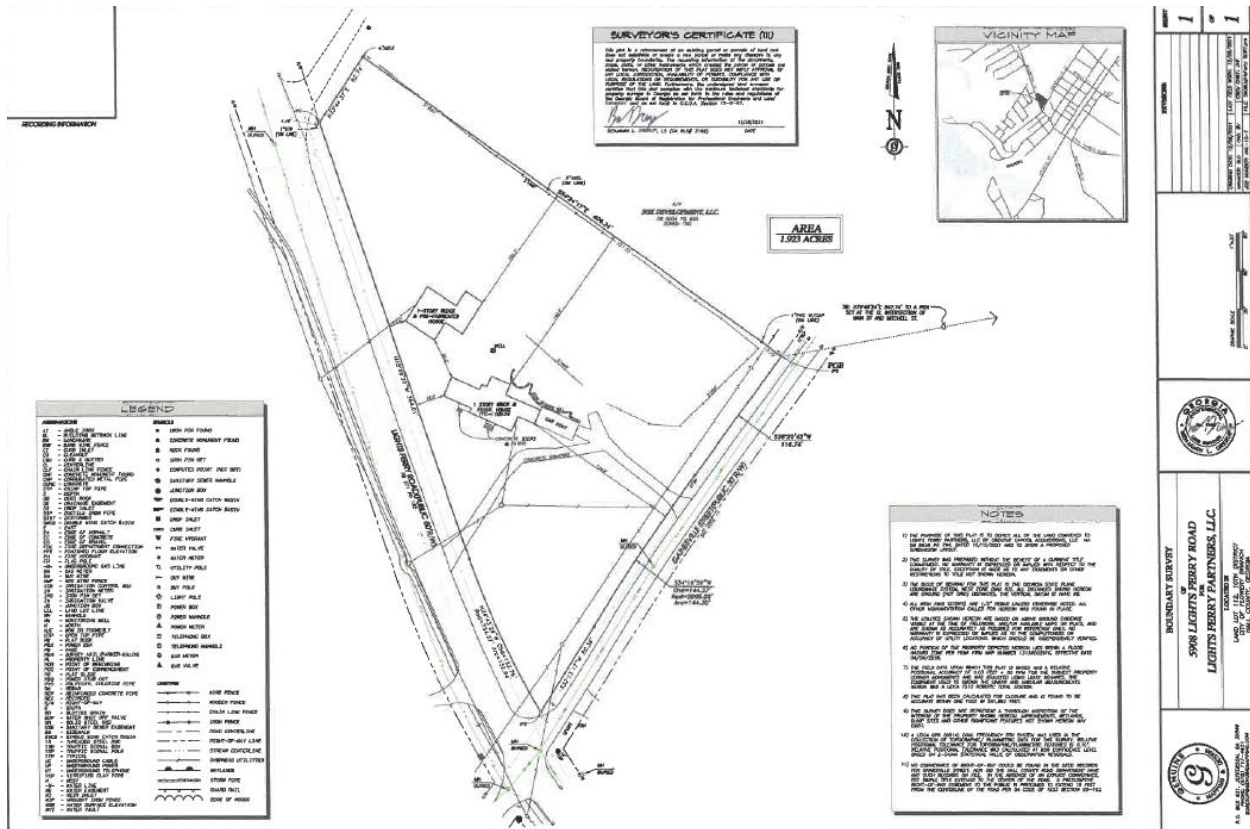
ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM

E. Ronald Bennett, City Attorney

Exhibit “A”



Public Hearing Published 02/02/22
Public Hearing 03/03/22

First Reading 04/21/22
Adopted 06/02/22

Exhibit "B"

5908 Lights Ferry Rd Legal Description

Description of Property

TRACT ONE

All that tract or parcel of land lying and being in the Town of Flowery Branch, Hall County, Georgia, being part of the land described in a deed recorded in Deed Book 284, Page 15, Hall County, Georgia Deed Records, adjoining the present homeplace of Clarence J. Fenn, and more particularly described as follows:

Beginning at the northeast corner of the Clarence J. Fenn homeplace on the Old Gainesville-Buford Road, and running thence 123 feet northward along said road to an iron pin corner; thence westward parallel with the Fenn line 400 feet, more or less, to an iron pin corner fixed by the parties hereto at a point 35 feet east of the rear line of the F.C. Orr property, as described in the deed recorded in Book 284, Page 515, thence southward parallel with Orr's said rear line 123 feet to the C.J. Fenn line at a point just across part of the pavement of the new road running along there; thence eastward 400 feet, more or less, to the beginning corner. The last mentioned new road cuts across the southwest corner of the lot herein conveyed, and of course this corner as cut off in the new road is not included in this deed.

TOGETHER WITH TRACT TWO

All that tract and parcel of land situate, lying and being in Hall County, Georgia, and being more particularly described as follows:

A part of Lot 112, being in Land Lot District No. 8, City of Flowery Branch, Hall County, Georgia, and being in the 1270th District G.M., Hall County, Georgia, containing one and one-tenth (1.1) acres, more or less, and being more particularly described as follows:

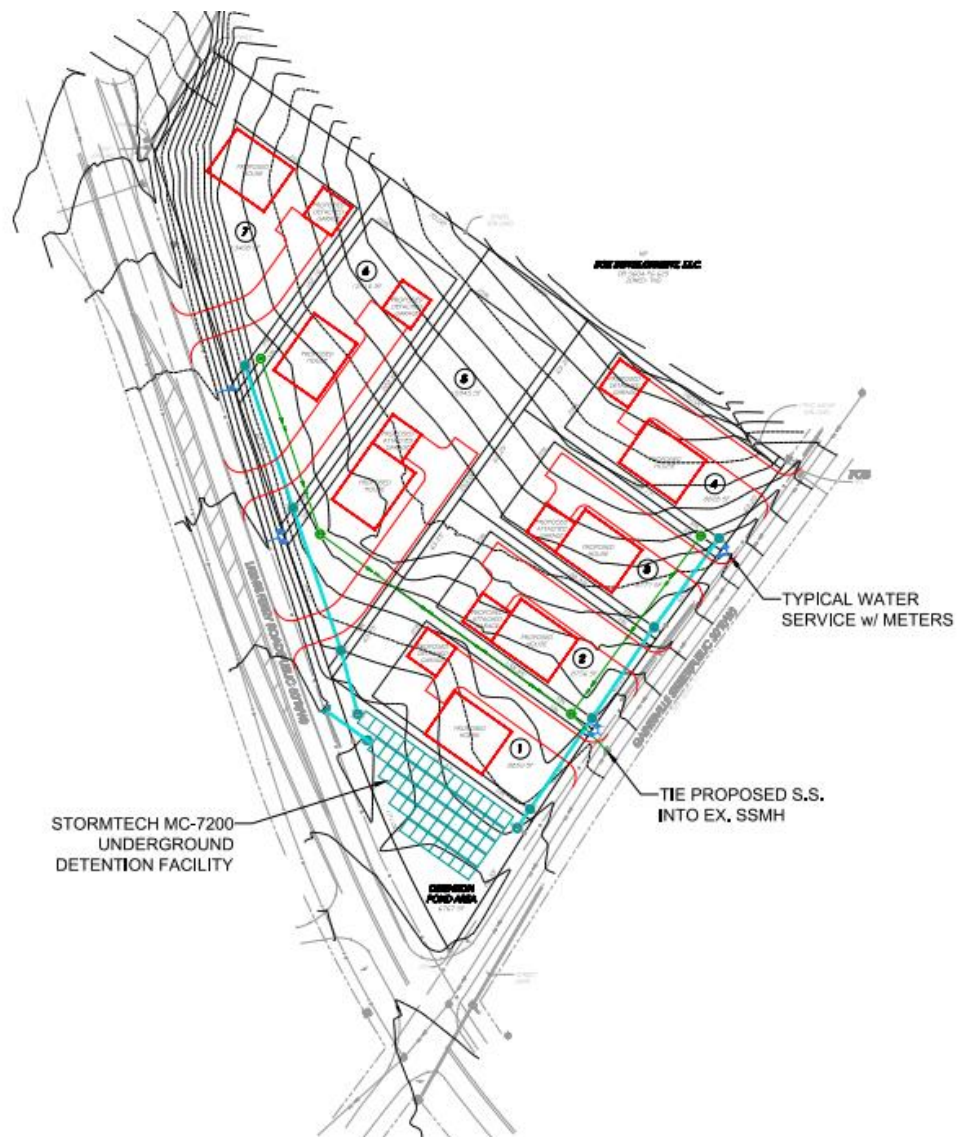
Beginning on the north side of Broad Street and west side of Old Gainesville Road; thence running northeast 264 feet to corner of what was formerly A.M. Orr line; thence west along A. M. Orr line 360 feet to the new highway; thence along the New Highway 450 feet to the Old Gainesville Road and the beginning corner. Said property is in a V-shape.

These two tracts being the same property conveyed in a Warranty Deed from Roy E. Clark and Janice Lee Clark Bryans to Allen J. Bryans dated August 24, 1996, recorded in Deed Book 2700, Page 278, Hall County, Georgia Deed Records, being improved property known as **5908 Lights Ferry Road** according to the present system of numbering properties by the Hall County, Georgia Tax Assessor's office. Said property is conveyed together with and subject to all easements, covenants, and restrictions of record, if any.

Exhibit "C"

Conditions of Zoning

1. The site shall significantly adhere to the as shown below:



2. Changes to the site plan deemed major by staff shall require Council approval.
3. Five (5) foot Sidewalks and curb gutter along Gainesville St and Lights Ferry that extend the entire length of the property in both directions.

4. Decorative light poles (matching the Flowery Branch downtown lights) shall be placed twenty-five (25) apart along Lights Ferry Road and Gainesville Street for the entire length of the project.
5. Professional Landscape plan that incorporates bermuda or zoysia sod throughout the entire development extended to the curb. Plan shall be approved by staff prior to the issuance of a land disturbance permit.
6. No fencing in front or side yards. Fencing in back yard shall not exceed 4 feet.
7. Fencing shall significantly adhere to the example provided below:



8. Underground retention with a common space for the underground retention tanks. Area where the tanks are installed should be professionally landscaped to promote a pocket park atmosphere for the residents of the development.
9. Establishment of an HOA with a maximum of 1 rental unit cap incorporated into the HOA bylaws.
10. HOA shall mandate specific times that trash and/or recycle receptors may be left out.
11. Front porches are required on all homes per TND requirements.
12. No front yard parking pads are allowed.
13. Mailboxes must be the exact same for all homes.
14. Homes shall have a minimum of 3,000 square feet of heated floor space.
15. Elevations shall be submitted and approved by the City of Flowery Branch prior to the issuance of a land disturbance permit.

Public Hearing Published	02/02/22
Public Hearing	03/03/22

First Reading	04/21/22
Adopted	06/02/22

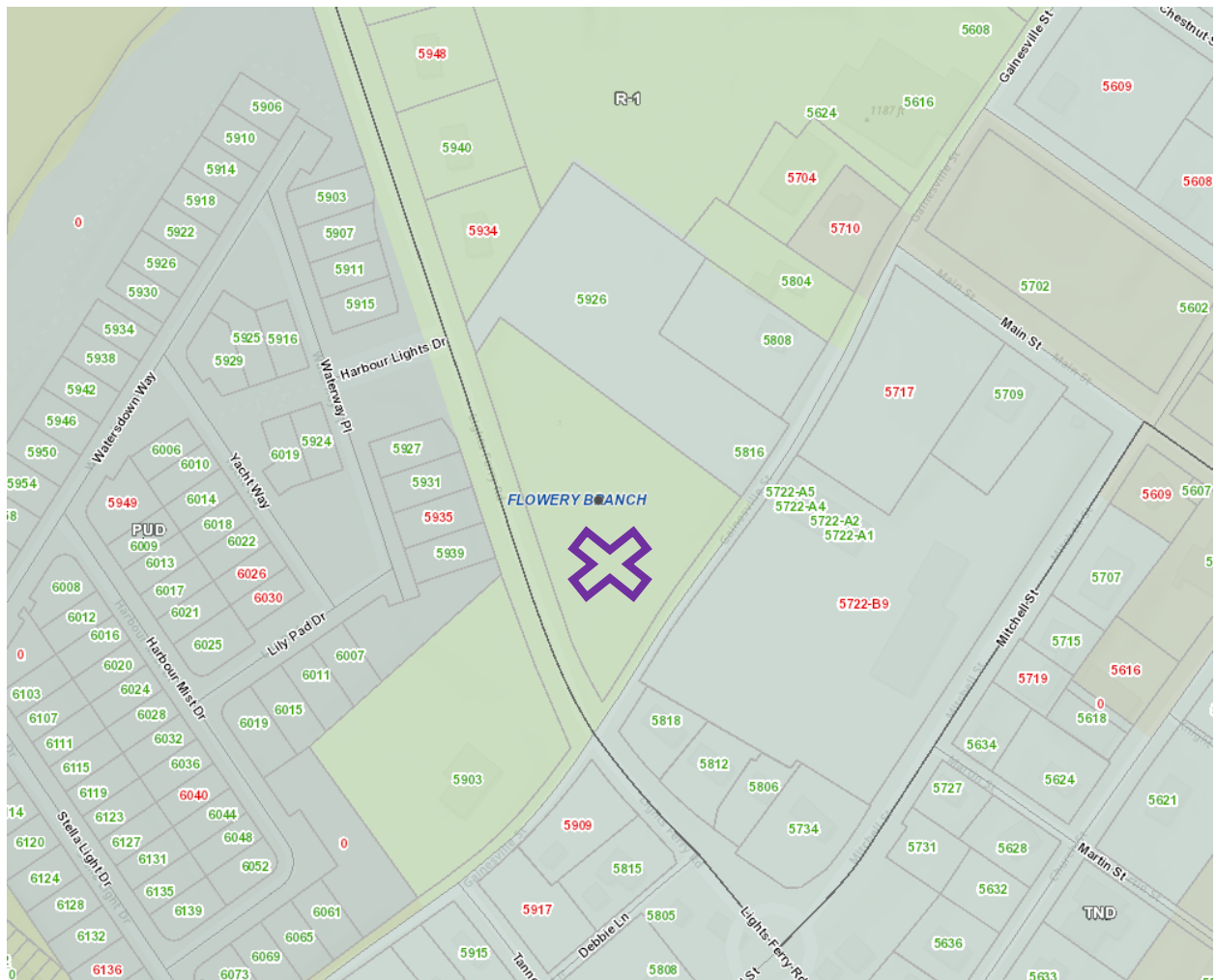
Public Hearing Published	02/02/22
Public Hearing	03/03/22

First Reading	04/21/22
Adopted	06/02/22

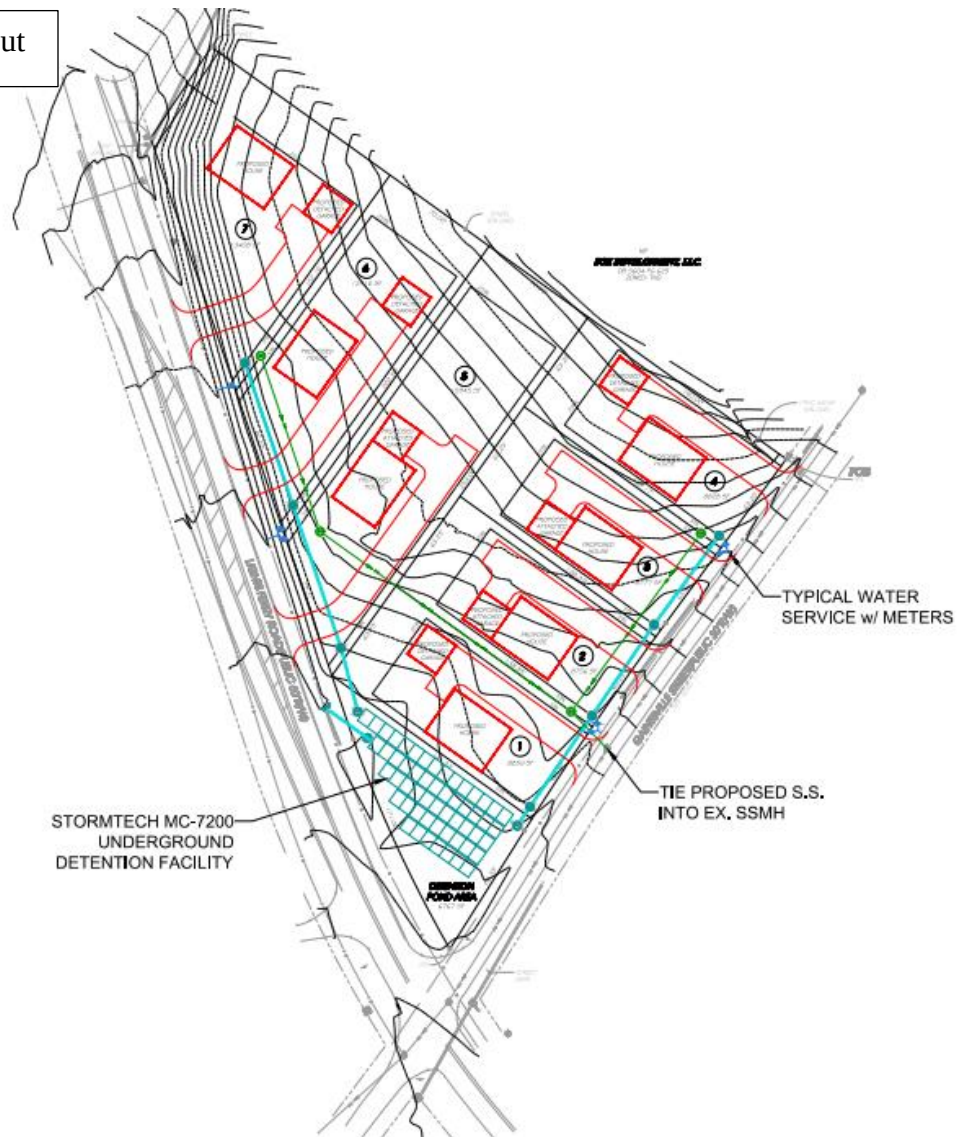
Staff Report
Lights Ferry Partners, LLC. Rezoning Request
Ordinance 660

Request

A request from Lights Ferry Partners, LLC. and Diego Fracasso to rezone 5908 Lights Ferry Road, a 1.92+/- acre of land also known as tax parcel identification number 08112 027019 from Residential, Detached Single-Family, Low-Density District (R-1) to Traditional Neighborhood Development District (TND) with the intent to subdivide, develop, and construct seven (7) detached single family homes.



Proposed Layout



Applicant did not supply elevations. Applicant must meet the architectural and design requirements set forth in Article 7, "Traditional Neighborhood Development District" (see attached Exhibit "A"), and of Article 12, "Requirements for Specific Residential Principal Buildings and Uses" (see attached Exhibit "B"), of the Flowery Branch zoning ordinance. Additionally, the applicant has supplied examples of proposed housing styles (shown below and as part of attached Exhibit "C").





Proposed Schedule

March 3, 2022 – Public Hearing
April 7, 2022 – Work Session (if requested)
April 21, 2022 – First Read and Vote
May 5, 2022 - Work Session (if requested)
June 2, 2022 – Second Read and Final Vote

Comprehensive Plan



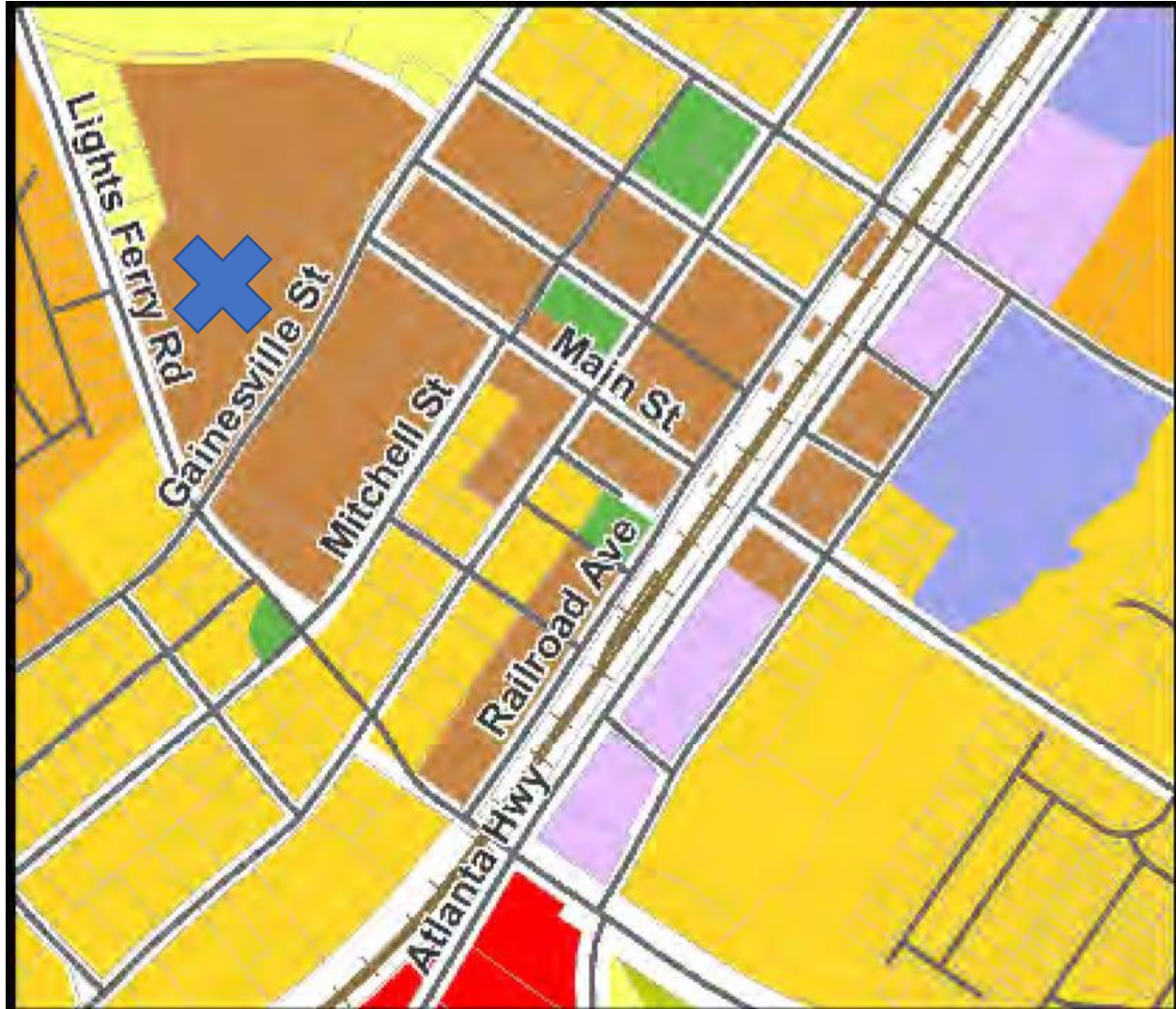
Purpose of the Comprehensive Plan

The *Flowery Branch Comprehensive Plan* is the City's policy guide for growth and development, as expressed by a vision statement, Future Development Map, character area policies, and supporting implementation strategies. The plan is most commonly used in the review and decision-making process by staff and City Council for rezoning requests, when proposals are evaluated for consistency with the Future Development Map and supporting text in this document.

The Comprehensive Plan also outlines the overall strategy for achieving the City's vision for future development by identifying a 5-year Community Work Program (CWP) with a prioritized 'to-do' list. The CWP should be consulted by staff and City Council on an annual basis when developing annual department-level work programs and the City budget.

In addition, this plan serves the purpose of meeting the intent and requirements of the Georgia Department of Community Affairs' (DCA) "Standards and Procedures for Local Comprehensive Planning," as amended on October 1, 2018. Preparation of a comprehensive plan in accordance with these standards is an essential requirement for maintaining status as a Qualified Local Government (QLG). QLG status allows Georgia cities and counties to be eligible for financial incentives from DCA, the Department of Natural Resources (DNR), the Georgia Environmental Finance Authority (GEFA), and the OneGeorgia Authority. This plan update allows the City of Flowery Branch to retain its QLG status.

Old Town Character Area



Old Town

Old Town encompasses the historic central business district and includes a significant portion of the Old Town Redevelopment Plan (2014) boundary and the Flowery Branch Historic District.

Vision

Protect and enhance downtown, making it a vibrant, pedestrian-friendly focal point of the City that integrates new development in a historic framework with a mix of uses, increased density at a comfortable scale, and open spaces and high quality buildings that enhance the public realm.

Design Principles

- Small blocks; lots on narrow streets
- Pocket parks or greenspace as a part of mixed-use developments
- Architectural style and building materials that complement the historic fabric of the area (design review is required)
- Typically greater lot coverages, building heights, and building intensities and little or no front and side building setbacks when compared with other character areas
- Redevelopment must be consistent with principles and recommendations of the Old Town Redevelopment Plan

Land Uses

"Main Street"-style commercial and vertical mixed use with retail and restaurants. Residential uses include upper floor dwelling units in mixed use buildings, single-family dwellings, and limited townhome development.

Zoning

- CBD, Central Business District
- TND, Traditional Neighborhood Development



Implementation Strategies

Update the 2014 Old Town Redevelopment Plan to identify additional development/redevelopment opportunities (and their acceptable use types and densities) to facilitate administration of the CBD zoning district.

Illustrative Photos

The Crest mixed-use buildings on Main Street will be constructed of traditional brick



Historic brick commercial buildings opposite The Crest



Brick used as a residential accent material, consistent with existing dwellings in the area



Brick used on site features in a townhome development



Planned plaza between the Farmers Market & Main Street



The proposed rezoning and project meet the intent of the Comprehensive Plan.

Analysis

Flowery Branch Zoning Ordinance Article 37 Rezoning and Conditional Use Applications

Sec. 34.7. - Analysis Requirements.

Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to Zoning Administrator in making recommendations and by the Governing Body in the decision-making process.

Staff Response:

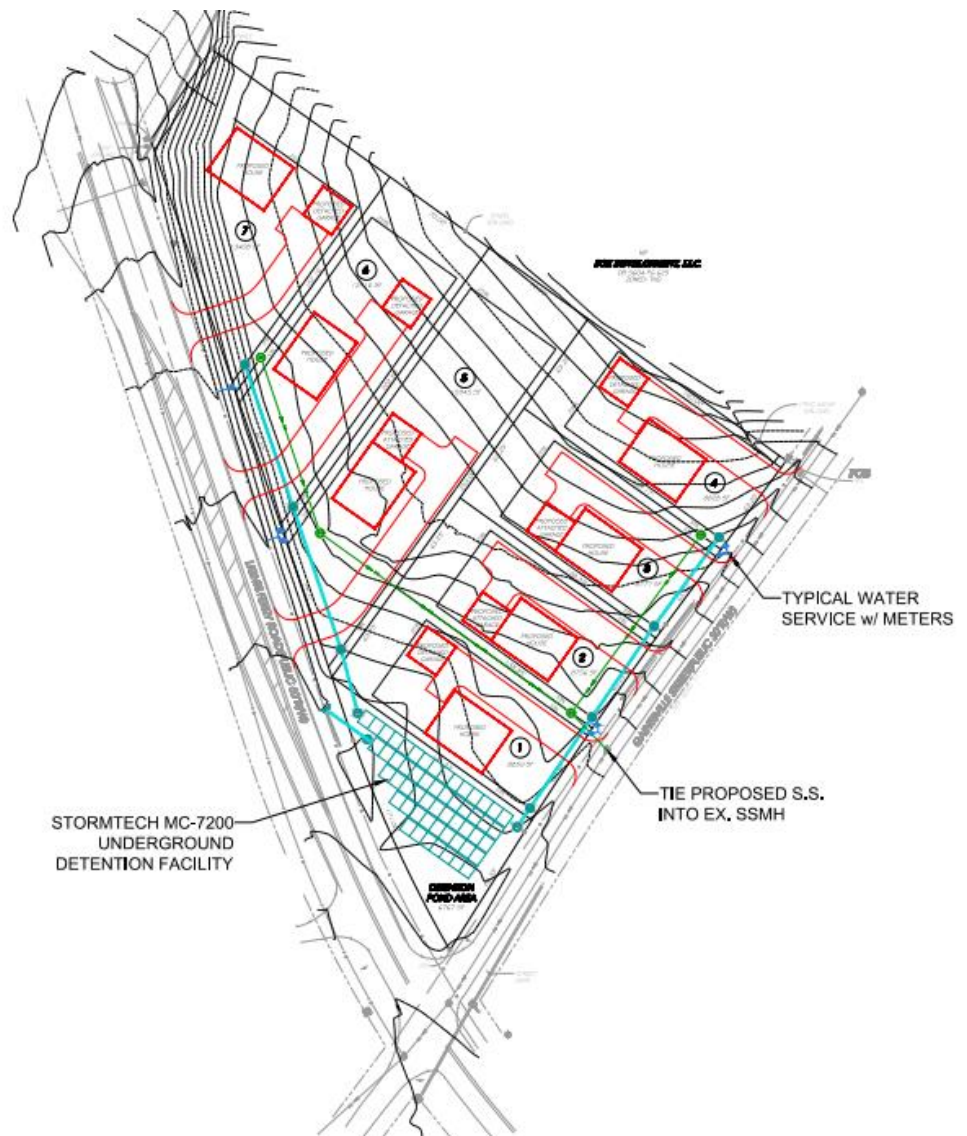
- (a) Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property. **Yes, a residential use is appropriate for this site and the surrounding area. It will help serve the downtown commercial/retail area.**
- (b) Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property. **The development will not adversely affect the area.**
- (c) Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has a reasonable economic use as currently zoned. **Yes, current zoning of R-1 is economically feasible.**
- (d) Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. **It is staff's opinion that the use will not create any unnecessary burdens.**
- (e) Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map. **Yes.**
- (f) 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 proposal. **Not to staff's knowledge, no.**
- (g) Existing use(s) and zoning of the subject property and nearby properties. **Currently vacant, the proposed use will fit in with the surrounding residential uses.**
- (h) Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification. **Staff does not have a specific number regarding property value but please review applicant's response as part of attached "Exhibit C".**

- (i) Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations. Staff does not feel that the proposed will be a deterrent but rather an enhancement to the surrounding area and a positive impact for downtown.
- (j) The possible creation of an isolated zoning district unrelated to adjacent and nearby districts. N/A
- (k) Possible effects of the change in zoning district map, or change in use, on the character of a zoning district. The proposed use will enhance the character of the existing district and surrounding area in staff's opinion.
- (l) The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality. The development, if approved, will need to go through all the required development reviews to ensure all applicable codes and requirements are met.
- (m) The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance. The proposed development will enhance the surrounding area and meet the intent of the Zoning Ordinance.

Recommendation

Approve the request as submitted conditioned as follows:

1. The site shall significantly adhere to the as shown below:



2. Changes to the site plan deemed major by staff shall require Council approval.
3. Five (5) foot Sidewalks and curb gutter along Gainesville St and Lights Ferry that extend the entire length of the property in both directions.
4. Decorative light poles (matching the Flowery Branch downtown lights) shall be placed twenty-five (25) apart along Lights Ferry Road and Gainesville Street for the entire length of the project.
5. Professional Landscape plan that incorporates bermuda or zoysia sod throughout the entire development extended to the curb. Plan shall be approved by staff prior to the issuance of a land disturbance permit.

6. No fencing in front or side yards. Fencing in back yard shall not exceed 4 feet.

7. Fencing shall significantly adhere to the example provided below:



8. Underground retention with a common space for the underground retention tanks. Area where the tanks are installed should be professionally landscaped to promote a pocket park atmosphere for the residents of the development.
9. Establishment of an HOA with a maximum of 1 rental unit cap incorporated into the HOA bylaws.
10. HOA shall mandate specific times that trash and/or recycle receptors may be left out.
11. Front porches are required on all homes per TND requirements.
12. No front yard parking pads are allowed.
13. Mailboxes must be the exact same for all homes.
14. Homes shall have a minimum of 3,000 square feet of heated floor space.
15. Elevations shall be submitted and approved by the City of Flowery Branch prior to the issuance of a land disturbance permit.

Exhibit “A”

ARTICLE 7
TND, TRADITIONAL NEIGHBORHOOD DEVELOPMENT DISTRICT

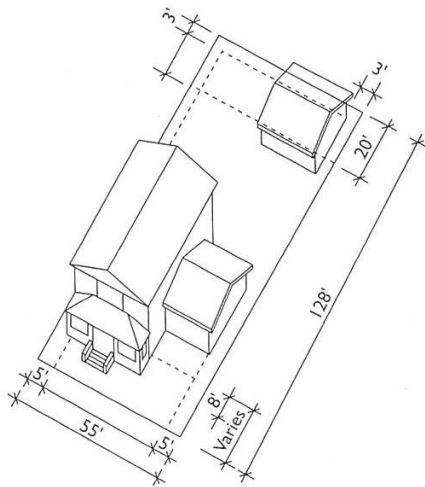
- Sec. 7.1. Purpose and Description.
- Sec. 7.2. Character.
- Sec. 7.3. Permitted and Conditional Uses.
- Sec. 7.4. Dimensional Requirements.
- Sec. 7.5. Additional Development Requirements.

Sec. 7.1. Purpose and Description.

This zoning district is intended to provide for neighborhoods that are designed according to the principles of “new urbanism” with a grid or modified-grid street network, pedestrian scale and orientation, shallow front yards, relatively narrow local streets planted with shade trees and provided with wide sidewalks, and with automobile garages located to the rear or side of residential lots. TND districts are further distinguished from conventional suburban subdivision developments in their provision of public greens or common areas, when new neighborhoods are created.

Sec. 7.2. Character.

Development within this district consists mostly of residential neighborhoods in a rectangular or square block, lot, and street pattern.



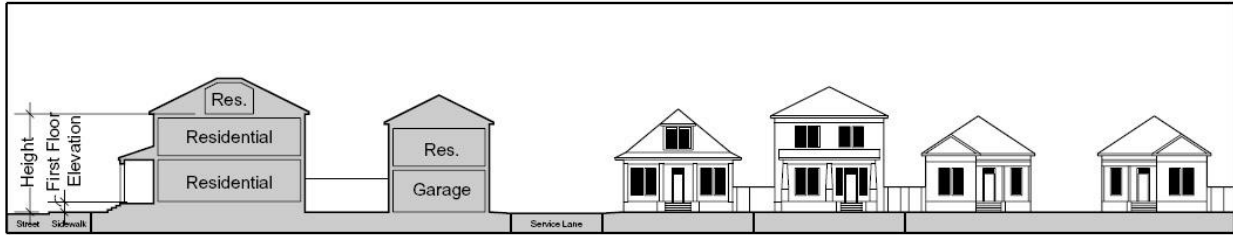
Source: Kindell, Peter J., “Building Types,” p. 189 in *Planning and Urban Design Standards*. Hoboken, NJ: John Wiley & Sons, 2006)

Consistent: Dwelling contains front porch and is located close to street. Minimal side yard setbacks. Garage is detached and located at rear of lot.



Source: Hill, John, W. Design Characteristics of Maryland’s Traditional Communities, Figure 4, p. 5.1-2 in *Time Saver Standards for Urban Design* (New York: McGraw-Hill, 2003)

Consistent: TND Street View – the original settlement pattern sets the character and establishes building themes that should be continued, including location of buildings close to the street and porches on the front of dwellings.



Source: Nashville, Tennessee, Metro Planning Department. 31st Avenue/Long Boulevard Urban Design Overlay. Adopted 3/16/04. Attachment to Ordinance No. BL 2004-151.

Sec. 7.3. Permitted and Conditional Uses.

Permitted and conditional uses shall be as provided in Table 7.1, "Permitted and Special Uses in Traditional Neighborhood Development Districts."

Sec. 7.4. Dimensional Requirements.

Dimensional requirements shall be as provided in Table 7.2, "Dimensional Requirements in Traditional Neighborhood Development Districts."

Sec. 7.5. Additional Development Requirements.

- (a) Maximum Block Width and Block Length. When a new subdivision is created within this district, the lots shall be designed in a grid-like pattern of blocks and interconnecting streets, where no new block created shall have a length or width exceeding 800 feet in length without an alley or intervening (mid-block) pedestrian footpaths.



Source: Arendt, Randall. 1999. *Crossroads, Hamlet, Village, Town: Design Characteristics of Traditional Neighborhoods, Old and New*. PAS Report No. 487/488, Figure 90, p. 58. Chicago: American Planning Association.

- (b) Front Porches. Any new, detached dwelling shall have a front porch no less than sixteen feet in width as measured along the street frontage and no less than six feet in depth.
- (c) On-site Parking. A two-car garage or carport located in the rear or side yard is required.

Table 7.1
Permitted and Conditional Uses in
Traditional Neighborhood Development Districts
(P = Permitted Use C = Conditional Use X = Prohibited)

Use	TND
Accessory apartment, attached	C
Accessory apartment, detached, above a garage in rear yard	P
Accessory building, structure, or use	P
Church, temple, synagogue, or place of worship, including specified accessory uses (see Sect. 14.3) (Ord. 348-11)	X
Adaptive reuse of a detached single-family dwelling for a club or lodge, nonprofit, sponsored by a civic or similar organization	C
Club or lodge, nonprofit, sponsored by a civic or similar organization, other than adaptive reuse of a detached single-family dwelling (Ord. 348-11)	C
Community recreation	P
Conservation areas and passive recreational facilities	P
Dwelling, single-family detached, fee-simple	P
Dwellings, single-family detached, condominium	P
Dwelling, townhouse (single-family attached, fee-simple)	P
Dwelling, two-family (duplex)	X
Dwelling, multi-family (apartment, attached residential condominium)	X
Dwelling, located within a building containing a nonresidential principal use	C
Garden, non-commercial, accessory to single-family detached dwelling	P
Greenhouse, non-commercial, accessory to single-family detached dwelling	P
Guest house (accessory building/use)	P
Home occupation, including family day care home	P
Institutional residential living and care facility, serving no more than 17 persons	X
Live/work unit	C
Mixed use development, within a detached single-family dwelling (adaptive reuse)	C
Office, within a detached single-family dwelling (adaptive reuse)	P
Office, other than adaptive reuse of a detached single-family dwelling	C
Personal service establishment, within a detached single-family dwelling only (adaptive reuse)	C
Retail trade establishment, enclosed within a detached single-family dwelling only (adaptive reuse)	C
Public or semi-public use	P
School, private, elementary, middle, or high	C
School, public	P
School, special	C
Temporary use	P
Zero lot line housing	P

Table 7.2
Dimensional Requirements for Traditional Neighborhood Development Districts

Requirement (measurement unit)	TND
Maximum height (feet)	30
Maximum height (number of stories)	3
Maximum density (units per acre)	6.5
Minimum lot size for detached single-family dwelling (square feet)	6,700
Minimum lot size for other uses (square feet)	5,000
Minimum lot width (feet)	40
Minimum lot depth (feet)	80
Minimum heated floor area per dwelling unit (square feet)	1,200
Minimum front yard setback from lot line (feet)	0
Minimum side setback, interior lot line or corner lot, all principal buildings (feet)	5
Minimum rear setback, all principal buildings (feet)	25
Rear setback for an accessory building when abutting an alley	None
Minimum landscape strip required along rights-of-way for any nonresidential use if permitted (width in feet)	15
Maximum coverage of impervious surface (percent of lot)	35
Minimum landscaped open space, all principal uses except detached, single-family residential lots and townhomes (percent)	20

Exhibit “B”

ARTICLE 12. - REQUIREMENTS FOR SPECIFIC RESIDENTIAL PRINCIPAL BUILDINGS AND USES

Sec. 12.1. - Commercial Recreation Facility.

Within a residential subdivision or multiple-family residential development, community recreation facilities as defined by this Zoning Ordinance must be platted when a part of a subdivision or part of the site plan approval for a multiple-family residential development. Community recreation facilities shall be subject to the following requirements:

- (a) *Exterior lighting.* If lighted, exterior lighting shall require a lighting plan to be submitted and approved prior to installation. See Article 23 of this Zoning Ordinance.
- (b) *Swimming Pools and Tennis Courts.* Swimming pools and tennis courts shall be setback a minimum of twenty-five (25) feet from all property lines of the tract of land devoted to community recreation, with a minimum ten (10) foot wide landscape strip along all property lines of said tract. See Article 19 of this Zoning Ordinance for landscape strip specifications.
- (c) *Buildings.* Buildings (excluding accessory structures) shall be setback a minimum of twenty-five (25) feet from the property line of the tract. If outdoor patios or decks are provided, they shall be located no closer than twenty-five (25) feet from the property line of the tract and a minimum ten (10) foot wide landscape strip shall be provided between said outdoor patio or deck and the property line or boundary of said tract. See Article 19 of this Zoning Ordinance for landscape strip specifications.
- (d) *Parking.* Parking shall be provided per the requirements of Article 21 of this Zoning Ordinance.



Sec. 12.2. - Model Home.

A dwelling unit may be constructed and used as a model home or temporary office for the sale of lots under the following conditions:

- (a) *Time of Construction.* The model home is typically constructed before approval of a final plat, and hence the model home is the principal use of the entire unsubdivided parcel until the final plat is approved.
- (b) *Location on a Lot.* The model home shall be placed on a lot designated on the approved preliminary plat and shall be placed in a manner that meets the applicable zoning district dimensional requirements so that it complies at the time it is erected and when it is sold and/or converted for single-family residential use.
- (c) *Sales.* Sales shall be limited to the lots and buildings within the subdivision where the model home is located.
- (d) *Certain Buildings Prohibited.* A manufactured home or portable building shall not be used as a model home or temporary sales office.
- (e) *Duration and Discontinuance.* The use of the model home for a sales office shall be discontinued within 30 days after Certificates of Occupancy have been issued on 90 percent of the lots in the subdivision.
- (f) *Parking and Accessibility.* The model home shall comply with off-street parking and applicable accessibility standards.

Sec. 12.3. - Multi-family Development.

- (a) *Condominiums.* If a condominium form of ownership is proposed, the development shall meet all current applicable state laws including the Georgia Condominium Act (O.C.G.A. § 44-3-70 et seq.). Proposed bylaws and the articles of incorporation for the condominium association shall be submitted with the application for development approval.
- (b) *Laundry facilities.* On-site accessory laundry facilities are permitted accessory uses for developments with 25 or more units.
- (c) *Setbacks.* Buildings within multi-family developments shall be subject to the setbacks for the entire lot as established in applicable zoning district dimensional requirements. There shall be no requirements for setbacks from private driveways within the multi-family development, except as may be determined by the Zoning Administrator to be essential to meet building or accessibility codes, to meet sight accessibility requirements for motorists and pedestrians, or other essential public safety considerations during the site plan review process.
- (d) *Site Plan Approval.* Site plan approval by the Zoning Administrator shall be required. The Zoning Administrator may place conditions of development approval on any multiple-family site plan approval, which such conditions are specifically related to compliance with a requirement of this Zoning Ordinance or other applicable regulation. Furthermore, reasonable conditions may be placed on the development through site plan approval by the Zoning Administrator in order to (1) ensure compliance with design and development standards specified in this Zoning Ordinance for said use or (2) ensure consistency with development guidelines or policies of the comprehensive plan.
- (e) *Design Standards.* See Section 10.7 of this Zoning Ordinance.



Sec. 12.4. - Relocated Residence.

A relocation permit is required to relocate a residential structure, whether it is to be moved out of or into the city limits. The relocation permit is not a building permit for the placement of the structure at a new location. The applicant shall include the following with the application for the relocation permit:

- (a) *Picture.* A photograph of the structure at its present location.
- (b) *Existing Location.* The current location (address and tax parcel number) where the structure is now located.
- (c) *Proposed Location in City.* If the structure is to be relocated inside the city limits, the proposed location (address and tax parcel number) of the structure. To ensure compliance with the applicable zoning district dimensional requirements, when the relocated residential structure is proposed to be located within the city limits, the Zoning Administrator shall require submission of the proposed location (address and tax parcel number) and a copy of the recorded plat of the lot on which the structure will be placed (if none exists the applicant shall be required to comply with subdivision requirements of the city's Subdivision and Land Development Ordinance).
- (d) *Floor Area.* The total heated floor area of the existing structure and, if to be located within the city, the renovated structure.
- (e) *Building Permit.* A building permit shall be required.
- (f) *Exterior Improvements.* All exterior improvements to the structure once relocated shall be completed within six months of relocation.
- (g) *Historic Preservation.* If located or proposed to be located within a historic district as recognized in this Zoning Ordinance or other historic preservation ordinance of the city, there must be a copy of the approved Certificate of Appropriateness from the Historic Preservation Commission prior to relocating the residential structure.
- (h) *Inspection.* The Zoning Administrator shall inspect or arrange for the inspection of the structure for compliance with the minimum standards of the zoning district proposed for location and other applicable regulations and codes.

Sec. 12.5. - Subdivision Entrance Monuments.

No subdivision entrance monument shall be permitted to be erected unless it meets the following requirements:

- (a) *Design.* The subdivision entrance monument and the landscape surrounding the monument shall be designed by a registered landscape architect.
- (b) *Design Review.* Design plan review and approval is required. See Article 40 of this zoning ordinance.

Sec. 12.6. - Townhouses.

In zoning districts where permitted, fee-simple townhouses shall meet the following requirements:

- (a) *Lot Frontage and Lot Width.* Each platted lot shall have a minimum of twenty (20) feet of frontage on a public street or private road that meets public street standards, and each lot shall have a minimum lot width of twenty (20) feet.
- (b) *Lot Size.* The minimum size of a lot for each fee-simple townhouse lot (i.e., the extent of land owned by the owner of the unit) shall be 2,000 square feet in lot area.



- (c) *Front Building Setbacks.* There shall be a minimum twenty (20) foot front setback from any perimeter boundary of the fee-simple townhouse subdivision and a 30-foot front setback from any public or private street exterior to or within the subdivision.
- (d) *Side Setbacks and Zero Lot Line.* Zero lot line between units within the same building shall be permitted, subject to applicable fire and building codes.
- (e) *Rear Setbacks.* There shall be a minimum twenty (20) foot rear setback from townhouse lot boundaries for all buildings and structures, except when the rear property line abuts an alley, in which case no setback shall be required.
- (f) *Building Separation.* There shall be a minimum building separation of twenty (20) feet between townhouse buildings.
- (g) *Building Unit Offsets.* To avoid a monotonous appearance, for any given building, no more than six (6) units may have common walls. Any building containing more than three (3) units with common walls must have the front façade, rear façade, and the roof of each attached unit distinct from the other through separation, staggering, or offsets in design. A minimum of two (2) exterior colors shall be used on buildings containing up to four (4) units, and a minimum of three (3) exterior colors shall be used on buildings containing five (5) or six (6) units; however, when all exteriors are unpainted brick, they shall not be required to vary in color. See also Sec. 12.6.(k)1.
- (h) *Rear Access.* Townhouse developments shall be designed to provide proper access to all dwelling units for firefighting purposes, as may be determined by applicable codes. Rear access, if required for firefighting purposes or by Subsection (n) below, shall be accomplished by alleys.
- (i) *Parking.* Two enclosed parking spaces minimum per unit shall be provided.
- (j) *Subdivision Plat Approval.* Each townhouse development or phase thereof shall require preliminary and final subdivision plat approval in accordance the City of Flowery Branch Subdivision and Land Development Ordinance.
- (k) *Wall Finishes.*

1. Exterior wall finish materials (excluding foundations, trim, windows and doors) shall be limited to: real brick (full-depth or thin brick), unpainted natural stone, unpainted cast stone, true three-coat cement stucco, natural wood or cementitious siding including lap siding and board and batten; and wood or cementitious shakes and shingles. A horizontal accent strip (i.e., band board or belly board / band) shall be used when there is a change in material. Each dwelling unit is limited to two of the allowed wall finishes listed in this subsection and one paint color. Adjoining or adjacent units shall not be the same exterior color.

The following are illustrative examples of wall finishes that **DO NOT** meet the requirements of this section:





b. False windows may count toward the transparency requirement where they are similar in size, shape, and materials to other windows on that building and consist of trim with closed shutters that have the appearance of a shuttered window or windows. A single louvered panel with trim may also count toward this requirement. False windows shall not be allowed to count toward this requirement unless shutters adjacent to a true window or windows are also provided on another exterior wall.

- (l) *Foundation Walls.* Exposed foundation walls must be faced in real brick or real stone to the level of the first finished floor when there is a basement or at least 24 inches above grade for the entire perimeter wall when the building has a slab on grade. Faux brick or stone foundation panels are prohibited.

The following are illustrative examples of foundation walls that **DO NOT** meet the requirements of this section:



Foundation wall missing / insufficient height on the side



Foundation wall is only located on the front façade

- (m) *Roof Materials.* Pitched roofs shall be finished in either architectural shingles or standing seam metal roofs.

- (n) *Garage Placement and Materials.*

1. Where townhouse developments abut public streets, lots fronting onto these streets shall address garage placement as follows: the front façade of the townhouse shall face the public street, and garages shall be rear loaded.

2. Where front-loaded garages are allowed, garage doors shall be carriage-style (both the door style/paneling as well as the hardware) and may either:

a. Recess at least one foot behind the front wall plane of the dwelling unit and the front entrance. When the garage door is recessed less than one foot, there shall be required a garage eyebrow treatment (trellis, pergola, roof, or a second-story architectural feature) that extends at least one foot beyond the garage face.

b. Project beyond the front wall plane and the front entrance upon providing a garage eyebrow treatment (trellis, pergola, roof, or second-story architectural feature) that extends at least one foot beyond the garage face, as well as decorative lighting that is mounted above or to the sides of the garage door.



3, All front-loaded garages shall be finished in real brick or real stone. The finish shall cover the entire façade of a projecting garage. When garage doors are recessed in accordance with Sec.(n) 2.a. above, the façade of the ground floor shall be finished in the required material(s).

4. Single-story detached garages that meet the requirements of subsections (k), (l) and (m) above and are placed to the rear of the building(s) are allowed in lieu of attached garages.

The following are illustrative examples of garage treatments that **DO NOT** meet the requirements of this section:



Brick or stone is only partially used or is not used at all as the required exterior finish, and carriage-style garage doors are not used. In addition, required elements over the projecting garages (left and middle examples) are missing.

(o) *Private Open Space.* Private, usable open space, such as balconies, patios, decks, etc. shall be provided contiguous to each dwelling unit. The area of such open space for each dwelling unit shall not be less than 10% of the floor area of the unit served.

1. Each dwelling unit with a rear-loaded garage shall provide a usable covered porch that runs the entire width of the front façade. The porch shall be at least 6 feet deep (not including steps, if applicable).

2. Rear patios, decks and porches shall be covered with a roof, pergola, or projecting architectural feature that is designed with materials to match the façade and/or trim of the building.

(p) *Residential Driveway Length.* Townhouses are required to have a minimum driveway length of twenty-three (23) feet as measured from the back of sidewalk or back of curb, as applicable.

(p) *Design Review.* See Article 40.

Sec. 12.7. – Single-Family Detached Dwellings.

Detached single-family dwellings shall meet the following requirements.

(a) *Wall Finishes.*

1. See Sec. 12.6.(k)1.

2. Facades facing a side yard shall meet the following requirements:

a. Each applicable façade shall have: a minimum of 5% transparency (defined as the minimum percentage of windows and doors that must cover a ground or upper story façade) of the total wall area; and, a maximum of 20 feet of blank wall area (defined as the portion of the exterior façade of a building that does not include windows or doors;



pilasters or other articulation greater than 12 inches in depth; or a substantial change in material) in either a vertical or horizontal direction.

- b. False windows may count toward the transparency requirement where they are similar in size, shape, and materials to other windows on that building and consist of trim with closed shutters that have the appearance of a shuttered window or windows. A single louvered panel with trim may also count toward this requirement. False windows shall not be allowed to count toward this requirement unless shutters adjacent to a true window or windows are also provided on another exterior wall.
 - c. Walls that are fully finished in brick shall be exempt from the transparency requirement in Subsection a. above.
 - 3. Facades facing a rear yard shall meet the following requirements:
 - a. Sec. 12.7.(a) 2. shall apply to rear facades that are visible from a public street.
 - b. Rear patios, decks and porches shall be covered with a roof, pergola, or projecting architectural feature that is designed with materials to match the façade and/or trim of the building.
- (b) *Entrance Features.*
 - 1. The primary entrance to a residence must be emphasized through the use of an unenclosed roofed porch, veranda or terrace that is a minimum of: six (6) feet deep (not including the steps); and 40% of the width of the front façade or 11 feet, whichever is greater.
 - 2. A stoop or gable may be used in lieu of a porch, veranda or terrace when the front façade finish is brick. A stoop shall not be more than six (6) feet deep (not including the steps) and cannot be fully enclosed.
 - 3. Entry steps shall have enclosed risers.
 - 4. Columns shall be a minimum width of eight (8) inches and shall be wood or durable material that resembles wood from top to bottom or atop stone or masonry bases.
- (c) *Foundation and Roof materials.* See Sections 12.6 (l) and (m).
- (d) *Garage Placement and Materials.*
 - 1. Where detached single-family developments abut public streets, lots fronting onto these streets shall address garage placement as follows: the front façade of the dwelling shall face the public street, and garages shall be rear loaded. This requirement shall not apply when homes are oriented such that the side yards front the public street.
 - 2. For single-family detached dwellings with attached front-loaded garages, garage doors shall not project more than eight (8) feet from the front wall plane and front entrance. Any projecting garage shall not prevent the requirement of Sec. 12.7.(b)1 being met.
 - 3. Projecting front-loaded garages shall have a garage eyebrow treatment (trellis, pergola, roof, or second-story architectural feature) that extends at least one foot beyond the garage face, as well as decorative lighting above or to the sides of the garage. The gable (if applicable) above the garage door shall not be blank and shall include window(s) and decorative lighting. Additional gable treatments options include a gable vent and a change in material.
 - 4. All front-loaded garages shall be finished in real brick or real stone. The finish shall cover the façade of the projecting garage wall but is not required to be used on the gable (if applicable)



above the required garage eyebrow treatment. When a garage does not project, the façade of the ground floor garage shall be finished in the required material(s).

5. Garage doors shall be carriage-style (both the door style/paneling and hardware).

The following are illustrative examples of garage treatments that **DO NOT** meet the requirements of this section:



Missing elements: full required extent of brick or stone finish, “eyebrow” treatment above the garage, and gable features (left and middle photos); brick or stone finish, carriage style door and front porch (photo at right). A carriage-style garage door is also not used in the photo at left.

(e) Residential Driveway Length. See Sec. 20.11.(c).

(f) Design Review. See Article 40.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consideration of executing a Lease Agreement for Suite 102 at 5519 Main Street with 4 Elephants Catering, LLC.

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

The building in question is a mixed-use development consisting of twelve (12) apartments with commercial space below. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied and the retail space is currently available for lease.

FACTS AND ISSUES:

4 Elephants Catering, LLC is interested in leasing this suite. The space available for the tenant is 1,347 square feet. The lease term is for seven years. The building is not "finished" on the inside and the city is providing an allowance for tenant improvements for the tenant.

OPTIONS:

1. Authorize execution of the lease as presented.
2. Do not authorize execution of the lease as presented and suggest other terms.
3. Do not authorize execution of the lease.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Lease Agreement for Suite 102 with 4 Elephants Catering, LLC.

SAMPLE MOTION:

I recommend that the city execute the lease agreement with 4 Elephants Catering, LLC. for the lease of Suite 102 of the Shopping Center on Main Street.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [4 Elephants Catering, LLC Lease Updated 5.25.2022 unsigned.pdf](#)
- [Executive Summary - lease 4 Elephants.pdf](#)

**FB MAIN STREET
A MASTER CONDOMINIUM
SHOPPING CENTER
LEASE AGREEMENT**

5519 Main Street

Suite 102

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: 4 Elephants Catering, LLC

**ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS**

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	4 Elephants Catering, LLC
E.	TENANT'S TRADE NAME:	4 Elephants Restaurant
F.	TENANT'S NOTICE ADDRESS:	Viravanh Xayavongsa and Soukanh Xayavongsa 4403 Helen Highway Cleveland, GA. 30528
G.	PHONE NUMBER AND EMAIL:	770-710-3910 Sunny.x318@gmail.com
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
J.	LEASE TERM:	Seven (7) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Earlier of (i) Tenant opening for business or (ii) five (5) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	\$280.62 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	\$2,806.25
	ADVANCE ADDITIONAL RENT:	\$280.62
	SECURITY DEPOSIT:	\$2,806.25 plus \$280.62
	TOTAL AMOUNT DUE WITH LEASE:	\$2,806.25 + \$280.62 + \$3,086.87
O.	GUARANTORS:	Viravanh Xayavongsa and Soukanh Xayavongsa
P.	USE:	For the use of a restaurant and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a restaurant (11 a.m. to 9 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions. Notwithstanding the foregoing Tenant may close for periodic private and special events.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1347 Square Feet
S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for one (1) period of three (3) years (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the

		Lease, not may any such sublessee or assignee exercise or enjoy the benefit of such Renewal Option. Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exist no default on the part of the Tenant under this Lease.
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SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the “Shopping Center”). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the

terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

Suite 102 consisting of approximately 1,347 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever

for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.2, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord

shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars (\$150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any

established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the

“Common Areas”). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant’s prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord’s judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all

exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within thirty (30) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in

default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars (\$5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities.

Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One Million Dollars (\$1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars (\$1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars (\$500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. *A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage;* and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum

Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars (\$750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available),

insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under

the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

- (i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary default occurring after the second such monetary default in any Lease Year); or
- (ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of

such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief from valuation and appraisal laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS (\$100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute,

and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease other than the City of Flowery Branch and Landlord's broker, Oakhurst Realty Partners, and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or

circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within thirty (30) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years

under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not

be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: _____

Date: _____

LANDLORD: City of Flowery Branch, GA

TENANT: S4 Elephants Catering, LLC

By: Edward R. Asbridge, Mayor

By: Viravanh Xayavongsa

ATTEST:

By: Soukanh Xayavongsa

By: Shelia Cooper, City Clerk

Sworn to and subscribed before me
this ____ day of _____, 2022.

NOTARY PUBLIC

[CITY SEAL]

My Commission Expires: _____

[NOTARY SEAL]

EXHIBIT A
SITE PLAN

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.

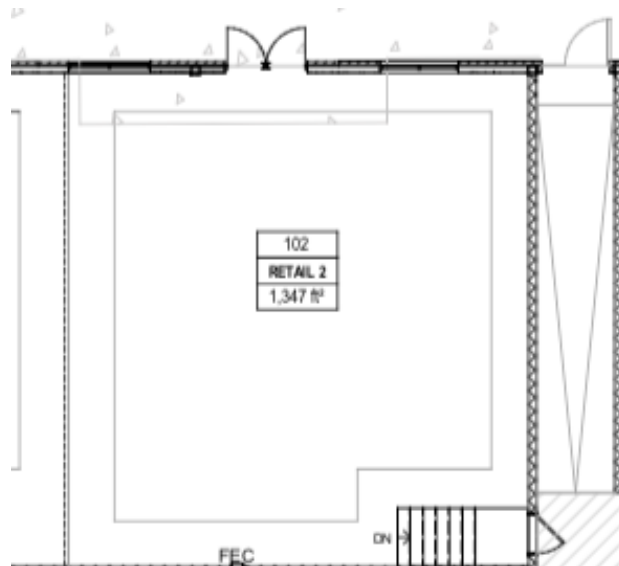


EXHIBIT B

LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Sixty Seven Thousand, Three Hundred Fifty and No/100 Dollars (\$67,350.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four installments at the following times: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the State in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

(a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

(b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;

(c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;

(d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;

(e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;

(f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;

(g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;

(h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;

(i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;

(j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable

federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.
2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.
3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.
4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.
5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs properly maintained and in good working order.
6. Care should be taken to prevent damage to the façade during sign installation.
7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.
8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F
GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENANT:	4 ELEPHANTS CATERING, LLC
LEASE DATE:	

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the “Lease”), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called “Landlord”), and E4 ELEPHANTS CATERING, LLC, (hereinafter called “Tenant”), the undersigned, Viravanh Xayavongsa and Soukanh Xayavongsa, individuals, (hereinafter called “Guarantor”), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys’ fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord’s part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired

by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth.

GUARANTOR(S):

Viravanh Xayavongsa, INDIVIDUALLY

Soukanh Xayavongsa, INDIVIDUALLY

By: Viravanh Xayavongsa, an Individual
Address: 6608 Windbrook Pkwy.
Flowery Branch, GA. 30542
Social Security Number: 577-04-3069

By: Soukanh Xayavongsa, an Individual
Address: 6608 Windbrook Pkwy.
Flowery Branch, GA. 30542
Social Security Number: 228-25-3450

Sworn to and subscribed before me
this is ____ day of _____, 2022.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

**EXHIBIT G
RENT SCHEDULE**

The following schedule shall begin on the Fixed Minimum Rent Commencement Date. Notwithstanding the foregoing, beginning on the Possession Date Tenant shall begin the payment of Tenant's prorata share of Additional Rent as shown in Section 1.1.M.

LEASE TERM

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 1 – 12	\$2,806.25	\$33,675.00	Full Amount Due Under the Lease
Months 13 – 24	\$2,890.44	\$34,685.25	Full Amount Due Under the Lease
Months 25 – 36	\$2,977.15	\$35,725.25	Full Amount Due Under the Lease
Months 37 – 48	\$3,066.47	\$36,797.58	Full Amount Due Under the Lease
Months 49 – 60	\$3,158.46	\$37,901.51	Full Amount Due Under the Lease
Months 61 - 72	\$3,253.21	\$39,038.55	Full Amount Due Under the Lease
Months 73 - 84	\$3,350.81	\$40,209.71	Full Amount Due Under the Lease

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 85 - 96	\$3,451.33	\$41,416.00	Full Amount Due Under the Lease
Months 97 – 108	\$3,554.87	\$42,658.48	Full Amount Due Under the Lease
Months 109 - 120	\$3,661.52	\$43,938.24	Full Amount Due Under the Lease

**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: LEASE AGREEMENT FOR SUITE 102 WITH 4 ELEPHANTS CATERING, LLC.

DATE: JUNE 2, 2022

(x) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL-

COUNCIL ACTION REQUESTED ON: JUNE 2, 2022

PURPOSE: The purpose of this agenda item is to request council execution of a lease agreement with 4 Elephants Catering, LLC for Suite 102 at 5519 Main Street in Flowery Branch, within the Shopping Center on Main Street.

HISTORY: The building in question is a mixed-use development consisting of twelve (12) apartments with commercial space below. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied and the retail space is currently available for lease.

FACTS AND ISSUES: 4 Elephants Catering, LLC has been interested in this suite for many months and has made several visits to the site. The space available for the tenant is 1,347 square feet. The lease term is for seven years. The rent varies per year as shown in the attached lease agreement. The building is not “finished” on the inside and the city is providing an allowance for tenant improvements for the tenant.

OPTIONS: 1) Authorize execution of the lease as presented.
2) Do not authorize execution of the lease as presented and suggest other terms.
3) Do not authorize execution of the lease.

RECOMMENDED SAMPLE MOTION: I recommend that the city execute the lease agreement with 4 Elephants Catering, LLC for the lease of Suite 102 of the Shopping Center on Main Street.

DEPARTMENT: Administration

Prepared by: Tonya Parrish



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider ratifying the signing of a Master Services Agreement and Service Advantage Work Order with VC3, Inc. for Information Technology (IT) Services.

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

The staff of City of Flowery Branch are continually monitoring and evaluating our current practices and comparing those to best practices. Where feasible, staff make recommendations for enhanced products or services. Several years ago the City's information technology services function was outsourced to Halski Systems (Halski). Staff, after evaluating Halski's services found that Halski was not providing services per its contract with the City that were best practices nor that were meeting the City's needs. Moreover, Halski was acquired by Logically which has indicated that the cost for IT services is anticipated to rise substantially for the City's requested IT needs. Based on the foregoing, staff determined that it was time to move on from Halski as the City's IT services provider.

FACTS AND ISSUES:

VC3, Inc. is a company that the Georgia Municipal Association (GMA) has partnered with to provide IT services for municipalities throughout the State of Georgia. To ensure the safest transition, because of the sensitivity of the City's information and the desire to timely upgrade and implement necessary cybersecurity protocols, the mayor executed the attached VC3, Inc. agreement and work order on March 18, 2022. Now that VC3, Inc. has accomplished the work necessary to protect the sensitivity of the City's information by upgrading and implementing the necessary cybersecurity protocols, staff is requesting that the Mayor and Council approve and ratify the decision to enter into the attached agreement with VC3, Inc. with an effective date of 3/18/2022.

OPTIONS:

Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$100,257 - General Fund and Water & Sewer Fund

RECOMMENDATION:

Approve the execution of both documents effective 3/18/2022.

SAMPLE MOTION:

I make a motion to approve and ratify the decision to enter into the Master Services Agreement and Service Advantage Work Order with VC3, Inc. dated of March 18, 2022.

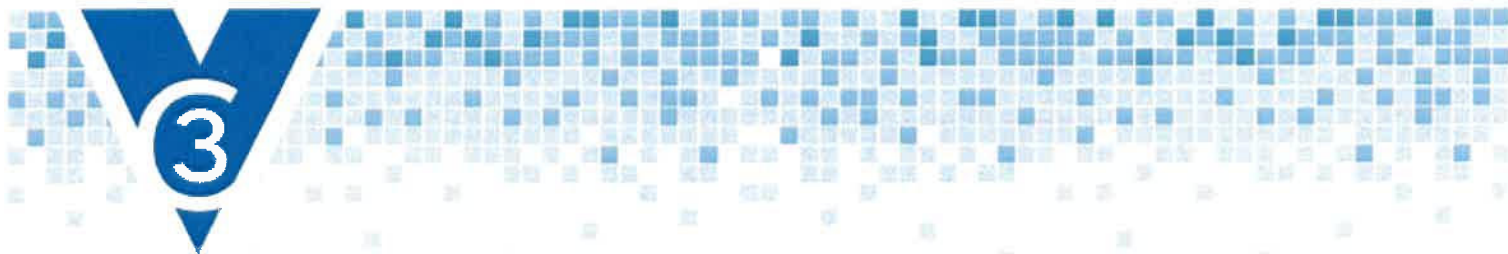
COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Signed Service Advantage Work Order.pdf](#)
- [Signed MSA Flowery Branch.pdf](#)
- [Executive Summary - VC3 contract.pdf](#)



City of Flowery Branch, GA

Service Advantage Work Order

Under the Master Services Agreement dated:

The Georgia Municipal Association, Inc., (GMA) has entered into a marketing and promotional services agreement with VC3, Inc., (VC3). GMA has entered into this arrangement because of VC3's longstanding reputation and GMA's determination that VC3 could provide valuable products and services to GMA members. GMA, however, has not evaluated each product or service offering of VC3 for the needs of each particular municipality or particular other clients and it is incumbent upon the Client to evaluate this Work Order itself. This particular model Work Order pertains to services which may be necessary and essential to address the needs of the Client and the Client may wish to review this Work Order with its own legal counsel, information technology personnel, and other reputable sources to determine whether any aspects of this model Work Order need to be adjusted, clarified, or expanded upon in order to meet the needs of the Client.



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Overview of Work Order

This Work Order is part of, and incorporated into, the Master Services Agreement between City of Flowery Branch, GA and VC3, Inc. and is subject to the terms and conditions of the agreement and any definitions contained in the Agreement. If any provision of this Work Order conflicts with the Agreement, the terms and conditions of the Agreement shall control.

Summary of Scope of Services & Fees

VC3 will provide the following services listed in Tables A and B. Recurring services, if included, shall be provided for 60 Months, starting from the date of the first recurring invoice (Effective Services Start Date), unless terminated in accordance with the terms of this work order or the Master Services Agreement.

VC3 will audit the Client's usage of units on a monthly basis; for each unit found in excess of the amount listed in Table A, VC3 will increase the monthly fee by the corresponding amount indicated in Table A. Reductions in Units above the minimum threshold will be reflected on the invoice within 30 days of service removal. Additional services may be added at any time during the life of this contract at the unit rates listed below.

(See tables on next page)



Table A: Services & Fees

Description	Units	Unit Price	Monthly Fee	One-Time Fee	Annual Fee
Service Advantage					
SA Support Seats	52.00	\$107.75	\$5,603.00	\$0.00	\$0.00
Server(s) - SA/SAL <i>Physical or virtual server that is running a server operating system.</i>	5.00	\$202.02	\$1,010.10	\$0.00	\$0.00
Managed Backups					
VC3 Backup - Server <i>VC3 Managed Backups per Server</i>	5.00	\$32.00	\$160.00	\$0.00	\$0.00
VC3 Backup - GB <i>Per GB data stored in backup repository. This number is an estimate and will vary from month to month depending on how much data is backed up, data optimization, and client retention requirements.</i>	3,600.00	\$0.05	\$180.00	\$0.00	\$0.00
Managed Backups - Implementation	1.00	\$1,000.00	\$0.00	\$1,000.00	\$0.00
Office 365 Products					
Office 365 E3	47.00	\$23.00	\$1,081.00	\$0.00	\$0.00
Exchange Online (Plan 1)	1.00	\$4.00	\$4.00	\$0.00	\$0.00
Azure Information Protection Premium P1	1.00	\$2.00	\$2.00	\$0.00	\$0.00
Managed Security					
Phishing Simulator & User Awareness Training	52.00	\$1.80	\$93.60	\$0.00	\$0.00
Duo Multi-Factor Authentication	52.00	\$4.25	\$221.00	\$0.00	\$0.00
Managed Security - Implementation <i>Implementation for Phishing Simulator & UAT, Duo MFA on Smartphone and Office 365</i>	1.00	\$1,103.00	\$0.00	\$1,103.00	\$0.00
Total Services Monthly:		\$8,354.70			

Notes:

- Prices shown above are valid for 30 days from date of work order.



Table B: Summary of Fees

One-Time Fees*	Monthly Fees	Annual Fees
\$10,457.70	\$8,354.70	\$0.00

* One-Time fees may include implementation if required.



Deliverables & Services

Service Advantage

VC3 will supply the necessary qualified resources to manage the IT Services of the client as defined below.

Included Devices: 'Included Devices' will be defined as applicable devices associated with the unit quantities stated in Table A.

VC3 will provide the following functions and services as part of this Work Order:

A. 24x7 Monitoring and Incident Response Services:

1. Provide 24X7 Incident response services for all included devices.
2. Track all incidents through an ITIL (Information Technology Infrastructure Library) based Service Desk system. All requests will be prioritized and processed per the 'Priority' guidelines listed in Addendum A.
3. Provide 24x7 collection of performance data for the client's included server and network devices per VC3's best practices.
4. Provide 24X7 response to critical event driven Incidents.
5. Utilize industry best practices for remote access, control and management of all devices.
6. VC3 First Call Resolution Center (FCR) is staffed from 7:00am to 6:00pm Monday through Friday.

B. Application Support:

1. Provide support client licensed 3rd party applications. If it is determined from the initial discovery and/or from third-party application vendors that an application requires additional servers, licensing or support resources, additional monthly costs may be required before the application can be supported.

C. Proactive Services:

1. **Backup Management:** Monitor and maintain customer provided backups for supported devices. For VC3 provided hosted virtual servers VC3 will provide, monitor, and maintain at least two weeks of daily backups (Monday-Friday).
2. **Patch Management:** Perform maintenance activities on included devices such as the application of vendor provided software and firmware updates.



3. **Antivirus and Support Tools:** Deploy VC3 Remote Support and Anti-Virus agents to all applicable included devices.
4. **Anti-Spam:** Provide Spam filtering for all inbound mail.

D. **VCIO Services:**

VC3 will provide the client with a named 'VCIO' or Virtual Chief Information Officer.

1. **Budgeting:** The VCIO will work with the client to develop an annual technology budget for recurring expense items and new capital requirements in alignment with organizational goals.
2. **Strategic Planning:** The VCIO will recommend technology solutions as well as provide roadmaps that support key business processes in order to help the client leverage technology appropriately. The VCIO will work with the client as part of the annual planning process to understand the current business drivers and goals and make recommendations targeted toward maximizing the effectiveness of the client's technology investment.
3. **Analyze IT Health data:** The VCIO will perform a periodic analysis of the data collected by VC3's monitoring systems to proactively resolve issues and assess potential risks within the environment. The VCIO will make this analysis available to key stakeholders and provide direction on business decisions regarding the level of investment.

E. **Hardware as a Service**

1. Seats can be increased or decreased to reflect staff headcount changes. If a seat is dropped within the first twelve months of activation a drop fee of three times unit cost will be assessed.
2. Packages can be upgraded, and unit counts will be updated accordingly.
3. Devices will be replaced based on the refresh cycle selected for that device and when the device was put into service.
4. VC3 will provide replacement components with substantially same or better performance as the original for failures on Hardware-as-a-Service equipment that occur because of internal equipment defects or end of life failure. The model and manufacturer of replacement devices may vary depending on device availability and lifecycle.
5. For mobile computers ie. Laptops, accidental replacement coverage is included with a limit of one replacement per refresh cycle. For all other devices client is responsible



for cost of replacement or repair where damage is due to any factors other than internal defects or end of life failure – including abuse, accident, or environmental factors (for example, fire or flood damage).

F. Endpoint Detection and Response

1. Automated rapid response to advanced threats.
2. Behavioral AI to detect fileless attacks.
3. Roll back feature allows rapid recovery of infected endpoints.
4. OS firewall control to allow automatic termination of suspicious connections.
5. 24x7 Security Operations Center Monitoring.
6. Device network quarantine to prevent lateral movement.
7. Escalation and notification to VC3 of detected security incidents.

Exclusions

Items other than those included above are expressly excluded from the Services provided within this Work Order. The following exclusions and clarifications are intended to clarify the scope of services for this work order:

- A. Excluded services are those related to functionality upgrades, such as those required to evaluate, specify, purchase, and implement client system or server upgrades such as operating systems, Microsoft Office suite software unless included with a specific VC3 product, third party software deployments or upgrades, or equipment related to these services whose scope exceeds that defined above. VC3 will provide these services to the client on a Time & Materials Work Order basis at the rates outlined in the Master Services Agreement. If modification or replacement of a hardware device or component is required, client is responsible for all hardware and hardware vendor services costs, excluding VC3 owned hardware explicitly provided through this work order.
- B. Software development, training and project work, including client-owned PC upgrades and non-patch upgrades of software, are not included.
- C. When client requests services by VC3 not explicitly included in this agreement, they are agreeing to invoicing of said services per the terms outlined in the Master Services Agreement. For all services which incur additional hourly fees, VC3 will notify the client that these services are outside the scope of this work order and will receive approval from client prior to rendering these additional services.



- D. Cybersecurity event or incident response activities or remediation efforts exceeding eight (8) hours of technician, engineer or project management time.

Client Responsibilities

- A. Client will provide a primary point of contact for VC3 to work with on all services provided in this Work Order.
- B. Client is responsible for authorizing access for VC3 to sites that are owned / controlled by third parties.
- C. Client is responsible for proper disposal of client-owned devices.
- D. Client will make a best effort to maintain the minimum infrastructure requirements as defined by VC3.
- E. Client will maintain both hardware and software maintenance agreements with the source Vendor whenever possible to allow for ongoing access to security updates and to provide quick replacement of non-functioning components.
- F. Client must assign VC3 as their Microsoft Partner of record.
- G. Client is responsible for procurement and ownership of all licenses, maintenance, and vendor support agreements required for support of their third-party applications, excluding the Microsoft licensing explicitly included in the per seat packages identified in Table A.
- H. Third party tool licensing may be required for additional cost.
- I. Client will be financially responsible for any remaining or ongoing charges from Microsoft. Microsoft subscriptions can each have their own terms and renewal dates. It is the client's responsibility to engage VC3 to adjust Microsoft subscription counts and terminations prior to 12 months from the order.

Assumptions

- A. The Work Order will not become effective unless and until it is agreed upon and signed by the Client and VC3.
- B. If VC3 is providing or managing Client 's Microsoft Licenses, then Client agrees to the Microsoft terms and conditions as stated in the Microsoft Customer Agreement found here: <https://www.microsoft.com/licensing/docs/customeragreement>
- C. VC3 reserves the right, at its discretion, to pass onto the client any changes to obligations, such as terms or pricing imposed on VC3 by a given vendor, for an offering that is currently resold to the client at any time during the current agreement term.



- D. VC3 will make reasonable efforts to resolve all issues remotely prior to dispatching an engineer onsite. Travel hours incurred will be invoiced according to the Master Services Agreement.



Invoicing

VC3 will invoice Client per Table C. VC3 will invoice the Client a pro-rated monthly fee based on any partial month of service plus the first full month of service on the effective services start date. All subsequent service months will be invoiced at the start of the month in which services are to be rendered. Services activated after the first of month may be invoiced on a pro rata basis the following month. Any taxes related to services purchased or licensed pursuant to this Work Order shall be paid by Client or Client shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes and freight charges shall be billed as a separate item on the invoice.

Unit rates will automatically increase annually on the anniversary of the Effective Services Start Date equivalent to the CPI change for All Urban Consumers or by 3%, whichever is higher.

The terms of this work order will automatically renew for an additional term of equivalent length to the current active term unless notice of termination is provided to VC3 no fewer than 90 calendar days prior to expiration of the current active term.

Table C

Milestone Billing	Milestone Description / Date	Invoice Amount
One-Time Fees	Invoiced at signing of the Work Order.	\$10,457.70
Monthly Fee (60 Months)	Invoicing to begin when recurring services begin.	\$8,354.70
Annual Fee (60 Months)	Invoiced at signing of the Work Order.	\$0.00

*Refer to Table B for implementation fee and monthly fee amounts.

VC3, Inc

Signature:

Hunter Lindsay

Name:

HUNTER LINDSAY

Title:

VP of Sales

Date:

3/21/22

City of Flowery Branch, GA

Signature:

Edward R. Ashbridge

Name:

EDWARD R. ASBRIDGE

Title:

Mayor

Date:

3/18/2022.



Addendum A – Service Desk Priorities

Incidents and Service Requests are triaged and prioritized to effectively resolve the most important issues in a timely manner. VC3 utilizes the following priorities, criteria and response metrics:

A. Priority 1:

- System/device/service down causing work to cease and critical impact to the organization or a whole department; no workaround available; Client is in danger of or is experiencing a financial loss or the ability to make strategic business decisions is impaired; begin resolution activities immediately.
- **24x7 Support:** Priority 1 incidents will be addressed on a 24 hours a day, 7 days a week basis including holidays.

B. Priority 2:

- System/device/service down causing work to cease and potential business impact for an individual user; no workaround available.
- Level of service degraded causing impact to the organization or a whole department; no workaround available.
- **24x7 Support:** Priority 2 incidents will be addressed on a 24 hours a day, 7 days a week basis including holidays.

C. Priority 3:

- Level of service degraded causing impact to an individual user; no work around available.
- Operational impact to the organization or a whole department though work continues as a result of implementing a workaround or use of other system/device/service.
- A request to enable or configure a system/device/service within 2 business days.
- Incidents related to Backup system failures.
- **Business Hours Support:** Priority 3 incidents will be addressed during normal business hours Monday-Friday, 8:00am to 5:00pm excluding holidays.

D. Priority 4:

- Operational impact to the organization, department or user exists though work continues as a result of implementing a workaround or use of another system/device/service.
- A request to enable or configure a system/device/service within 5 business days.
- **Business Hours Support:** Priority 4 incidents will be addressed during normal business hours Monday-Friday, 8:00am to 5:00pm excluding holidays.

E. Priority 5:

- Operational impact to the organization, department or user is minimal or is mitigated by a reliable workaround.
- A request to enable or configure a system/device/service beyond 5 business days from the date of the request.
- Requests that have longer lead times to implement than possible within 5 business days.
- **Business Hours Support:** Priority 5 incidents will be addressed during normal business hours Monday-Friday, 8:00am to 5:00pm excluding holidays.



Call Priority	Initial Client Contact Guidelines	Initial Client Contact Percentages
1	30 Min	95%
2	60 Min	95%
3	4 business hours	95%
4	8 business hours	95%
5	8 Business Hours	95%



Addendum B – Maintenance Windows

All work performed within VC3's Hosting Infrastructure is a form of maintenance. Such work may or may not result in a disruption of service depending on the scope of the activity.

1. **Scheduled Maintenance:** All planned work performed on VC3's Hosting Infrastructure by VC3 engineers or staff is defined as "Scheduled Maintenance".

During Scheduled Maintenance, some or all of VC3's Hosting Infrastructure may be out of service and therefore may not be accessible to users. Regularly Scheduled Maintenance will occur on Mondays between 2 AM and 5 AM. A 15-minute downtime is expected during this window. If Client has a business need to avoid said outage, they must provide their request via the VC3 Service Desk ten business days in advance.

- a. **Notification:** If VC3 decides to perform Scheduled Maintenance beyond the standard 15-minute downtime, Client will be notified via email ten business days before the Scheduled Maintenance window.

2. **Emergency Maintenance:** All work performed in response to a disruption or a threat to the availability of a component of VC3's Hosting Infrastructure within the control of VC3 is defined as "Emergency Maintenance".

Emergency Maintenance will be conducted based upon the timeframe that the emergency exists. Normal business hours will see an immediate response. For issues that occur during non-business hours, the impact of the event will be evaluated as soon as possible, and appropriate measures taken to return the system to normal availability.

- a. **Notification:** Client will be notified via email should Emergency Maintenance be necessary.

3. The VC3 Hosting Infrastructure includes is not limited to the following areas: E-mail hosting, server hosting, website hosting, Content Management System, Hosted Applications, Internet Service Provider, Hosted Voice, and custom application hosting.



Addendum C – Service Provider E-Verify Compliance Affidavit

By executing this affidavit, the undersigned Service Provider named below, which is an individual, firm, or corporation engaged in the physical performance of services in Georgia under a contract with the City of Flowery Branch, GA, affirms that it has registered with, is authorized to use and uses the federal work authorization program commonly known as E-verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, Service Provider will continue to use the federal work authorization program throughout the contract period and will contract for the performance of services in satisfaction of such contract only with subcontractors who present to Service Provider an affidavit containing the information required by O.C.C.A. §13-10-91(b). The undersigned Service Provider attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

VC3, Inc.

Project Name

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____, in _____ (city), _____ (state).

BY: Service Provider Authorized Officer or Agent

Date

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

____ DAY OF _____, 20____

Notary Public

My Commission Expires:



Addendum D – Service Provider Subcontractor E-Verify Compliance Affidavit

By executing this affidavit, the undersigned subcontractor named below, which is an individual, firm, or corporation engaged in the physical performance of services in Georgia under a contract with the VC3, Inc., affirms that it has registered with, is authorized to use and uses the federal work authorization program commonly known as E-verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period. The undersigned subcontractor attests that its federal work authorization user identification number and date of authorization are as follows:

58-09151163 3/18/2022
Federal Work Authorization User Identification Number Date of Authorization

City of Flowery Branch Master Services Agreement
Name of Subcontractor Name of Project

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on 18th, 2022 in Flowery Branch (city), Georgia (state).
Alecia R Gamble 3/18/2022
BY: Subcontractor Authorized Officer or Agent Date

Alecia L. Gamble, Finance Director
Printed Name and Title of Authorized Officer or Agent

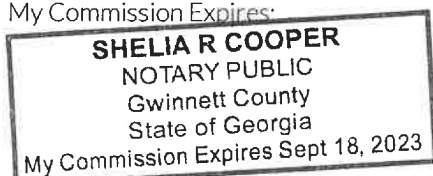
SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

18 DAY OF March, 2022

Shelia R Cooper

Notary Public

My Commission Expires:



3/2/2022

Page 16 of 18



March 11, 2022

Dear City of Flowery Branch, GA,

As an important client to VC3, Inc., we would like to invite you to participate in our payment plan using the Automated Clearing House (ACH). In lieu of cutting a check or processing a credit card transaction for goods and/or services, your company's payment will be drafted via electronic transfer and automatically debited from your account at your financial institution. ACH will be used for all invoices, including new and previous agreements, and time and material invoices with VC3. The ACH Payment program has proven to be an efficient and cost-effective mechanism for making payments, increasing payment security, and for eliminating the time lag caused by standard mail. In addition, outstanding invoices are paid without any manual hassles.

You will still receive an invoice as usual. Upon receipt of your invoice, your company will have 15 calendar days to review the outstanding payable. If no changes are needed, an ACH bank draft will be initiated on the next scheduled bank draft day after the 15th calendar day review period (typically the following Thursday).

If there is a dispute on a charge, please email the invoice number and issue at hand to finance@vc3.com. This will freeze your automated ACH payment until the dispute is settled.

For your convenience we have enclosed an ACH Payment Authorization Form. Please use this agreement as consent for VC3 to directly withdraw funds from your financial institution.

Sincerely,

VC3, Inc.



ACH Payment Authorization Agreement

Company Name: City of Flowery Branch, GA

We hereby authorize VC3, Inc., to initiate debit entries out of our checking account indicated below at the depository financial institution named below, hereafter called Depository. VC3, Inc. acknowledges that the origination of ACH transactions out of the account must comply with the provisions of U.S. law.

Bank Name: _____

City: _____ State: _____ Zip: _____

Routing Number: _____ Account Number: _____

Account Type: _____

This authorization is to remain in full force and effect until VC3, Inc. has received written notification of its termination, in such time and in such manner as to afford VC3, Inc. a reasonable opportunity to act on it.

Name: EDWARD R. ASBRIDGE Title: MAYOR

Signature: Edward R. Asbridge Date: 3/18/2022

Remittance Contact: TONYA PARRISH

Contact Email: tonya@Flowerybranchga.org

MASTER SERVICES AGREEMENT

This model Master Service Agreement ("MSA") and Work Orders contain terms agreed to by VC3 for use with Georgia municipalities. Georgia Municipal Association, Inc. recommends reviewing this Master Service Agreement and Work Orders with the City Attorney.

This Master Services Agreement ("Agreement") is entered into as of this 18th day of March, 2022, (the "Effective Date"), between VC3, Inc., a Delaware corporation having its principal place of business at 1301 Gervais Street, Suite 1800, Columbia, SC 29201 ("Company"), and City of Flowery Branch, GA, a Municipal Corporation having its principal place of business at 5410 W Pine St Flowery Branch, GA 30542. ("Client").

WHEREAS, Client is a local government, public authority, or similar entity of the State of Georgia; and

WHEREAS, Client is eligible to purchase the products and services described in the attached Work Orders ("Products and Services") at a rate negotiated by Georgia Municipal Association, Inc. ("GMA") for local governments; and

WHEREAS, Client and Company acknowledge that this MSA, which includes any Work Orders accepted by Client, is solely between Client and Company; and

WHEREAS, Company warrants that it provides the Products and Services described in the attached Work Orders in compliance with all laws and standards applicable to Company's industry; and

WHEREAS, Company warrants that it has and will keep in effect at its sole expense all licenses, permits, qualifications, and approvals which are legally required to provide the Products or Services;

NOW THEREFORE, for and in consideration of the foregoing Recitals and the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Company (each individually a "Party" and collectively the "Parties") agree to the Recitals above and as follows:

Client and Company hereby agree as follows:

1. Services To Be Performed.

1.1 Services. Company will provide computer system and network maintenance, software, consulting and professional services (the "Services") as mutually agreed to in a written executed attachment to this Agreement by Company and Client (a "Work Order"); provided however that the parties recognize that Company may from time to time provide Services to Client at Client's request without a Work Order, and in such cases, these Services shall be subject to and governed by the terms and conditions of this Agreement and performed by Company on a time and materials basis and invoiced at the hourly billing rates specified in Exhibit A. All Work Orders signed by authorized representatives of both parties are automatically incorporated by reference as numbered attachments to Appendix 1 of this Agreement as if fully restated. Each Work Order shall describe the Services to be performed

and other such terms and conditions approved by Company and Client. Company and Client agree that multiple Work Orders may be executed and this MSA shall govern each Work Order. Client acknowledges that Company may engage one or more subcontractors to assist Company in rendering the Services for each Work Order. Company, its employees, agents, and subcontractors shall have access to Client's premises and property during normal working hours for the purpose of performing the Services.

1.2 **Form of Work Order.** Each Work Order will conform to substantially the following format:

(a) The Work Order will contain "Work Order" in the title.

(b) The contents of the Work Order may be included in the body of the Work Order, or in separately signed Attachments, as the parties consider most practical. The Work Order shall include a provision for the dated signatures of authorized representatives of both parties.

1.3 **Change Orders.** Client may request a change in the scope or nature of the Services in a Work Order at any time. However, changes to the scope of the Services in a Work Order can be made only in writing executed by both parties.

2. **Charges for Services.**

2.1 **Charges.** Company shall be entitled to compensation for the performance of the Services as stated in each Work Order. Unless otherwise expressly stated in a Work Order, Company's compensation will be based on direct labor hours charged at fixed labor rates. The Work Order may call for a budget of expected charges as a way for both parties to monitor performance. Except as otherwise expressly set forth in a Work Order, all Services that are identified to be rendered on a time and materials basis will be invoiced at the hourly billing rates specified in Exhibit A.

2.2 **Invoices.** Unless otherwise stated in a Work Order, payment for the Services is due monthly when and as performance is rendered. Company shall issue invoices to Client for charges when and as they come due. Client shall make payment to Company of all such invoices within thirty (30) days from the date of such invoice.

2.3 **Expenses.** Client shall pay Company for all reasonable expenses incurred by Company in the performance of the Services, including travel, living, and out-of-pocket expenses incurred pursuant to this Agreement.

2.4 **Effect of Late Payment.** All late payments by Client shall bear interest at a rate of one and one-half percent (1.5%) per month or partial month during which any sums were owed and unpaid, or the highest rate allowed by law, whichever is lower.

2.5 **Collection Costs.** Client shall reimburse Company for any expenses and costs it incurs to collect any amounts due to Company under this Agreement, including reasonable attorneys fees.

2.6 **Taxes.** Client shall pay directly, or reimburse Company for, and indemnify and hold Company harmless from, all taxes and tariffs assessed or levied by any governmental entity that are now or may become applicable to the Services or measured by payments made by

Client to Company hereunder, or are required to be collected by Company or paid by Company to tax authorities including interest assessment thereon if such assessments are due to Client's actions or inactions. This includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, or any other form of tax based on services performed, equipment used by Company to perform services solely for Client, and the communication or storage of data, but does not include taxes based upon Company's net income.

3. Term and Termination.

3.1 Term. The term of this Agreement shall continue from the Effective Date until the earlier of (a) expiration of the term of all Work Orders referencing this Agreement or (b) termination of this Agreement as provided in this Agreement.

3.2 Termination for Cause. Either party may terminate a Work Order or this Agreement, as applicable, for material breach by the other party of the Work Order or this Agreement, as applicable, which is not cured within thirty (30) days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail.

3.3 Termination for Convenience. Unless specified otherwise in a specific Work Order, Client may terminate for convenience any recurring fee Work Order by providing Company with at least ninety (90) days prior notice of the date of termination and by paying Company a termination for convenience fee in full no later than sixty (60) days prior to the date of termination. The termination for convenience fee will be calculated as the Company's remaining cost owed to third parties for products and services, including but not limited to, hardware, software, license, hosting, or maintenance that is due by Company to third parties per the original agreement terms agreed by Client and Company plus the higher of the initial monthly contract fee or the highest monthly fee in the prior 12 month period from the date of termination notice times the number of months remaining from the date of termination until the end of the current contract period times thirty percent (30%).

3.4 Effect of Termination. Client shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination. Expiration or termination of any Work Order or this Agreement for any reason will not release either party from any liabilities or obligations set forth in any Work Order or this Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

4. Proprietary Protections.

4.1 Ownership Rights

(a) **General.** Each party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date, or acquired or developed after the Effective Date without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights, except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Company or Client to violate the proprietary rights of any third party in any software or otherwise. Notwithstanding anything

to the contrary in this Agreement, Company (i) will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in performing the Services which are based on trade secrets or proprietary information of Company or are otherwise owned or licensed by Company (collectively, "tools"), (ii) will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the Services and may be retained by Company's employees in intangible form, all of which constitute substantial rights on the part of Company in the technology developed as a result of the Services performed under this Agreement.

(b) **Materials Developed for or Delivered to Client.** Client agrees that all software and other materials (including, but not limited to customizations, modifications, specifications, documentation and training materials) developed for or delivered to Client pursuant to this Agreement or any Work Order, including all related copyrights, patent rights, trade secrets, ideas, designs, concepts, techniques, inventions, discoveries or other intellectual property rights (collectively, the "Materials"), shall be the exclusive property of Company and the Company shall own all right, title and interest therein. In this connection, Client acknowledges that all Materials which are or may be developed pursuant to this Agreement or any Work Order are and shall be the intellectual property and confidential proprietary information and products of Company, and Client hereby transfers and assigns any and all rights in and to the Materials to Company, its successors and assigns, including all intellectual property rights relating thereto. From time to time upon Company's request, Client shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Company may request. Company agrees that Client shall have a limited nonexclusive license to use the Materials internally to the extent necessary to carry out and fulfill the terms and conditions of the Work Order for which the Materials were developed and shall have the right to grant a limited nonexclusive license to the third parties specifically identified in a Work Order to use the Materials solely for the purposes contemplated by such Work Order, provided that such third parties shall first agree in a signed writing to be bound by the terms of this Agreement or such terms as may be acceptable to Company.

(c) **Specific Deliverables Owned by Client.** Notwithstanding the foregoing provisions of Section 4.1(b) but subject to any third party rights or restrictions and the provisions of Section 4.1(a) and the other provisions of this Section 4.1(c), Client will own the copyright in and to Materials that (i) are developed for and delivered by Company to Client, (ii) are paid for by Client, and (iii) are clearly and specifically identified in a Work Order as governed by the provisions of this Section 4.1(c) (the "Specific Client Owned Deliverables"). Notwithstanding the foregoing, Company will retain ownership of any Company-owned software or development tools that are used in producing the Specific Client Owned Deliverables and become embedded in the Specific Client Owned Deliverables. Company hereby grants to Client a perpetual (subject to compliance with this sentence), royalty-free, nontransferable, nonexclusive license to use such embedded software and tools (if any) solely in connection with Client's internal use and exploitation of the Specific Client Owned Deliverables and only so long as such software and tools (if any) remain embedded in the Specific Client Owned Deliverables and are not separated therefrom. Company will own all intellectual property rights in or related to the Specific Client Owned Deliverables other than the copyright ownership rights granted to Client pursuant to this Section 4.1(c).

4.2 Client Information. Company recognizes and agrees that, except as specified in Section 4.1, it has no claim of ownership to any data, materials or information submitted by

Client to Company or the Services ("Client Information"), which Client Information is being provided to Company solely for the purposes of enabling Company to render the Services, and that title and all ownership rights in and to such Client Information shall at all times remain with Client. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Information.

4.3 **Confidentiality.**

(a) **Confidential Information.** This Section 4.3 shall apply to all confidential and proprietary information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), including all Client Information, Materials of Company, and information related to the Disclosing Party's technology, software, know-how, products, potential products, services, potential services, financial information, employees, customers, markets and/or business information (collectively, "Confidential Information"). The terms and conditions of this Agreement and all Work Orders shall be treated by Client as the Confidential Information of Company. Confidential Information shall not include any information which (i) was known to the Receiving Party prior to being disclosed by the Disclosing Party, (ii) becomes publicly known through no wrongful act of the Receiving Party, (iii) is approved for release by written authorization of the Disclosing Party, (iv) is received from a third party not in breach of any separate confidentiality obligation known to the Receiving Party, or (v) is independently developed without reference to the Disclosing Party's Confidential Information. All oral disclosures of Confidential Information to the other party will be summarized and confirmed as confidential or proprietary by the disclosing party in writing within ten (10) business days of the disclosure.

(b) **Scope of Obligation.** The Receiving Party agrees to use the Confidential Information of the Disclosing Party only as provided for in this Agreement. Each party agrees to hold the other party's Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information only to those employees, agents, representatives and/or consultants who require such information only in connection with this Agreement. Each party agrees to instruct all such employees, agents, representatives and consultants regarding the foregoing obligations and ensure that such employees, agents, representatives and consultants are bound by obligations of confidentiality to the Receiving Party that are at least as restrictive as those contained herein. Each party agrees that it will take all reasonable measures to protect the confidentiality of, and avoid the unauthorized disclosure or use of, the other party's Confidential Information, including but not limited to PPI and PHI, in order to prevent it from being made public or in the possession of persons other than those persons authorized hereunder to have any such Confidential Information, which measures shall include at least the same degree of care that the Receiving Party utilizes to protect its own confidential information of a similar nature but in any event shall include commercially reasonable precautions designed to protect the Disclosing Party's Confidential Information from unauthorized disclosure and/or use. Prior to disclosure of Confidential Information to any of its employees or other authorized persons, Company shall obtain an appropriate signed confidentiality agreement from all such persons.

(c) **Limited Disclosure Right.** Confidential Information may be disclosed to the extent required by court order or as otherwise required by law, provided that the Receiving Party, to the extent legally permissible, notifies the Disclosing Party promptly upon learning

of the possibility of any such requirement and, to the extent legally permissible, has given the Disclosing Party a reasonable opportunity to contest or limit the scope of such required disclosure. If the disclosure of information covered by this MSA is required pursuant to the law, the recipient may make the required disclosure provided that the recipient must, if permitted by law, advise the other party promptly of the request for disclosure and cooperate with the other party in responding to it. The parties shall clearly identify any document or types of documents submitted to each other that include trade secrets and submit an affidavit with respect to such documents in accordance with the provisions of the Georgia Open Records Act.

(d) **Return of Confidential Information.** Promptly upon termination of this Agreement, or at any other time upon the request by a party, the other party shall (i) return to the Disclosing Party or, at the Disclosing Party's request, destroy all Confidential Information of such Disclosing Party, whether in paper or electronic form, provided, however that the foregoing shall not apply to Confidential Information that is stored in the Receiving Party's electronic archives, which Confidential Information will be destroyed in the ordinary course of the Receiving Party's business in accordance with its document destruction policies; and (ii) certify to the Disclosing Party in writing that it has complied with the provisions of this Section 4.3.

(e) **PPI and PHI.** For purposes of this Agreement, "Personal and Protected Information" ("PPI") is any information that identifies an individual enrolled in an employee benefits program administered by Client, information that shows an individual received or will receive treatment or payment for treatment for any kind of medical condition, information that identifies a payment card holder, information that contains identifiers that are commonly used in identity theft, and any information that is "Protected Health Information" ("PHI") as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"). Company shall ensure that individuals performing services pursuant to this Agreement that require access to Client's PPI have been appropriately trained in information privacy and security and comply with Company's information privacy and security policies and procedures. For any Client PPI transmitted by Company, or identified by Client as PPI and stored on Company owned cloud infrastructure, Company shall encrypt all PPI in transmission and at rest, including any email that contains PPI and leaves the Client's network. Company shall safeguard all PPI in its possession in accordance with the information security obligations appropriate for medical and financial information. Any PPI in Company's custody that is not electronic shall be securely destroyed (if appropriate) or securely stored in a controlled physical environment, and Company affirms that access to such information is limited to its employees who require access to the information in order to perform Services or exercise rights under this Agreement or any Work Order. Company's employees and Company's subcontractors' employees may only use and disclose PPI as necessary to perform the Services described in a Work Order, and, if Company will maintain HIPAA PHI as a result, Company may only use and disclose PHI in accordance with a Business Associate Agreement, if any has been executed.

5. Limited Warranty and Disclaimers.

5.1 **Limited Warranty.** Company warrants to Client that the Services, as and when delivered or rendered hereunder, will substantially conform to the description of services or specifications set forth in the applicable Work Order. Company also warrants to Client that the Services will be performed by qualified personnel in a diligent, professional, and skillful

manner. Company's sole liability under the foregoing warranty shall be to provide the services described in Section 5.3 hereof.

5.2 DISCLAIMER OF WARRANTIES. THE WARRANTY SET FORTH IN SECTION 5.1 STATES COMPANY'S SOLE AND EXCLUSIVE WARRANTY TO CLIENT CONCERNING THE SERVICES HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, THE SERVICES ARE PROVIDED STRICTLY "AS IS" AND COMPANY MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY EXCLUDED. COMPANY DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS THAT THE SERVICES BEING PROVIDED WILL RESULT IN COST SAVINGS, PROFIT IMPROVEMENT, OR THAT THE SERVICES WILL BE ERROR-FREE. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY COMPANY.

5.3 Notice Obligation; Remedy. Client shall notify Company in writing within thirty (30) days after completion of the Services in question when any of the Services fail to substantially conform to the description of services or specifications set forth in the applicable Work Order. With respect to all other services, including but not limited to recurring services essential for ongoing cybersecurity, Company shall notify Client within thirty (30) days of discovery of any Services that fail to substantially conform to the description of services or specifications set forth in the applicable Work Order, and shall correct the nonconformity so that the Services shall be performed by sufficiently qualified personnel in a diligent, professional, and skillful manner that substantially conform with the agreed description of services or specifications in the applicable Work Order. Such notification shall include the detailed information necessary for Company to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, Company shall correct the nonconformity so that the Services shall substantially conform with the agreed description of services or specifications in the applicable Work Order. Client agrees to pay Company for all personnel time and expenses incurred in investigating reported nonconformities when the alleged nonconformities are not discovered. The passage of the thirty (30) day period after completion of the Services in question without the notification described herein shall constitute final acceptance of the Services.

6. Limitation of Liability.

6.1 COMPANY'S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY ARISING OUT OF, OR CONNECTED WITH THIS AGREEMENT, THE SERVICES OR USE OF THE PRODUCT OF ANY SERVICES FURNISHED HEREUNDER, SHALL IN ALL CASES BE LIMITED SOLELY TO CORRECTION OF NONCONFORMITIES WHICH DO NOT SUBSTANTIALLY CONFORM WITH THE AGREED DESCRIPTION OF SERVICES IN A WORK ORDER, OR SPECIFICATIONS IDENTIFIED IN A WORK ORDER.

6.2 IF FOR ANY REASON COMPANY IS UNABLE OR FAILS TO CORRECT NONCONFORMITIES AS PROVIDED, COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF ANY WORK ORDER FOR SUCH FAILURE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT FOR THAT PORTION OF THE SERVICES WHICH FAIL TO CONFORM. IN NO EVENT SHALL COMPANY BE LIABLE UNDER COMPANY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY

WORK ORDER (INCLUDING FOR ANY AMOUNTS IN EXCESS OF CLAIM AND/OR SERIES OF CLAIMS, WHETHER RELATED OR UNRELATED) WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EXCEED THE AMOUNTS PAID BY CLIENT TO COMPANY IN FOR SERVICES OF COMPANY DURING THE NINETY DAY (90) PERIOD PRECEDING ANY FAILURE OR BREACH BY THE EVENT(S) GIVING RISE TO THE CLAIM (OR TO THE FIRST CLAIM IN A SERIES OF CLAIMS). FOR THE AVOIDANCE OF DOUBT, ANY AMOUNTS PAID TO COMPANY OR CLAIM BY CLIENT FOR THIRD PARTY HARDWARE, SOFTWARE, PRODUCTS OR SERVICES SHALL NOT BE A PART OF AMOUNTS PAID FOR SERVICES OF COMPANY.

6.3 UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO CLIENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM OR DAMAGES ASSERTED BY ANY THIRD PARTY.

6.4 CLIENT ACKNOWLEDGES THAT COMPANY HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

6.5 THE PROVISIONS OF SECTIONS 5, 6 AND 7 ARE CLIENT'S EXCLUSIVE REMEDIES RELATED TO THE SERVICES, ANY FAILURE BY COMPANY TO CORRECT NONCONFORMITIES IN THE SERVICES, OR FOR BREACH BY COMPANY OF THIS AGREEMENT OR A WORK ORDER AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF SUCH REMEDIES.

6.6 Client is responsible for adopting reasonable measures to limit Client's exposure with respect to such potential losses and damages, including (without limitation) examination and confirmation of results of the Services prior to use thereof, provision for identification and correction of errors and omissions, and preparation and storage of backup or duplicate data. Client is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any Client Information.

7. Indemnity and Insurance.

7.1 Infringement Claims.

(a) **General.** Subject to Section 6 of this Agreement, the limitations set forth below in this Section 7.1 and the procedures set forth below in Section 7.3, Company and Client (each an "indemnitor") each agrees to defend the other party (each an "indemnatee") against any action to the extent that such action is based upon a claim that the Confidential Information (other than third party hardware, software, products, materials or services) provided by the indemnitor, or any part thereof, (i) infringes a copyright perfected under United States statute, or (ii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret, and the indemnitor will bear the expense of such defense and pay any liabilities, costs and

expenses, including reasonable attorneys' fees and expenses (collectively "Losses") that are attributable to such claim finally awarded by a court of competent jurisdiction.

(b) **Exclusions.** Neither Company nor Client will be liable to the other for claims of indirect or contributory infringement. The indemnitor will have no liability to the indemnitee hereunder if (i) the claim of infringement is based upon the use of Confidential Information provided by the indemnitor hereunder in connection or in combination with equipment, devices or software not supplied by the indemnitor or used in a manner for which the Confidential Information was not designed, (ii) the indemnitee modifies any Confidential Information provided by the indemnitor hereunder and such infringement would not have occurred but for such modification, or (iii) the claim of infringement arises out of the indemnitor's compliance with specifications or requirements provided by the indemnitee and such infringement would not have occurred but for such compliance.

(c) **Additional Remedy.** If Confidential Information becomes the subject of an infringement claim under this Section 7.1, or in the indemnitor's opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys' fees as required above in this Section 7.1, the indemnitor may, at its option and in its sole discretion, (A) replace or modify the Confidential Information to make it noninfringing or cure any claimed misuse of another's trade secret or (B) procure for the indemnitee the right to continue using the Confidential Information pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by the indemnitor but will be subject to Section 6 of this Agreement. If neither alternative is pursued by, or (if pursued) available to, the indemnitor, (x) the indemnitee will return such Confidential Information to the indemnitor and (y) if requested by the indemnitee in good faith, the parties will negotiate, but subject to Section 6 of this Agreement, to reach a written agreement on what, if any, monetary damages (in addition to the indemnitor's obligation to defend the claim and pay any damages and attorneys' fees as required above in this Section 7.1) are reasonably owed by the indemnitor to the indemnitee as a result of the indemnitee no longer having use of such Confidential Information. The payment of any such monetary damages will be the indemnitee's sole and exclusive remedy for the inability of the indemnitor to implement either of the above alternatives.

7.2 Third Party Indemnification of Company. Without limiting Company's liability to Client under this Agreement, each of the parties acknowledge that Company would not enter into this Agreement, and by Company entering into and performing its obligations under this Agreement, Company will not assume and should not be exposed to the business and operational risks associated with Client's business, and Client therefore agrees, subject to Section 7.3 below, to indemnify and defend Company and hold Company harmless from any and all third party Losses arising out of the conduct of Client's business, including the use by Client of the Services. Company shall indemnify, defend, and hold harmless Client and its officers, directors, agents, and employees, from and against any and all third-party claims and actions arising from Company's grossly negligent acts, errors and/or omissions or intentional or willful misconduct in the performance of this Agreement.

7.3 Procedures. The indemnification obligations set forth in this Section 7 will not apply unless the party claiming indemnification: (a) notifies the other promptly in writing of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, in order to allow the indemnitor the opportunity to investigate and defend the matter; provided, however, that the failure to so notify will only relieve the indemnitor of its obligations under this Section 7 if and to the extent that the indemnitor is prejudiced thereby;

and (b) gives the other party full opportunity to control the response thereto and the defense thereof, including any agreement relating to the settlement thereof; provided, however, that the indemnitee will have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by legal counsel of its choosing, all at the indemnitee's cost and expense. However, if the indemnitor fails to promptly assume the defense of the claim, the party entitled to indemnification may assume the defense at the indemnitor's cost and expense. The indemnitor will not be responsible for any settlement or compromise made without its consent, unless the indemnitee has tendered notice and the indemnitor has then refused to assume and defend the claim and it is later determined that the indemnitor was liable to assume and defend the claim. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor.

7.4 Insurance. Company shall maintain, throughout the term of this Agreement, at its own expense comprehensive general liability insurance with limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, professional liability (errors & omissions) insurance with limits of no less than \$1,000,000 per claim and \$2,000,000 aggregate, and cyber-liability insurance of \$3,000,000 per claim and \$3,000,000 aggregate. If such insurance is written on a claims-made form, it shall continue for three years following termination of this MSA. The coverage shall contain no special limitations on the scope of protection afforded to Client. Said insurance policies shall cover all activities performed by VC3, its agents, officers, and employees under this MSA. Notwithstanding any other provision of this Section, Company may satisfy the insurance obligations hereunder by a combination of commercial insurance and/or a self-funded insurance in whatever proportions are deemed appropriate by Company. Company shall furnish Client with a certificate or other written evidence of Company's election to provide or cause to be provided all or part of its coverage under a risk retention or self-insurance program or any combination thereof.

7.5 Workers' Compensation. During the term of this Agreement, Company shall fully comply with worker compensation laws. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies insuring against any liability Company may have for worker's compensation if such a policy is required by law.

8. General Provisions.

8.1 Non-Hire Provision. Each party to this Agreement agrees that it will not hire, employ, or contract with, or solicit to hire, employ, or contract with, any person who is, or within the immediately preceding one year was, an employee or subcontractor of the other party to this Agreement for any purposes during the term of this Agreement, or for a period of one year after this Agreement terminates.

8.2 Recording. (a) Some Services provided may involve recording and/or monitoring. For such Services, information uploaded to or in any way passing through computer systems used to provide the Services, including written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. By accessing or using the Services, Client consents to such recording and monitoring. Client is also solely responsible for informing anyone with whom Client interacts or otherwise communicates via the Services that information uploaded to or in any way passing through the Services, including written, visual or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes.

(b) If phone conferences/conference bridges are applicable to the Services being provided to Client, Client acknowledges that the laws of certain jurisdictions may require that if a conference is recorded, all participants in the conference must be informed in advance of any such recording, so they may consent to being recorded (if required by applicable laws). Client acknowledges and agrees that Client shall be solely responsible for complying with all Applicable Laws and Third-Party Rights when using recording features (this includes Client's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Company shall have no liability to Client or any participant in Client's recorded conference with respect to Client's obligations under this Section 8.2.

8.3 Conflict. Any purchase order or other document issued by Client is for administrative convenience only. In the event of any conflict between this Agreement and any purchase order, this Agreement shall prevail.

8.4 Survival. In the event of any expiration or termination of this Agreement, Sections 2, 3, 4, 5, 6, 7, and 8 of this Agreement shall survive and shall continue to bind the parties.

8.5 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and the State of Georgia without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

8.6 Forum. All disputes arising under this Agreement shall be brought in the state or federal courts located in Georgia, as permitted by law. The state and federal courts located in Georgia shall each have non-exclusive jurisdiction over disputes under this Agreement. Client consents to the personal jurisdiction of the above courts.

8.7 Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Client will cause Company irreparable damage for which recovery of money damages would be inadequate, and that Company shall therefore be entitled to obtain timely injunctive relief to protect Company's rights under this Agreement in addition to any and all remedies available at law.

8.8 Notices. All notices under this Agreement shall be in writing and shall be delivered (a) personally, with a copy by email; (b) by overnight courier, with a copy by email; or (c) by United States mail, registered or certified, return receipt requested, postage prepaid, with a copy by email. Notices shall be deemed received on the date of personal delivery, the date of action receipt as indicated on the delivery invoice or return receipt or the date receipt is refused; whichever is earlier. Notices shall be sent to the parties at the addresses set forth below, or at such other addresses as the parties may provide in writing from time to time.

CLIENT:

Tonya Parrish, City Manager
5410 W Pine St, Flowery Branch, Georgia 30542
tonya@flowerybranchga.org
(770) 967-6371

COMPANY:

Primary Contact:
David Bridges, President
VC3, Inc
1301 Gervais Street, Suite 1800, Columbia, South Carolina 29201
(800) 787-1160

8.9 **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

8.10 **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

8.11 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

8.12 **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

8.13 **Nondisclosure.** Client promises not to disclose the terms and conditions of this Agreement to any third party without the prior written consent of Company.

8.14 **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

8.15 **Assignment.** Neither this Agreement nor any Work Order executed pursuant to this Agreement shall be assigned, sold, or otherwise transferred by either party without the written consent of the other party; provided, this prohibition on assignments without written consent of the other party shall not apply when the Company has been acquired through merger, reorganization, consolidation, or sale of all or any portion of the assets of the Company.

8.16 **Right to Engage in Other Activities.** Client acknowledges and agrees that Company may provide information technology services for third parties at any Company facility that Company may utilize from time to time for performing the Services. Nothing in this Agreement will impair Company' right to acquire, license, market, distribute, develop for itself or others or have others develop for Company similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement.

8.17 **Georgia Security and Immigration Compliance Act.** Company attests compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the execution of the

contractor affidavit as shown in Rule 300-10-1-.07, or a substantially similar contractor affidavit, which document is attached to and made a part of the contract. Company agrees that, in the event Company employs or contracts with any subcontractor(s) in connection with the covered contract, Company will secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit as shown in Rule 300-10-1-.08 or a substantially similar subcontractor affidavit, and maintain records of such attestation for inspection by the Client at any time. Such subcontractor affidavit shall be made a part of the contractor/subcontractor agreement. Any new Work Order shall be accompanied by an updated E-Verify Compliance Affidavit.

8.18 Independent Contractor Relationship. The parties acknowledge that Company shall perform the Services hereunder as an independent contractor and nothing contained herein shall be deemed to create any joint venture, partnership, or agency or employee relationship between the parties hereto, nor shall either party have the right, power, or authority whether express or implied, to incur any liability on behalf of the other party. The parties further acknowledge that Client will have no obligation whatsoever to provide any employee benefits or privileges of any kind or nature to Company, its agents, employees, or subcontractors, including, without limitation, insurance benefits or pension benefits. Further, Company acknowledges that Client is not responsible to collect or withhold federal, state, or local taxes, including income taxes and social security taxes, and that any and all such taxes imposed as a result of this Agreement shall be paid by Company.

8.19 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

8.20 Entire Agreement. This Agreement together with any Work Orders attached hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Company and Client by their duly authorized representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

COMPANY:

VC3, Inc.

By: Hunter Lindsey

Name: HUNTER LINDSEY

Title: VP of Sales

CLIENT:

City of Flowery Branch, GA

By: Edward R. Asbridge

Name: EDWARD R. ASBRIDGE

Title: MAYOR.

Exhibit A
Hourly Rates

Service Area	Hourly Bill Rate	Description of Service Area
Consulting & Project Management	\$ 188.00	Consulting (Design, Architecture, Planning); Technology Assessments; Security Audits. Project Management. CIO Consulting Services including product evaluations and application/infrastructure planning services.
Application Development	\$ 178.00	Application Software development, design, testing and code revisions. Systems Programming (System Level Scripting/Automation). All SharePoint services.
Web Design Services	\$ 178.00	Web site design and implementation services which are NOT built on a Microsoft SharePoint platform.
Infrastructure Deployment Services	\$ 165.00	Installation and Setup of the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Citrix, Network Domains and Desktop Deployments.
Infrastructure Maintenance Services	\$ 165.00	Maintenance Services for the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Domains, Microsoft Server and Desktop support.
Travel Time	\$ 113.00	Travel time to and from the Customer. This rate includes the mileage expense at the current IRS approved mileage rate.
After Hours Support Services	\$ 204.00	All reactive support services provided to Customer outside of the hours of 8am to 5pm Monday through Friday and all services provided on National Holidays
Note: Rates will automatically increase on an annual basis equivalent to the CPI change for All Urban Consumers or by 3%, whichever is higher. Annual rate increases will become effective on the first of the month following the release of data for the prior calendar year.		

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Information Technology Services

DATE: June 2, 2022

BUDGET INFORMATION:

ANNUAL- \$100,257

CAPITAL-

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COUNCIL ACTION REQUESTED ON: June 2, 2022

PURPOSE: Consider ratifying the signing of a Master Services Agreement and Service Advantage Work Order with VC3, Inc. for Information Technology (IT) Services.

HISTORY: The staff of City of Flowery Branch are continually monitoring and evaluating our current practices and comparing those to best practices. Where feasible, staff make recommendations for enhanced products or services. Several years ago the City's information technology services function was outsourced to Halski Systems (Halski). Staff, after evaluating Halski's services found that Halski was not providing services per its contract with the City that were best practices nor that were meeting the City's needs. Moreover, Halski was acquired by Logically which has indicated that the cost for IT services is anticipated to rise substantially for the City's requested IT needs. Based on the foregoing, staff determined that it was time to move on from Halski as the City's IT services provider.

FACTS AND ISSUES: VC3, Inc. is a company that the Georgia Municipal Association (GMA) has partnered with to provide IT services for municipalities throughout the State of Georgia. To ensure the safest transition, because of the sensitivity of the City's information and the desire to timely upgrade and implement necessary cybersafety protocols, the mayor executed the attached VC3, Inc. agreement and work order on March 18, 2022. Now that VC3, Inc. has accomplished the work necessary to protect the sensitivity of the City's information by upgrading and implementing the necessary cybersafety protocols, staff is requesting that the Mayor and Council approve and ratify the decision to enter into the attached agreement with VC3, Inc. with an effective date of 3/18/2022.

OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION: I make a motion to approve and ratify the decision to enter into the Master Services Agreement and Service Advantage Work Order with VC3, Inc. dated of March 18, 2022.

DEPARTMENT: Administration **Prepared by:** Tonya Parrish



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

COUNCIL MEETING DATE: June 2, 2022

HISTORY:

The City of Flowery Branch is applying for funding through the Rural Downtown Redevelopment Grant program offered through the Georgia Department of Community Affairs (DCA). DCA is seeking applications that will increase opportunities for private investment to be injected into areas of disinvestment. The funding shall increase commerce within the downtown, facilitate additional visitors/shoppers/activities within the downtown space, address workforce development and/or downtown housing needs that contribute to the overall revitalization of the community. Generally speaking, DCA is seeking to fund construction projects that have likely to have already undergone a large degree of planning by the community.

The City has planned for the Chestnut Street City Park and the multi-use trail but has not had funding for either project. The planning was far enough along to qualify for this grant as stated previously in what the DCA is looking for in this specific grant.

FACTS AND ISSUES:

DCA is establishing a maximum amount of grant request at \$5,000,000. A funding floor has also been established at \$1,000,000. DCA anticipates funding between five (5) and fifteen (15) applications. The minimum match requirement is generally no less than 10% of the total project cost.

Project: The City will be applying for funding to aid with Phase 2 of the “Old Town” Redevelopment Project. The scope of work includes the development of Chestnut Street City Park and the construction of a multi-use trail connecting key residential areas to Old Town. This project will compliment Phase 1 of the Old Town Redevelopment Project which is currently in process. The investment in this Phase 2 will yield additional amenities for residents and guests. Specifically, the Chestnut Street City Park will provide greenspace and recreational amenities to compliment the Phase 1 redevelopment project. In addition to providing a healthy, recreational amenity, the multi-use trails will provide an alternative means of transportation to Old Town for Flowery Branch residents, providing a solution to the limited parking issues. These projects align with the City’s Comprehensive Plan and Old Town Redevelopment Plan.

OPTIONS:

Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

Grant - \$2,833,501.50; and, Local Match \$314,833.50 (Local Resources Fund)

RECOMMENDATION:

Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

SAMPLE MOTION:

I move to send the letter of commitment, not to exceed \$314,833.50, and to make application to the Georgia Department of Community Affairs for the Downtown Redevelopment Grant.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Letter to Commission Nunn.pdf](#)
- [Executive Summary - Rural Downtown Grant application.pdf](#)



Mr. Christopher Nunn, Commissioner
Georgia Department of Community Affairs
60 Executive Park South, NE
Atlanta, GA 30329

Re: Letter of Financial Commitment
City of Flowery Branch – Downtown Redevelopment Project

Dear Commissioner Nunn:

This letter is to certify that the City of Flowery Branch will provide the matching funds for the above referenced project in the amount of \$314,833.50.

Thank you for your continued support of Georgia and our rural communities. This kind of project is truly transformational for our city. Should you have questions or require additional information, please feel free to contact me at (770) 967-6371.

Sincerely,

Ed Asbridge
Mayor

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Commitment of Local Match of \$314,833.50 with the application for the Downtown Redevelopment Grant

DATE: June 2, 2022

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

☐ **OTHER**

Total Amount of Grant Request: **\$2,833,501.50**

Total Project Cost: **\$3,148,335.00**

Cash Match (Can be In-Kind) Required: **\$314,833.50**

COUNCIL ACTION REQUESTED ON: June 2, 2022

PURPOSE: The City of Flowery Branch is applying for funding through the Rural Downtown Redevelopment Grant program offered through the Georgia Department of Community Affairs (DCA). DCA is seeking applications that will increase opportunities for private investment to be injected into areas of disinvestment. The funding shall increase commerce within the downtown, facilitate additional visitors/shoppers/activities within the downtown space, address workforce development and/or downtown housing needs that contribute to the overall revitalization of the community. Generally speaking, DCA is seeking to fund construction projects that have likely to have already undergone a large degree of planning by the community.

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OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION: I move to send the letter of commitment, not to exceed \$314,833.50, and to make application to the Georgia Department of Community Affairs for the Downtown Redevelopment Grant.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish
