City of Flowery Branch
City Council Meeting
Thursday, August 17, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

PUBLIC HEARING:

NEW BUSINESS – WORK SESSION

- Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.
  ES - Consent Termination of Lease Agreement.pdf
  Consent Lease Termination Agreement.pdf
  El Sabor Costeno, LLC Lease Agreement.pdf
  10.6.2022 First Amendment El Sabor Costeno Taqueria, LLC.pdf
  2.16.2023 Second Amendment El Sabor Costeno Taqueria, LLC.pdf

DEPARTMENT REPORTS: - a. City Manager Report
b. City Clerk Report
c. Community Relations Report
d. Finance Department Report
e. Human Resources Report
f. Planning Department Report
g. Police Department Report
h. Public Works & Utilities Report
i. Attorney Report
j. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider August 3, 2023 City Council Meeting Minutes
  Unofficial August 3, 2023 City Council Minutes.pdf

- Consider August 3, 2023 Executive Session Minutes

UNFINISHED BUSINESS - VOTING SESSION:

- Consider Second Vote for Ordinance 696 for an Annexation and Ordinance 697 for a Rezoning Request submitted by Cook Communities.
  1b-Annexation Application.pdf
  1a-Rezoning Application.pdf
  2a-Rezoning Exhibit (Parkers Place).pdf
  2b-Rezoning Exhibit (Rendering).pdf
  3-Letter of Intent.pdf
  4-Rezoning Analysis and Development Statistics (Parkers Place).pdf
  5-Parker's Place (Traffic Memo).pdf
  Cook Annexation Ordinance.pdf
  Cook Rezoning Ordinance.pdf
- Consider Ordinance 698 to Amend the City Flowery Branch Retirement Plan through GMA.
  Executive Summary - Retirement Plan - 2nd reading.pdf
  Ordinance 698 City of Flowery Branch Retirement Plan Amendment.pdf
  Flowery Branch CL 7 17 23.pdf
  Benefit Studies - Flowery Branch - 2023(9672951.4).pdf

NEW BUSINESS – VOTING SESSION

- Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.
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  2.16.2023 Second Amendment El Sabor Costeno Taqueria, LLC.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: Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.

COUNCIL MEETING DATE: August 17, 2023

HISTORY:
The City of Flowery Branch and El Sabor Costeno Taqueria, LLC entered into a lease agreement dated May 9, 2022, a First Amendment dated October 6, 2022 and a Second Amendment dated February 16, 2023.

FACTS AND ISSUES:
Tenant has been going through the plan process for the leased property. However, due to several circumstances, Tenant is unable to complete the build-out of the leased space and has requested that the lease be terminated. Landlord and Tenant have determined it is in the best interest of the parties to terminate the lease agreement.

OPTIONS:
(1) Approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC. 2) Do not approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC.

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

AMOUNT AND SOURCE OF FUNDS:
N/A

RECOMMENDATION:
Terminate lease agreement.

SAMPLE MOTION:
Motion to approve the Consent Termination of Lease Agreement with El Sabor Costeno Taqueria, LLC of the FB Main Street, A Master Condominium Shopping Center lease agreement.

COLLABORATING DEPARTMENT:
Administration

DEPARTMENT: Finance

Prepared by: Nancy Rodriguez

ATTACHMENTS

- ES - Consent Termination of Lease Agreement.pdf
- Consent Lease Termination Agreement.pdf
- El Sabor Costeno, LLC Lease Agreement.pdf
- 10.6.2022 First Amendment El Sabor Costeno Taqueria, LLC.pdf
- 2.16.2023 Second Amendment El Sabor Costeno Taqueria, LLC.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.

DATE: August 9, 2023

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: August 17, 2023

PURPOSE: Terminate lease agreement.

HISTORY: The City of Flowery Branch and El Sabor Costeno Taqueria, LLC entered into a lease agreement dated May 9, 2022, a First Amendment dated October 6, 2022 and a Second Amendment dated February 16, 2023.

FACTS AND ISSUES: Tenant has been going through the plan process for the leased property. However, due to several circumstances, Tenant is unable to complete the build-out of the leased space and has requested that the lease be terminated. Landlord and Tenant have determined it is in the best interest of the parties to terminate the lease agreement.

OPTIONS: (1) Approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC. 2) Do not approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC.

RECOMMENDED SAMPLE MOTION: Motion to approve the Consent Termination of Lease Agreement with El Sabor Costeno Taqueria, LLC of the FB Main Street, A Master Condominium Shopping Center lease agreement.

DEPARTMENT: Legal

Prepared by: Karen G. Thomas

ATTACHMENTS: Consent Termination of Lease Agreement

STATE OF GEORGIA

COUNTY OF HALL

CONSENT TERMINATION OF LEASE AGREEMENT

WHEREAS, the City of Flowery Branch, Georgia (hereinafter referred to as "Landlord") and El Sabor Costeno Taqueria, LLC (hereinafter referred to as "Tenant"), entered into the FB Main Street, a Master Condominium Shopping Center Lease Agreement, dated May 9, 2022, ("Lease Agreement"), wherein Landlord leased to Tenant 1259 square feet of space, Suite 101, 5519 Main Street, Flowery Branch, Georgia (the "Demised Premises").

WHEREAS, Landlord and Tenant entered into a First Amendment to Lease Agreement dated October 6, 2022; and

WHEREAS, Landlord and Tenant entered into a Second Amendment to Lease Agreement dated February 16, 2023; and

WHEREAS, due to several circumstances, Landlord and Tenant have determined that it is in the best interests of the parties to terminate the existing Lease Agreement;

NOW THEREFORE, Landlord and Tenant hereby agree to terminate that certain Lease Agreement dated May 9, 2022, as amended October 6, 2022 and February 16, 2023 as referenced above and agree that each party shall have no further responsibilities or obligations pursuant to said Lease Agreement.

Signatures Next Page

SO AGREED, this ____ day of August, 2023.

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________________
Edward R. Asbridge, Mayor

ATTEST:

____
Nancy Galvan Rodriguez, Assistant City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
this_____ day of August, 2023.

____
NOTARY PUBLIC
My commission expires: _________

FB MAIN STREET

A MASTER CONDOMINIUM

SHOPPING CENTER

LEASE AGREEMENT

5519 Main Street

Suite 101

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: El Sabor Costeno Taqueria, LLC

ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	May 9, 2022
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	El Sabor Costeno Taqueria, LLC
E.	TENANT'S TRADE NAME:	El Sabor Costeno Taqueria
F.	TENANT'S NOTICE ADDRESS:	Armando Altamirano Emiliano 5467 Riverchase Drive Flowery Branch, GA 30542
G.	PHONE NUMBER AND EMAIL:	404-392-4149 Mando.alta@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:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	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):	$262.29 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	$2,622.91
	ADVANCE ADDITIONAL RENT:	$262.29
	SECURITY DEPOSIT:	$2,622.91 plus $262.29
	TOTAL AMOUNT DUE WITH LEASE:	$2,622.91 + $262.29 + $2,885.20
O.	GUARANTORS:	Armando Altamirano Emiliano
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.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1259 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 five (5) 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.

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 101 consisting of approximately 1,259 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 3.5, 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 appraisement 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 Janet Thomas of Century 21 Connect Realty, Tenant's Broker 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 three hundred and sixty (360) 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: 5/9/2022

LANDLORD: City of Flowery Branch, GA

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper

By: Shelia Cooper, City Clerk

Date: 5/5/2022

TENANT: El Sabor Costeno Taqueria, LLC

By: Armando Altamirano Emiliano

Sworn to and subscribed before me

this 5 day of May, 2022.

Tonya Caldwell Bailey

NOTARY PUBLIC

My Commission Expires: 11/24/2023

[NOTARY SEAL]

TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

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.

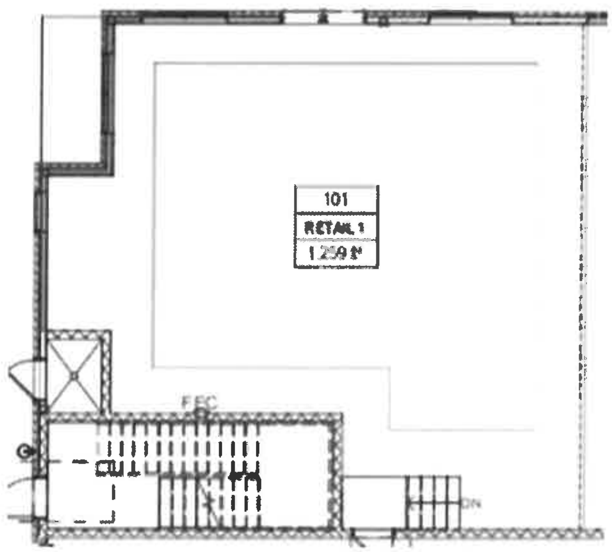


EXHIBIT B

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 Two Thousand, Nine Hundred Fifty and No/100 Dollars ($62,950.00) 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 monthly installments at the following time: (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 property 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
TENTANT:	EL SABOR COSTENO TAQUERIA, 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 EL SABOR COSTENO TAQUERIA, LLC, (hereinafter called "Tenant"), the undersigned, Armando Altamirano Emiliano an individual, (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):

Armando Altamirano Emiliano

By: ______________________________
an Individual
Address: 5467 Riverchase Dr. Flowery Branch, GA. 30542
Social Security Number: 70596 2008
Sworn to and subscribed before me
this 5 day of May, 2022.

____
NOTARY PUBLIC

My Commission Expires: 11/24/2023

[SEAL]

STATE OF GEORGIA NOTARY PUBLIC
TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

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*	$2,622.91	$31,474.92	Full Amount Due Under the
Months 13 – *24*	$2,701.60	$32,419.17	Full Amount Due Under the
Months 25 – 36	$2,782.65	$33,391.74	Full Amount Due Under the
Months 37 – 48	$2,866.12	$34,393.49	Full Amount Due Under the
Months 49 – 60	$2,952.11	$35,425.30	Full Amount Due Under the

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 61 – 72	$3,040.67	$36,488.06	Full Amount Due Under the
Months 73 - 84	$3,131.89	$37,582.70	Full Amount Due Under the
Months 85 - 96	$3,225.85	$38,710.18	Full Amount Due Under the
Months 97 – 108	$3,322.62	$39,871.18	Full Amount Due Under the

Months 109 -	$3,422.30	$41,067.63	Full Amount Due Under the

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 6th day of October, 2022, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and EL SABOR COSTENO TAQUERIA, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated May 9, 2022 (the "Original Lease"), for that certain property commonly known as 5519 Main Street, Suite 101, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Eight (8) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 6th day of October, 2022.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia Cooper, City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
This 12 day of October, 2022.

____
NOTARY PUBLIC
My commission expires: April 1, 2025

Nancy Galvan Rodriguez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 1, 2025

SECOND AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS SECOND AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 16th day of February, 2023, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and EL SABOR COSTENO TAQUERIA, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated May 9, 2022 (the "Original Lease"), for that certain property commonly known as 5519 Main Street, Suite 101, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Eleven (11) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 16th day of February, 2023.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: Edward R. Asbridge
Edward R. Asbridge, Mayor

ATTEST:

Shelia R Cooper
Shelia Cooper, City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
This 21 day of February, 2023.

Nancy Galvan Rodriguez
NOTARY PUBLIC

My commission expires: April 1, 2025

Nancy Galvan Rodriguez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 1, 2025

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider August 3, 2023 City Council Meeting Minutes

COUNCIL MEETING DATE: August 17, 2023

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:

Prepared by: Nancy Rodriguez

ATTACHMENTS

- Unofficial August 3, 2023 City Council Minutes.pdf

City of Flowery Branch
City Council Meeting
Thursday, August 3, 2023. 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

Mayor Asbridge called the council meeting to order at 6:00 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, Assistant City Clerk Nancy Rodriguez, Public Works & Utilities Director Bill Whidden, Community Relations Director Renee Carden, Planning and Community Development Director Rich Atkinson, and City Attorney Karen Thomas.

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda as presented.

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

Motion carried

NEW BUSINESS -WORK SESSION:

Consider Approval of Task Order with ESG Engineering, Inc. for the 2023 Water Distribution Improvements

City Manager Parrish presented a task order from ESG Engineering to provide professional engineering design services for the construction of drinking water distribution improvements in the City of Flowery Branch in an amount not to exceed $97,500.

Council held a discussion with City Manager Parrish.

Consider Beer and Wine License for Try-La INC, DBA: Hampton Inn & Suites

City Manager Parrish led a discussion regarding a Beer and Wine license for Try-La INC, dba Hampton Inn & Suites located at 4660 Holland Dam Road, Flowery Branch, Georgia.
Hampton Inn & Suites has been in business since 2008 and the Hilton brand is requiring all hotels to allow alcohol to be served to their guests.

There were no questions from Council.

Consider First Vote of Ordinance 698 to Amend the City of Flowery Branch Retirement Plan through GMA.

Director Hamby presented an amendment to Ordinance 698, amending the City of Flowery Branch Retirement plan for city employees through Georgia Municipal Association (GMA). City staff reviewed options, provided by GMA, of increasing the pension multiplier to 2.5% or 3%. It was determined, from the option studied, that an increase to a 2.5% multiplier with a 30 year cap is the best and most sustainable option.

Council held a discussion with Director Hamby.

Consider Cancellation of Contracts with Utility Service Company, Inc. for Water Tank Maintenance

City Manager Parrish led a discussion regarding cancelling current contracts with Utility Service Company, Inc. for the water tank maintenance.

Council held a discussion with City Manager Parrish.

Discussion about Potential Text Amendment to the Zoning Ordinance

Director Atkinson presented a proposed text amendment to the zoning ordinance. The goal is to restrict location of gas stations in reference to residential subdivisions.

Some of the proposed changes to the zoning ordinance are the following:

Sec. 14.15. Gas Stations/Convenience Stores with Fuel Pumps
Gas Stations/Convenience Stores with Fuel Pumps shall meet all requirements set forth by the Flowery Branch Code of Ordinances and in addition shall comply with the following:

a) A conditional use permit (CUP) shall be approved by the Flowery Branch City Council prior to any plan submittal for land disturbance, sign, or building permit.
b) Gas or any pump that dispenses any type of fuel shall be located at least twenty-five (25) feet from the right-of-way.
c) Pumps must be located behind the primary structure.
d) No new gas station may be located within 1,320 feet of a residential neighborhood as measured in a straight line from property line to property line from subject property to any parcel contained within a residential subdivision.

e) Building must be a minimum 75% brick on all four sides.
f) Pump island columns and dumpster enclosure must match the building.

Council held a discussion with Director Atkinson.

<u>DEPARTMENT REPORTS:</u>

<u>City Manager Report:</u>

City Manager Parrish wanted to recognize Amanda Nix, Code Compliance Officer, for her hard work and compassion to a resident of Flowery Branch. Officer Nix showed compassion and determination to help a resident solve a compliance issue. She is appreciated for all her efforts.

<u>Community Relations Report:</u>

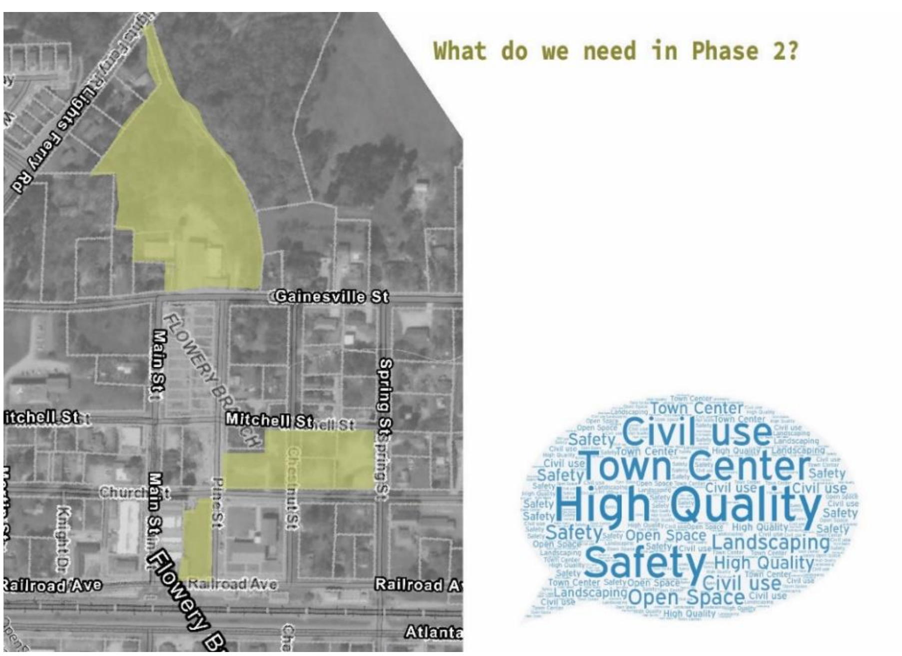
Director Carden wanted to remind everyone that the Farmer's Market Summer hours have been extended until 7 PM. She also wanted to invite everyone to the Back-to-School Block party on Friday August 4, 2023 and Music at the Branch on Sunday August 6, 2023. A new fall calendar has been created to detail events until October.

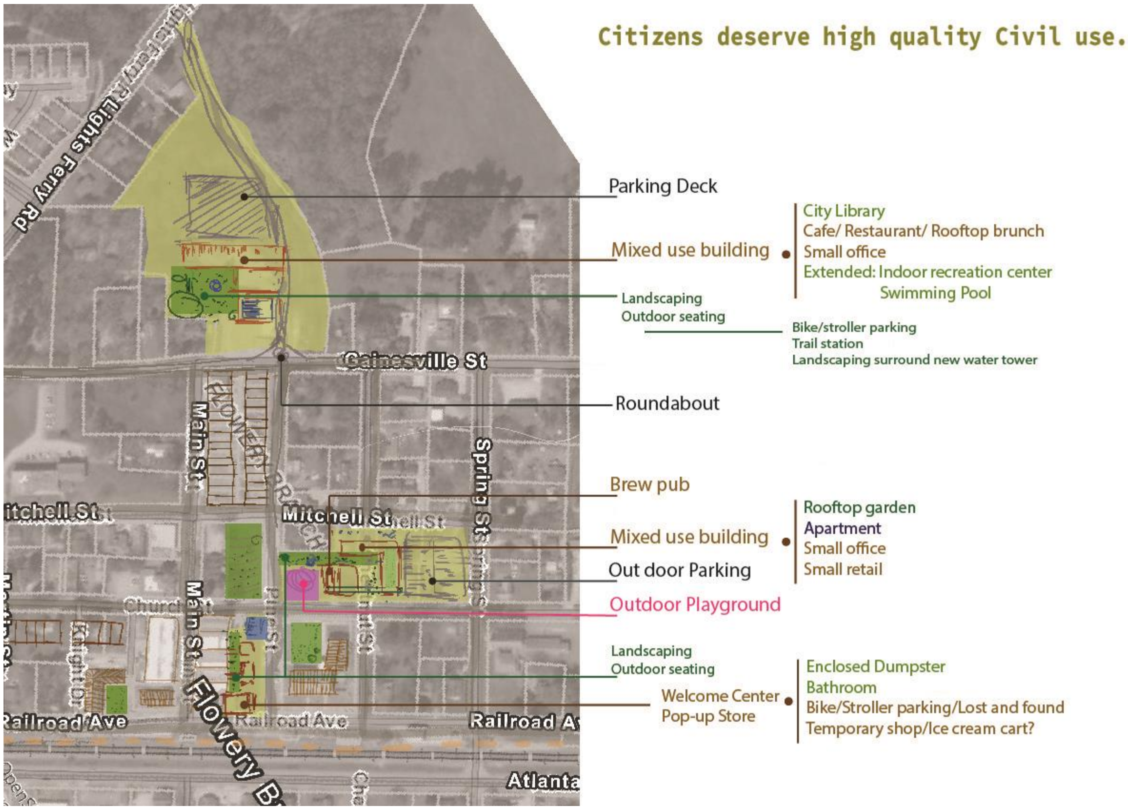
<u>Community Relations Report:</u>

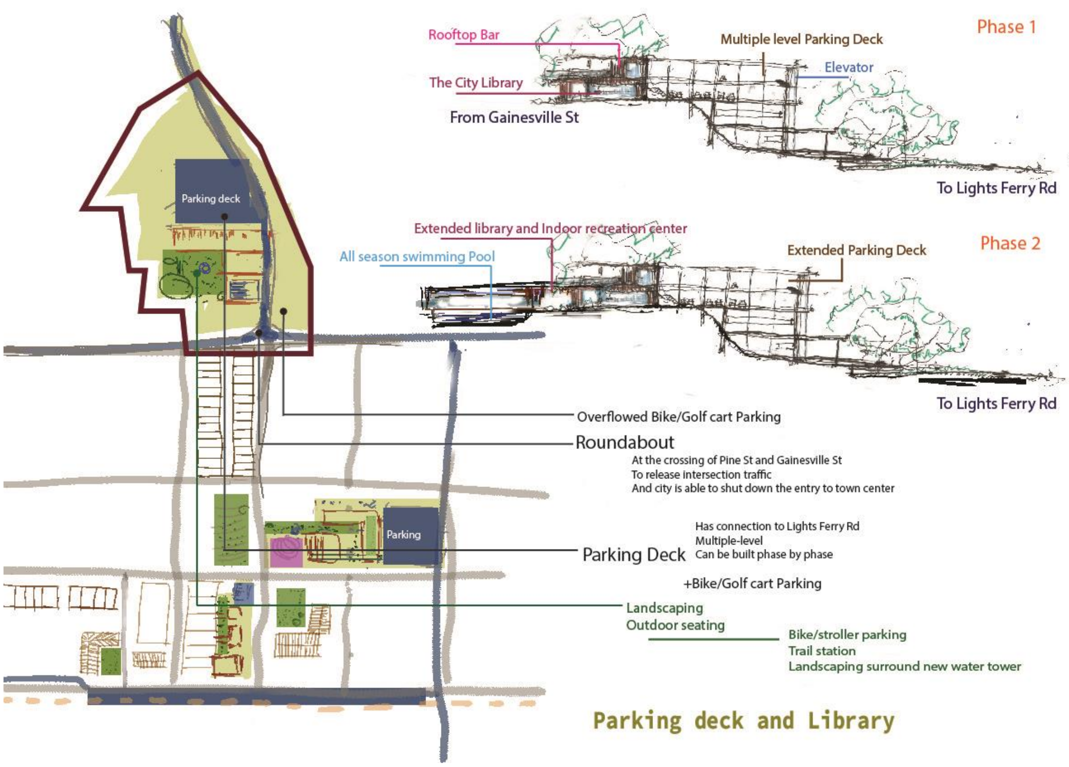
Director Hamby wanted to address the ordinance stating if approved the change would take place September 1, 2023, and any new employee after would only have the option of 2.5% with a cap.

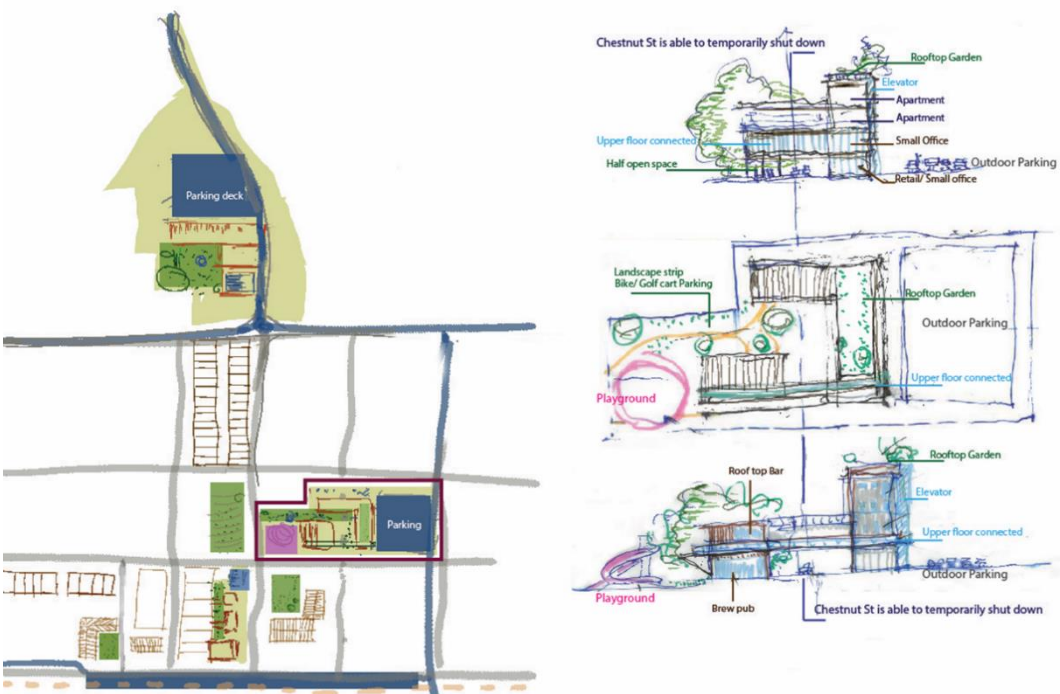
<u>Planning Department Report:</u>

City Planner Peng presented Council with *<u>Staff Presentation of Downtown Phase II</u>*

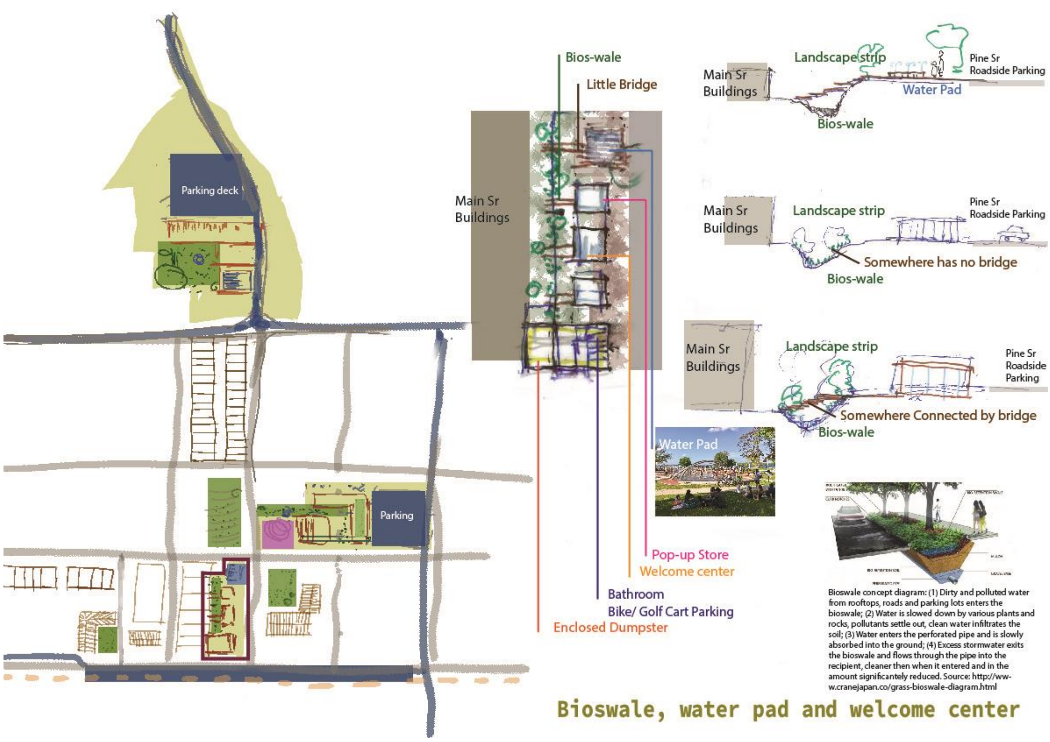



Citizens deserve high quality Civil use.
Lights Ferry Rd
Gainesville St
Main St
Spring St
Mitchell St
Church St
Pine St
Railroad Ave
Flowery Br
Atlanta
Parking Deck
Mixed use building
City Library
Cafe/ Restaurant/ Rooftop brunch
Small office
Extended: Indoor recreation center
Swimming Pool
Landscaping
Outdoor seating
Bike/stroller parking
Trail station
Landscaping surround new water tower
Roundabout
Brew pub
Mixed use building
Rooftop garden
Apartment
Small office
Small retail
Out door Parking
Outdoor Playground
Landscaping
Outdoor seating
Welcome Center
Pop-up Store
Enclosed Dumpster
Bathroom
Bike/Stroller parking/Lost and found
Temporary shop/Ice cream cart?


Rooftop Bar
The City Library
From Gainesville St
Multiple level Parking Deck
Elevator
Phase 1
To Lights Ferry Rd
Parking deck
Extended library and Indoor recreation center
All season swimming Pool
Extended Parking Deck
Phase 2
To Lights Ferry Rd
Overflowed Bike/Golf cart Parking
Roundabout
At the crossing of Pine St and Gainesville St
To release intersection traffic
And city is able to shut down the entry to town center
Parking
Parking Deck
Has connection to Lights Ferry Rd
Multiple-level
Can be built phase by phase
+Bike/Golf cart Parking
Landscaping
Outdoor seating
Bike/stroller parking
Trail station
Landscaping surround new water tower
Parking deck and Library



Playground, Brew Pub, mixed-use and Parking



Bioswale, water pad and welcome center

Let's talk about Pedestrian-friendly.

Parking Space surrounds town center

Bike, stroller and golf cart parking along Pine St

We can temporarily shut down vehicle traffic

Let's talk about Who pay for What. And How Much.

Developer

Location	Use	Unit Number	Size	Condition
The City Library	Rooftop bar	1	2000 – 4000 sqft	Landscape
	Library Café	1	2000 – 3000 sqft	bike rack/golf cart parking
	Small Office	Multiple	2000 – 3000 sqft	Partially for Public work
Brew Pub and Mixed Use	Apartment	6-10	700 – 2500 per unit	
	Small Office	Multiple	1500 – 2500 sqft	Landscape
	Roadside Retail	1-2	1000 – 2000 sqft	Bike rack/golf cart parking
	Brew Pub	1	4000 - 6800 sqft	Build the Playground
Pop-up Store Welcome Center	Pop-up store	2-4	600 -- 800 sqft	Partially for Bathroom and dumpster

Third party management company/ App Provider	
Parking Management	Primary
EV charger Management	Could be controlled by parking management
Payment method	Could be add-on to above

	Size	Price	Cost	Capacity
Outdoor parking	20000 Spft	$3-$6/sqft	$60k-120k	60 spots
Parking Deck	60000 Sqft	$25,473/Spot in 2022	$6M-8M	180 spots
EV charger: Level 2		$2k-5k/spot	$100k	24 spots
EV charger: FCDC		$20k/spot transit $50k	$100k	5 spots
Bioswale	160 ft	$58/9 ft-16 ft	$9,280	
Permeable Pavement		$1.02/spft		
Green Roof	6080 Sqft	$15 ($30 concrete roof)	$90k or $180k	
Playground surfacing	4000 Sqft	$12 (range: $8-$16)	$50k	
Playground Equipment	2 sets: Toddler/School age 4000 – 6000 sqft		100k-200k	Maximum 60-90 kids
Bike Rack		$50-150	TBD	
Golf Cart Parking		$3-$6/sqft		
Dumpster			Could be partially offered by developer	
Bathroom				
Water fountain				
Library	6000-8000 sqft (could be sized down)	Roughly $1000/sqft	6-8M	Shelving: 2500 linear ft. 20,000 books
Indoor Recreation Center				

City

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 6:53 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:53 p.m.

PUBLIC COMMENTS:

CONSENT AGENDA:

- Consider July 20, 2023 City Council Meeting Minutes
- Consider July 20, 2023 Executive Session Minutes

There was a motion made to approve the consent agenda as presented.

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

UNFINISHED BUSINESS - VOTING SESSION:

Consider First Vote for an Appeal of the Zoning Administrator's Decision to Deny an Occupational Tax License Submitted by Mr. Razvan Catanitou.

There was a motion made to deny the Occupational Tax License submitted by Mr. Razvan Catanitou.

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

Consider the Second Vote on Ordinance 693, a Variance Request Submitted by Stanton E. Porter Allowing Fuel Pumps to be Located in Front of the Primary Structure at 4603 Atlanta Highway.

City Attorney Thomas read the caption to Ordinance 693.

There was a motion made to approve the Second Reading of Ordinance 693.

MOTION: Joe Anglin
SECOND: Oliver McClellan

Council held a discussion regarding Ordinance 693 and Exhibit "C" condition 5 (five). Council is concerned with the language. Council would like ordinance to read "Exterior building material shall be fully brick and stone on all 4 sides." Mr. Porter is not opposed to this condition.

There was a motion made to amend Ordinance 693, Exhibit "C" condition 5 (five) to read "Exterior building material shall be fully brick and stone on all 4 sides."

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

There was a vote to approve the Second Reading of Ordinance 693 with the amendment to Exhibit "C" condition 5 (five).

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

Consider Second Vote for Ordinance 696 for an Annexation request submitted by Cook Communities.

Applicant Cook Communities, representative Luke Pressley from 3120 Frontage Road, has requested to table Second Reading of Ordinance 696 until City Council Meeting on August 17, 2023 so council has ample time to review revised site plan.

City Attorney Thomas read the caption to Ordinance 696.

There was a motion made to table the Second Reading of Ordinance 696 until the City Council Meeting on August 17, 2023.
MOTION: Oliver McClellan
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider Second Vote for Ordinance 697 for a Rezoning request submitted by Cook Communities.

There was a motion made to table the Second Reading of Ordinance 697 until the City Council Meeting on August 17, 2023.

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

NEW BUSINESS - VOTING SESSION:

Consider Approval of Task Order with ESG Engineering, Inc. for the 2023 Water Distribution Improvements

There was a motion made to approve the Task Order with ESG Engineering, Inc. for the 2023 Water Distribution Improvements.

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

Consider Beer and Wine License for Try-La INC, DBA: Hampton Inn & Suites

There was a motion made to approve a Beer and Wine License for Try-La, Inc. dba Hampton Inn & Suites.

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

Consider First Vote of Ordinance 698 to Amend the City of Flowery Branch Retirement Plan through GMA.

City Attorney Thomas read the caption for Ordinance 698.

There was a motion made to approve the First Vote of Ordinance 698 to Amend the City of Flowery Branch Retirement Plan through GMA and to authorize the Mayor and staff to execute necessary documents.

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

Council held a discussion.

Consider Cancellation of Contracts with Utility Service Company, Inc. for Water Tank Maintenance

There was a motion made to table the consideration of cancellation of contracts with Utility Service Company, Inc. for Water Tank Maintenance to a date to be determined.

MOTION: Joe Anglin
SECOND: William McDaniel

There was a motion made to amend the tabling of consideration of cancellation of contracts with Utility Service Company, Inc. for Water Tank Maintenance to set a date for the City Council Meeting on September 7, 2023.

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

There was a vote to approve the amended tabling of consideration of cancellation of contracts with Utility Service Company, Inc. for Water Tank Maintenance to the City Council Meeting on September 7, 2023.

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

EXECUTIVE SESSION:

There was a motion made to enter executive session for matters related to the acquisition/disposition of real estate, for matters related to certain personnel issues, and for matters related to pending or potential litigation at 7:13 p.m.

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 7:59 p.m.

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

ADJOURNMENT:

There was a motion made to adjourn the meeting at 8:00 p.m

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

Edward R. Asbridge, Mayor | Date | Shelia Cooper, City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider August 3, 2023 Executive Session Minutes

COUNCIL MEETING DATE: August 17, 2023

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:

Prepared by: Nancy Rodriguez

ATTACHMENTS

-

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Second Vote for Ordinance 696 for an Annexation and Ordinance 697 for a Rezoning Request submitted by Cook Communities.

COUNCIL MEETING DATE: August 17, 2023

HISTORY:
Cook Communities submitted a similar request which was denied annexation by City Council on August 18, 2022. This request was tabled until June 15, 2023 due to Hall County attempting to object to the annexation. The Department of Community Affairs, in an e-mail to Mayor Asbridge dated April 24, 2023, declined to assign a panel to review the County request. Hall County had forty-five calendar days to formally object to the annexation and they did not meet that deadline.

FACTS AND ISSUES:
The request is to annex 14.27 +/- acres of land located at 5704 Jim Crow Road from Hall County into Flowery Branch rezoning it from Agricultural Residential to Planned Unit Development. Applicant wishes to construct an age restricted (55 and over), gated, private 49 unit townhomes community.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
Approve as conditioned.

SAMPLE MOTION:
I make a motion to approve ordinance 696.
I make a motion to approve 697.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Nancy Rodriguez

ATTACHMENTS

- 1b-Annexation Application.pdf
- 1a-Rezoning Application.pdf
- 2a-Rezoning Exhibit (Parkers Place).pdf
- 2b-Rezoning Exhibit (Rendering).pdf
- 3-Letter of Intent.pdf
- 4-Rezoning Analysis and Development Statistics (Parkers Place).pdf
- 5-Parker's Place (Traffic Memo).pdf
- Cook Annexation Ordinance.pdf
- Cook Rezoning Ordinance.pdf

Flowery Branch

ANNEXATION APPLICATION

Date: 2/13/2023

Address of Request:

5704 Jim Crow Road
Flowery Branch, GA 30542

Submitted to the City Clerk per The Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 44; Section 44.4 on

City Clerk Signature Shelia Cooper 2/23/2023

Applicant Information

Name: Cook Communities

Address: 3120 Frontage Road
Gainesivlle, GA 30504

E-mail address: gcook@cook-residentail.com

Phone number: 678-207-1500

Signature:

Property owner information (if different than the applicant)

Property owner (please print): Shadow Stone Partners, LLC

Signature of property owner:

Flowery Branch

Property Information

Tax Map Number: 08100 001003A ,B,C,D

Current Zoning: AR3 Total Acres: 14.268

Is this property contiguous to the city-limits of Flowery Branch? Yes

Proposed City of Flowery Branch Zoning: PUD

Proposed City of Flowery Branch Character Area: Residential

Current Use: Residential

Per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 36; Does this property potentially require a **DRI** (Development of Regional Impact) study? No

Voting Rights Act Information

Resident Population: _______ Housing Units: _________ Other Buildings: ____

Race Population %: White_____ Black_____ Hispanic_____ Other_____

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

- Legal description
- Current survey of property
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)
- Zoning application
- Annexation ≥ 100 acres of land requires an official request to amend the character area and future land use map designation for the subject property
- Names and addresses of adjoining property owners
- Reasons for requesting annexation
- Signed statement authorizing City of Flowery Branch staff and/or City Council to inspect the subject property

Flowery Branch

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

N/A

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

N/A

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

N/A

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
N/A	N/A

Flowery Branch

REZONING APPLICATION

Date: 2/13/2023

Address of Request: 5704 Jim Crow Road

Flowery Branch, GA 30542

Tax Map # 08100 001003A, B, C, D Current Zoning: AR3

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

Currently a conforming use? No

Any conditions of zoning, CUP's, etc.? No

Applicant Information

Name: Cook Communities

Address: 3120 Frontage Road

Gainesville, GA 30504

E-mail address: gcook@cook-residential.com

Phone number: 678-207-1500

Signature:

Notary: Leigh Anne Gilliam

LEIGH ANNE GILLIAM
MY COMMISSION EXPIRES
NOTARY
PUBLIC
NOVEMBER 15, 2023
GWINNETT COUNTY, GEORGIA

Property owner information (if different than the applicant)

Property owner (please print): Shadowstone Partners, LLC

Signature of property owner:

Notary:

LEIGH ANNE GILLIAM
MY COMMISSION EXPIRES
NOTARY
PUBLIC
NOVEMBER 15, 2023
GWINNETT COUNTY, GEORGIA

Property Information

Tax Map Number: 08100 001003A , B, C, D

Current Zoning: AR3 Total Acres: 14.268

Is this property located within the city-limits of Flowery Branch? No

Proposed City of Flowery Branch Zoning: PUD

Current Use: Residential

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

Flowery Branch

- 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

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N/A

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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

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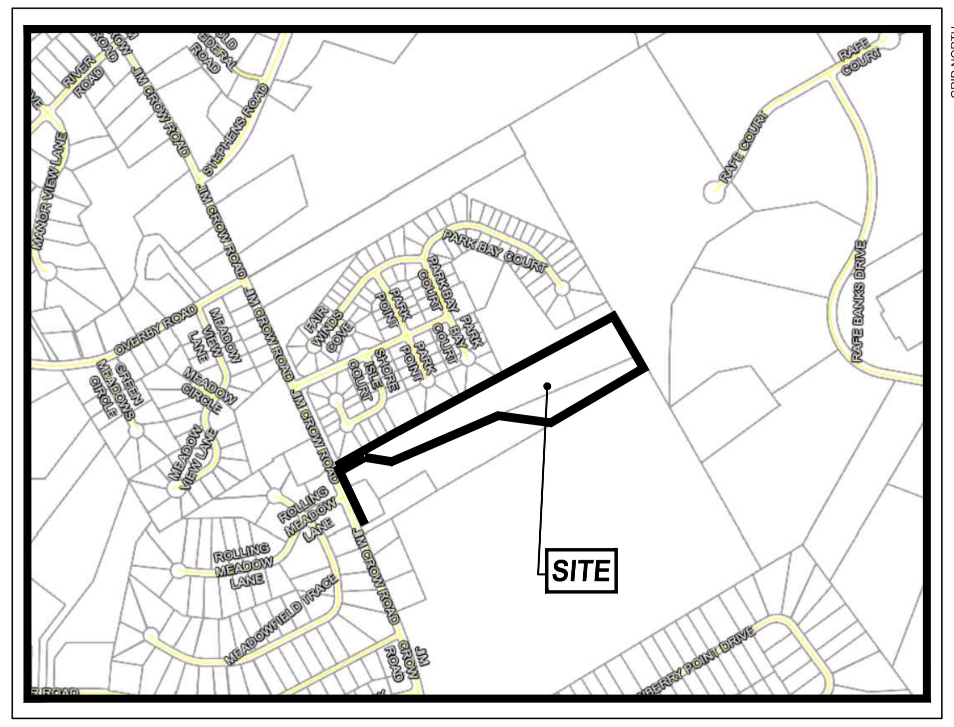
Elected Officials Name	Amount of Description of Gift
N/A	N/A

CITY STAFF ONLY

Application Received By: RJEA

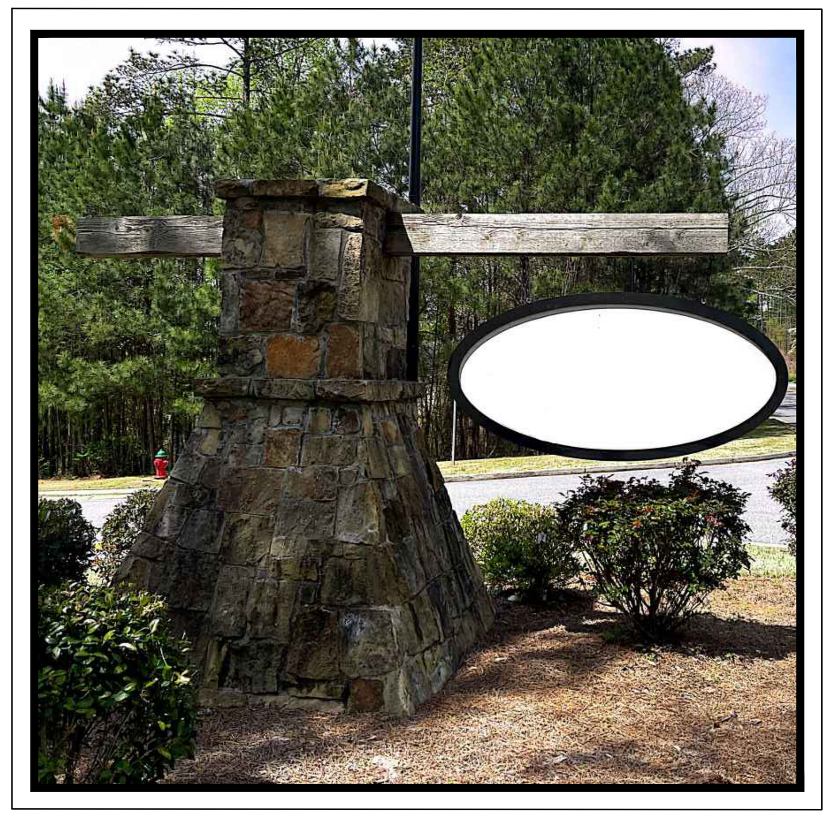
Date: 2/24/2023 Total Fee: 1,000



VICINITY MAP
N.T.S.

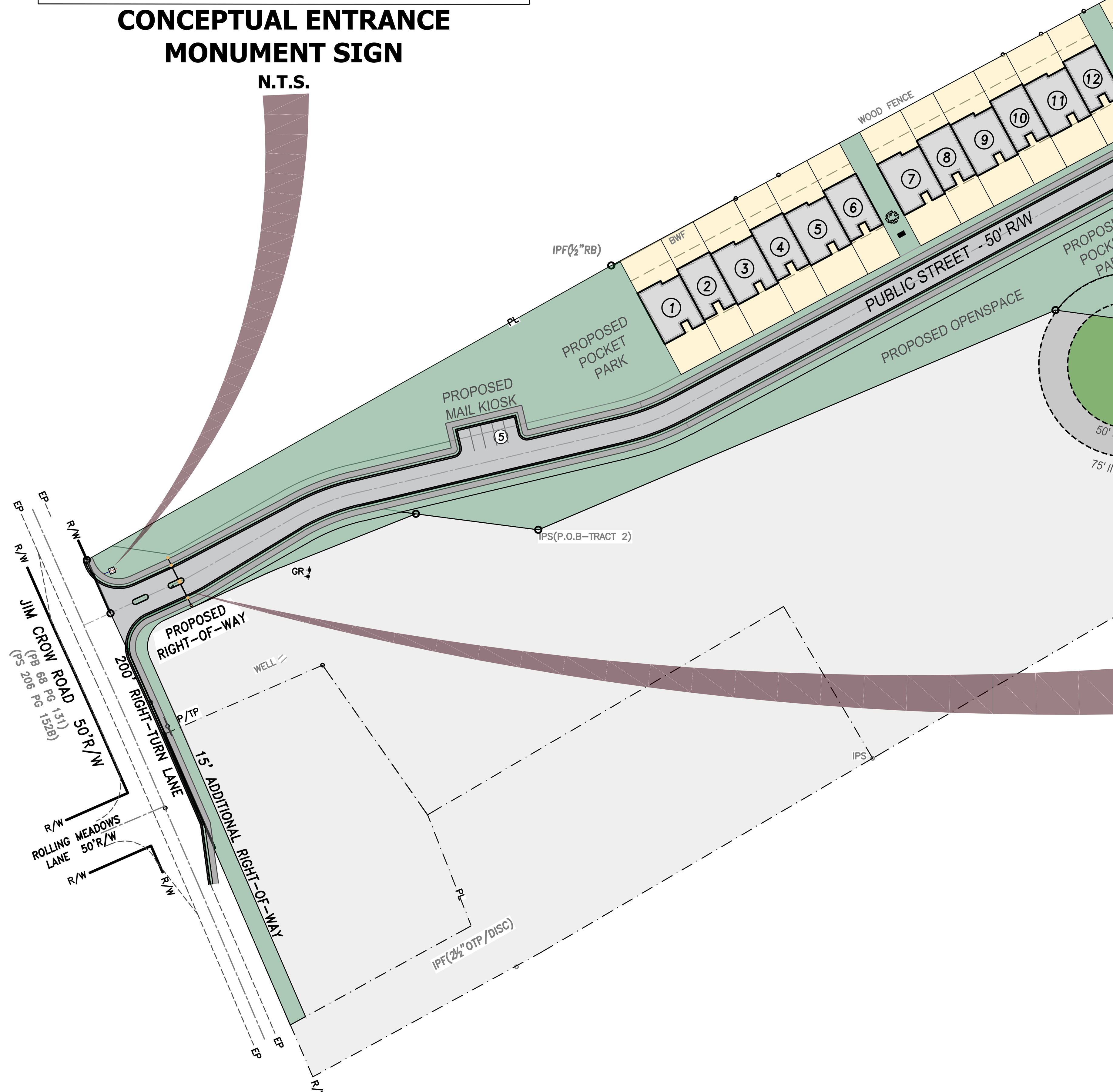
PROPOSED WALKING TRAIL
N.T.S.

PROPOSED PICKLEBALL COURTS
N.T.S.

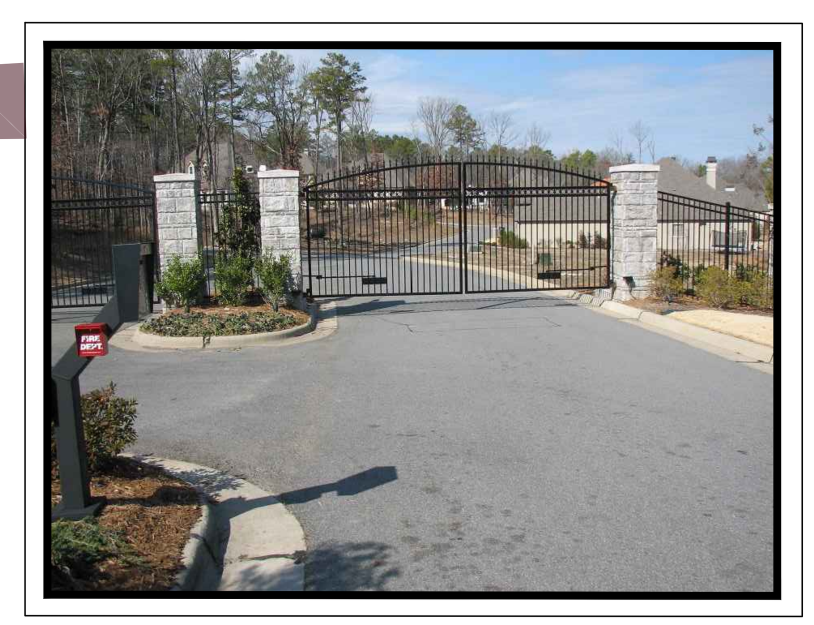


CONCEPTUAL ENTRANCE MONUMENT SIGN
N.T.S.

PROPOSED POCKET PARK
N.T.S.




PROPOSED WALKING TRAIL
N.T.S.



PROPOSED ENTRANCE GATE
N.T.S.

GENERAL NOTES:

1. TOTAL PROPERTY ACREAGE = 14.268 ACRES (TOTAL)
2. CURRENT ZONING = AR–III (HALL COUNTY)
3. PROPOSED ZONING = PUD
4. PROPOSED USE = SINGLE–FAMILY ATTACHED SUBDIVISION (49 LOTS TOTAL)
5. PROPOSED DENSITY = 3.43 UNITS/ACRE
6. PROPOSED OPENSPACE/COMMON AREA = ±5.9 ACRES (41%).
7. PROPOSED SETBACKS:
   - FRONT YARD = 20'/30' (20' FROM PERIMETER & 30' FROM STREET)
   - REAR YARD = 20'
   - SIDE YARD = 5'
   - MIN. LOT SIZE = 2,000 S.F. (FEE SIMPLE)
   - MIN. LOT WIDTH = 20'
8. BOUNDARY INFORMATION BASED UPON DEED RESEARCH.
9. WATER TO BE PROVIDED BY THE CITY OF GAINESVILLE. SEWER SERVICE TO BE PROVIDED BY THE CITY OF FLOWERY BRANCH.
10. A PORTION OF THIS PROPERTY IS LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE AS PER HALL COUNTY F.I.R.M. PANEL No. 13139C0283G EFFECTIVE 4/4/2018.
11. OPENSPACE/COMMON AREA TO BE DEEDED AND MAINTAINED BY A QUALIFIED HOMEOWNERS ASSOCIATION.
12. THIS SITE DOES CONTAIN WETLANDS.
13. THIS SITE IS WITHIN 200' OF STATE WATERS.
14. THIS SITE DOES NOT CONTAIN ANY KNOWN CEMETERIES.

GRAPHIC SCALE: 1" = 80'
0' 40' 80' 160' 320'

COOK
3120 FRONTAGE ROAD
GAINESVILLE, GA 30504
(678) 207-1509
www.thecookandcompany.com
P.E.F. #007243

PREPARED FOR:

COOK COMMUNITIES
3120 FRONTAGE RD.
GAINESVILLE, GA 30504
24-HR. CONTACT:
GEOFF COOK
(678) 207-1509

PROJECT NAME:

FLOWERY BRANCH JIM CROW ROAD TRACT

TASK:

REZONING EXHIBIT

PROJECT INFORMATION:

FLOWERY BRANCH TRACT
Project Name
21-017
Project Number
JIM CROW ROAD
Project Address

Land Lot No.(s)

District
HALL COUNTY, GEORGIA
County, State

PLAN REVISION

No.	DATE	DESCRIPTION
1		
2		
3		
4		

G.S.W.C.C. LEVEL II CERTIFIED DESIGN PROFESSIONAL
No. 0000013059

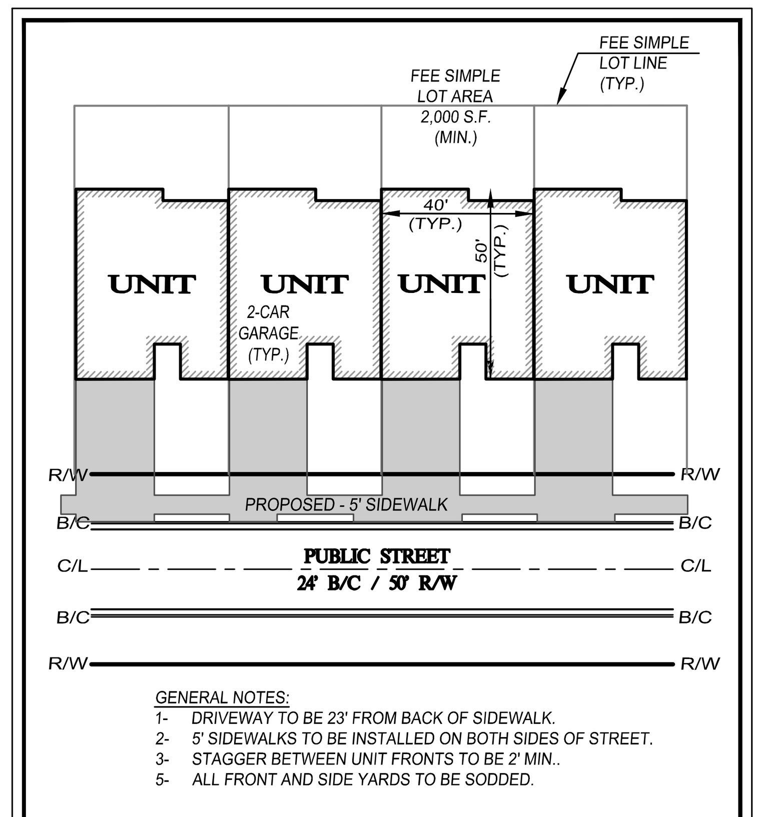
CONTACT:
C. LUKE PRESSLEY, P.E.
(678) 267-7153
luke@thecookandcompany.com

SHEET
1 of 1

JWW DESIGN	AS SHOWN SCALE
3/22/22 DATE	21-017 PROJECT No.

PROPOSED TOWNHOME (FRONT)
N.T.S.

PROPOSED TOWNHOME (FRONT-RIGHT)
N.T.S.



TYPICAL UNIT LAYOUT
(SINGLE FAMILY ATTACHED) NOT TO SCALE

PROPOSED ENTRANCE GATE
N.T.S.

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(678) 207-1509

PROJECT NAME:

FLOWERY BRANCH JIM CROW ROAD TRACT

TASK:

REZONING EXHIBIT

PROJECT INFORMATION:

FLOWERY BRANCH TRACT	Project Name
21-017	Project Number
JIM CROW ROAD	Project Address
	Land Lot No.(s)
	District
HALL COUNTY, GEORGIA	County, State

PLAN REVISION

No.	DATE	DESCRIPTION
1		
2		
3		
4		

GEORGIA REGISTERED No. 36163 PROFESSIONAL ENGINEER C. LUKE PRESSLEY

"FOR REZONING ONLY"

G.S.W.C.C. LEVEL II CERTIFIED DESIGN PROFESSIONAL No. 0000013059

CONTACT:
C. LUKE PRESSLEY, P.E.
(678) 267-7153
luke@thecookandcompany.com

SHEET

1 of 1

CLP DESIGN	AS SHOWN SCALE
2/22/2022 DATE	21-017 PROJECT No.

February 13th, 2023

City of Flowery Branch
5512 Main Street
Flowery Branch, GA 30542
(770) 967-6371

LETTER OF INTENT

Rezoning/Annexation for the Parker's Place at Lanier – Flowery Branch, GA
5704 Jim Crow Road – Flowery Branch, GA 30542
Tax Parcel No. 08100 001003A, 08100 001003B, 08100 001003C & 08100 001003D
L.L. 100 / 8th District
(Note: A copy of a combination Survey is included in this application for clarification – 14.27 Acres total)

Cook Communities submits this Letter of Intent and attached Application for the purpose of rezoning/annexing to the City of Flowery Branch's Planned Unit Development (PUD) Zoning Classification for the 14.27-acre tract located along Jim Crow Road, south of the existing Park Walk at Lanier Residential Development. The property currently lies in unincorporated Hall County and is adjacent to the Flowery Branch City Limits to the north. The subject property is currently zoned AR-III (Hall County) and contains one single family home and associated outbuilding. The intent is to annex the entire property shown on the combination/boundary survey into the City of Flowery Branch. All property included in this application is owned by Shadow Stone Partners, LLC. (See Rezoning Exhibit).

Cook Communities proposes to develop a distinctive and attractive single-family attached neighborhood with amenities. The neighborhood will consist of Forty-nine (49) 2-story attached cottage style homes and is proposed to be age-restricted for residents 55 and older. Each home will have 3 or 4-bedrooms and 2 or 3 bathrooms. The heated S.F. for the proposed units will be 1,550+ S.F. with a 2-Car Garage. The 2-Car garages will be located a minimum of 23' from the back of sidewalk as required. Additionally, the homes will include attractive architectural elements including shake and board and batten siding, stone/brick accents, a variety of unique garage doors and sodded yards. The proposed units are intended to meet the requirements of the recently adopted Ordinance 657 (Article 12 – Section 12.6). Attached to this letter of intent is a rendering of the proposed units for reference. These homes will meet the same quality and price point of homes in the surrounding area.

Amenities proposed for the development include a small community clubhouse, pickleball courts, sidewalks with connected walking trails, pocket parks and attractive landscaping. An exhibit and rendering of the proposed amenities are provided with this submittal for visual reference.

Access for the development will be provided along Jim Crow Road with a proposed right-turn (deceleration) lane provided at the entrance. The entrance will have an attractive monument-type sign with landscaping and will be gated. The provisions for water and sanitary sewer for the development will be provided by the City of Gainesville and the City of Flowery Branch.

The applicant and its representatives welcome the opportunity to meet with the City of Flowery Branch staff to answer any questions or concerns you may have. Cook Communities respectfully requests your approval of this application.

Respectfully,

Cook Communities / Keith Cook

February 13th, 2023

City of Flowery Branch
5512 Main Street
Flowery Branch, GA 30542
(770) 967-6371

DEVELOPMENT STATISTIC AND ANALYSIS

Parker's Place at Lanier – Flowery Branch, GA
5704 Jim Crow Road – Flowery Branch, GA 30542
Tax Parcel No. 08100 001003A, 08100 001003B, 08100 001003C & 08100 001003D
L.L. 100 / 8th District
(Note: A copy of a combination Survey is included in this application for clarification – 14.27 Acres total)

Development Statistics

As part of this application, a site plan of the proposed development was submitted depicting the subdivision and typical fee simple building lots and proposed units for the neighborhood. The below information is meant to ensure all requested information is included.

(a) Maximum Height of Proposed Homes – 35'
(b) Minimum S.F. of proposed Homes –1,500 S.F.+ (Heated) (2-Story)
(c) Color Renderings of Proposed Homes are included with this submittal
 a. (See 2b-Rezoning Exhibit (Rendering).pdf)
(d) The Proposed Building Materials for the homes are included
 a. (See Letter of Intent)
(e) Maximum of 49 Single-Family Attached Homes (Fee Simple Townhome Lots)
 a. Minimum Lot Size = 2,000 S.F. (Min. Shown 3,500 S.F.)
 b. Minimum 1,500+ S.F. Heated (2-Car Garage) – 2 Story
(f) Proposed Overall Lot Coverage (Entire Project) = 30%
(g) Proposed Landscaped Area
 a. A minimum of 2 Trees per Lot (See Typical Lot Detail)
 b. A minimum of 10' Landscape Buffer adjacent to existing neighborhood.
 c. Pocket Parks and Walking Trails
 d. Attractive Entrance Monument (Development will be Gated)

(h) Parking will Include:

a. 2-Car with Driveway (23' From Back of Sidewalk)
b. 5 Spaces for Proposed Mail Kiosk
c. 10 Spaces at Proposed Clubhouse and Pickleball Courts

(i) Will Provide as requested.

Development Analysis

The development being proposed by Cook Communities is in line with the City of Flowery Branch's 2041 Comprehensive Plan. While currently not specifically included (as it lies in Hall County), the adjacent neighborhood (Park Walk at Lanier) has a similar zoning to what is being requested. The 2041 Comprehensive Plan and Future Land use map targets this area as Suburban Residential, and the comprehensive plan suggests smaller lots may be appropriate in a PUD zoning district. Cook Communities feels this development generally meets the objectives of the PUD Zoning district when viewed as a small part of the overall community. While this development proposes only single-family attached homes, it provides the broader mix of residential housing types when viewed as a part of the surrounding neighborhoods. Jim Crow Road contains primarily single-family residential neighborhoods of varying densities from its intersection with McEver Road to its Termination at Lake Lanier. The Parker's Place at Lanier Development is similar to the recent development trend in the area. The adjacent neighborhood statistics are included in the additional material submitted as part of the application. No adverse effect is anticipated from the proposed development as it is inline with the surrounding uses as a single-family residential development. A deceleration lane is proposed at the entrance for cars traveling from McEver Road which will be the primary travel route. The subdivision will be gated. The existing use of the Subject Property is a single-family residence with undeveloped acreage. Gravity Sewer is available in the rear portion of the property and public water available along Jim Crow Road. The impact to local schools will be minimal as this will be an age-restricted 55+ community. This portion of Hall County and the City of Flowery Branch has seen significant development in recent years, with an increase in demand for housing of all types. Cook Communities feels this community will provide a housing option that is currently underrepresented in the city. The Parker's Place at Lanier development will meet all the state and City of Flowery Branch's requirements including environmental, erosion and stormwater requirements.

The applicant and its representatives welcome the opportunity to meet with the City of Flowery Branch staff to answer any questions or concerns you may have. Cook Communities respectfully requests your approval of this application.

SOUTHEASTERN ENGINEERING, INC.

2470 Sandy Plains Road
Marietta, GA 30066
(Office) 770-321-3936
cmaddox@seengineering.com

Date: May 16, 2022

To: Whom it may concern; Hall County, GA

From: Chris Maddox, PE, PTOE; Southeastern Engineering, Inc. (SEI)

RE: Trip Generation Memo for Jim Crow Road Subdivision

CC: Luke Pressley, PE; Cook Development

There is a development with 49 single-family attached units proposed on the west side of Jim Crow Road north of Rolling Meadow Lane currently located in Hall County, GA. The development will be constructed on currently undeveloped land, and is proposed to be annexed into the City of Flowery Branch, GA. The site plan is attached in **Appendix A**. The development will be age restricted and accessed via one new road along Jim Crow Road north of Rolling Meadow Lane and south of Park Shore Cove. Southeastern Engineering, Inc (SEI) has reviewed the adjacent roadway network and development site to summarize the characteristics of the study area and provide information on estimated new trips generated by the development.

Jim Crow Road runs from McEver Road in the south and dead ends to the north, providing access to primarily single-family residential developments. Jim Crow Road is a two-lane undivided facility, with a posted speed limit of 45 MPH, and it is functionally classified as a minor collector. The intersection of Jim Crow Road and McEver Road is a signal-controlled intersection. GDOT'S TADA system was referenced for historical traffic volumes on the roadway and in 2018 Jim Crow Road had an Annual average daily traffic (AADT) volume of 1,590 vehicles per day. The GDOT TADA data sheet for Jim Crow Road is included in **Appendix B**.

The development is expected to generate approximately 181 new daily trips (91 entering and 90 exiting). In the AM peak period the development is expected to generate approximately 10 total trips (4 entering; 6 exiting), and in the PM peak period generate approximately 13 total trips (7 entering; 6 exiting). The vast majority of the trips entering and exiting are anticipated to be going to and from McEver Road in the south. The Trip Generation Report is included in **Appendix B**.

The new development street will be minor-street stop controlled at its intersection with Jim Crow Road. Due to the majority of traffic entering the development from the south via McEver Road a northbound right turn deceleration lane on Jim Crow Road would be beneficial at the new intersection. Crash history at the adjacent residential intersections, Rolling Meadow Lane and Park Shore Cove, was reviewed to see if any crash patterns exist in the area that may identify safety concerns for the new intersection. Per GDOT's Numetric crash data system there have been three crashes reported in the development area since 2015. Two of the three were single vehicles crashes and no injuries were recorded. The crash summary report is attached in **Appendix C.**

The proposed development matches the existing land uses along Jim Crow Road, and the surrounding area. Based on the characteristics of Jim Crow Road the additional daily and peak hour trips generated by the development are not anticipated to have a significant impact on the roadway's operations. The crash history does not show any anticipated safety issues at the site. Please let me know if we can be of any additional assistance during the review process, or if you have any questions. Thank you.

Sincerely,

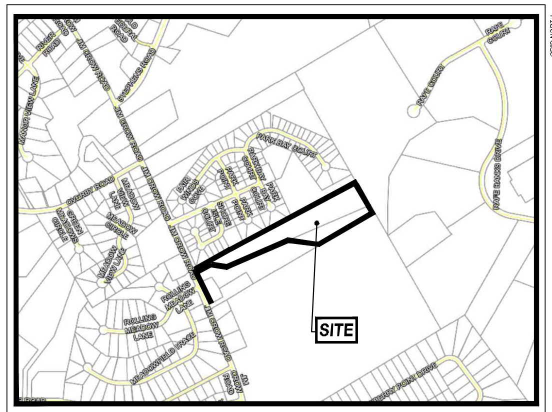
C Maddox

Chris Maddox, PE, PTOE
Traffic Engineering Division Manager

Appendices

- Appendix A
    - Concept Site Plan
- Appendix B
    - GDOT TADA Data Sheet
    - Trip Generation Report
- Appendix C
    - Crash Summary Report

Appendix A
Concept Site Plan

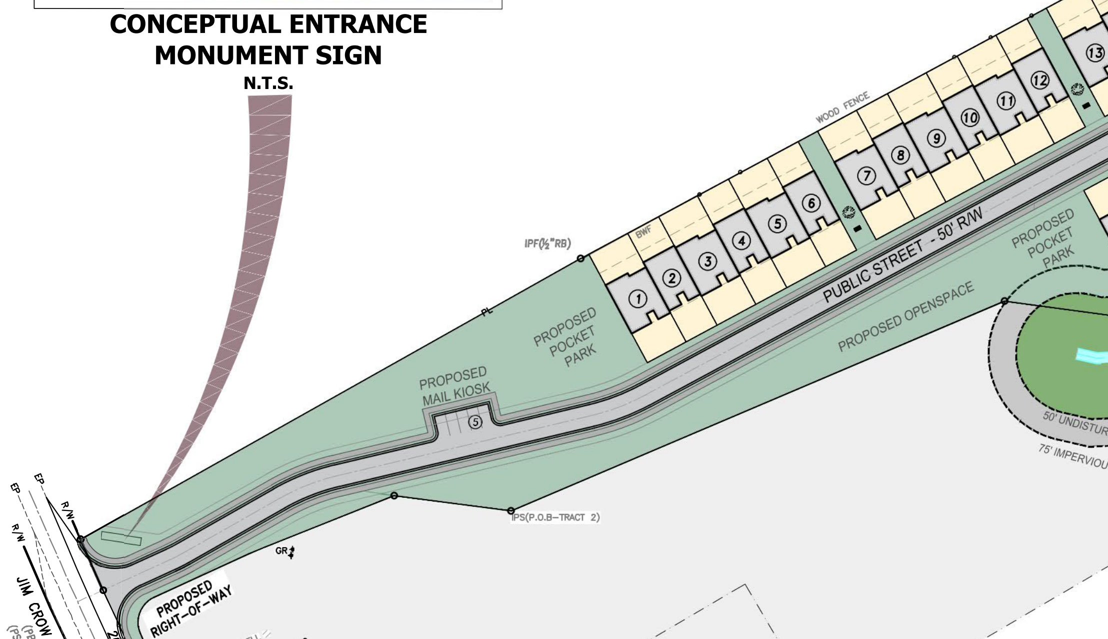


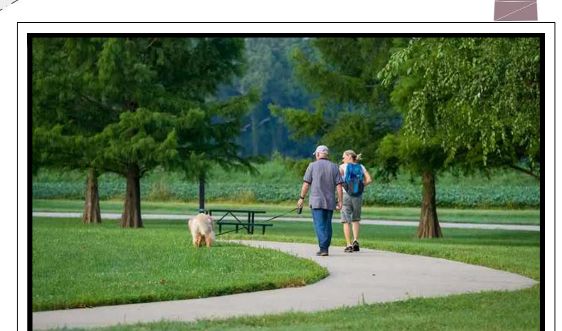
VICINITY MAP
N.T.S.

PROPOSED WALKING TRAIL
N.T.S.

CONCEPTUAL ENTRANCE MONUMENT SIGN
N.T.S.

PROPOSED POCKET PARK
N.T.S.



PROPOSED WALKING TRAIL
N.T.S.

PROPOSED PICKLEBALL COURTS
N.T.S.

GENERAL NOTES:

1. TOTAL PROPERTY ACREAGE = 14.268 ACRES (TOTAL)
2. CURRENT ZONING = AR-III (HALL COUNTY)
3. PROPOSED ZONING = PUD
4. PROPOSED USE = SINGLE-FAMILY ATTACHED SUBDIVISION (49 LOTS TOTAL)
5. PROPOSED DENSITY = 3.43 UNITS/ACRE
6. PROPOSED OPENSPACE/COMMON AREA = ±5.9 ACRES (41%).
7. PROPOSED SETBACKS:
   - FRONT YARD = 20'/30' (20' FROM PERIMETER & 30' FROM STREET)
   - REAR YARD = 20'
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   - MIN. LOT SIZE = 2,000 S.F. (FEE SIMPLE)
   - MIN. LOT WIDTH = 20'
8. BOUNDARY INFORMATION BASED UPON DEED RESEARCH.
9. WATER TO BE PROVIDED BY THE CITY OF GAINESVILLE. SEWER SERVICE TO BE PROVIDED BY THE CITY OF FLOWERY BRANCH.
10. A PORTION OF THIS PROPERTY IS LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE AS PER HALL COUNTY F.I.R.M. PANEL No. 13139C0283G EFFECTIVE 4/4/2018.
11. OPENSPACE/COMMON AREA TO BE DEEDED AND MAINTAINED BY A QUALIFIED HOMEOWNERS ASSOCIATION.
12. THIS SITE DOES CONTAIN WETLANDS.
13. THIS SITE IS WITHIN 200' OF STATE WATERS.
14. THIS SITE DOES NOT CONTAIN ANY KNOWN CEMETERIES.

GRAPHIC SCALE: 1" = 80'
0' 40' 80' 160' 320'

COOK
3120 FRONTAGE ROAD
GAINESVILLE, GA 30504
(678) 207-1509
www.thecookandcompany.com
P.E.F. #007243

PREPARED FOR:

COOK COMMUNITIES
3120 FRONTAGE RD.
GAINESVILLE, GA 30504
24-HR. CONTACT:
GEOFF COOK
(678) 207-1509

PROJECT NAME:

FLOWERY BRANCH JIM CROW ROAD TRACT

TASK:

REZONING EXHIBIT

PROJECT INFORMATION:

Project Name	FLOWERY BRANCH TRACT
Project Number	21-017
Project Address	JIM CROW ROAD
Land Lot No.(s)	
District	
County, State	HALL COUNTY, GEORGIA

PLAN REVISION

No.	DATE	DESCRIPTION
1		
2		
3		
4		

G.S.W.C.C. LEVEL II CERTIFIED DESIGN PROFESSIONAL
No. 0000013059

CONTACT:
C. LUKE PRESSLEY, P.E.
(678) 267-7153
luke@thecookandcompany.com

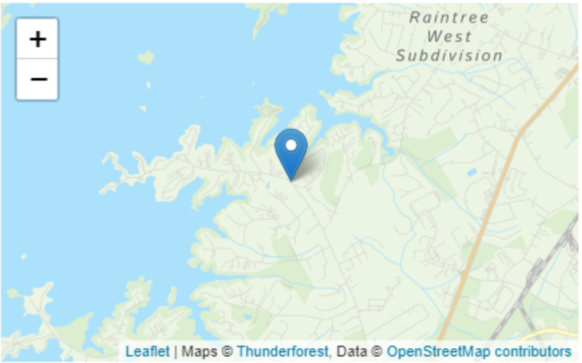
SHEET
1 of 1

JWW DESIGN	AS SHOWN SCALE
3/22/22 DATE	21-017 PROJECT No.

Appendix B
GDOT TADA Data Sheet

0000139_7387 - 139-7387
Description: CR 142900 BEG AT
County: Hall
Route number: 00130205
LRS section: 1393130205
Functional class: 6U - Minor Collector (Urban)
Coordinates: 34.21993025, -83.93521186

Site Data

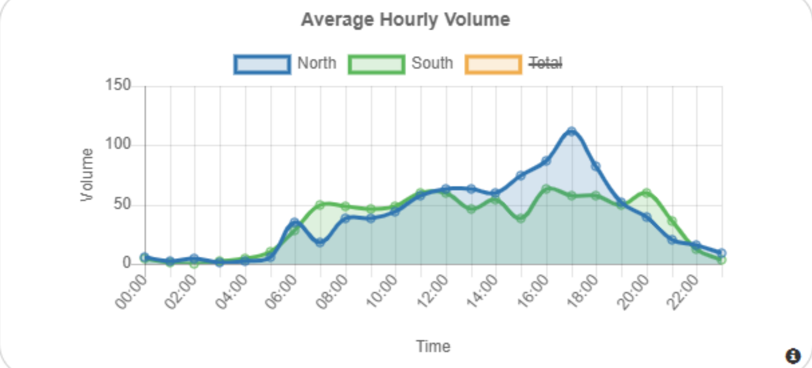


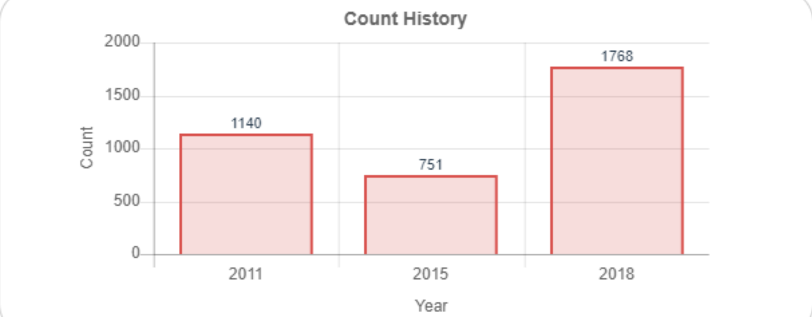
Count History

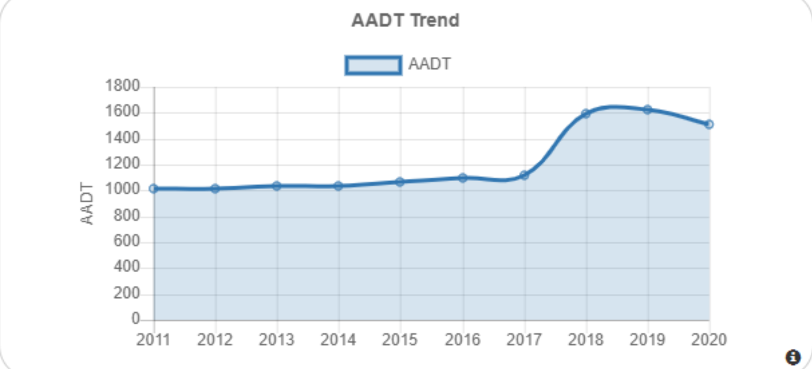
Year	Month	Count type	Duration	Count
2018	May	Volume	48 hours	1768
2015	August	Volume	32 hours	751
2011	September	Class	48 hours	1140

Annual Statistics

Data Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Statistics type	-	-	-	-	Estimated	Estimated	Estimated	Actual	Estimated	**Estimated**
AADT	1010	1010	1030	1030	1070	1100	1120	1590	1620	**1510**
K-Factor	-	-	-	-	-	-	-	0.126	0.126	**0.126**
D-Factor	-	-	-	-	-	-	-	0.710	0.710	**0.710**
Future AADT	-	-	-	-	-	2070	2000	2070	2700	**2700**







Appendix B

Trip Generation Report

Trip Generation Summary

Alternative: Alternative 1

Phase: Open Date: 5/16/2022

Project: Jim Crow Road Analysis Date: 5/16/2022

ITE	Land Use	Weekday Average Daily Trips *				Weekday AM Peak Hour of Adjacent Street Traffic *				Weekday PM Peak Hour of Adjacent Street Traffic *		
		Enter	Exit	Total		Enter	Exit	Total		Enter	Exit	Total
252	SENIORATTACHED 1 49 Dwelling Units	91	90	181		4	6	10		7	6	13
	Unadjusted Volume	91	90	181		4	6	10		7	6	13
	Internal Capture Trips	0	0	0		0	0	0		0	0	0
	Pass-By Trips	0	0	0		0	0	0		0	0	0
	Volume Added to Adjacent Streets	91	90	181		4	6	10		7	6	13

Total Weekday Average Daily Trips Internal Capture = 0 Percent

Total Weekday AM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

Total Weekday PM Peak Hour of Adjacent Street Traffic Internal Capture = 0 Percent

* - Custom rate used for selected time period.

Source: Institute of Transportation Engineers, Trip Generation Manual 10th Edition

Appendix C
Crash Summary Report

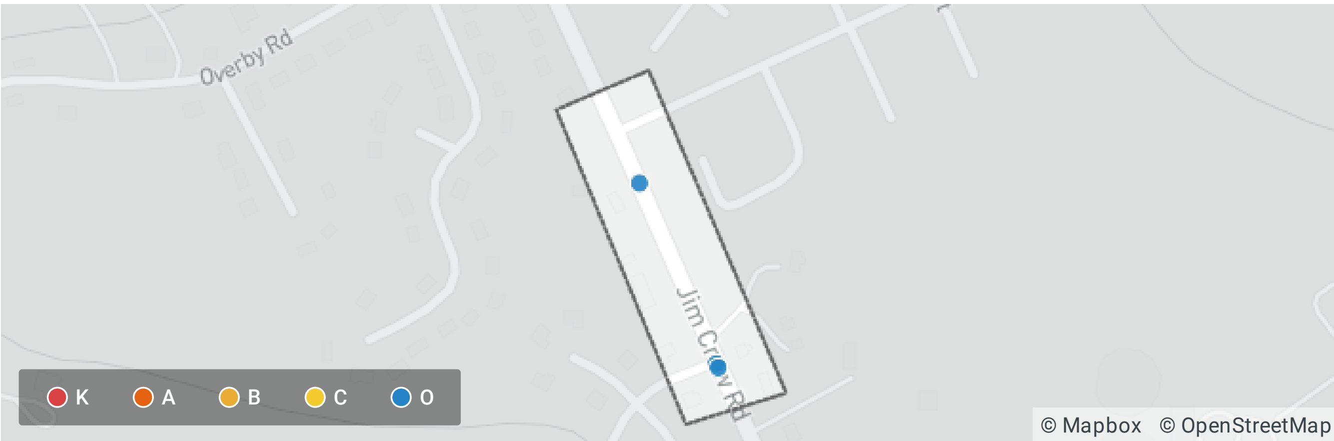
CRASH SUMMARY REPORT

Jim Crow Road

Created on May 16, 2022
Created by Chris Maddox
Data extents: May 10, 2018 to March 20, 2019

Applied Filters

Date and Time (Year) | ≤≥ | 2015 - 2020 | Shape: Polygon



Total Crashes	3	Fatal Crashes	0

GDOT Summary		Collisions Dataset
Total Crashes	3	100.00%
Distracted Driver (Suspected)	2	66.67%
Single Motor Vehicle Involved	2	66.67%
Intersection Related	1	33.33%
+ 7 more	0	0%

KABCO Severity		Collisions Dataset
(O) No Injury	3	100.00%
+ 5 more	0	0%

Date and Time (Year)		Collisions Dataset
2019	1	33.33%
2018	2	66.67%
+ 6 more	0	0%

Date and Time (Hour of Day)		Collisions Dataset
6 am - 8 am	1	33.33%
8 am - 10 am	1	33.33%

4 pm - 6 pm	1	33.33%
+ 9 more	0	0%

Manner of Collision (Crash Level)		Collisions Dataset
Not a Collision with Motor Vehicle	2	66.67%
Rear End	1	33.33%
+ 7 more	0	0%

Location at Impact (Crash Level)		Collisions Dataset
On Roadway - Non-Intersection	1	33.33%
On Roadway - Roadway Intersection	1	33.33%
On Shoulder	1	33.33%
+ 14 more	0	0%

Most Harmful Event (Crash Level)		Collisions Dataset
Animal	1	33.33%
Mail Box	1	33.33%
Motor Vehicle in Motion	1	33.33%
+ 35 more	0	0%

Operator / Driver Contributing Factor		Collisions Dataset
No Contributing Factors	2	66.67%
Following Too Close	1	33.33%
Other	1	33.33%
+ 40 more	0	0%

Area: County		Collisions Dataset
Hall	3	100.00%
+ 158 more	0	0%

Area: District (Crash Level)		Collisions Dataset
D1	3	100.00%
+ 6 more	0	0%

Safety Equipment (Crash Level)		Collisions Dataset
Lap and Shoulder Belt Used	3	100.00%
+ 12 more	0	0%

Public Hearing Published	03/15/2023	First Reading	07/20/2023
Public Hearing	04/20/2023 - 06/15/2023	Adopted	08/17/2023

ORDINANCE NO. 696

AN ORDINANCE TO ANNEX AND BRING WITHIN THE CORPORATE LIMITS OF THE CITY OF FLOWERY BRANCH, STATE OF GEORGIA, REAL PROPERTY TOTALING 14.27 +/- ACRES OF LAND, OWNED BY SHADOW STONE PARTNERS, LLC. IDENTIFIED AS 5704 JIM CROW ROAD, TAX PARCEL 08100 001003A, 0 JIM CROW ROAD, TAX PARCEL 08100 001003B, 0 JIM CROW ROAD, TAX PARCEL 08100 001003C, AND 0 JIM CROW ROAD, TAX PARCEL 08100 001003D AND AS SHOWN ON ATTACHED EXHIBIT "A", AND AS DESCRIBED ON ATTACHED EXHIBIT "B"; PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Shadow Stone Partners, LLC. owns the subject parcel of land identified as Parcel Tax Identification Nos.08100 001003A, 08100 001003B, 08100 001003C, and 08100 001003D as shown on Exhibit "A", and as described on Exhibit "B"; and

WHEREAS, the City Council of the City of Flowery Branch has considered the application of Shadow Stone Partners, LLC. and in conjunction with the standards set forth in O.C.G.A. §§ 36-36-1 through 36-36-110, O.C.G.A.§ 36-60-111, and the City of Flowery Branch Community Agenda for annexation into the City's corporate limits; and

WHEREAS, said parcels of land identified as Parcel Tax Identification Nos.08100 001003A, 08100 001003B, 08100 001003C, and 08100 001003D are within the unincorporated area of Hall County, State of Georgia, and is contiguous to the existing corporate limits of the City of Flowery Branch, Georgia at this time; and

WHEREAS, Shadow Stone Partners, LLC. has submitted to the City Council of Flowery Branch, Georgia, a written and signed application and affidavit showing consent to being annexed, and whereas a survey and complete description of the subject parcels being considered to be annexed, is included in the application; and

WHEREAS, the City Council held a public hearing at the meeting of June 15, 2023, 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. RECITALS.

All of the foregoing recitals of this Ordinance are incorporated by reference as if fully set forth herein and are made part of this annexation ordinance.

SECTION 2. ANNEXATION.

The City Council of Flowery Branch, Georgia, does hereby annex and include within the corporate limits of the City of Flowery Branch, Georgia real parcels of land known as Parcel Tax Identification No. Nos.08100 001003A, 08100 001003B, 08100 001003C, and 08100 001003D as shown on Exhibit “A”, and as described on Exhibit “B”. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. CERTIFICATION BY THE CITY CLERK

The City Council of Flowery Branch, Georgia, authorizes and directs the City Clerk of Flowery Branch, Georgia to certify this Ordinance and attached Exhibits and have a certified copy of this Ordinance and its Exhibits filed with the Department of Community Affairs and any other public official or agencies as required by law.

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.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be September 1st, 2023.

SECTION 6. REPEALER.

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

Approved this 17th day of August 2023.

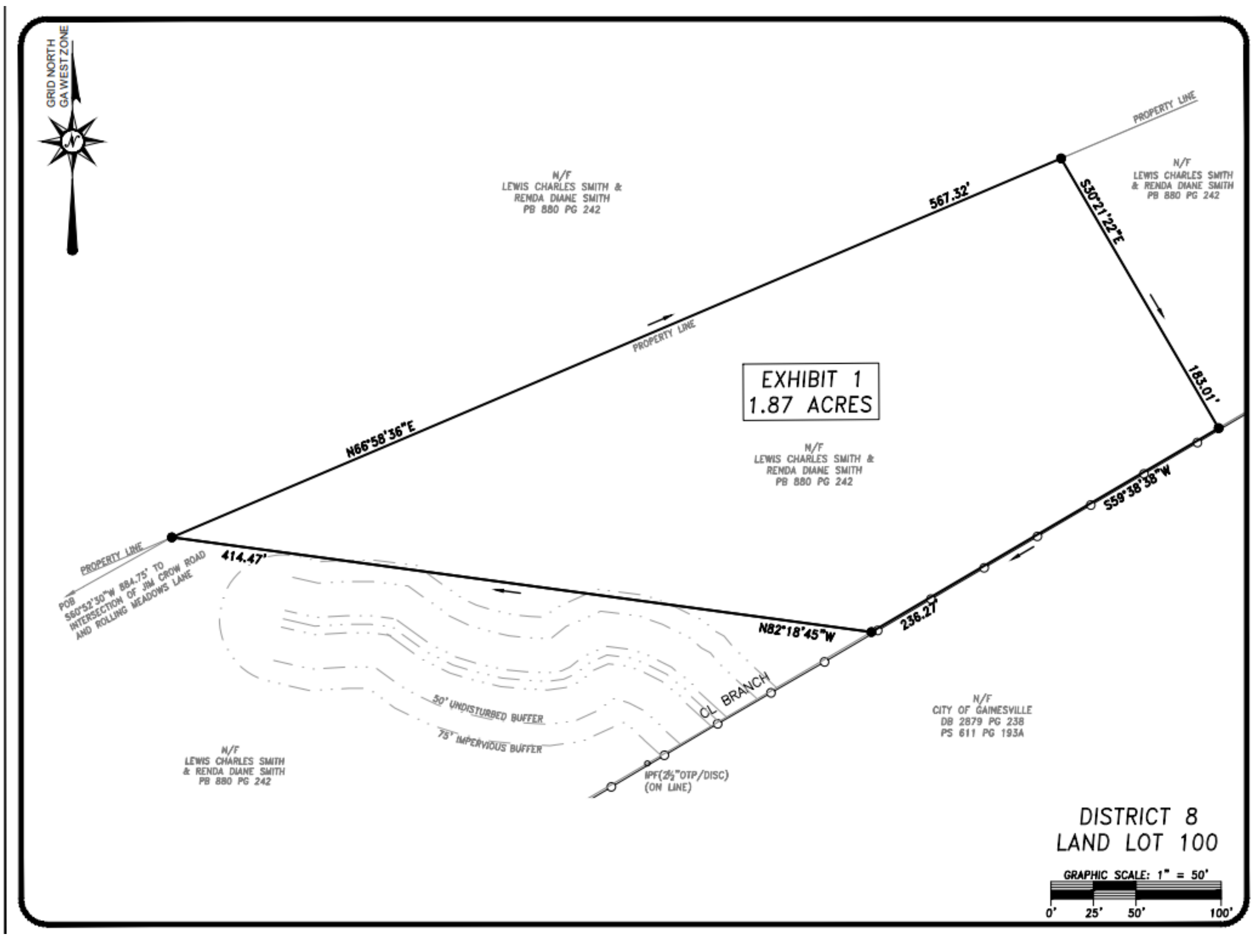
____
Edward R. Asbridge, Mayor

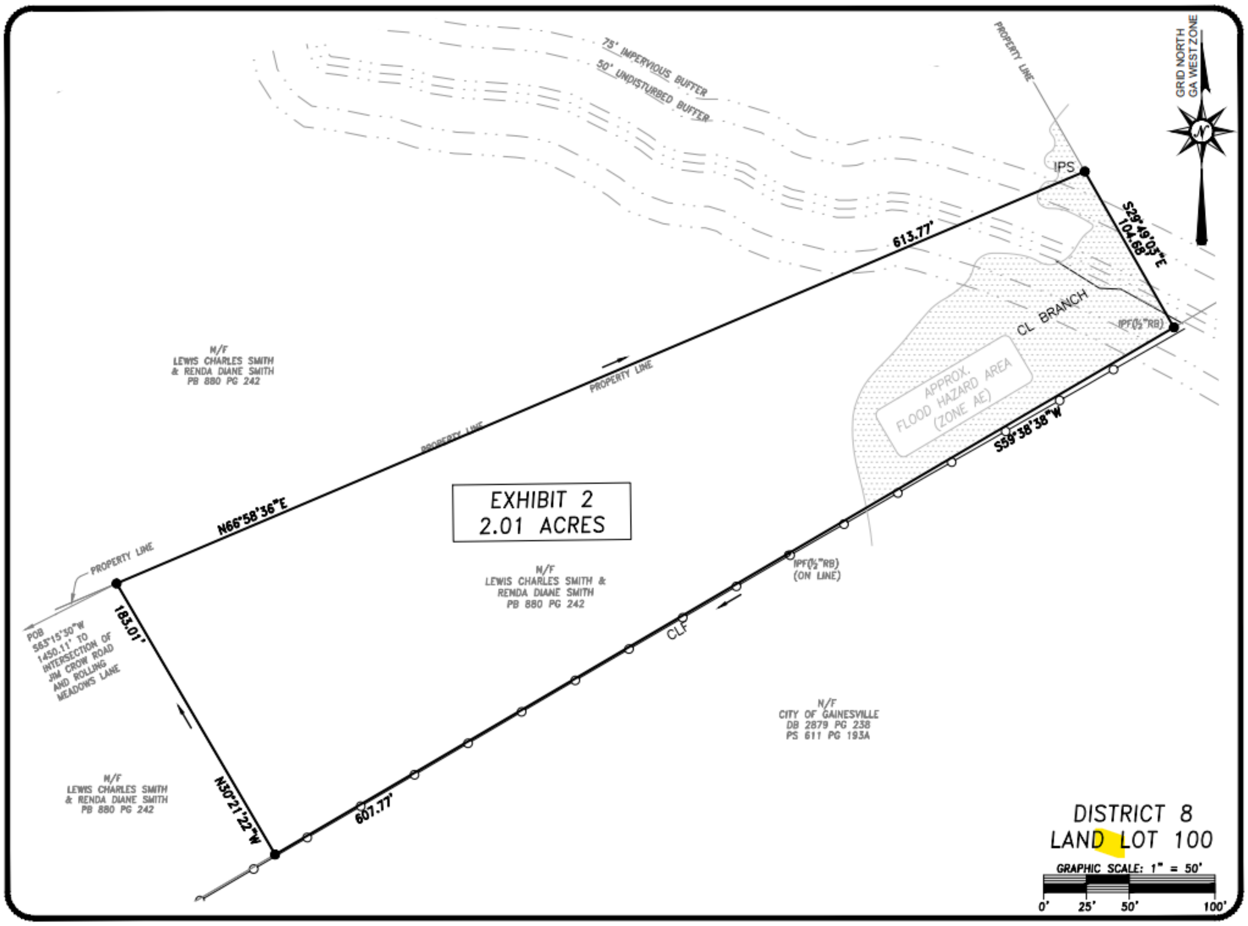
____
Nancy Rodriguez, Assistant City Clerk

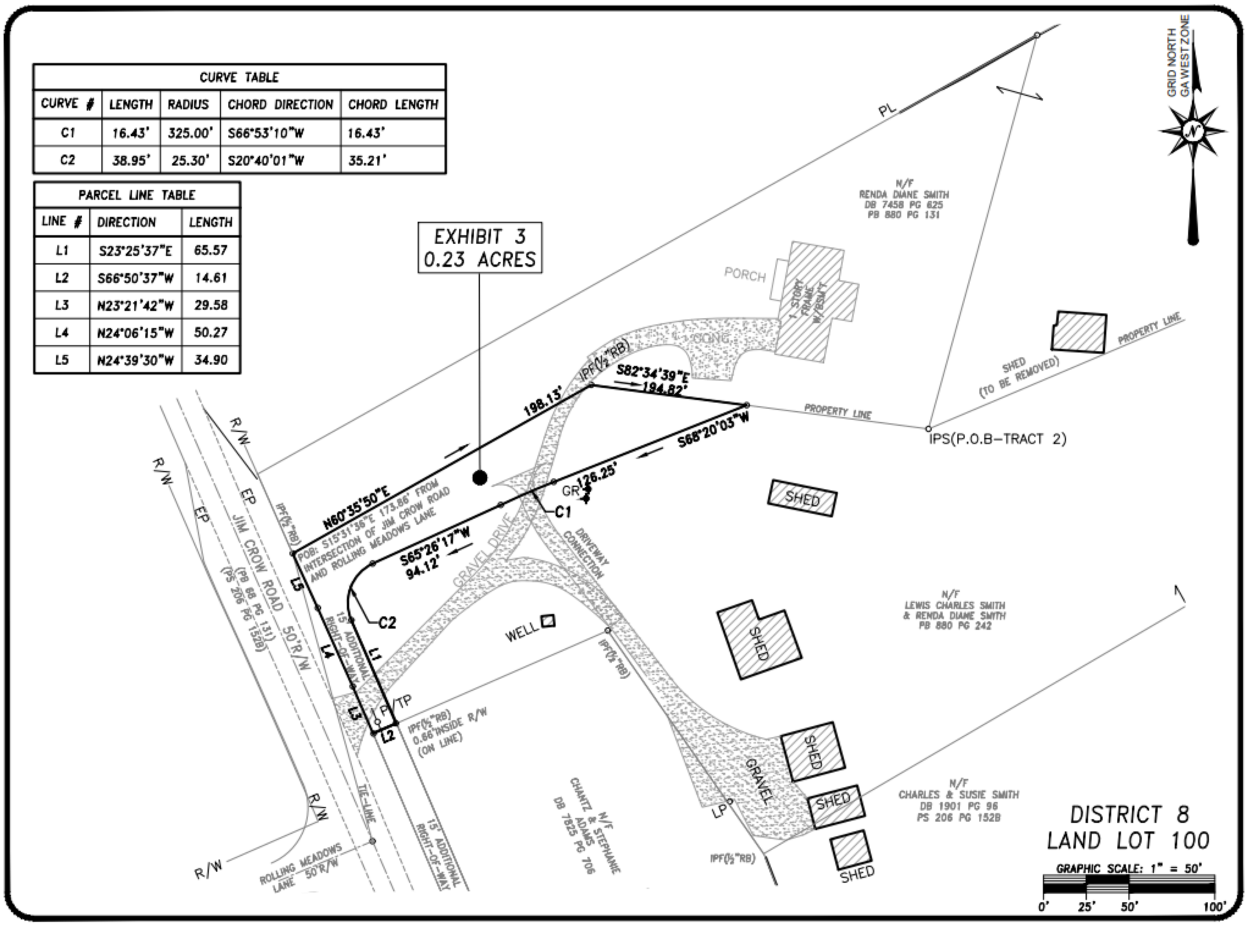
APPROVED AS TO FORM

____
Karen Thomas, City Attorney

Exhibit “A”


GRID NORTH
GA WEST ZONE
N/F
LEWIS CHARLES SMITH &
RENDA DIANE SMITH
PB 880 PG 242
PROPERTY LINE
N/F
LEWIS CHARLES SMITH
& RENDA DIANE SMITH
PB 880 PG 242
567.32'
S30°21'22"E
PROPERTY LINE
EXHIBIT 1
1.87 ACRES
183.01'
N66°58'36"E
N/F
LEWIS CHARLES SMITH &
RENDA DIANE SMITH
PB 880 PG 242
S59°38'38"W
PROPERTY LINE
414.47'
POB
S60°52'30"W 884.75' TO
INTERSECTION OF JIM CROW ROAD
AND ROLLING MEADOWS LANE
N82°18'45"W
236.27'
CL BRANCH
50' UNDISTURBED BUFFER
75' IMPERVIOUS BUFFER
N/F
CITY OF GAINESVILLE
DB 2879 PG 238
PS 611 PG 193A
N/F
LEWIS CHARLES SMITH
& RENDA DIANE SMITH
PB 880 PG 242
IPF(2½"OTP/DISC)
(ON LINE)
DISTRICT 8
LAND LOT 100
GRAPHIC SCALE: 1" = 50'
0'
25'
50'
100'


75' IMPERVIOUS BUFFER
50' UNDISTURBED BUFFER
PROPERTY LINE
GRID NORTH
GA WEST ZONE
N
IPS
613.77'
S29°49'03"E
104.68'
CL BRANCH
IPF(½"RB)
APPROX.
FLOOD HAZARD AREA
(ZONE AE)
N/F
LEWIS CHARLES SMITH
& RENDA DIANE SMITH
PB 880 PG 242
PROPERTY LINE
PROPERTY LINE
S59°38'38"W
EXHIBIT 2
2.01 ACRES
N66°58'36"E
PROPERTY LINE
N/F
LEWIS CHARLES SMITH &
RENDA DIANE SMITH
PB 880 PG 242
IPF(½"RB)
(ON LINE)
CLF
183.01'
POB
S63°15'50"W
1450.11' TO
INTERSECTION OF
JIM CROW ROAD
AND ROLLING
MEADOWS LANE
N/F
CITY OF GAINESVILLE
DB 2879 PG 238
PS 611 PG 193A
N/F
LEWIS CHARLES SMITH
& RENDA DIANE SMITH
PB 880 PG 242
N30°21'22"W
607.77'
DISTRICT 8
LAND LOT 100
GRAPHIC SCALE: 1" = 50'
0'
25'
50'
100'

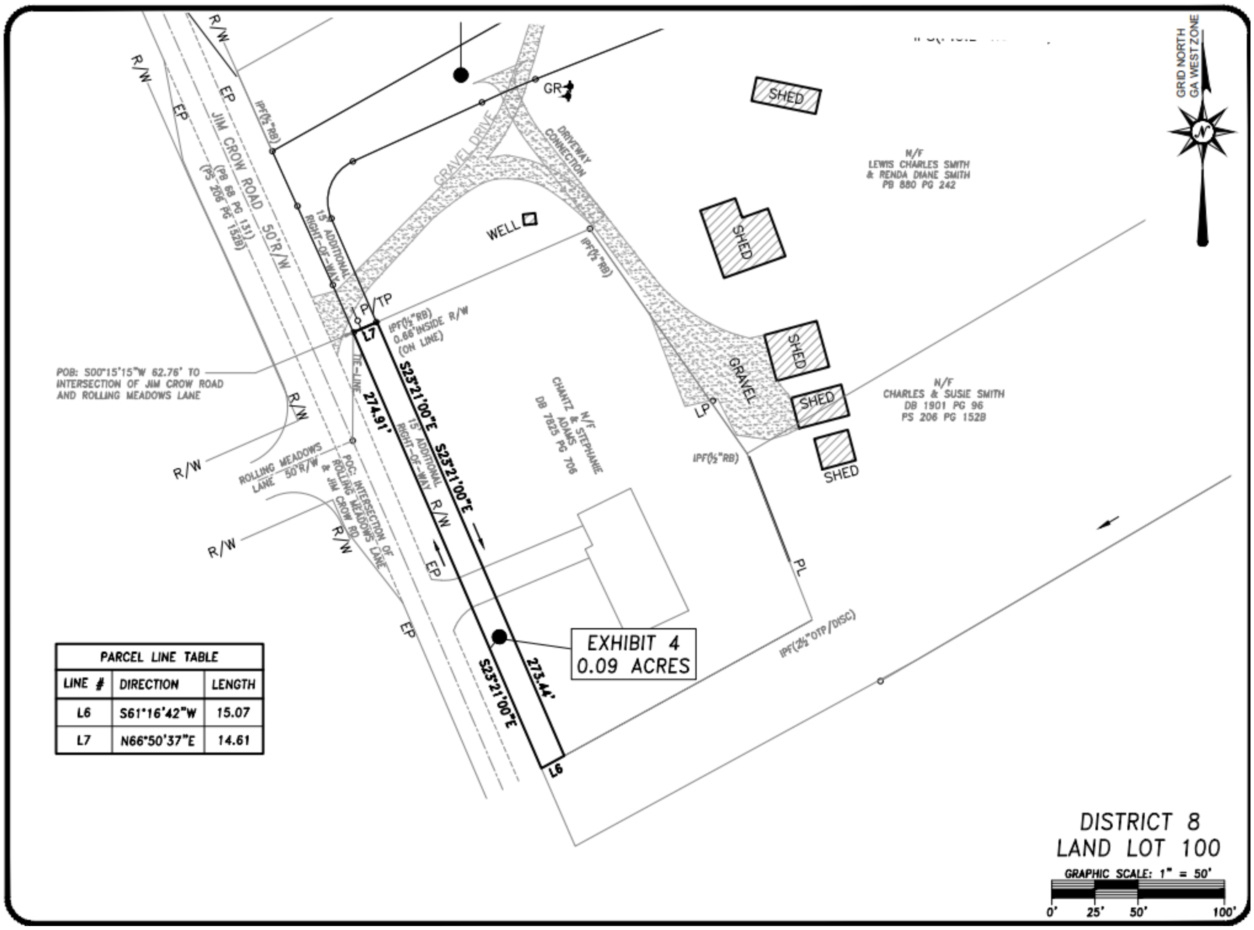


CURVE TABLE

CURVE #	LENGTH	RADIUS	CHORD DIRECTION	CHORD LENGTH
C1	16.43'	325.00'	S66°53'10"W	16.43'
C2	38.95'	25.30'	S20°40'01"W	35.21'

PARCEL LINE TABLE

LINE #	DIRECTION	LENGTH
L1	S23°25'37"E	65.57
L2	S66°50'37"W	14.61
L3	N23°21'42"W	29.58
L4	N24°06'15"W	50.27
L5	N24°39'30"W	34.90



PARCEL LINE TABLE		
LINE #	DIRECTION	LENGTH
L6	S61°16'42"W	15.07
L7	N66°50'37"E	14.61

Exhibit “B”

Tract 1
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 60°52’30” E a distance of 884.75’ to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 58' 36" E a distance of 567.32’ to a point;
THENCE, S 30° 21' 22" E a distance of 183.01’ to a point;
THENCE, S 59° 38' 38" W a distance of 236.27’ to a point;
THENCE, N 82° 18' 45" W a distance of 414.47’ to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 1.87 acres (81,662 square feet) dated April 4, 2023.

Tract 2
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 63°15'30" E a distance of 1450.11' to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 58' 36" E a distance of 613.77' to an iron pin set;
THENCE, S 29° 49' 03" E a distance of 104.68' to a 1/2-inch rebar;
THENCE, S 59° 38' 38" W a distance of 607.77' to a point;
THENCE, N 30° 21' 22" W a distance of 183.01' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 2.01 acres (87,513 square feet) dated April 4, 2023.

Tract 3
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 15°31'36" E a distance of 173.86' to a 1/2-inch rebar, said point being the true POINT OF BEGINNING;

THENCE, N 60° 35' 50" E a distance of 199.93' to a 1/2-inch rebar;
THENCE, S 82° 34' 39" E a distance of 91.39' to a point;
THENCE, S 68° 20' 03" W a distance of 121.07' to a point;
THENCE with a curve turning to the left with an arc length of 33.76', with a radius of 473.31', with a chord bearing of S 66° 35' 13" W, with a chord length of 33.76' to a point;

THENCE, S 65° 26' 17" W a distance of 82.12' to a point;
THENCE with a curve turning to the left with an arc length of 39.07', with a radius of 25.00', with a chord bearing of S 20° 40' 01" W, with a cord length of 35.21' to a point;
THENCE, S 23° 25' 37" E a distance of 65.57' to a point;
THENCE, S 66° 51' 33" W a distance of 14.61' to a point;
THENCE, N 23° 21' 42" W a distance of 29.58' to a point;
THENCE, N 24° 19' 53" W a distance of 85.16' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 0.23 acres (9,889 square feet) dated April 4, 2023.

Tract 4
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 00°15'15" E a distance of 62.76' to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 50' 37" E a distance of 14.98' to a point;
THENCE, S 23° 21' 00" E a distance of 273.44' to a point;
THENCE, S 61° 16' 42" W a distance of 15.07' to a point;
THENCE, N 23° 20' 43" W a distance of 274.90' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 0.09 acres (4,110 square feet) dated April 4, 2023.

ORDINANCE NO. 697

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF FLOWERY BRANCH, GEORGIA, BY REZONING REAL PROPERTY TOTALING 14.27 +/- ACRES OF LAND, OWNED BY SHADOW STONE PARTNERS, LLC. IDENTIFIED AS 5704 JIM CROW ROAD, TAX PARCEL 08100 001003A, 0 JIM CROW ROAD, TAX PARCEL 08100 001003B, 0 JIM CROW ROAD, TAX PARCEL 08100 001003C, AND 0 JIM CROW ROAD, TAX PARCEL 08100 001003D AND AS SHOWN ON ATTACHED EXHIBIT "A", AND AS DESCRIBED ON ATTACHED EXHIBIT "B"; TO BE REZONED FROM HALL COUNTY AGRICULTURAL RESIDENTIAL (AR III) TO FLOWERY BRANCH PLANNED UNIT DEVELOPMENT (PUD), AS SHOWN ON ATTACHED EXHIBIT "A", AND AS DESCRIBED ON ATTACHED EXHIBIT "B", AND AS CONDITIONED ON ATTACHED EXHIBIT "C", PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Shadow Stone Partners, LLC. owns the subject parcel of land identified as Parcel Tax Identification Nos.08100 001003A, 08100 001003B, 08100 001003C, and08100 001003D as shown on Exhibit "A", and as described on Exhibit "B"; and

WHEREAS, Shadow Stone Partners, LLC has 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 June 15, 2023 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 Hall County Agricultural Residential (AR III) to Flowery Branch Planned Unit Development (PUD) 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 AR III

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 subject parcels, as shown on Exhibit “A” and as legally described in Exhibit “B”, are hereby rezoned from Hall County Agricultural Residential (AR III) to Flowery Branch Planned Unit Development (PUD) and conditioned as shown on attached Exhibit “C”. Said Exhibits are incorporated.

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.

Public Hearing Published	03/15/2023	First Reading	07/20/2023
Public Hearing	04/20/2023 - 06/15/2023	Adopted	08/17/2023

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.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be September 1st, 2023.

SECTION 6. REPEALER.

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

Approved this 17th day of August 2023.

____
Edward R. Asbridge, Mayor

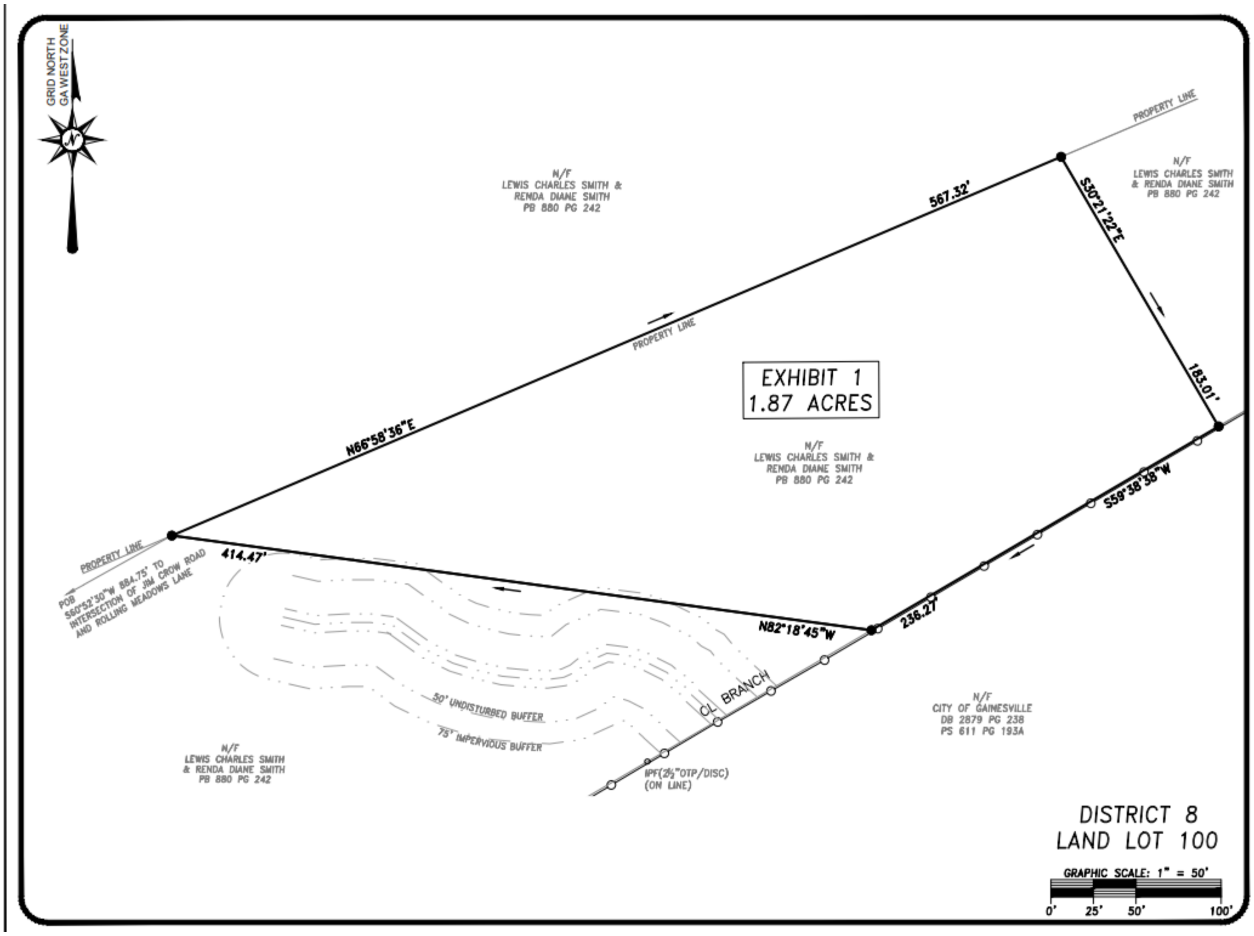
____
Nancy Rodriguez, Assistant City Clerk

APPROVED AS TO FORM

____
Karen Thomas, City Attorney

Public Hearing Published	03/15/2023	First Reading	07/20/2023
Public Hearing	04/20/2023 - 06/15/2023	Adopted	08/17/2023

Exhibit "A"



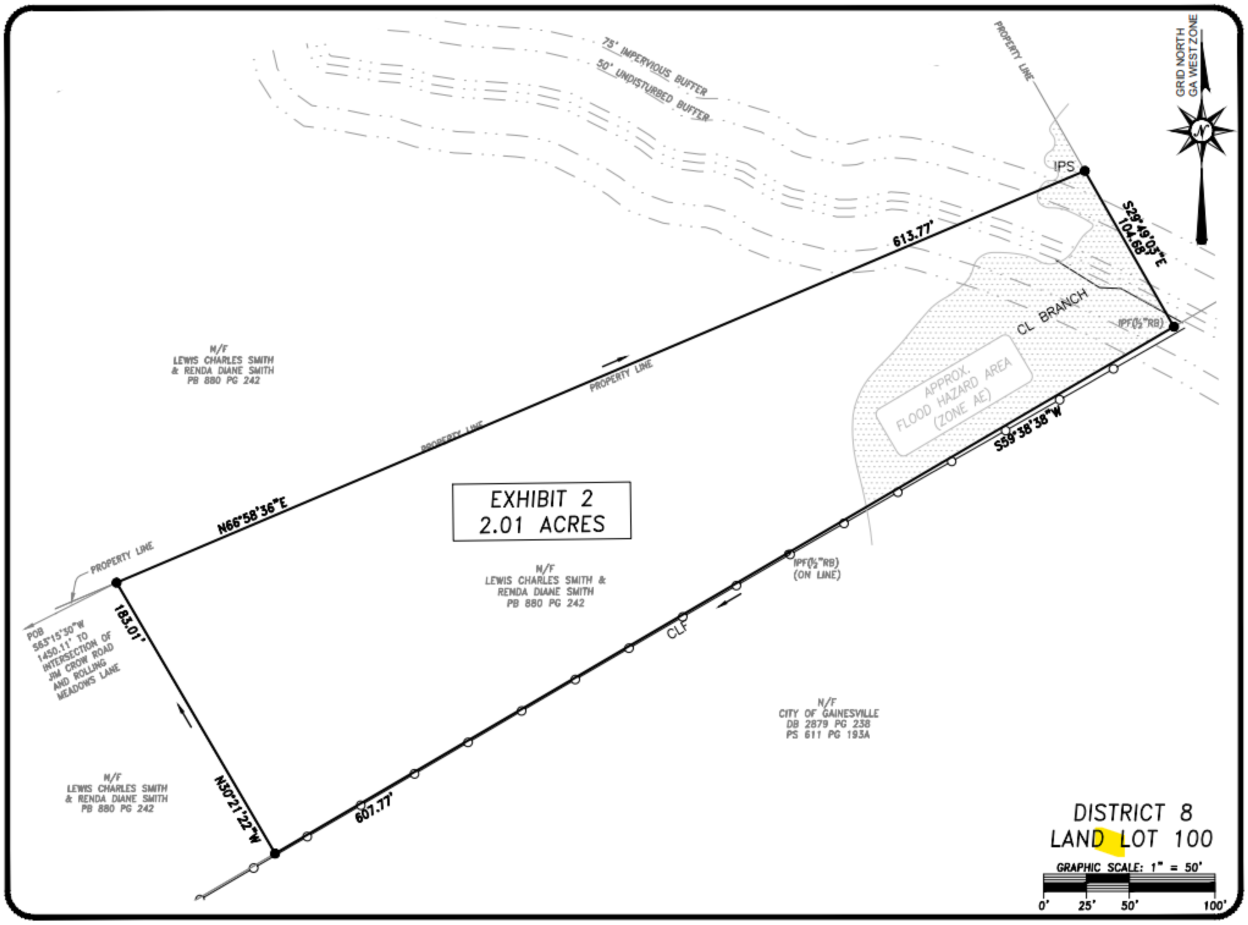
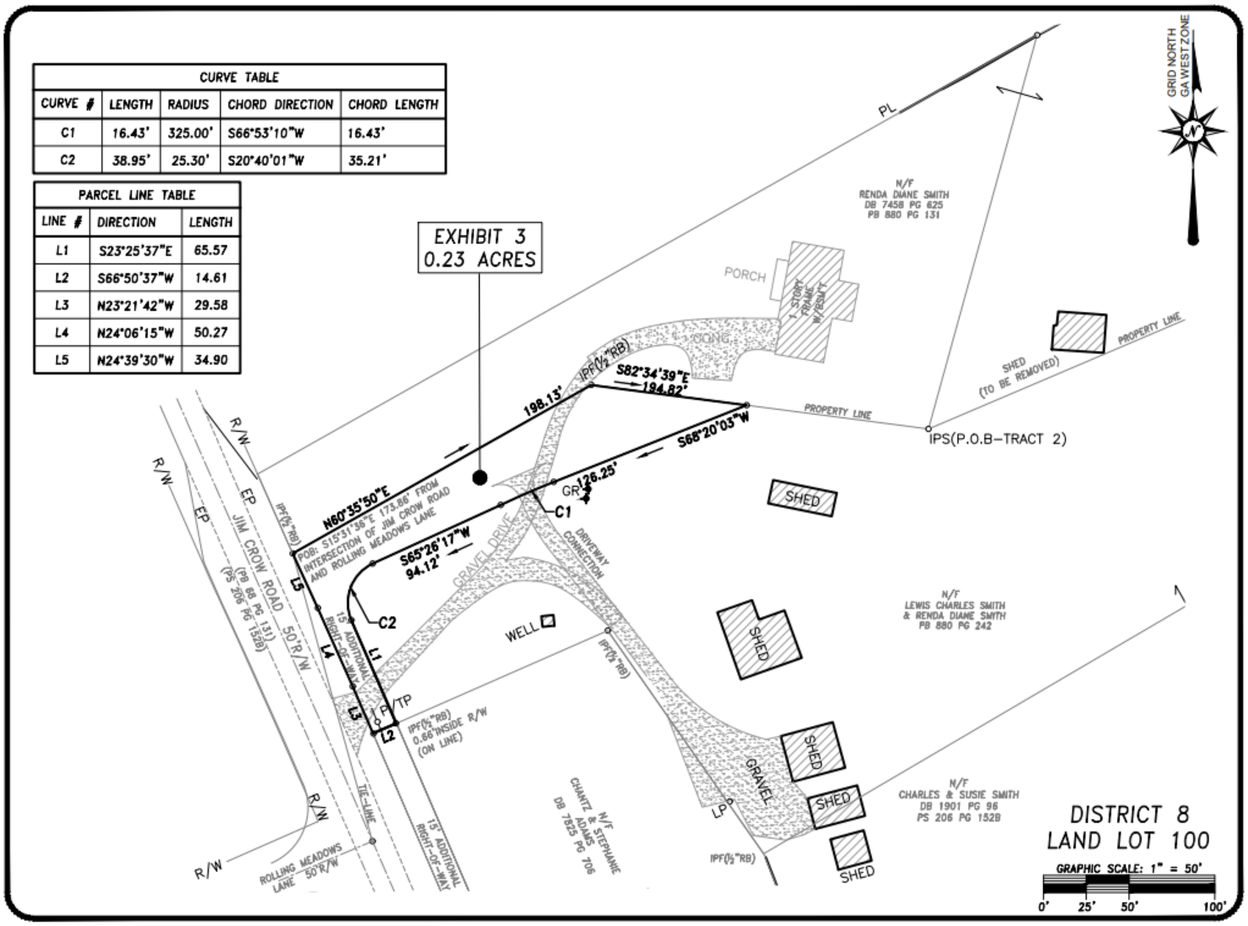
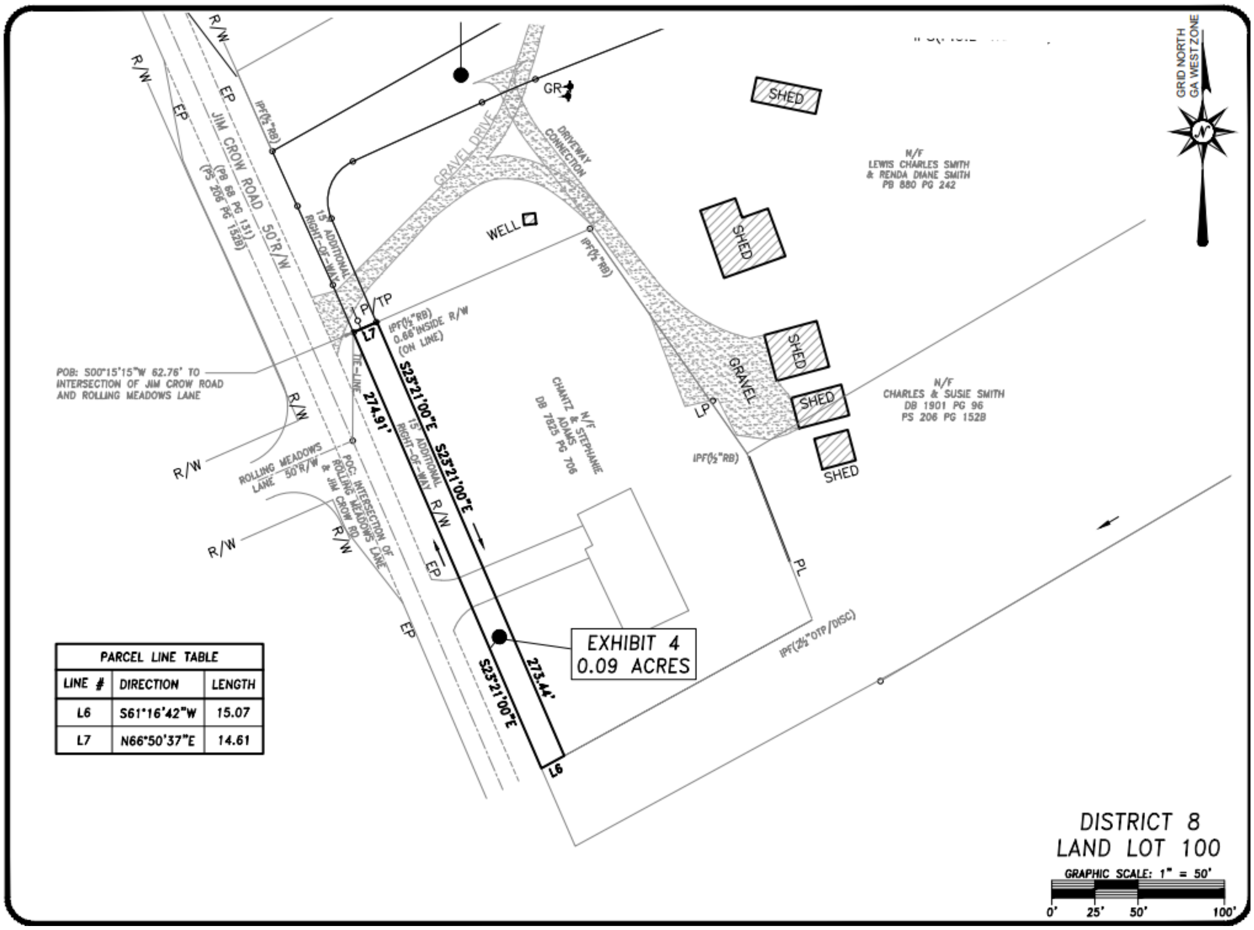


EXHIBIT 2
2.01 ACRES
N/F
LEWIS CHARLES SMITH &
RENDA DIANE SMITH
PB 880 PG 242
N/F
CITY OF GAINESVILLE
DB 2879 PG 238
PS 611 PG 193A
N66°58'36"E
613.77'
S29°49'03"E
104.68'
S59°38'38"W
607.77'
N50°21'22"W
183.01'
POB
S63°15'30"W
1450.11' TO
INTERSECTION OF
JIM CROW ROAD
AND ROLLING
MEADOWS LANE
PROPERTY LINE
75' IMPERVIOUS BUFFER
50' UNDISTURBED BUFFER
IPS
CL BRANCH
APPROX. FLOOD HAZARD AREA (ZONE AE)
IPF(½"RB)
IPF(½"RB) (ON LINE)
CLF
GRID NORTH
GA WEST ZONE
DISTRICT 8
LAND LOT 100
GRAPHIC SCALE: 1" = 50'
0' 25' 50' 100'

CURVE TABLE				
CURVE #	LENGTH	RADIUS	CHORD DIRECTION	CHORD LENGTH
C1	16.43'	325.00'	S66°53'10"W	16.43'
C2	38.95'	25.30'	S20°40'01"W	35.21'

PARCEL LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S23°25'37"E	65.57
L2	S66°50'37"W	14.61
L3	N23°21'42"W	29.58
L4	N24°06'15"W	50.27
L5	N24°39'30"W	34.90





PARCEL LINE TABLE		
LINE #	DIRECTION	LENGTH
L6	S61°16'42"W	15.07
L7	N66°50'37"E	14.61

Exhibit “B”

Tract 1
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 60°52’30” E a distance of 884.75’ to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 58' 36" E a distance of 567.32’ to a point;
THENCE, S 30° 21' 22" E a distance of 183.01’ to a point;
THENCE, S 59° 38' 38" W a distance of 236.27’ to a point;
THENCE, N 82° 18' 45" W a distance of 414.47’ to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 1.87 acres (81,662 square feet) dated April 4, 2023.

Tract 2
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 63°15'30" E a distance of 1450.11' to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 58' 36" E a distance of 613.77' to an iron pin set;
THENCE, S 29° 49' 03" E a distance of 104.68' to a 1/2-inch rebar;
THENCE, S 59° 38' 38" W a distance of 607.77' to a point;
THENCE, N 30° 21' 22" W a distance of 183.01' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 2.01 acres (87,513 square feet) dated April 4, 2023.

Tract 3
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 15°31'36" E a distance of 173.86' to a 1/2-inch rebar, said point being the true POINT OF BEGINNING;

THENCE, N 60° 35' 50" E a distance of 199.93' to a 1/2-inch rebar;
THENCE, S 82° 34' 39" E a distance of 91.39' to a point;
THENCE, S 68° 20' 03" W a distance of 121.07' to a point;
THENCE with a curve turning to the left with an arc length of 33.76', with a radius of 473.31', with a chord bearing of S 66° 35' 13" W, with a chord length of 33.76' to a point;

THENCE, S 65° 26' 17" W a distance of 82.12' to a point;
THENCE with a curve turning to the left with an arc length of 39.07', with a radius of 25.00', with a chord bearing of S 20° 40' 01" W, with a cord length of 35.21' to a point;
THENCE, S 23° 25' 37" E a distance of 65.57' to a point;
THENCE, S 66° 51' 33" W a distance of 14.61' to a point;
THENCE, N 23° 21' 42" W a distance of 29.58' to a point;
THENCE, N 24° 19' 53" W a distance of 85.16' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 0.23 acres (9,889 square feet) dated April 4, 2023.

Tract 4
Shadow Stone Partners, LLC

All that tract or parcel of land lying and being in Land Lot 100 of the 8th District, Hall County, Georgia, and being a portion of the lands of Shadow Stone Partners, LLC. Said tract being described by the following description:

To find the true point of beginning, COMMENCE at the intersection of Rolling Meadows Lane and Jim Crow Road, said intersection having a Georgia Grid North, NAD 83, West zone value of N: 1531279.9204 E: 2368747.6315; Thence running along a tie line N 00°15'15" E a distance of 62.76' to a point, said point being the true POINT OF BEGINNING;

THENCE, N 66° 50' 37" E a distance of 14.98' to a point;
THENCE, S 23° 21' 00" E a distance of 273.44' to a point;
THENCE, S 61° 16' 42" W a distance of 15.07' to a point;
THENCE, N 23° 20' 43" W a distance of 274.90' to the ENDING at a point, said point being the true POINT OF BEGINNING.

Said tract being a portion of the lands of Shadow Stone Partners, LLC containing 0.09 acres (4,110 square feet) dated April 4, 2023.

Exhibit "C"

Conditions of Zoning

1. Sewer shall be provided by the City of Flowery Branch.
2. Water shall be provided by the City of Gainesville.
3. Development shall be gated.
4. All internal streets shall be private.
5. Mandatory Homeowner's Association must be created.
6. Homeowner's Association shall include a 15% rental cap for the project.
7. Project shall be age restricted. No one under the age of fifty-five (55) shall reside in the subdivision.
8. The northern property line shall include a staff approved buffer plan that shall run the length of the property. Said plan must be incorporated into the overall landscape plan and shall be submitted at the time of land disturbance.
9. All townhomes shall meet all current architectural and design requirements of the City of Flowery Branch zoning ordinance.
10. Amenities shall be provided and shall include a pocket park, walking trails, and pickle ball courts as generally shown on the submitted plan dated 3/22/2023.

11. Project shall not exceed fifty (50) townhomes.
12. Project shall significantly adhere to the site plan dated 3/22/2023 and as shown below:

13. A sidewalk extending the length of the project shall be constructed along Jim Crow Road and shall be a minimum of five (5) feet in width.
14. All homes shall be constructed to have one thousand five hundred and fifty (1,550) square feet of heated space at a minimum.
15. All homes shall include a two (2) car garage.
16. Driveways shall be a minimum of twenty-three (23) feet as measured from the back of the sidewalk.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Ordinance 698 to Amend the City Flowery Branch Retirement Plan through GMA.

COUNCIL MEETING DATE: August 17, 2023

HISTORY:
Historically, The City of Flowery Branch has offered the city staff a pension plan through GMA with a 2% multiplier and no cap in years of service. During the Council retreat for the FY2024 budget it was expressed, by council, that we need to look at our benefits package to ensure that we retain and attract highly qualified employees. The staff looked at its insurance package and retirement package to ensure that it was competitive with the market. Recently the council approved the establishment of the City of Flowery Branch 457 plan for employees to contribute to, however; it appears that changes to our current Pension plan are recommend to remain competitive in the employee market.

FACTS AND ISSUES:
In an effort to attract and retain highly qualified employees, city staff constantly evaluates the benefits provided to its employees. As we reviewed the current benefits package for insurance and retirement, we discussed the possibility of updating the City's pension plan to our employees to attract and retain highly qualified employees. City staff reviewed options, provided by GMA, of increasing the pension multiplier to 2.5% or 3%. It was determined, from the option studied, that an increase to a 2.5% multiplier with a 30 year cap is the best and most sustainable option. City staff feels that this amendment will help retain and attract highly qualified employees.

OPTIONS:
Approve the second reading of Ordinance 698 to amend the City of Flowery Branch Retirement Plan or table for further discussion.

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

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
Approval

SAMPLE MOTION:
I make a motion to approve the second reading of Ordinance 698 to amend the City of Flowery Branch Retirement Plan and authorize the Mayor and City Staff to sign any necessary documents.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Nancy Rodriguez

ATTACHMENTS

- Executive Summary - Retirement Plan - 2nd reading.pdf
- Ordinance 698 City of Flowery Branch Retirement Plan Amendment.pdf
- Flowery Branch CL 7 17 23.pdf
- Benefit Studies - Flowery Branch - 2023(9672951.4).pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Ordinance 698 to Amend the City Flowery Branch Retirement Plan through GMA.

DATE: July 26, 2023

(X)RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL-
CAPITAL-

COUNCIL ACTION REQUESTED ON: August 3, 2023

PURPOSE:

To amend the City of Flowery Branch Retirement plan for city employees through Georgia Municipal Association (GMA).

HISTORY:

Historically, The City of Flowery Branch has offered the city staff a pension plan through GMA with a 2% multiplier and no cap in years of service. During the Council retreat for the FY2024 budget it was expressed, by council, that we need to look at our benefits package to ensure that we retain and attract highly qualified employees. The staff looked at its insurance package and retirement package to ensure that it was competitive with the market. Recently the council approved the establishment of the City of Flowery Branch 457 plan for employees to contribute to, however; it appears that changes to our current Pension plan are recommend to remain competitive in the employee market.

FACTS AND ISSUES:

In an effort to attract and retain highly qualified employees, city staff constantly evaluates the benefits provided to its employees. As we reviewed the current benefits package for insurance and retirement, we discussed the possibility of updating the City's pension plan to our employees to attract and retain highly qualified employees. City staff reviewed options, provided by GMA, of increasing the pension multiplier to 2.5% or 3%. It was determined, from the option studied, that an increase to a 2.5% multiplier with a 30 year cap is the best and most sustainable option. City staff feels that this amendment will help retain and attract highly qualified employees.

OPTIONS:

Approve the second reading of Ordinance 698 to amend the City of Flowery Branch Retirement Plan or table for further discussion.

RECOMMENDED SAMPLE MOTION:

I make a motion to approve the second reading of Ordinance 698 to amend the City of Flowery Branch Retirement Plan and authorize the Mayor and City Staff to sign any necessary documents.

DEPARTMENT: Administration

Prepared by: Matthew Hamby

GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM

DEFINED BENEFIT RETIREMENT PLAN

AN ORDINANCE
and
ADOPTION AGREEMENT
for

City of Flowery Branch

Form Volume Submitter Adoption Agreement
Amended and Restated as of January 1, 2013
(With Amendments Taking Effect on or Before January 1, 2017)

TABLE OF CONTENTS

PAGE

I. AN ORDINANCE #698

An Ordinance to amend and restate the Retirement Plan for the Employees of the City of Flowery Branch, Georgia in accordance with and subject to the terms and conditions set forth in the attached Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement. When accepted by the authorized officers of the City and GMEBS, the foregoing shall constitute a Contract between the City and GMEBS, all as authorized and provided by O.C.G.A. § 47-5-1 et seq.

BE IT ORDAINED by the Mayor and Council of the City of Flowery Branch, Georgia, and it is hereby ordained by the authority thereof:

Section 1. The Retirement Plan for the Employees of the City of Flowery Branch, Georgia is hereby amended and restated as set forth in and subject to the terms and conditions stated in the following Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement.

Ordinance continued on page 37

II. GMEBS DEFINED BENEFIT RETIREMENT PLAN ADOPTION AGREEMENT

1. ADMINISTRATOR

Georgia Municipal Employees Benefit System
201 Pryor Street, SW
Atlanta, Georgia 30303
Telephone: 404-688-0472
Facsimile: 404-577-6663

2. ADOPTING EMPLOYER

Name: **City of Flowery Branch, Georgia**

3. GOVERNING AUTHORITY

Name: **Mayor and Council**
Address: **P.O. Box 757, Flowery Branch, GA 30542-0013**
Phone: **(770) 967-6371**
Facsimile: **(770) 967-6481**

4. PLAN REPRESENTATIVE

[To represent Governing Authority in all communications with GMEBS and Employees]
(See Section 2.49 of Master Plan)

Name: **City Manager**
Address: **P.O. Box 757, Flowery Branch, GA 30542-0013**
Phone: **(770) 967-6371**
Facsimile: **(770) 967-6481**

5. PENSION COMMITTEE

[Please designate members by position. If not, members of Pension Committee shall be determined in accordance with Article XIV of Master Plan]

Position:
Position:
Position:
Position:
Position:

Pension Committee Secretary: **City Clerk**
Address: **P.O. Box 757, Flowery Branch, GA 30542-0013**
Phone: **(770) 967-6371**
Facsimile: **(770) 967-6481**

6. TYPE OF ADOPTION

This Adoption Agreement is for the following purpose (**check one**):

☐ This is a new defined benefit plan adopted by the Adopting Employer for its Employees. This plan does not replace or restate an existing defined benefit plan.

☐ This is an amendment and restatement of the Adopting Employer's preexisting non-GMEBS defined benefit plan.

☒ This is an amendment and restatement of the Adoption Agreement previously adopted by the Employer, as follows **(check one or more as applicable):**

- ☒ To update the Plan to comply with PPA, HEART, WRERA, and other applicable federal laws and guidance.

- ☒ To make the following amendments to the Adoption Agreement **(must specify below revisions made in this Adoption Agreement; all provisions must be completed in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: **This is an amendment to increase the benefit multiplier to 2.5% and limit maximum Total Credited Service to 30 years for all Eligible Regular Employees who (1) are initially employed or become reemployed on or after September 1, 2023, or (2) were in Service as of August 31, 2023, Terminate on or after September 1, 2023, and are not thereafter reemployed, provided they have fewer than 37.5 years of Total Credited Service with the City (including Credited Service granted pursuant to Section 13(A)(1) of the Adoption Agreement) upon Termination. (see pp. 20 - 22).**

7. EFFECTIVE DATE

NOTE: This Adoption Agreement and any Addendum, with the accompanying Master Plan Document, is designed to comply with Internal Revenue Code Section 401(a), as applicable to a governmental qualified defined benefit plan, and is part of the GMEBS Defined Benefit Retirement Plan. Plan provisions designed to comply with certain provisions of the Pension Protection Act of 2006 ("PPA"); the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"); and the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"); and Plan provisions designed to comply with certain provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2012-76 (the 2012 Cumulative List) are effective as of the applicable effective dates set forth in the Adoption Agreement and Master Plan Document. By adopting this Adoption Agreement, with its accompanying Master Plan Document, the Adopting Employer is adopting a plan document intended to comply with Internal Revenue Code Section 401(a), as updated by PPA, HEART, WRERA, and the 2012 Cumulative List with the applicable effective dates.

(1) **Complete this item (1) only if this is a new defined benefit plan which does not replace or restate an existing defined benefit plan**.

The effective date of this Plan is _____.
(insert effective date of this Adoption Agreement not earlier than January 1, 2013).

(2) **Complete this item (2) only if this Plan is being adopted to replace a non-GMEBS defined benefit plan.**

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be the ____________________**(insert effective date of this Adoption Agreement not earlier than January 1, 2013)**. This Plan is intended to replace and serve as an amendment and restatement of the Employer's preexisting plan, which became effective on _____ **(insert original effective date of preexisting plan)**.

(3) **Complete this item (3) only if this is an amendment and complete restatement of the Adopting Employer's existing GMEBS defined benefit plan.**

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be **September 1, 2023** **(insert effective date of this Adoption Agreement not earlier than January 1, 2013)**.

This Plan is adopted as an amendment and restatement of the Employer's preexisting GMEBS Adoption Agreement, which became effective on **March 3, 2022** **(insert effective date of most recent Adoption Agreement preceding this Adoption Agreement)**.

The Employer's first Adoption Agreement became effective **November 1, 2014** **(insert effective date of Employer's first GMEBS Adoption Agreement)**. The Employer's GMEBS Plan was originally effective **November 1, 2014** **(insert effective date of Employer's original GMEBS Plan)**. (If the Employer's Plan was originally a non-GMEBS Plan, then the Employer's non-GMEBS Plan was originally effective _____ **(if applicable, insert effective date of Employer's original non-GMEBS Plan)**.)

8. PLAN YEAR

Plan Year means **(check one):**

☐ Calendar Year
☐ Employer Fiscal Year commencing ______________________________.
☒ Other **(must specify month and day commencing)**: **July1.**

9. CLASSES OF ELIGIBLE EMPLOYEES

Only Employees of the Adopting Employer who meet the Master Plan's definition of "Employee" may be covered under the Adoption Agreement. Eligible Employees shall not include non-governmental employees, independent contractors, leased employees, nonresident aliens, or any other ineligible individuals, and this Section 9 must not be completed in a manner that violates the "exclusive benefit rule" of Internal Revenue Code Section 401(a)(2).

A. Eligible Regular Employees

Regular Employees include Employees, other than elected or appointed members of the Governing Authority or Municipal Legal Officers, who are regularly employed in the services of the Adopting Employer. Subject to the other conditions of the Master Plan and the Adoption Agreement, the following Regular Employees are eligible to participate in the Plan **(check one)**:

☒ **ALL** - All Regular Employees, provided they satisfy the minimum hour and other requirements specified under "Eligibility Conditions" below.

☐ **ALL REGULAR EMPLOYEES EXCEPT** for the following employees **(must specify; specific positions are permissible; specific individuals may not be named)**: ______________________________.

B. Elected or Appointed Members of the Governing Authority

An Adopting Employer may elect to permit participation in the Plan by elected or appointed members of the Governing Authority and/or Municipal Legal Officers, provided they otherwise meet the Master Plan's definition of "Employee" and provided they satisfy any other requirements specified by the Adopting Employer. Municipal Legal Officers to be covered must be specifically identified by position. Subject to the above conditions, the Employer hereby elects the following treatment for elected and appointed officials:

(1) Elected or Appointed Members of the Governing Authority (check one):

☒ **ARE NOT** eligible to participate in the Plan.

☐ **ARE** eligible to participate in the Plan.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date, or special waiting period provision): ______________________________.

(2) Municipal Legal Officers (check one):

☒ **ARE NOT** eligible to participate in the Plan.

☐ **ARE** eligible to participate in the Plan. The term "Municipal Legal Officer" shall include only the following positions **(must specify - specific positions are permissible; specific individuals may not be named)**: **____.**

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date) **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))** : ____.

10. ELIGIBILITY CONDITIONS

A. <u>Hours Per Week (Regular Employees)</u>

The Adopting Employer may specify a minimum number of work hours per week which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Regular Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied**. The Employer hereby elects the following minimum hour requirement for Regular Employees:

☐ No minimum
☐ 20 hours/week (regularly scheduled)
☐ 30 hours/week (regularly scheduled)
☒ Other: **<u>40 hours/week</u>** (must not exceed 40 hours/week regularly scheduled)

<u>Exceptions</u>: If a different minimum hour requirement applies to a particular class or classes of Regular Employees, please specify below the classes to whom the different requirement applies and indicate the minimum hour requirement applicable to them.

Class(es) of Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named):** ______________________________.

Minimum hour requirement applicable to excepted Regular Employees:

☐ No minimum
☐ 20 hours/week (regularly scheduled)
☐ 30 hours/week (regularly scheduled)
☐ Other: __________________ (must not exceed 40 hours/week regularly scheduled)

B. <u>Months Per Year (Regular Employees)</u>

The Adopting Employer may specify a minimum number of work months per year which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied**. The Employer hereby elects the following minimum requirement for Regular Employees:

☐ No minimum

☒ At least **6** months per year (regularly scheduled)

Exceptions: If different months per year requirements apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: ______________________________.

The months to year requirement for excepted class(es) are:

☐ No minimum
☐ At least _______ months per year (regularly scheduled)

11. WAITING PERIOD

Except as otherwise provided in Section 4.02(b) of the Master Plan, Eligible Regular Employees shall not have a waiting period before participating in the Plan. Likewise, elected or appointed members of the Governing Authority and Municipal Legal Officers, if eligible to participate in the Plan, shall not have a waiting period before participating in the Plan.

12. ESTABLISHING PARTICIPATION IN THE PLAN

Participation in the Plan is considered mandatory for all Eligible Employees who satisfy the eligibility conditions specified in the Adoption Agreement, except as provided in Section 4.03(e) of the Master Plan. However, the Employer may specify below that participation is optional for certain classes of Eligible Employees, including Regular Employees, elected or appointed members of the Governing Authority, Municipal Legal Officers, City Managers, and/or Department Heads. If participation is optional for an Eligible Employee, then in order to become a Participant, he must make a written election to participate within 120 days after employment, election or appointment to office, or if later, the date he first becomes eligible to participate in the Plan. The election is irrevocable, and the failure to make the election within the 120 day time limit shall be deemed an irrevocable election not to participate in the Plan.

Classes for whom participation is optional **(check one)**:

☒ None (Participation is mandatory for all Eligible Employees except as provided in Section 4.03(e) of the Master Plan).
☐ Participation is optional for the following Eligible Employees **(must specify - specific positions are permissible; specific individuals may not be named; all positions or classes specified must be Eligible Employees)**: ____________________________.

13. CREDITED SERVICE

In addition to Current Credited Service the Adopting Employer may include as Credited Service the following types of service:

A. <u>Credited Past Service with Adopting Employer</u>

Credited Past Service means the number of years and complete months of Service with the Adopting Employer prior to the date an Eligible Employee becomes a Participant which are treated as credited service under the Plan.

(1) Eligible Employees Employed on Original Effective Date of GMEBS Plan. With respect to Eligible Employees who are employed by the Adopting Employer on the original Effective Date of the Employer's GMEBS Plan, Service with the Adopting Employer prior to the date the Eligible Employee becomes a Participant (including any Service prior to the Effective Date of the Plan) shall be treated as follows **(check one)**:

☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except for Service rendered prior to _____________________________ **(insert date)**.

☒ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except as follows **(must specify other limitation in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: **<u>Participants who were employed as of November 1, 2014, will be entitled to receive up to five (5) years of credit (at no cost to the Participant) for their Service with the City of Flowery Branch prior to November 1, 2014, which will be counted for all purposes under the Plan (i.e., meeting the minimum Service requirements for participation and Vesting under the Plan, meeting the minimum Service requirements for Retirement and death benefit eligibility under the Plan, and computing the amount of Retirement or death benefits under the Plan).</u>**

☐ No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

(2) Previously Employed, Returning to Service after Original Effective Date. If an Eligible Employee is not employed on the original Effective Date of the Employer's GMEBS Plan, but he returns to Service with the Adopting Employer sometime after the Effective Date, his Service prior to the date he becomes a Participant (including any Service prior the Effective Date) shall be treated as follows **(check one)**:

☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), subject to any limitations imposed above with respect to Eligible Employees employed on the Effective Date.

☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), provided that after his return to employment, the Eligible Employee performs Service equal to the period of the break in Service or one (1) year, whichever is less. Any limitations imposed above with respect to Eligible Employees employed on the Effective Date shall also apply.

☒ No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

Other limitation(s) on Recognition of Credited Past Service **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _______.

(3) Eligible Employees Initially Employed After Effective Date. If an Eligible Employee's initial employment date is after the original Effective Date of the Employer's GMEBS Plan, his Credited Past Service shall include only the number of years and complete months of Service from his initial employment date to the date he becomes a Participant in the Plan.

(4) Newly Eligible Classes of Employees. If a previously ineligible class of Employees becomes eligible to participate in the Plan, the Employer must specify in an addendum to this Adoption Agreement whether and to what extent said Employees' prior service with the Employer shall be treated as Credited Past Service under the Plan.

B. <u>Prior Military Service</u>

<u>Note</u>: This Section does not concern military service required to be credited under USERRA – See Section 3.02 of the Master Plan for rules on the crediting of USERRA Military Service.

(1) Credit for Prior Military Service.

The Adopting Employer may elect to treat military service rendered prior to a Participant's initial employment date or reemployment date as Credited Service under the Plan. Unless otherwise specified by the Employer under "Other Conditions" below, the term "Military Service" shall be as defined in the Master Plan. Except as otherwise required by federal or state law or under "Other Conditions" below, Military Service shall not include service which is credited under any other local, state, or federal retirement or pension plan.

Military Service credited under this Section shall not include any service which is otherwise required to be credited under the Plan by federal or state law. Prior Military Service shall be treated as follows **(check one)**:

☒ Prior Military Service is **not** creditable under the Plan **(if checked, skip to Section 13.C. – Prior Governmental Service)**.

☐ Prior Military Service shall be counted as Credited Service for the following purposes (check one or more as applicable):

- ☐ Computing amount of benefits payable.
- ☐ Meeting minimum service requirements for vesting.
- ☐ Meeting minimum service requirements for benefit eligibility.

(2) Maximum Credit for Prior Military Service.

Credit for Prior Military Service shall be limited to a maximum of _____ years **(insert number)**.

(3) Rate of Accrual for Prior Military Service.

Credit for Prior Military Service shall accrue at the following rate **(check one)**:

☐ One month of military service credit for every _______ month(s) **(insert number)** of Credited Service with the Adopting Employer.

☐ One year of military service credit for every _____ year(s) **(insert number)** of Credited Service with the Adopting Employer.

☐ All military service shall be creditable (subject to any caps imposed above) after the Participant has completed _______ years **(insert number)** of Credited Service with the Employer.

☐ Other requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _______.

(4) Payment for Prior Military Service Credit (check one):

☐ Participants shall **not** be required to pay for military service credit.

☐ Participants shall be required to pay for military service credit as follows:

  ☐ The Participant must pay ____% of the actuarial cost of the service credit (as defined below).

  ☐ The Participant must pay an amount equal to **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ________________________.

Other Conditions for Award of Prior Military Service Credit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _______.

(5) Limitations on Service Credit Purchases. Unless otherwise specified in an Addendum to the Adoption Agreement, for purposes of this Section and Section 13.C. concerning prior governmental service credit, the term "actuarial cost of service credit" is defined as set forth in the Service Credit Purchase Addendum. In the case of a service credit purchase, the Participant shall be required to comply with any rules and regulations established by the GMEBS Board of Trustees concerning said purchases.

C. <u>Prior Governmental Service</u>

<u>Note</u>: A Participant's prior service with other GMEBS employers shall be credited for purposes of satisfying the minimum service requirements for Vesting and eligibility for Retirement and pre-retirement death benefits as provided under Section 9.05 of the Master

Plan, relating to portability service. This Section 13(C) does not need to be completed in order for Participants to receive this portability service credit pursuant to Section 9.05 of the Master Plan.

(1) Credit for Prior Governmental Service.

The Adopting Employer may elect to treat governmental service rendered prior to a Participant's initial employment date or reemployment date as creditable service under the Plan. Subject to any limitations imposed by law, the term "prior governmental service" shall be as defined by the Adopting Employer below. The Employer elects to treat prior governmental service as follows **(check one)**:

☒ Prior governmental service is **not** creditable under the Plan **(if checked, skip to Section 13.D. – Unused Sick/Vacation Leave)**.

☐ Prior governmental service shall be counted as Credited Service for the following purposes under the Plan **(check one or more as applicable)**:

- ☐ Computing amount of benefits payable.
- ☐ Meeting minimum service requirements for vesting.
- ☐ Meeting minimum service requirements for benefit eligibility.

(2) Definition of Prior Governmental Service.

Prior governmental service shall be defined as follows: **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: __________.

Unless otherwise specified above, prior governmental service shall include only full-time service (minimum hour requirement same as that applicable to Eligible Regular Employees).

(3) Maximum Credit for Prior Governmental Service.

Credit for prior governmental service shall be limited to a maximum of ________ years **(insert number)**.

(4) Rate of Accrual for Prior Governmental Service Credit.

Credit for prior governmental service shall accrue at the following rate **(check one)**:

☐ One month of prior governmental service credit for every _____ month(s) **(insert number)** of Credited Service with the Adopting Employer.

☐ One year of prior governmental service credit for every _____ year(s) **(insert number)** of Credited Service with the Adopting Employer.

☐ All prior governmental service shall be creditable (subject to any caps imposed above) after the Participant has completed _____ years **(insert number)** of Credited Service with the Adopting Employer.

☐ Other requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(5) Payment for Prior Governmental Service Credit.

☐ Participants shall **not** be required to pay for governmental service credit.

☐ Participants shall be required to pay for governmental service credit as follows:

☐ The Participant must pay ____% of the actuarial cost of the service credit.
☐ The Participant must pay an amount equal to **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ________________________.

Other Conditions for Award of Prior Governmental Service Credit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

D. <u>Leave Conversion for Unused Paid Time Off (e.g., Sick, Vacation, or Personal Leave)</u>

(1) Credit for Unused Paid Time Off.

Subject to the limitations in Section 3.01 of the Master Plan, an Adopting Employer may elect to treat accumulated days of unused paid time off for a terminated Participant, for which the Participant is not paid, as Credited Service. The only type of leave permitted to be credited under this provision is leave from a paid time off plan which qualifies as a bona fide sick and vacation leave plan (which may include sick, vacation or personal leave) and which the Participant may take as paid leave without regard to whether the leave is due to illness or incapacity. The Credited Service resulting from the conversion of unused paid time off must not be the only Credited Service applied toward the accrual of a normal retirement benefit under the Plan. The Pension Committee shall be responsible to certify to GMEBS the total amount of unused paid time off that is creditable hereunder.

<u>Important Note</u>: Leave cannot be converted to Credited Service in lieu of receiving a cash payment. If the Employer elects treating unused paid time off as Credited Service, the conversion to Credited Service will be automatic, and the Participant cannot request a cash payment for the unused paid time off.

The Employer elects the following treatment of unused paid time off:

☒ Unused paid time off shall **not** be treated as Credited Service **(if checked, skip to Section 14 – Retirement Eligibility)**.

☐ The following types of unused paid time off for which the Participant is not paid shall be treated as Credited Service under the Plan **(check one or more as applicable)**:

☐ Unused sick leave
☐ Unused vacation leave
☐ Unused personal leave
☐ Other paid time off **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(2) Minimum Service Requirement.

In order to receive credit for unused paid time off, a Participant must meet the following requirement at termination **(check one)**:

☐ The Participant must be 100% vested in a normal retirement benefit.
☐ The Participant must have at least _______ years **(insert number)** of Total Credited Service (not including leave otherwise creditable under this Section).
☐ Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _______.

(3) Use of Unused Paid Time Off Credit. Unused paid time off for which the Participant is not paid shall count as Credited Service for the following purposes under the Plan **(check one or more as applicable)**:

☐ Computing amount of benefits payable.
☐ Meeting minimum service requirements for vesting.
☐ Meeting minimum service requirements for benefit eligibility.

(4) Maximum Credit for Unused Paid Time Off.

Credit for unused paid time off for which the Participant is not paid shall be limited to a maximum of ____ months **(insert number)**.

(5) Computation of Unused Paid Time Off.

Unless otherwise specified by the Adopting Employer under "Other Conditions" below, each twenty (20) days of creditable unused paid time off shall constitute one (1) complete month of Credited Service under the Plan. Partial months shall not be credited.

(6) Other Conditions (please specify, subject to limitations in Section 3.01 of Master Plan; must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): ______________________________.

14. RETIREMENT ELIGIBILITY

A. <u>Early Retirement Qualifications</u>

Early retirement qualifications are **(check one or more as applicable)**:

☒ Attainment of age **<u>55</u> (insert number)**

☒ Completion of **<u>10</u>** years **(insert number)** of Total Credited Service

<u>Exceptions</u>: If different early retirement eligibility requirements apply to a particular class or classes of Eligible Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Eligible Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: ________________________________.

Early retirement qualifications for excepted class(es) are **(check one or more as applicable)**:

☐ Attainment of age _________ **(insert number)**

☐ Completion of _________ years **(insert number)** of Total Credited Service

B. <u>Normal Retirement Qualifications</u>

<u>Note</u>: Please complete this Section and also list "Alternative" Normal Retirement Qualifications, if any, in Section 14.C.

(1) <u>Regular Employees</u>

Normal retirement qualifications for Regular Employees are **(check one or more as applicable)**:

☒ Attainment of age **<u>65</u> (insert number)**

☒ Completion of **<u>5</u>** years **(insert number)** of Total Credited Service

☐ In-Service Distribution to Eligible Employees permitted (<u>i.e.</u>, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ______________________________________.

<u>Exceptions</u>: If different normal retirement qualifications apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Class(es) of Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: **<u>The Eligible Regular Employee employed in the position of City Manager on March 3, 2022</u>**.

Normal retirement qualifications for excepted class(es) are **(check one or more as applicable)**:

☒ Attainment of age **<u>65</u> (insert number)**

☐ Completion of _________ years **(insert number)** of Total Credited Service

☐ In-Service Distribution to Eligible Employees permitted (<u>i.e.</u>, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________________________________.

(2) <u>Elected or Appointed Members of Governing Authority</u>

Complete this Section only if elected or appointed members of the Governing Authority or Municipal Legal Officers are permitted to participate in the Plan. Normal retirement qualifications for this class are **(check one or more as applicable)**:

☐ Attainment of age _________ **(insert number)**

☐ Completion of _________ years **(insert number)** of Total Credited Service

☐ In-Service Distribution to Eligible Employees permitted (<u>i.e.</u>, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________________________________.

<u>Exceptions</u>: If different normal retirement qualifications apply to particular elected or appointed members of the Governing Authority or Municipal Legal Officers, the Employer must specify below to whom the different requirements apply and indicate below the requirements applicable to them.

Particular elected or appointed members of the Governing Authority or Municipal Legal Officers to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

Normal retirement qualifications for excepted elected or appointed members of the Governing Authority or Municipal Legal Officers are **(check one or more as applicable)**:

☐ Attainment of age _________ **(insert number)**

☐ Completion of _________ years **(insert number)** of Total Credited Service

☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

C. Alternative Normal Retirement Qualifications

The Employer may elect to permit Participants to retire with unreduced benefits after they satisfy service and/or age requirements other than the regular normal retirement qualifications specified above. The Employer hereby adopts the following alternative normal retirement qualifications:

Alternative Normal Retirement Qualifications (check one or more, as applicable):

(1) ☒ Not applicable (the Adopting Employer does not offer alternative normal retirement benefits under the Plan).

(2) ☐ **Alternative Minimum Age & Service Qualifications (if checked, please complete one or more items below, as applicable):**

☐ Attainment of age _________ **(insert number)**

☐ Completion of _________ years **(insert number)** of Total Credited Service

☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must**

specify - specific positions are permissible; specific individuals may not be named):____.

This alternative normal retirement benefit is available to:

☐ All Participants who qualify.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time he satisfies the above qualifications in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(3) ☐ **Rule of _______ (insert number)**. The Participant's combined Total Credited Service and age must equal or exceed this number. Please complete additional items below:

To qualify for this alternative normal retirement benefit, the Participant **(check one or more items below, as applicable)**:

☐ Must have attained at least age ______ **(insert number)**

☐ Must not satisfy any minimum age requirement

☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ________________________________.

This alternative normal retirement benefit is available to:

☐ All Participants who qualify.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time he satisfies the Rule in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(4) ☐ **Alternative Minimum Service**. A Participant is eligible for an alternative normal retirement benefit if he has at least ________ years **(insert number)** of Total Credited Service, regardless of the Participant's age.

☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum service requirement specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ________________________________.

This alternative normal retirement benefit is available to:

☐ All Participants who qualify.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(5) ☐ **Other Alternative Normal Retirement Benefit**.

Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): _______.

☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _______________________________.

This alternative normal retirement benefit is available to:

☐ All Participants who qualify.

☐ Only the following Participants **(must specify – specific positions are permissible; specific individuals may not be named)**: ______________.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(6) ☐ **Other Alternative Normal Retirement Benefit <u>for Public Safety Employees Only</u>**.

Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): _______.

☐ In-Service Distribution to Eligible Employees who are Public Safety Employees permitted (<u>i.e.</u>, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age 50 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify – specific positions are permissible; specific individuals may not be named)**: ____.

This alternative normal retirement benefit is available to:

☐ All public safety employee Participants who qualify.

☐ Only the following public safety employee Participants **(must specify – specific positions are permissible; specific individuals may not be named)**: ____.

A public safety employee Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

Note: "Public safety employees" are defined under the Internal Revenue Code for this purpose as employees of a State or political subdivision of a State who provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

D. <u>Disability Benefit Qualifications</u>

Subject to the other terms and conditions of the Master Plan and except as otherwise provided in an Addendum to this Adoption Agreement, disability retirement qualifications are based upon Social Security Administration award criteria or as otherwise provided under Section 2.23 of the Master Plan. The Disability Retirement benefit shall commence as of the Participant's Disability Retirement Date under Section 2.24 of the Master Plan.

To qualify for a disability benefit, a Participant must have the following minimum number of years of Total Credited Service **(check one)**:

☒ Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
☐ No minimum.
☐ _______ years **(insert number)** of Total Credited Service.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ______________________________.

15. RETIREMENT BENEFIT COMPUTATION

A. <u>Maximum Total Credited Service</u>

The number of years of Total Credited Service which may be used to calculate a benefit is **(check one or all that apply)**:

☐ not limited.

☐ limited to _________ years for all Participants.

☐ limited to ________ years for the following classes of Eligible Regular Employees:

☐ All Eligible Regular Employees.

☐ Only the following Eligible Regular Employees: ____________________.

☐ limited to _______ years as an elected or appointed member of the Governing Authority.

☐ limited to _______ years as a Municipal Legal Officer.

☒ Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: **The number of years of Total Credited Service which may be used to calculate a benefit is limited to 30 years for all Eligible Regular Employees. Notwithstanding the foregoing, the number of years of Total Credited Service which may be used to calculate a benefit shall not be limited with respect to calculation of benefits using the 2.0% alternative flat percentage formula below, only for those Eligible Regular Employees who were in Service as of August 31, 2023, Terminate on or after September 1, 2023, are not thereafter reemployed, and have more than 37.5 years of Total Credited Service with the City (including Credited Service granted pursuant to Section 13(A)(1) of the Adoption Agreement)**.

B. Monthly Normal Retirement Benefit Amount

(1) Regular Employee Formula

The monthly normal retirement benefit for Eligible Regular Employees shall be 1/12 of **(check and complete one or more as applicable)**:

☒ (a) **Flat Percentage Formula**. **2.5% (insert percentage)** of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

☒ All Participants who are Regular Employees.
☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

☐ (b) **Alternative Flat Percentage Formula**. **2.0% (insert percentage)** of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. This formula applies to the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: **Eligible Regular Employees who have at least 37.5 years of Total Credited Service with the City (including Credited Service granted pursuant to Section 13(A)(1) of the Adoption**

Agreement), and Terminate on or after September 1, 2023 and are not thereafter reemployed.

☐ (c) **Split Final Average Earnings Formula**. _____ % **(insert percentage)** of Final Average Earnings up to the amount of **Covered Compensation (see subsection (2) below for definition of Covered Compensation)**, plus ______% **(insert percentage)** of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

☐ All Participants who are Regular Employees.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:______.

☐ (d) **Alternative Split Final Average Earnings Formula**. _____ % **(insert percentage)** of Final Average Earnings up to the amount of **Covered Compensation (see subsection (2) below for definition of Covered Compensation)**, plus ______% **(insert percentage)** of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

☐ All Participants.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

[Repeat above subsections as necessary for each applicable benefit formula and Participant class covered under the Plan.]

(2) Covered Compensation (complete only if Split Formula(s) is checked above):

Covered Compensation is defined as (check one or more as applicable):

☐ (a) **A.I.M.E. Covered Compensation** as defined in Section 2.18 of the Master Plan. This definition of Covered Compensation shall apply to **(check one)**:

☐ All Participants who are Regular Employees.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

☐ (b) **Dynamic Break Point** Covered Compensation as defined in Section 2.19 of the Master Plan. This definition of Covered Compensation shall apply to **(check one)**:

☐ All Participants who are Regular Employees.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:______.

☐ (c) **Table Break Point** Covered Compensation as defined in Section 2.20 of the Master Plan. This definition of Covered Compensation shall apply to **(check one)**:

☐ All Participants who are Regular Employees.
☐ Only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

☐ (d) **Covered Compensation** shall mean a Participant's annual Earnings that do not exceed $_______________ **(specify amount)**. This definition shall apply to **(check one)**:

☐ All Participants who are Regular Employees.
☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:______.

(3) Final Average Earnings

Unless otherwise specified in an Addendum to the Adoption Agreement, Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the **36** **(insert number not to exceed 60)** consecutive months of Credited Service preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose.

This definition of Final Average Earnings applies to:

☒ All Participants who are Regular Employees.
☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____________________________________.

[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]

(4) Formula for Elected or Appointed Members of the Governing Authority

The monthly normal retirement benefit for members of this class shall be as follows **(check one)**:

☒ Not applicable (elected or appointed members of the Governing Authority or Municipal Legal Officers are not permitted to participate in the Plan).

☐ $_________ **(insert dollar amount)** per month for each year of Total Credited Service as an elected or appointed member of the Governing Authority or Municipal Legal Officer or major fraction thereof (6 months and 1 day).

This formula applies to:

☐ All elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate.

☐ Only the following elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate **(must specify - specific positions are permissible; specific individuals may not be named)**: ______________________________________.

[Repeat above subsection as necessary for each applicable formula for classes of elected or appointed members covered under the Plan.]

C. Monthly Early Retirement Benefit Amount

Check and complete one or more as applicable:

☒ (1) **Standard Early Retirement Reduction Table**. The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced on an Actuarially Equivalent basis in accordance with Section 12.01 of the Master Plan to account for early commencement of benefits. This provision shall apply to:

☒ All Participants.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:______.

☐ (2) **Alternative Early Retirement Reduction Table**. The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced to account for early commencement of benefits based on the following table. This table shall apply to:

☐ All Participants.

☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:______.

Alternative Early Retirement Reduction Table

Number of Years Before [Age (Insert Normal Retirement Age)] (check as applicable)	**Percentage of Normal Retirement Benefit*** (complete as applicable)
☐ 0	1.000
☐ 1	0.___
☐ 2	0.___
☐ 3	0.___
☐ 4	0.___
☐ 5	0.___
☐ 6	0.___
☐ 7	0.___
☐ 8	0.___
☐ 9	0.___
☐ 10	0.___
☐ 11	0.___
☐ 12	0.___
☐ 13	0.___
☐ 14	0.___
☐ 15	0.___

*Interpolate for whole months

D. Monthly Late Retirement Benefit Amount (check one):

☒ (1) The monthly Late Retirement benefit shall be computed in the same manner as the Normal Retirement Benefit, based upon the Participant's Accrued Benefit as of his Late Retirement Date.

☐ (2) The monthly Late Retirement benefit shall be the greater of: (1) the monthly retirement benefit accrued as of the Participant's Normal Retirement Date, actuarially increased in accordance with the actuarial table contained in Section 12.05 of the Master Plan; or (2) the monthly retirement benefit accrued as of the Participant's Late Retirement Date, without further actuarial adjustment under Section 12.06 of the Master Plan.

E. Monthly Disability Benefit Amount

The amount of the monthly Disability Benefit shall be computed in the same manner as the Normal Retirement benefit, based upon the Participant's Accrued Benefit as of his Disability Retirement Date.

Minimum Disability Benefit. The Adopting Employer may set a minimum Disability Benefit. The Employer elects the following minimum Disability benefit **(check one)**:

☒ Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).

☐ No minimum is established.

☐ No less than **(check one):** ☐ 20% ☐ 10% ☐ ____% **(if other than 20% or 10% insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)

☐ No less than **(check one):** ☐ 66 2/3 % ☐ ______% **(if other than 66 2/3%, insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability, less any monthly benefits paid from federal Social Security benefits as a result of disability as reported by the Employer. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)

Note: The Adopting Employer is responsible for reporting to GMEBS any amounts to be used in an offset.

F. Minimum/Maximum Benefit For Elected Officials

In addition to any other limitations imposed by federal or state law, the Employer may impose a cap on the monthly benefit amount that may be received by elected or appointed members of the Governing Authority. The Employer elects **(check one)**:

☒ Not applicable (elected or appointed members of the Governing Authority do not participate in the Plan).

☐ No minimum or maximum applies.

☐ Monthly benefit for Service as an elected or appointed member of the Governing Authority may not exceed 100% of the Participant's final salary as an elected or appointed member of the Governing Authority.

☐ Other minimum or maximum **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

16. SUSPENSION OF BENEFITS FOLLOWING BONA FIDE SEPARATION OF SERVICE; COLA

A. <u>Re-Employment as Eligible Employee After Normal, Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service (see Master Plan Section 6.06(c) Regarding Re-Employment as an Ineligible Employee and Master Plan Section 6.06(e) and (f) Regarding Re-Employment After Disability Retirement)</u>

(1) Reemployment After Normal or Alternative Normal Retirement. In the event that a Retired Participant 1) is reemployed with the Employer as an Eligible Employee (as defined in the Plan) after his Normal or Alternative Normal Retirement Date and after a Bona Fide Separation from Service, or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) due to the addition of such class to the Plan after his Normal or Alternative Normal Retirement Date, the following rule shall apply **(check one)**:

☒ (a) The Participant's benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.

☐ (b) The Participant may continue to receive his retirement benefit in accordance with Section 6.06(b) of the Master Plan. This rule shall apply to **(check one)**: ☐ all Retired Participants ☐ only the following classes of Retired Participants **(must specify (specific positions are permissible; specific individuals may not be named) - benefits of those Retired Participants not listed shall be suspended in accordance with Section 6.06(a) of the Master Plan if they return to work with the Employer)**: ____________.

(2) Reemployment After Early Retirement. In the event a Participant Retires with an Early Retirement benefit after a Bona Fide Separation from Service 1) is reemployed with the Employer as an Eligible Employee before his Normal Retirement Date; or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) before his Normal Retirement Date due to the addition of such class to the Plan, the following rule shall apply **(check one or more as applicable)**:

(a) ☒ The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.

This rule shall apply to **(check one)**: ☒ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

(b) ☐ The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan. However, the Participant may begin receiving benefits after he satisfies the qualifications for Normal Retirement or Alternative Normal Retirement, as applicable, and after satisfying the minimum age parameters of Section 6.06(a)(3) of the Master Plan, in accordance with Section 6.06(b)(2)(B)(i) of the Master Plan.

This rule shall apply to **(check one)**: ☐ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

(c) ☐ The Participant's Early Retirement benefit shall continue in accordance with Section 6.06(b)(2)(B)(ii) of the Master Plan.

This rule shall apply to **(check one)**: ☐ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

B. <u>Cost Of Living Adjustment</u>

The Employer may elect to provide for an annual cost-of-living adjustment (COLA) in the amount of benefits being received by Retired Participants and Beneficiaries, which shall be calculated and paid in accordance with the terms of the Master Plan. The Employer hereby elects the following **(check one)**:

☒ (1) No cost-of-living adjustment.

☐ (2) Variable Annual cost-of-living adjustment not to exceed ______% **(insert percentage)**.

☐ (3) Fixed annual cost-of-living adjustment equal to ______% **(insert percentage)**.

The above cost-of-living adjustment shall apply with respect to the following Participants (and their Beneficiaries) **(check one)**:

☒ All Participants (and their Beneficiaries).
☐ Participants (and their Beneficiaries) who terminate employment on or after __________________ **(insert date)**.
☐ Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)); specific positions are permissible; specific individuals may not be named)**: __________________________.

The Adjustment Date for the above cost-of-living adjustment shall be (if not specified, the Adjustment Date shall be January 1): ____.

17. TERMINATION OF EMPLOYMENT BEFORE RETIREMENT; VESTING

A. Eligible Regular Employees

Subject to the terms and conditions of the Master Plan, a Participant who is an Eligible Regular Employee and whose employment is terminated for any reason other than death or retirement shall earn a vested right in his accrued retirement benefit in accordance with the following schedule **(check one):**

☐ **No vesting schedule (immediate vesting)**.

☒ **Cliff Vesting Schedule**. Benefits shall be 100% vested after the Participant has a minimum of **5** years **(insert number not to exceed 10)** of Total Credited Service. Benefits remain 0% vested until the Participant satisfies this minimum.

☐ **Graduated Vesting Schedule**. Benefits shall become vested in accordance with the following schedule **(insert percentages)**:

COMPLETED YEARS OF TOTAL CREDITED SERVICE	VESTED PERCENTAGE
1	%
2	%
3	%
4	%
5	%
6	%
7	%
8	%
9	%
10	%

Exceptions: If a vesting schedule other than that specified above applies to a special class(es) of Regular Employees, the Employer must specify the different vesting schedule below and the class(es) to whom the different vesting schedule applies.

Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: **The Eligible Regular Employee employed in the position of the City Manager on March 3, 2022.**

Vesting Schedule for excepted class **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: **No Vesting schedule (immediate Vesting).**

B. Elected or Appointed Members of the Governing Authority

Subject to the terms and conditions of the Master Plan, a Participant who is an elected or appointed member of the Governing Authority or a Municipal Legal Officer shall earn a vested right in his accrued retirement benefit for Credited Service in such capacity in accordance with the following schedule **(check one)**:

☒ Not applicable (elected or appointed members of the Governing Authority are not permitted to participate in the Plan).

☐ No vesting schedule (immediate vesting).

☐ Other vesting schedule **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

18. PRE-RETIREMENT DEATH BENEFITS

A. <u>In-Service Death Benefit</u>

Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following in-service death benefit, to be payable in the event that an eligible Participant's employment with the Employer is terminated by reason of the Participant's death prior to Retirement **(check and complete one)**:

(1) ☒ **Auto A Death Benefit**. A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant, had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan. In order to be eligible for this benefit, a Participant must meet the following requirements **(check one)**:

☒ The Participant must be vested in a normal retirement benefit.

☐ The Participant must have ______ years **(insert number)** of Total Credited Service.

☐ The Participant must be eligible for Early or Normal Retirement.

☐ Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ________________________________.

(2) ☐ **Actuarial Reserve Death Benefit**. A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, actuarially equivalent to the reserve required for the Participant's anticipated Normal Retirement benefit, provided the Participant meets the following eligibility conditions **(check one)**:

☐ The Participant shall be eligible upon satisfying the eligibility requirements of Section 8.02(c) of the Master Plan.

☐ The Participant must have _____ years **(insert number)** of Total Credited Service.

☐ Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ___________________________________.

Imputed Service. For purposes of computing the actuarial reserve death benefit, the Participant's Total Credited Service shall include **(check one)**:

☐ Total Credited Service accrued prior to the date of the Participant's death.

☐ Total Credited Service accrued prior to the date of the Participant's death, plus **(check one)**: ☐ one-half (½) ☐ ___________ **(insert other fraction)** of the Service between such date of death and what would otherwise have been the Participant's Normal Retirement Date. **(See Master Plan Section 8.02(b) regarding 10-year cap on additional Credited Service.)**

Minimum In-Service Death Benefit for Vested Employees Equal to Terminated Vested Death Benefit. Unless otherwise specified under "Exceptions" below, if a Participant's employment is terminated by reason of the Participant's death prior to Retirement, and if as of the date of death the Participant is vested but he does not qualify for the in-service death benefit, then the Auto A Death Benefit will be payable, provided the Auto A Death Benefit is made available to terminated vested employees under the Adoption Agreement (see "Terminated Vested Death Benefit" below).

(3) Exceptions: If an in-service death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit **(must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415): ____**.

Participants to whom alternative death benefit applies **(must specify - specific positions are permissible; specific individuals may not be named)**: ___________________________________.

Eligibility conditions for alternative death benefit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ___________.

B. Terminated Vested Death Benefit

(1) Complete this Section only if the Employer offers a terminated vested death benefit. The Employer may elect to provide a terminated vested death benefit, to be payable in the event that a Participant who is vested dies after termination of employment but before

Retirement benefits commence. Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following terminated vested death benefit **(check one)**:

☒ **Auto A Death Benefit**. A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan.

☐ **Accrued Retirement Benefit**. A monthly benefit payable to the Participant's Pre-Retirement Beneficiary which shall be actuarially equivalent to the Participant's Accrued Normal Retirement Benefit determined as of the date of death.

(2) Exceptions: If a terminated vested death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit **(must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415): ____**.

Participants to whom alternative death benefit applies **(must specify - specific positions are permissible; specific individuals may not be named): ________________________________**.

Eligibility conditions for alternative death benefit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ___________.

19. EMPLOYEE CONTRIBUTIONS

(1) Employee contributions (check one):

☒ Are not required.

☐ Are required in the amount of _____ % **(insert percentage)** of Earnings for all Participants.

☐ Are required in the amount of _____ % **(insert percentage)** of Earnings for Participants in the following classes **(must specify - specific positions are permissible; specific individuals may not be named)**: _____________________.

[Repeat above subsection as necessary if more than one contribution rate applies.]

(2) Pre-Tax Treatment of Employee Contributions. If Employee Contributions are required in Subsection (1) above, an Adopting Employer may elect to "pick up" Employee

Contributions to the Plan in accordance with IRC Section 414(h). In such case, Employee Contributions shall be made on a pre-tax rather than a post-tax basis, provided the requirements of IRC Section 414(h) are met. If the Employer elects to pick up Employee Contributions, it is the Employer's responsibility to ensure that Employee Contributions are paid and reported in accordance with IRC Section 414(h). The Adopting Employer must not report picked up contributions as wages subject to federal income tax withholding.

The Employer hereby elects **(check one)**:

☐ To pick up Employee Contributions. By electing to pick up Employee Contributions, the Adopting Employer specifies that the contributions, although designated as Employee Contributions, are being paid by the Employer in lieu of Employee Contributions. The Adopting Employer confirms that the executor of this Adoption Agreement is duly authorized to take this action as required to pick up contributions. This pick-up of contributions applies prospectively, and it is evidenced by this contemporaneous written document. On and after the date of the pick-up of contributions, a Participant does not have a cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to the designated Employee Contributions, which includes not having the option of receiving the amounts directly instead of having them paid to the Plan.

☐ Not to pick up Employee Contributions.

(3) Interest on Employee Contributions. The Adopting Employer may elect to pay interest on any refund of Employee Contributions.

☐ Interest shall not be paid.

☐ Interest shall be paid on a refund of Employee Contributions at a rate established by GMEBS from time to time.

☐ Other rate of interest **(must specify rate in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

20. MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT

If an Adopting Employer desires to amend any of its elections contained in this Adoption Agreement (or any Addendum), the Governing Authority by official action must adopt an amendment of the Adoption Agreement (or any Addendum) or a new Adoption Agreement (or Addendum) must be adopted and forwarded to the Board for approval. The amendment of the new Adoption Agreement (or Addendum) is not effective until approved by the Board and other procedures required by the Plan have been implemented.

The Administrator will timely inform the Adopting Employer of any amendments made by the Board to the Plan.

21. TERMINATION OF THE ADOPTION AGREEMENT

This Adoption Agreement (and any Addendum) may be terminated only in accordance with the Plan. The Administrator will inform the Adopting Employer in the event the Board should decide to discontinue this volume submitter program.

22. EMPLOYER ADOPTION AND AUTHORIZATION FOR AMENDMENTS

Adoption. The Adopting Employer hereby adopts the terms of the Adoption Agreement and any Addendum, which is attached hereto and made a part of this ordinance. The Adoption Agreement (and, if applicable, the Addendum) sets forth the Employees to be covered by the Plan, the benefits to be provided by the Adopting Employer under the Plan, and any conditions imposed by the Adopting Employer with respect to, but not inconsistent with, the Plan. The Adopting Employer reserves the right to amend its elections under the Adoption Agreement and any Addendum, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Board of Trustees of GMEBS. The Adopting Employer acknowledges that it may not be able to rely on the volume submitter advisory letter if it makes certain elections under the Adoption Agreement or the Addendum.

The Adopting Employer hereby agrees to abide by the Master Plan, Trust Agreement, and rules and regulations adopted by the Board of Trustees of GMEBS, as each may be amended from time to time, in all matters pertaining to the operation and administration of the Plan. It is intended that the Act creating the Board of Trustees of GMEBS, this Plan, and the rules and regulations of the Board are to be construed in harmony with each other. In the event of a conflict between the provisions of any of the foregoing, they shall govern in the following order:

(1) The Act creating the Board of Trustees of The Georgia Municipal Employees' Benefit System, O.C.G.A. Section 47-5-1 *et seq*. (a copy of which is included in the Appendix to the Master Defined Benefit Plan Document) and any other applicable provisions of O.C.G.A. Title 47;

(2) The Master Defined Benefit Plan Document and Trust Agreement;

(3) This Ordinance and Adoption Agreement (and any Addendum); and

(4) The rules and regulations of the Board.

In the event that any section, subsection, sentence, clause or phrase of this Plan shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses or phrases of this Plan, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The Governing Authority hereby declares that it would have passed the remaining parts of this Plan or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

This Adoption Agreement (and any Addendum) may only be used in conjunction with Georgia Municipal Employees Benefit System Master Defined Benefit Retirement Plan Document approved by the Internal Revenue Service under advisory letter J501718a dated March 30, 2018. The Adopting Employer understands that failure to properly complete this Adoption Agreement (or any Addendum), or to operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement (and any Addendum), Master Plan Document and Trust, may result in disqualification of the Adopting Employer's Plan under the Internal Revenue Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is Georgia Municipal Employees Benefit System, with its primary business offices located at: 201 Pryor Street, SW, Atlanta, Georgia, 30303. The business telephone number is: (404) 688-0472. The primary person to contact is: GMEBS Legal Counsel.

Authorization for Amendments. Effective on and after February 17, 2005, the Adopting Employer hereby authorizes the volume submitter practitioner who sponsors the Plan on behalf of GMEBS to prepare amendments to the Plan, for approval by the Board, on its behalf as provided under Revenue Procedure 2005-16, as superseded by Revenue Procedure 2015-36, Revenue Procedure 2011-49, and Announcement 2005-37. Effective January 1, 2013, Georgia Municipal Association, Inc., serves as the volume submitter practitioner for the Plan. Employer notice and signature requirements were met for the Adopting Employer before the effective date of February 17, 2005. The Adopting Employer understands that the implementing amendment reads as follows:

> On and after February 17, 2005, the Board delegates to the Practitioner the authority to advise and prepare amendments to the Plan, for approval by the Board, on behalf of all Adopting Employers, including those Adopting Employers who have adopted the Plan prior to the January 1, 2013, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Adopting Employers. Employer notice and signature requirements have been met for all Adopting Employers before the effective date of February 17, 2005. In any event, any amendment prepared by the Practitioner and approved by the Board will be provided by the Administrator to Adopting Employers.
>
> Notwithstanding the foregoing paragraph, no amendment to the Plan shall be prepared on behalf of any Adopting Employer as of either:
>
> - the date the Internal Revenue Service requires the Adopting Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Adopting Employer to incorporate a type of Plan not allowable in a volume submitter plan as described in Revenue Procedure 2015-36; or
>
> - as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments.

If the Adopting Employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, the Practitioner's authority to amend the Plan on behalf of the Adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Adopting Employer further understands that, if it does not give its authorization hereunder or, in the alternative, adopt another pre-approved plan, its Plan will become an individually designed plan and will not be able to rely on the volume submitter advisory letter.

Section 2. Except as otherwise specifically required by law or by the terms of the Master Plan or Adoption Agreement (or any Addendum), the rights and obligations under the Plan with respect to persons whose employment with the City was terminated or who vacated his office with the City for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Plan, if any, as it existed and was in effect at the time of such termination.

Section 3. The effective date of this Ordinance shall be September 1, 2023.

Section 4. All Ordinances and parts of ordinances in conflict herewith are expressly repealed.

Approved by the Mayor and Council of the City of Flowery Branch, Georgia this _______ day of ____________________, 20_____.

Attest: CITY OF FLOWERY BRANCH, GEORGIA

________________________ ____________________________________

City Clerk Mayor

(SEAL)

Approved:

____

City Attorney

The terms of the foregoing Adoption Agreement are approved by the Board of Trustees of Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this ______ day of __________________________, 20____.

Board of Trustees
Georgia Municipal Employees
Benefit System

(SEAL)

____

Secretary

GEORGIA MUNICIPAL ASSOCIATION

RISK MANAGEMENT AND
EMPLOYEE BENEFIT SERVICES
BOARD OF TRUSTEES

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City Attorney, Centerville

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City Manager, Griffin

W. D. Palmer, III
Councilmember, Camilla

James F. Palmer
Mayor, Calhoun

John Reid
Mayor, Eatonton

JoAnne Taylor
Mayor, Dahlonega

Albert Thurman
Mayor, Powder Springs

Kenneth L. Usry
Mayor, Thomson

Clementine Washington
Mayor Pro Tem, Midway

Vince Williams
Mayor, Union City

EXECUTIVE STAFF

Randy Logan
Deputy Executive Director

July 25, 2023

TRANSMITTED VIA E-MAIL
(shelia.cooper@flowerybranchga.org)

Ms. Shelia Cooper
City Clerk
City of Flowery Branch
PO Box 757
Flowery Branch, Georgia 30542

RE: City of Flowery Branch GMEBS Defined Benefit Retirement Plan; Amendment to Increase Benefit Multiplier and Establish Maximum Total Credited Service

Dear Ms. Cooper:

Per the city's request, enclosed please find a draft Adoption Agreement for the city of Flowery Branch's Georgia Municipal Employees Benefit System ("GMEBS") Defined Benefit Retirement Plan ("Plan"). The amendment to the Plan increases the benefit multiplier from 2.0% to 2.5% and limits maximum total credited service to 30 years for eligible regular employees who terminate on or after September 1, 2023. However, there is an alternative wherein the number of years of credited service for calculating a benefit will not be limited for eligible regular employees who are using the 2.0% alternative benefit multiplier, terminate on or after September 1, 2023, are not thereafter reemployed, and have more than 37.5 years of service with the city, as this benefit would likely be greater than a benefit calculated using a 2.5% benefit multiplier and a maximum of 30 years of service (see pp. 20 - 22).

The Adoption Agreement provides that the amended Plan document will become effective September 1, 2023. **Please note that per O.C.G.A. § 47-5-40, the Adoption Agreement has been drafted in the form of an ordinance** and must be adopted for the amendment to be effective.

If the draft Adoption Agreement is acceptable, please have the designated representatives sign and date where indicated (p. 37). Next, please scan and email the Adoption Agreement to Gina Gresham at rgresham@gacities.com. We will then countersign the document and return an electronic copy to you. Please note that GMEBS will not execute plan documents that have been edited by the city. If the document requires revisions, please let us know before adopting them.

If you have any questions about the information provided in this letter or require further information, please feel free to contact me at (678) 686-6236 or kjeselnik@gacities.com.

Sincerely,

Kevin Jeselnik

Kevin H. Jeselnik
Assistant General Counsel

Encl.

C: Ms. Karen Thomas, City Attorney, City of Flowery Branch (w/ encl.)
Ms. Marinetty Bienvenu, Director, Employee Benefit Services (w/o encl.)
Ms. Michelle Warner, Director, Retirement Field Services and DC Program (w/o encl.)
Ms. Gwin Hall, Senior Associate General Counsel (w/o encl.)

2727 Paces Ferry Road SE, Building One, Suite 1400
Atlanta, GA 30339-4053
T 678.306.3100
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segalco.com

May 18, 2023

Ms. Michelle Warner
Director of Retirement Field Services and Defined Contribution Programs
Georgia Municipal Association
201 Pryor Street, SW
Atlanta, Georgia 30303

Re: Benefit Studies for the City of Flowery Branch

Dear Michelle:

As requested, we have developed the impact on plan funding of the following proposed changes for the City of Flowery Branch Retirement Plan.

1. Change benefit multiplier from 2.00% to 2.50% for all Employees for all service

2. Change benefit multiplier from 2.00% to 3.00% for all Employees for all service

The data, financial information, and plan provisions for the January 1, 2023 valuation were used to develop these results. Since the results are dependent on a given set of assumptions and data as of a specific date, there is a risk that emerging results may differ significantly, as actual experience differs from the assumptions.

When determining the Recommended Contribution, the total level dollar amortization is adjusted, if necessary, to be within a corridor of the 10-year and the 30-year amortization of the unfunded/(surplus) actuarial accrued liability. In addition, since the funded ratio on an actuarial basis prior to the plan change is 70.40%, the plan change is amortized over 15 years per the GMEBS funding policy. The amortization period may change depending on the funded ratio when the plan change is first reflected. If the actuarial funding ratio drops below 70%, the amortization period would be 10 years instead of 15. Alternatively, if the actuarial funding ratio goes over 80%, the amortization period would be 20 years.

Please note, for the fiscal year July 1, 2022 to June 30, 2023, GASB standards require that the plan’s Net Pension Liability (NPL) be reported on the sponsoring employer’s balance sheet. The standards require using the Entry Age Funding method and assets at market (rather than the projected Unit Credit method and smoothed assets which are used for determining contribution requirements). For the fiscal year ended June 30, 2023, we have calculated the NPL as $1,044,024. Inclusion of the proposed benefit improvement (1) would increase this by an estimated $300,000. Inclusion of the proposed benefit improvement (2) would increase this by an estimated $601,000.

We are members of the American Acadamy of Actuaries and we meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.

If you have any questions or need additional information, please let us know.

Sincerely,

Jeanette R. Cooper

Jeanette R. Cooper, FSA, FCA, MAAA, EA
Vice President and Consulting Actuary

Malichi Waterman

Malichi S. Waterman, FCA, MAAA, EA
Vice President and Consulting Actuary

City of Flowery Branch
Benefit Studies
Summary of Results

	Current Plan	Flat 2.50% Benefit Multiplier	Flat 3.00% Benefit Multiplier
Current Recommended Contribution			
Recommended Contribution as of January 1, 2023	$201,003	$201,003	$201,003
Covered Payroll	$2,141,262	$2,141,262	$2,141,262
% of Covered Payroll	9.28%	9.28%	9.28%
Impact of Benefit Improvement			
Cost of Benefit Improvement	--	$58,268	$116,537
% of Covered Payroll	--	2.69%	5.39%
Total Plan Cost of Benefit Improvement			
$ Amount (Recommended Contribution + Cost of Benefit Improvement)	--	$259,271	$317,540
% of Covered Payroll	--	11.97%	14.67%
Funding Elements			
Mid-year Normal Cost with Expenses	$134,835	$166,587	$198,340
Actuarial Value of Assets	$1,437,150	$1,437,150	$1,437,150
Actuarial Accrued Liability	$2,041,418	$2,267,080	$2,492,742
Unfunded Actuarial Accrued Liability	$604,268	$829,930	$1,055,592
Funded Ratio on Actuarial Value of Assets	70.40%	63.39%	57.65%
Market Value of Assets	$1,296,675	$1,296,675	$1,296,675
Funded Ratio on Market Value of Assets	63.52%	57.20%	52.02%

Fiscal year begins July 1, 2023.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.

COUNCIL MEETING DATE: August 17, 2023

HISTORY:
The City of Flowery Branch and El Sabor Costeno Taqueria, LLC entered into a lease agreement dated May 9, 2022, a First Amendment dated October 6, 2022 and a Second Amendment dated February 16, 2023.

FACTS AND ISSUES:
Tenant has been going through the plan process for the leased property. However, due to several circumstances, Tenant is unable to complete the build-out of the leased space and has requested that the lease be terminated. Landlord and Tenant have determined it is in the best interest of the parties to terminate the lease agreement.

OPTIONS:
(1) Approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC. 2) Do not approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC.

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

AMOUNT AND SOURCE OF FUNDS:
N/A

RECOMMENDATION:
Terminate lease agreement.

SAMPLE MOTION:
Motion to approve the Consent Termination of Lease Agreement with El Sabor Costeno Taqueria, LLC of the FB Main Street, A Master Condominium Shopping Center lease agreement.

COLLABORATING DEPARTMENT:
Administration

DEPARTMENT: Finance

Prepared by: Nancy Rodriguez

ATTACHMENTS

- ES - Consent Termination of Lease Agreement.pdf
- Consent Lease Termination Agreement.pdf
- El Sabor Costeno, LLC Lease Agreement.pdf
- 10.6.2022 First Amendment El Sabor Costeno Taqueria, LLC.pdf
- 2.16.2023 Second Amendment El Sabor Costeno Taqueria, LLC.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consent Termination of FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.

DATE: August 9, 2023

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: August 17, 2023

PURPOSE: Terminate lease agreement.

HISTORY: The City of Flowery Branch and El Sabor Costeno Taqueria, LLC entered into a lease agreement dated May 9, 2022, a First Amendment dated October 6, 2022 and a Second Amendment dated February 16, 2023.

FACTS AND ISSUES: Tenant has been going through the plan process for the leased property. However, due to several circumstances, Tenant is unable to complete the build-out of the leased space and has requested that the lease be terminated. Landlord and Tenant have determined it is in the best interest of the parties to terminate the lease agreement.

OPTIONS: (1) Approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC. 2) Do not approve the consent termination of lease agreement with El Sabor Costeno Taqueria, LLC.

RECOMMENDED SAMPLE MOTION: Motion to approve the Consent Termination of Lease Agreement with El Sabor Costeno Taqueria, LLC of the FB Main Street, A Master Condominium Shopping Center lease agreement.

DEPARTMENT: Legal

Prepared by: Karen G. Thomas

ATTACHMENTS: Consent Termination of Lease Agreement

STATE OF GEORGIA

COUNTY OF HALL

<u>CONSENT TERMINATION OF LEASE AGREEMENT</u>

WHEREAS, the City of Flowery Branch, Georgia (hereinafter referred to as “Landlord”) and El Sabor Costeno Taqueria, LLC (hereinafter referred to as “Tenant”), entered into the FB Main Street, a Master Condominium Shopping Center Lease Agreement, dated May 9, 2022, (“Lease Agreement”), wherein Landlord leased to Tenant 1259 square feet of space, Suite 101, 5519 Main Street, Flowery Branch, Georgia (the “Demised Premises”).

WHEREAS, Landlord and Tenant entered into a First Amendment to Lease Agreement dated October 6, 2022; and

WHEREAS, Landlord and Tenant entered into a Second Amendment to Lease Agreement dated February 16, 2023; and

WHEREAS, due to several circumstances, Landlord and Tenant have determined that it is in the best interests of the parties to terminate the existing Lease Agreement;

NOW THEREFORE, Landlord and Tenant hereby agree to terminate that certain Lease Agreement dated May 9, 2022, as amended October 6, 2022 and February 16, 2023 as referenced above and agree that each party shall have no further responsibilities or obligations pursuant to said Lease Agreement.

Signatures Next Page

SO AGREED, this ____ day of August, 2023.

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________________
Edward R. Asbridge, Mayor

ATTEST:

____
Nancy Galvan Rodriguez, Assistant City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
this_____ day of August, 2023.

____
NOTARY PUBLIC
My commission expires: __________

FB MAIN STREET

A MASTER CONDOMINIUM

SHOPPING CENTER

LEASE AGREEMENT

5519 Main Street

Suite 101

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: El Sabor Costeno Taqueria, LLC

ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	May 9, 2022
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	El Sabor Costeno Taqueria, LLC
E.	TENANT'S TRADE NAME:	El Sabor Costeno Taqueria
F.	TENANT'S NOTICE ADDRESS:	Armando Altamirano Emiliano 5467 Riverchase Drive Flowery Branch, GA 30542
G.	PHONE NUMBER AND EMAIL:	404-392-4149 Mando.alta@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:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	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):	$262.29 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	$2,622.91
	ADVANCE ADDITIONAL RENT:	$262.29
	SECURITY DEPOSIT:	$2,622.91 plus $262.29
	TOTAL AMOUNT DUE WITH LEASE:	$2,622.91 + $262.29 + $2,885.20
O.	GUARANTORS:	Armando Altamirano Emiliano
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.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1259 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 five (5) 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.

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 101 consisting of approximately 1,259 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 3.5, 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 appraisement 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 Janet Thomas of Century 21 Connect Realty, Tenant's Broker 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 three hundred and sixty (360) 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: 5/9/2022

LANDLORD: City of Flowery Branch, GA

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

ATTEST:

By: Shelia Cooper, City Clerk

Date: 5/5/2022

TENANT: El Sabor Costeno Taqueria, LLC

By: Armando Altamirano Emiliano

Sworn to and subscribed before me

this 5 day of May, 2022.

NOTARY PUBLIC

My Commission Expires: 11/24/2023

[NOTARY SEAL]

STATE OF GEORGIA NOTARY PUBLIC
TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

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.

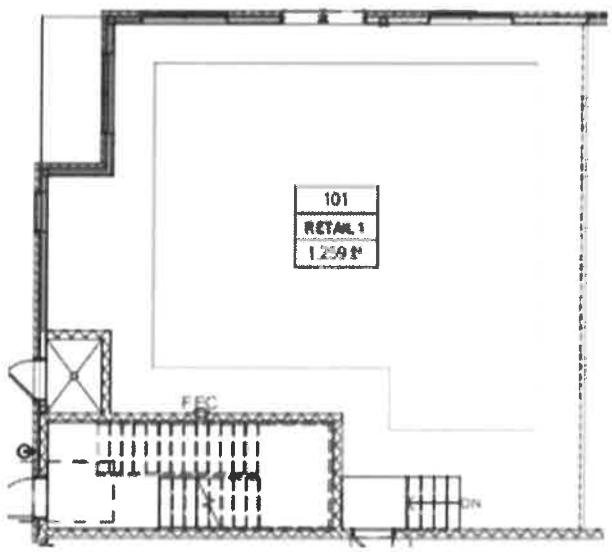

EXHIBIT B

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 Two Thousand, Nine Hundred Fifty and No/100 Dollars ($62,950.00) 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 monthly installments at the following time: (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 property 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
TENTANT:	EL SABOR COSTENO TAQUERIA, 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 EL SABOR COSTENO TAQUERIA, LLC, (hereinafter called "Tenant"), the undersigned, Armando Altamirano Emiliano an individual, (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):

Armando Altamirano Emiliano

By: ______________________________
an Individual
Address: 5467 Riverchase Dr. Flowery Branch, GA. 30542
Social Security Number: 70596 2008
Sworn to and subscribed before me
this 5 day of May, 2022.

____
NOTARY PUBLIC

My Commission Expires: 11/24/2023

[SEAL]

STATE OF GEORGIA NOTARY PUBLIC
TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

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*	$2,622.91	$31,474.92	Full Amount Due Under the
Months 13 – *24*	$2,701.60	$32,419.17	Full Amount Due Under the
Months 25 – 36	$2,782.65	$33,391.74	Full Amount Due Under the
Months 37 – 48	$2,866.12	$34,393.49	Full Amount Due Under the
Months 49 – 60	$2,952.11	$35,425.30	Full Amount Due Under the

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 61 – 72	$3,040.67	$36,488.06	Full Amount Due Under the
Months 73 - 84	$3,131.89	$37,582.70	Full Amount Due Under the
Months 85 - 96	$3,225.85	$38,710.18	Full Amount Due Under the
Months 97 – 108	$3,322.62	$39,871.18	Full Amount Due Under the

Months 109 -	\$3,422.30	\$41,067.63	Full Amount Due Under the

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 6th day of October, 2022, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and EL SABOR COSTENO TAQUERIA, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated May 9, 2022 (the "Original Lease"), for that certain property commonly known as 5519 Main Street, Suite 101, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Eight (8) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 6th day of October, 2022.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: Edward R Asbridge
Edward R. Asbridge, Mayor

ATTEST:

Shelia R Cooper
Shelia Cooper, City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
This 12 day of October, 2022.

Nancy Galvan Rodriguez
NOTARY PUBLIC
My commission expires: April 1, 2025

Nancy Galvan Rodriguez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 1, 2025

SECOND AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS SECOND AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 16th day of February, 2023, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and EL SABOR COSTENO TAQUERIA, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated May 9, 2022 (the "Original Lease"), for that certain property commonly known as 5519 Main Street, Suite 101, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Eleven (11) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 16th day of February, 2023.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: Edward R. Asbridge
Edward R. Asbridge, Mayor

ATTEST:

Shelia R Cooper
Shelia Cooper, City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
This 21 day of February, 2023.

Nancy Galvan Rodriguez
NOTARY PUBLIC

My commission expires: April 1, 2025

Nancy Galvan Rodriguez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 1, 2025