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August 5, 2020

Via Electronic Mail and Overnight Delivery (Mayor Deutsch Only)

Mayor Lynn Deutsch (lynn.deutsch@dunwoodyga.gov)
Council Member Stacey Harris (stacey.harris@dunwoodyga.gov)
Council Member Joe Seconder (joe.seconder@dunwoodyga.gov)
Council Member Pam Tallmadge (pam.tallmadge@dunwoodyga.gov)
Council Member Jim Riticher (jim.riticher@dunwoodyga.gov)
Council Member Tom Lambert (tom.lambert@dunwoodyga.gov)
Council Member John Heneghan (john.heneghan@dunwoodyga.gov)
City of Dunwoody, City Hall
4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338

Re: **Objection to Proposed Dunwoody Village Master Plan, § 27-107B(a)(7);
Notice of Constitutional Challenge; and Ante Litem Notice**

Dear Mayor and Members of the City Council:

This firm represents Peachtree Shops of Dunwoody, LLC and SODOP II, LLC (Peachtree Shops of Dunwoody, LLC and SODOP II, LLC are hereinafter collectively referred to as "PSD"). PSD formally objects to the current draft of the Dunwoody Village Master Plan, § 27-107B(a)(7), for the reasons stated below.

I. Property Introduction and Development History.

Peachtree Shops of Dunwoody, LLC owns the Shops of Dunwoody, located at 5500 Chamblee Dunwoody Road, comprised of ± 11.44 acres, and situated in the southwest quadrant of the intersection of Chamblee Dunwoody Road and Dunwoody Village Parkway (Tax Parcel ID No. 18 366 01 001). SODOP II, LLC owns the Sunshine Car Wash site located at the terminus of Dunwoody Village Parkway at 1244 Dunwoody Village Parkway and containing ± 1.94 acres (Tax Parcel ID No. 18 366 01 022) (the two tracts, Tax Parcel ID No. 18 366 01 001 and Tax Parcel ID No. 18 366 01 022, are hereinafter collectively referred to as the "Subject Property").

SGR/23191865.1



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In August of 1977, the Subject Property was rezoned by unincorporated Dekalb County from R-150 (Suburban Residential District) to C-1 (Local Commercial District) (CZ-77105).¹ At the time, the developers (who have no relation to PSD) entered into an "Agreement and Declaration of Covenants and Restrictions" with the Dunwoody Homeowners' Association ("DHA") and certain adjoining property owners which was filed and recorded in the Office of the Clerk of Superior Court, Dekalb County, Georgia in Deed Book 3705, Pages 140 through 150 (the "1977 Agreement"). A true and correct copy of the 1977 Agreement is attached hereto as Exhibit "A". Pursuant to the 1977 Agreement, the developers agreed to provide a "buffer[]" on "the west" side of the Subject Property ranging "from 150' to 200'" and to maintain that buffer "for 20 years" or until August of 1997 (the "Buffer Covenant") (*See* 1977 Agreement, ¶ 2(a); *see also* ¶ 4, which states that the Buffer Covenant "shall run with the Property for a period of twenty (20) years").

The 1977 Agreement also provided a mechanism to extend the Buffer Covenant for an additional 20 years or until August of 2017:

At the end of such twenty (20) year period, upon the request of the DHA, the Developers and their successors or assigns agree to renew said covenants and restrictions and subject the Property to said covenants and restrictions for an additional twenty (20) year period.

The DHA did not timely request to extend the Buffer Covenant.² Therefore, it expired by its express terms in August of 1997, or roughly 23 years ago. Further, PSD has reviewed the zoning history for the Subject Property and it does not establish that the Buffer Covenant was made a

¹ The referenced rezoning involved a total of \pm 20.418 acres, of which the Subject Property was a part.

² In July of 1991, the DHA entered into "Covenants for The Shops of Dunwoody", filed and recorded in the Office of the Clerk of Superior Court, Dekalb County, Georgia in Deed Book 6993, Pages 8 through 48 (the "1991 Agreement"), a true and correct copy of which is attached hereto as Exhibit "B". The 1991 Agreement was intended to clarify and modify portions of the 1977 Agreement. Importantly, however, the 1991 Agreement expressly stated that it was not intended to modify the Buffer Covenant, which was listed in paragraph 2(a) of the 1977 Agreement: "Those provisions of the [1977 Agreement] which are not in any way changed herein and remain applicable...expressly include Paragraphs...2(a)" (*See* Exhibit "B" at ¶ 1). Further, the 1991 Agreement expired in 2011 (*See* Exhibit "B" at ¶ 4).

condition of the 1977 rezoning or any later, related rezoning of the Subject Property.³ Hence, it appears to exist only because of the 1977 Agreement.

II. Constitutional Defects in the Current Draft of § 27-107B(a)(7) of the Dunwoody Village Master Plan.

In the latest draft of the Dunwoody Village Master Plan, the Subject Property has been placed in the DV-1 Village Commercial District along with certain other parcels, including properties on the east side of Chamblee Dunwoody Road. Section 27-107B(a)(7) addresses buffers and transition yards and states as follows:

When a DV-1 Village Commercial District abuts any single-family residential zoning district to the west, an undisturbed buffer with a depth of 130' is required abutting the single-family district Adjacent to the undisturbed buffer, a TY4 transition yard is required with a minimum width of 20' The total combined depth of the undisturbed buffer shall be 150'.

Hence, the proposed ordinance requires a 150' undisturbed buffer (the "150' Buffer") on the west side of the Subject Property. This requirement was not in earlier drafts of the Dunwoody Village Master Plan (*See, e.g.*, January 21, 2020 draft which stated that "[w]est of Chamblee Dunwoody Road and north of Mount Vernon Road, a TY4 transition yard with a minimum width of 75' is required between any DV-1 or DV-3 district and any parcel in a single-dwelling residential zoning district"). It is PSD's understanding that it was added by the Planning Commission at the request of a member of the DHA. Nonetheless, if approved, the 150' Buffer will consume approximately 3.09 acres of the ± 13.38 acre Subject Property or 23%.

The City has not imposed a similar burden on similarly situated properties. For example, the City is not requiring the 150' Buffer on other DV-1 designated property, including the parcels on the east side of Chamblee Dunwoody Road, despite the fact that the DV-1 property on the east side of Chamblee Dunwoody is directly adjacent to single-family residential development, just like the Subject Property. Similarly, the 150' Buffer the City has placed on the Subject Property is five (5) times wider than that the largest transitional yard the City requires on other properties (*See* Section 27-230(v)(1) which indicates that the largest transitional yard compelled by City Code is TY4, which requires only 30').

³ In contrast, Dekalb County did expressly adopt a buffer condition for 2.27 acres north of the Subject Property (Tax Parcel ID No. 18-366-1-10) on January 22, 1985 (CZ-85016). A true and correct copy of the January 22, 1985 minutes and conditions for CZ-85016 are attached hereto as Exhibit "C".

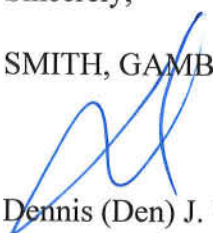
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PSD has not sought to change to the Dunwoody Village Master Plan or to rezone the Subject Property. The City initiated this effort. In light of the facts above, the 150' Buffer requirement specified by § 27-107B(a)(7) appears to be an attempt to reinstate a long-expired private agreement for the benefit a small number of private property owners, constitutes a taking without just and adequate compensation and is unconstitutional. PSD hopes that the City will revise this provision, hereby formally notifies the City of its legal and constitutional objections and provides an *ante litem* notice pursuant to O.C.G.A § 36-33-5 (2020), alerting the City of its intent to seek money damages, if necessary, for the potential injuries specified herein, all as stated in Exhibit "D".

Sincerely,

SMITH, GAMBRELL & RUSSELL, LLP



Dennis (Den) J. Webb, Jr.

DJW/db

cc: Richard McCloud (richard.mccloud@dunwoodyga.gov)
Cecil McLendon (CecilMcLendon@hotmail.com)

EXHIBIT A

8/23/77

STATE OF GEORGIA)
COUNTY OF DEKALB)

AGREEMENT AND DECLARATION OF
COVENANTS AND RESTRICTIONS

*Not condition
of zoning.*

THIS AGREEMENT made this ____ day of August, 1977 by and between S. LOWELL WAMMOCK, RUSSELL G. HENDERSON and CICERO GARNER, JR., DOUGLAS W. MORGAN and CURTIS R. PAGE (hereinafter called the "Developers"), the DUNWOODY HOMEOWNERS ASSOCIATION, INC. (hereinafter called the "DHA"), and ROBERT A. LEAVY and FRANK R. COLIANO (hereinafter referred to as "Adjoining Property Owners") with SOLOMAN J. BANKS, MYRON D. WOLF and PEACHTREE FEDERAL SAVINGS AND LOAN ASSOCIATION joining in the execution of this Agreement for the purposes hereinafter set forth.

W I T N E S S E T H:

WHEREAS, the Developers are the owners of certain tracts of real property located in Land Lot 366, 18th District, Dekalb County, Georgia as more particularly described in Exhibit "A", attached hereto and by reference made a part hereof (hereinafter called the "Property"); and

WHEREAS, the parties hereto desire that the Property be subject to certain covenants and restrictions hereinafter set forth in connection with the development of the Property as a shopping center and other commercial uses permitted by zoning (the "Shopping Center").

NOW, THEREFORE, in consideration of the premises of this Agreement and the mutual undertakings by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

✓ 1. The Property will be developed pursuant to the following architectural guidelines:

✓ (a) Design--The Shopping Center, identified as Dunwoody West, will be developed in an architectural design comparable to the style and theme of the main portion of Dunwoody Village Shopping Center.

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✓ (b) Facade--The entire structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the Developers' choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.

✓ (c) Windows--No windows will face the housing to the west of the Shopping Center.

✓ (d) Building Height--The building height of the Shopping Center shall not exceed twenty-five (25) feet from grade level, at the roof peak, except for towers where deemed necessary by the Developers to maintain the proper design proportion.

✓ (e) Roofing--The roofing shall meet the same design and building material requirements set forth in paragraphs 1 (a) and (b) above.

2. In order to protect the Adjoining Property Owners, the Developers agree as hereinafter set forth.

(a) Buffers--Except as provided in paragraph 2 (b), there shall be appropriate undisturbed buffers, as defined in the shopping center plan, Dunwoody West, dated October 4, 1976, and revised February 9, 1977. Said buffers are generally defined as from 150 feet to 200 feet on the west. Solely at the option of DHA and the adjacent homeowners, the buffer property may be: (1) deeded to adjacent homeowners, with covenants providing for the undisturbed character for 20 years; or (2) deeded to DHA with the same covenants; or ^{NR}(3) deeded to Dekalb County, with the same covenants; (4) remain as a part of the shopping center property under the same covenants or (5) leased to DHA with the same covenants. Such election shall be made within ninety (90) days after the rezoning by the Dekalb County Commissioners. Except as provided in paragraph 2 (b), such buffer property shall remain undisturbed and will not be encroached upon any further than shown on the above-described shopping center plans. The Developers further agree that additional plantings may be desirable or necessary in the buffer property to reduce visual impact on adjacent homeowners.

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In the event that this is necessary, DHA will grant written permission to plant additional evergreen trees and shrubs, provided that no damage is done to existing foliage as described in paragraph 3 (1).

✓ (b) Berms--In those areas where adjacent homeowners will be exposed to sight of the buildings of the Shopping Center, it is agreed that berms and plantings will be provided to create a visual screen to such buildings. In order to create this visual screen between such buildings and the adjacent property owners, it is additionally agreed that all such berms and plantings described herein shall not utilize more than twenty-five (25) feet of that portion of the buffer property described in paragraph 2 (a) above which is adjacent to the Shopping Center, provided that no damage is done to existing foliage as described in paragraph 3 (1). Such berms and plantings shall be of appropriate height and density to accomplish the objectives stated in this paragraph. In the absence of a grading plan, no specifics can be practically established; however, they shall be no less than 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, with a slope ratio of not less than 1.5 to 1 and planted with multiple rows of evergreen trees 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, at the closest possible intervals near the top of each berm.

✓ (c) Fence--A six-foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening and protection to adjacent homeowners. Such fence and plantings shall be permanently maintained by the Shopping Center ownership in a good state of repair and shall not encroach upon the established buffer property, except as it relates to berms.

(d) Lighting--All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet

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from grade level. All lighting for the purposes of parking will be located to the front of the buildings. Any lighting located in the rear of the buildings shall be no more than ten feet in height.

✓ (e) Garbage and Trash Storage--All garbage, trash and refuse generated by the operation of the Shopping Center shall be stored in central "dumpster" type containers located in an area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within twenty (20) feet of the main structure.

3. The Developers agree that development of the Property will be restricted as set forth below.

✓ (a) Uses--It is agreed that the Property may be developed only for retail commercial and business offices and/or institutional purposes in accordance with the restrictions set forth herein.

✓ (b) Location of Buildings and Improvements--The location of buildings and improvements on the Property, including, but not limited to, streets, pavement areas, parking and parking lots, embankments, retaining walls, trees, fences, entrances from public roads and curb lines shall be as generally shown on the plan referred to in paragraph 2 (a), subject to final architectural and site plan design reflecting the objectives set forth herein. It is recognized that the plan referred to in paragraph 2 (a) is a preliminary plan that is subject to modification as required by final architectural and site plan design set forth above.

✓ (c) Floor Area Limitation--Not more than 92,000 square feet of total floor area shall be constructed on sites defined on the shopping center plan described in paragraph 2 (a), excluding Sites A, B, and C as delineated thereon. With respect to Sites A, B, and C, each site will be limited to a total floor area not to exceed 8,000 square feet per site.

✓ (d) Construction--Site development construction, except for the finishing of concrete, shall occur only between the hours of 7 A.M. and 7 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather, and with the prior written approval of DHA, which approval will not be unreasonably withheld.

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✓ (e) Entrances/Exits--There shall be no curb cuts, entrances, or exits to the Property, either now or in the future, except as defined on the above-described shopping center plan. Specifically, there shall only be one on Chamblee-Dunwoody Road, one on Nandine Lane and one from the adjacent development via Dunwoody Village Parkway.

✓ (f) Signs--The Developers agree to cooperate with DHA in their efforts to establish an overall criteria as to the design, size and location of signs in the Dunwoody area. It is further generally agreed that neon or internally lighted signs are not to be used and that sign height shall be compatible with the architectural and graphic scale and proportion established by the style and design objectives set forth herein.

✓ (g) Restrictions against Offensive Businesses--Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic book stores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the Property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to landowners in the vicinity.

✓ (h) Site and Grade Plan--The final site plan and grading plan shall be subject to the written approval of the DHA to assure conformity with the intent, as well as the substance, of the stipulations contained herein, such approval to not be unreasonably withheld. DHA shall have fifteen (15) days from the receipt of the final site and grading plans in which to approve or disapprove such plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such plans shall be deemed to have been given. In the event DHA disapproves such plans, any resubmission of revised plans shall be approved or disapproved by DHA within fifteen (15) days of receipt of such revised plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such revised plans shall be deemed to have been given.

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✓(i) Residential Development--S. Lowell Wammock agrees that development of the tract to the southwest and abutting the shopping center property shall begin at the earliest possible date as currently zoned (R-100) and in substantial conformity to site plan proposed for S. Lowell Wammock, with home construction to begin as soon as practical, but in any case, to precede development of the Property.

✓(j) Common Site Development--It is explicitly agreed that all Property included in the rezoning application, including Site A, Site B, and Site C, shall be developed in a unified plan which will be in conformity to the stipulations contained herein.

✓(k) Drainage--It is agreed that all permanent retention ponds or facilities required for water run-off shall be constructed as underground facilities, located in the parking lot areas. It is further agreed that proper provision shall be made for handling water run-off during site construction, including silt and debris barriers, such that no nearby property owners or buffer property shall be damaged in any way by such run-off.

✓(l) Foliage Retention--It is agreed that the Developers will make their best efforts to retain all substantial trees on the property, which are not located in the area defined for the buildings of the Shopping Center. Such retained trees shall be protected at the minimum by building wells around them to protect roots before grading begins and exercising caution during grading to prevent root and trunk damage.

✓(m) Historic Structures--As to the possible historic structures located on the Property, specifically that thought to be built by Major Dunwoody, the Developers agree to make a reasonable effort to save it in its entirety, if such can be done without prohibitive cost and within the architectural and design objectives set forth herein, and to use said structure as a curio shop or some similarly appropriate activity.

✓(n) Community Library--The Developers agree to make their best efforts to provide an appropriate area and amount of floor space for a community library for reasonable compensation within the budgetary constraints of Dekalb County and the Dunwoody community.

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✓(o) Delivery Vehicles--The Developers understand that commercial truck traffic for the purpose of deliveries to the Shopping Center establishments is a matter of concern and agrees that said deliveries shall be made during normal business hours and in such a manner as to be inoffensive to nearby homeowners and that delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.

✓(p) Hours of Operation and Traffic Areas--The Developers further understand the desire to limit operation of the establishments in the Shopping Center to reasonable hours and agree that no business shall operate or be open in the shopping center past midnight on any day, except for any restaurant or theater operation. The Developers further agree that those establishments generally construed to be "high traffic" shall be located, in so much as possible, in the center of the proposed building where nearby residents will be more shielded from the activity generated by those establishments.

✓(q) The Developers understand that heavy truck traffic during construction hours potentially jeopardizes the safety and lives of the community residents and children. It is therefore agreed that all such traffic should operate within normal traffic laws and with extreme care and concern for the safety and lives of the community.

✓(r) The Developers agree to allow appropriate community organizations access to the property during reasonable hours, but not the buffer area, for the purpose of removing plants, shrubs, etc. prior to grading, provided that such groups indemnify and hold harmless the Developers against any and all loss or damage arising out of such activities. The Developers reserve the right to retain certain shrubs, plants, etc. which shall be properly designated. Groups allowed access for these purposes must be approved by the DHA and accompanied by a Board Member, designated by the Board of DHA.

4. The Developers hereby declare that the Property described in Exhibit "A" is and shall be developed, owned, occupied, operated, transferred, sold and conveyed subject to the covenants and restrictions hereinabove set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the property owned by the Adjoining Property Owners. Such covenants and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof, the Adjoining Property Owners and the DHA. The covenants and restrictions contained herein shall run with the Property for a period of twenty (20) years. At the end of such twenty (20) year period, upon the request of the DHA, the Developers and their successors or assigns agree to renew said covenants and restrictions and subject the Property to said covenants and restrictions for an additional twenty (20) year period. Notwithstanding anything contained herein to the contrary, in the event that construction of the entrance way and the perimeter road on the Property pursuant to paragraph 3(b) herein are not substantially completed within two (2) years from the date hereof, then and in that event, the restrictions contained in paragraphs 3(e) and 3(j) herein providing respectively for entrances and exits to the Property and for the development of the Property in a unified plan shall cease to be covenants and restrictions running with the Property or any portion thereof. Except as herein provided, all other covenants and restrictions contained herein shall remain in full force and effect.

5. Solomon J. Banks and Myron D. Wolf join in the execution hereof as the holders of security interests in that portion of the Property owned by S. Lowell Wammock to evidence and confirm their consent to the covenants and restrictions contained herein, and do hereby subordinate the lien of their security interests to the covenants and restrictions contained herein.

6. Peachtree Federal Savings and Loan Association joins in the execution hereof as the holder of a security interest in that portion of the Property owned by Cicero Garner, Douglas W. Morgan and Curtis R.

Page to evidence and confirm its consent to the covenants and restrictions contained herein, and does hereby subordinate the lien of its security interest to the covenants and restrictions contained herein.

7. This Agreement constitutes the entire agreement between the parties hereto and may not be amended, modified or revoked without the prior written consent of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Agreement.

8. This Agreement may be executed in any number of counterparts by the parties hereto with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed and shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above set forth.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

"DEVELOPERS"

S. LOWELL WAMMOCK (SEAI

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

RUSSELL G. HENDERSON (SEAI

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

CICERO GARNER, JR. (SEAI

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Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

DOUGLAS W. MORGAN (SEAL)

CURTIS R. PAGE (SEAL)

DUNWOODY HOMEOWNERS ASSOCIATION, INC.

By: _____
HERB SPRAGUE, President

Attest: _____
Secretary

(CORPORATE SEAL)

ROBERT A. LEAVY (SEAL)

FRANK R. COLIANO (SEAL)

PEACHTREE FEDERAL SAVINGS AND LOAN
ASSOCIATION

By: _____

Attest: _____

(CORPORATE SEAL)

#12

Signed, sealed and delivered
in the presence of:

Unofficial Witness

MYRON D. WOLF (SEAL)

Notary Public

Signed, sealed and delivered
in the presence of:

Unofficial Witness

SOLOMAN J. BANKS (SEAL)

Notary Public

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TRACT NO. 1

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the parcel herein described commence at the point where the west line of Land Lot 366 intersects the northwestern right of way line of Mount Vernon Highway, said point also being located a distance of 918.5 feet southwesterly as measured along the northwestern right of way line of Mount Vernon Highway from the intersection of the northwestern right of way line of Mount Vernon Highway and the west right of way line of Nandina Lane; running thence in a northerly direction along the west line of Land Lot 366 a distance of 894.9 feet to the true point of beginning thus established continuing thence in a northerly direction along the west line of Land Lot 366 north 09 degrees 39 minutes west a distance of 766.9 feet to an iron pin located on the south side of a 20-foot alley; running thence north 82 degrees 00 minutes east along the south side of said 20-foot alley a distance of 629.3 feet to an iron pin; running thence south 18 degrees 35 minutes east a distance of 410.2 feet to an iron pin; running thence south 04 degrees 03 minutes east a distance of 300.0 feet to an iron pin; running thence south 89 degrees 41 minutes east a distance of 201.8 feet to an iron pin located on the west right of way line of Nandina Lane; running thence south 04 degrees 38 minutes east and along the west right of way line of Nandina Lane a distance of 83.3 feet to an iron pin; running thence south 89 degrees 37 minutes west a distance of 861.3 feet to an iron pin and the point of beginning; as per survey for "Lowell Wamrock" prepared by Southland Engineers & Surveyors, Inc. dated August 26, 1971, last revised October 19, 1971, and containing 12.192 acres according to said survey.

TRACT NO. 2

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at a point marked by an iron pin found located a distance of 969.26 feet southerly as measured southerly along the west line of Land Lot 366 from the common corner of Land Lots 365, 366, 376, and 377; thence running South 84 degrees 01 minutes East a distance of 398.88 feet to a point marked by an axle; thence running South 84 degrees 15 minutes East a distance of 187.60 feet to a point; thence running South 10 degrees 00 minutes East a distance of 90.00 feet to a point; thence running South 84 degrees 17 minutes East a distance of 75.00 feet to a point; thence running South 10 degrees 40 minutes East a distance of 272.59 feet to a point located on the center line of an abandoned street, formerly known as Christopher Street, said point being located a distance of 100.00 feet westerly as measured westerly along the center line of the aforesaid abandoned street from the intersection formed by the center line of the aforesaid abandoned street with the western margin of the right-of-way of Chamblee-Dunwoody Road; thence running North 81 degrees 18 minutes 41 seconds West along the aforesaid center line of the abandoned street a distance of 724.65 feet to a point located on the west line of Land Lot 366; thence running North 01 degree 24 minutes West along the west line of Land Lot 366 a distance of 315.04 feet to the point of beginning.

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TRACT NO. 3

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at the iron pin found at the intersection of the west side of Chamblee-Dunwoody Road (formerly known as Roswell Street) with the center line of the strip of land formerly known as Christopher Street (an abandoned street); and running thence South 11 degrees 52 minutes 56 seconds East, 148.91 feet along the west side of Chamblee-Dunwoody Road to an iron pin at the north line of property conveyed by Dr. N. Strickland to A. N. Burnham by warranty deed dated December 16, 1919, of record in Deed Book 123, page 183, DeKalb County Records (said adjoining property now or formerly being owned by Russell G. Henderson); thence North 83 degrees 24 minutes 04 seconds West along the north line of said Henderson property and along a stone wall 200 feet to the east line of property now or formerly owned by Austin; thence North 10 degrees 59 minutes 09 seconds West, 155.8 feet along the line of said Austin property to the center line of the former Christopher Street (abandoned); thence South 81 degrees 18 minutes 41 seconds East along the center line of former Christopher Street (abandoned) 200 feet to an iron pin at the west side of Chamblee-Dunwoody Road and the point of beginning.

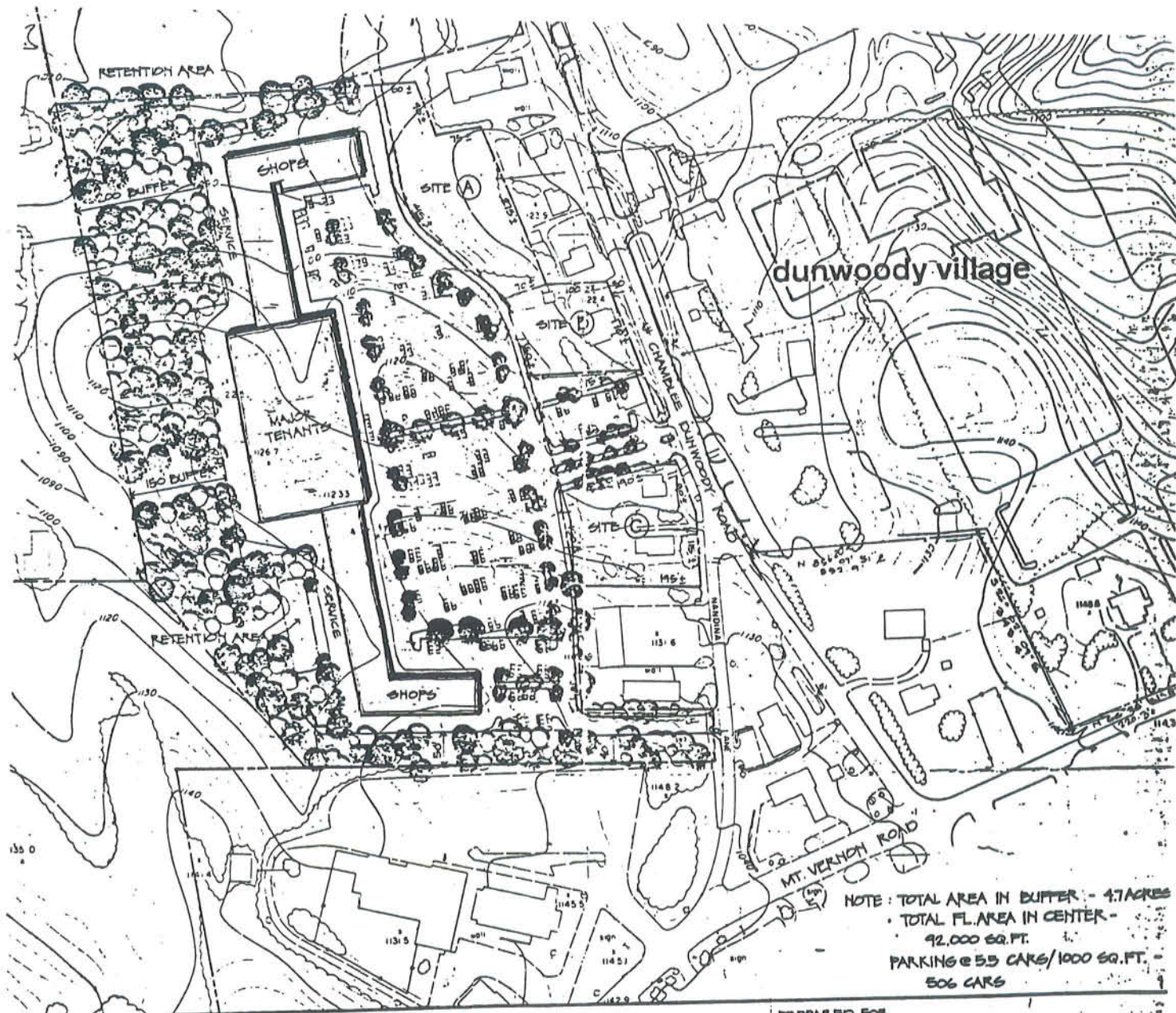
TRACT NO. 4

All that tract or parcel of land lying and being in Land Lot No. 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the western side of Chamblee-Dunwoody Road, formerly known as Roswell Street, at the northeast corner of the S. T. Spruill, then B. T. Pierce property, said beginning point being at the northeast corner of Lot 13 as shown on the map hereinafter referred to, and being located 50 feet north of the intersection of the western side of Chamblee-Dunwoody Road with the west side of Mandina Lane; and running thence northwesterly along the western side of Chamblee-Dunwoody Road 156.4 feet to the southern side of a stone wall at the south line of the N. Strickland property; running thence westerly in a straight line along the southern line of said N. Strickland property 195.19 feet to an iron pin at the northwestern corner of Lot 16 as shown on the map hereinafter referred to; thence southeasterly along the line of property now or formerly owned by Austin, which is along the rear line of Lots 16, 15 and 14, as shown on the map hereinafter referred to a distance of 150 feet to an iron pin at the northwest corner of said Lot 13; running thence easterly along the northern line of said S. T. Spruill, then B. T. Pierce property, which is along the northern line of said Lot 13, a distance of 197.36 feet to an iron pin on the western side of Chamblee-Dunwoody Road at the point of beginning; said property being all of Lots 14, 15 and 16, and a portion of Lot 17 as shown on Map of Dunwoody recorded in Plat Book 9, page 73, DeKalb County Records.

Being the same property conveyed by Warranty Deed from The Citizens and Southern National Bank, as Trustee under Agreement of the James H. Cowart, Inc. Profit Sharing Plan "4937 II", to Russell G. Henderson, dated January 29, 1971, filed for record February 1, 1971, recorded in Deed Book 2609, page 781, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia.

#12



opping center plan

PREPARED FOR
 S. LOWELL WAMMOCK

REZONING PLAN

#12

EXHIBIT B

FILED & RECORDED
DEKALB COUNTY, GA.

JUL 3 3 41 PM '91

CLERK OF SUPERIOR COURT
DEKALB COUNTY, GA.

**COVENANTS
FOR
THE SHOPS OF DUNWOODY**

ORIGINAL

BOOK 6993 PAGE 008

STATE OF GEORGIA

COUNTY OF DEKALB

AGREEMENT AND DECLARATION OF COVENANTS
AND RESTRICTIONS

THIS AGREEMENT, made and entered into this 2nd day of JULY, 1991, by and between RUSSELL G. HENDERSON, CICERO GARNER, JR., DOUGLAS W. MORGAN, and CURTIS R. PAGE; (hereinafter referred to as "Previous Owners"); S. LOWELL WAMMOCK, THE SHOPS OF DUNWOODY, LTD., ~~TRUST COMPANY BANK as the successor to~~ ~~PEACHTREE FEDERAL SAVINGS AND LOAN ASSOCIATION~~, MARY FRANCES BLACK d/b/a SNOOKIES, INC. d/b/a OLD HICKORY HOUSE STORE and CICERO GARNER, JR. and DOUGLAS W. MORGAN d/b/a DUNWOODY PARTNERS (hereinafter referred to as "Present Owner(s)"); ROBERT A. LEAVEY, 5108 Hidden Branches Circle, Atlanta, DeKalb County, Georgia, JAMES LIESENDAHL 5065 Trailridge Way, Dunwoody, DeKalb County, Georgia, (hereinafter "Leavey", "Liesendahl" or collectively referred to as "Adjacent Homeowners"); the DUNWOODY HOMEOWNERS ASSOCIATION, INC. (hereinafter "DHA"), a Georgia non-profit civic association with its present principal place of business located at 4878 Summerford Drive, Dunwoody, Georgia 30338; AMERICAN NATIONAL BANK AND TRUST COMPANY BANK OF CHAT-TANOOGA and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (hereinafter "Mortgages");

BOOK 6993 PAGE 009

WHEREAS, Present Owner(s) have developed a shopping center known as "The Shops of Dunwoody", which contains "outparcels", on approximately 20.418 acres of land located in DeKalb County, Georgia and more particularly described in Exhibit 1 attached hereto and incorporated by reference herein (hereinafter "Shopping Center Property"); and

WHEREAS, the Legal Description for the Shopping Center Property is divided into eight subparts reflecting acquisition of eight different tracts of land comprising the total acreage, which tracts on Exhibit 1 are respectively labeled on Exhibit 1 Tracts A through Tract H; and

3705/14-
WHEREAS, in reference to 17.657 acres of the Shopping Center Property (hereinafter "Covenanted Property") (Tracts A, B, C and D, E and F of Exhibit 1 and independently described on Exhibit 2 attached and incorporated by reference), Present Owner(s) and Previous Owners entered into with Adjacent Homeowners and DHA and/or were bound by an earlier Agreement entitled "AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS"; dated August 9, 1977, (hereinafter "First Covenant"); as filed and recorded in the office of the Clerk of Superior Court, DeKalb County, Georgia in Deed Book 3705, Pages 140 through 150, and incorporated by reference herein, as a Covenant which was to run with the Covenanted Property for a minimum period of twenty years, and

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BOOK 6993 PAGE 010

which First Covenant governed the manner in which the Covenanted Property could be zoned, developed, accessed and used by any Owner(s) thereof and its/his/their successors in interest; and

WHEREAS, Wammock, one of the Present Owner(s) of the Shopping Center Property, currently wishes to depart from certain terms and conditions imposed by the First Covenant on a portion of the Covenanted Property (Exhibit 1, Tract D), and also wishes to develop certain adjacent acreage acquired by him after execution of the First Covenant referenced herein;

WHEREAS, some of Previous and Present Owners wish to clarify the extent of any further obligation of them with respect to the First Covenant; and

WHEREAS, Wammock, as one of Present Owner(s), had pending before the Board of Commissioners of DeKalb County, Georgia, an Application to Alter Conditions of Rezoning approved in Applications CZ77105 and CZ88036, which Application sought a departure from some of the terms and conditions of the First Covenant, and which change in the conditions of rezoning accordingly would be violative of the First Covenant and prohibited; and

WHEREAS, Previous Owners, Present Owner(s), Adjacent Homeowners, and DHA, as the original signatories to or parties bound by the First Covenant, are willing to depart from some of its terms and conditions in exchange for new and valuable con-

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BOOK 6993 PAGE 011

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sideration, consisting of the restructuring and extension in duration of restrictions upon the manner in which all of the Shopping Center Property and certain adjacent property ultimately acquired may be owned, zoned, occupied, used and developed on the terms hereinafter set forth; as well as the payment of certain expenses incidental to the preparation and recording of this Agreement, the sufficiency of which is hereby acknowledged; and

*WHEREAS, DMA and Adjacent Homeowners supported the requested change in condition and the approval of some variances necessary to develop a part of the Covenanted Property in reliance upon representations by Present Owner Wamock that these new covenants would be drafted and executed, as per Exhibit 3;

NOW, THEREFORE, for and in consideration of the mutual benefits flowing between the parties and all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of said parties, THE PARTIES DO AGREE AS FOLLOWS:

1.

Except as otherwise provided herein, all terms, conditions, and provisions of the First Covenant not expressly modified or deleted in this Agreement shall remain in full force and effect between these parties in reference to the zoning, development, ownership, occupation, or use of any or all of the Shopping Cen-

* WHEREAS, Mortgagees, as holders of certain deeds to secure debt encumbering certain portions of the Shopping Center Property, have been made a party hereto, to evidence their consent to and approval of the modifications to the First Covenant set forth in this Agreement; and

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BOOK 6993 PAGE 012

ter Property, and shall be binding upon their successors in interest and/or assigns, although for a longer duration as provided in Paragraph 4 hereof. Those provisions of the First Covenant which are not in any way changed herein and remain applicable to all of the Shopping Center Property, including Tract D, expressly include Paragraphs 1(a), 1(b), 1(e), 2(a), 2(b), 2(c), 2(d), 2(e), 3(a), 3(d), 3(f), 3(g), 3(i), 3(k), 3(o), 3(p), and 3(q). Paragraphs 3(m) and 3(n) of the First Covenant are specifically revoked and are no longer of any force or effect in reference to any of the Shopping Center Property.

Notwithstanding any of the foregoing provisions in Paragraph 1, it is expressly agreed and understood that Tracts E & F of Exhibit 1 (presently in use by a Burger King franchise), shall be and is subject only to the First Covenant referenced herein, in its entirety, and is not otherwise subject to this second Agreement and Declaration of Covenants and Restrictions.

2.

Present Owner Wamrock acquired, subsequent to his execution of the First Covenant, sole and exclusive ownership of a tract of land containing 0.506 acres more or less (hereinafter "New Property"), which tract is identified as "Tract G" on the Legal

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BOOK 6993 PAGE 013

Description of the Shopping Center Property attached and incorporated as Exhibit 1. Said New Property, which fronts on Chamblee-Dunwoody Road, is adjacent and to the east of Tract D of the Shopping Center Property as reflected on Exhibit 1. It is hereby covenanted and agreed that all of the Shopping Center Property, i.e. the Covenanted Property, this New Property, and all other property so described within the Shopping Center Property, will be zoned, developed, used, owned and occupied, for the period of time set forth herein, according to the following new and additional standards (as well as to the terms and conditions of the First Covenant not inconsistent therewith).

a) The New Property, as well as that portion of the adjacent and heretofore vacant Tract D of the Shopping Center Property which is to be added to the New Property shall be developed in substantial accordance with the Preliminary Site Plan attached hereto as Exhibit 4 and incorporated herein by reference. This realigned tract, containing as it does a portion of Tract D of the Shopping Center Property and the New Property (Tract G) henceforth shall be referred to as "Bank Property". The final, engineered site plan and any grading plans for the Bank Property shall be provided to the President of DHA for its written approval in advance of actual on-site work to ensure conformity with the intent and substance of this Agreement, which

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BOOK 6993 PAGE 014

approval shall not be unreasonably withheld. If DHA does not give notice of its approval or disapproval within fifteen (15) days of their receipt of such plans, approval shall be deemed to have been given. If reasonable disapproval is communicated by DHA, all construction activity on the Bank Property shall cease until such time as new plans are submitted in accordance with this Paragraph. It is expressly understood and agreed that this Bank Property shall have one curb cut on Chamblee-Dunwoody Road and Paragraph 3(e) of the First Covenant is hereby modified to that extent. However, under no circumstances shall development of the Bank Property proceed so as to permit more than one curb cut from it to Chamblee-Dunwoody Road. Additionally, under no circumstances shall any road or driveway running through either the New Property (Tract G) or Tract D of the Shopping Center Property permit straight access from Chamblee-Dunwoody Road to Tracts A, B, or C of the Shopping Center Property. Although Present Owner(s) may also install a curb cut from Tract D to the remainder of the Covenanted Property (Tracts A, B and C), this "back entrance" shall not align directly with the curb cut from the Bank Property to Chamblee-Dunwoody Road and shall be posted by the owner of the Bank Property to advise that only use by bank customers is permitted to deter cut-through traffic to Chamblee-Dunwoody Road. These parties agree that this sign will be 2 feet

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by 4 feet in size and posted at a four-foot height from finished street level. This sign shall contain the following language: "Please limit access to HomeBanc Only".

b) Proper provision shall be made for handling water run off during and after Site construction, including use of silt and debris barriers, so as to prevent damage from run-off to nearby property owners or the buffers on the Shopping Center Property.

c) Total gross buildable floor area on the Bank Property shall not exceed 5,000 square feet.

d) Under no circumstances shall the Bank Property be used for a pool hall, billiard parlor, amusement arcade, peep show, adult or pornographic bookstore or movies which would be offensive, noxious or detrimental to the community.

e) The height of the to-be-constructed building on the Bank Property shall not exceed 35 feet in height from finished grade to roof peak on the northern side of that building.

f) Architectural design of signage on the New Property also shall remain governed by the First Covenant, except that in addition to the provisions therein DHA shall have the right to approve the size and location of all exterior signs and any internal signs visible from the outside, including temporary signs of any type or design, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, DHA and Adjacent

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Homeowners expressly acknowledge that temporary signs or banners may be hung or used for a period not to exceed thirty days to signify the opening of a new tenant's new business on the Shopping Center Property. DHA and Adjacent Homeowners also expressly acknowledge and agree that two freestanding signs designed per the specifications attached as Exhibit 5-A and 5-B, one located in front of the bank building and one behind it, are acceptable under these covenants. Similarly, DHA and Adjacent Homeowners also acknowledge and agree that HomeBanc may install two facade signs, one each on the western and eastern sides of its building to be erected on the Bank Property, provided said signs do not cover more than 10% of the face of each side of this building measured from the eave to grade, and further provided they otherwise comply with the design criteria in this and the First Covenant. Finally, DHA and Adjacent Homeowners acknowledge and agree that any building to be erected on the Bank Property is architecturally satisfactory, without the need for further review, if developed as per the rendering attached and incorporated by reference as Exhibit 6.

g) In the event Present Owners Wamrock or the Shops of Dunwoody, Ltd. or their successors or assigns or representatives should acquire any additional acreage ^{easterly or southerly of and} adjacent to the Shopping Center Property during the term hereof, then it is agreed and un-

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✓

derstood that these covenants shall be extended to apply to such after-acquired property and govern the manner in which it shall be developed, used, occupied or owned except as to the specific site plan and floor area for such property. This obligation expressly includes but is not limited to prohibiting said individuals or entities from maintaining or seeking additional curb cuts on Chamblee Dunwoody Road for any adjacent, additional property they may acquire.

h) Under no circumstances will Present Owner(s) Wamrock, the Shops of Dunwoody, Ltd. or their successors, assigns or representatives seek permission or in any way permit additional curb cut access to Chamblee-Dunwoody Road from either the Covenanted Property or the New Property or any after-acquired property except as provided herein.

i) Paragraph 1(c) of the original covenant expressly is modified to permit windows on the west side of any structure erected on the Bank Property.

j) Paragraph 1(d) of the First Covenant, as applied to the New Property, is hereby revised to require only that all outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties and will not exceed 25 feet in height from finished grade. The remaining provisions of

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BOOK 6993 PAGE 018

Paragraph 1(d) remain applicable to the Covenanted Property and shall remain in full force and effect.

k) Paragraph 3(b) of the First Covenant is amended to add that location of buildings and improvements on the Bank Property shall be as generally shown on the Site Plan attached hereto as Exhibit 4, subject to final engineering, architectural and site plan design reflecting the objectives set forth herein.

l) Paragraph 3(1) of the First Covenant is amended to add that Present Owner(s) will make their best efforts to retain all substantial trees on the Bank Property, unless such trees stand in the way of building or parking facilities to be erected thereon.

3.

Adjacent Homeowners and DHA agree that they will not take steps to contest Present Owner Wamrock's Alteration of Rezoning Condition as hereinabove set out, or to seek to enforce the terms and conditions of the First Covenant contrary to the provisions herein, if zoning, use, access, occupation and all development upon the Shopping Center Property and any After-Acquired Property commences, proceeds and exists according to the conditions herein.

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4.

This Agreement shall be recorded in the Clerk's office of the Superior Court of DeKalb County, and shall remain in effect for an initial twenty (20) year period from the date of its recording, and except as may otherwise be provided herein shall be binding on all parties having or acquiring any right, title or interest in the Shopping Center Property, additions thereto after-acquired, or any part thereof; and shall inure to the benefit of each owner thereof, the Adjacent Homeowners and their successors and/or assigns to the real property owned by them, and to DHA.

~~At the end of the initial twenty (20) year period, and upon the acquiescence of two-thirds of the signatories or their successors or assigns, Present Owner(s) or its/their/his successors or assigns agree to renew these covenants and restrictions and subject the Shopping Center Property and additions thereto after-acquired to said covenants and restrictions for an additional twenty (20) year period unless such extension is otherwise prohibited by law.~~

DHA shall be responsible for causing this document to be recorded, but Present Owner Wammock shall reimburse DHA for the costs thereof.

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ex

5.

Any of these parties also shall have the right to enjoin or restrain any breach hereof and shall have the right to seek specific performance to insure performance of the terms and conditions hereunder. Neither Adjacent Homeowners, DHA or Present Owner(s) or its/his/their successors and assigns shall have the right to seek damages for breach of this Agreement. Nor shall any party hereto be liable to any other party for a breach of this Agreement committed after said party no longer has an ownership interest in any property relevant to this Agreement, including the Shopping Center Property and the property of Adjacent Homeowners. In the event that litigation should be necessary to enforce any of the rights conferred hereunder, then the prevailing party also shall be entitled to recover the reasonable costs thereof, including attorney's fees.

6.

Present Owner Wamrock agrees to take all steps reasonably necessary to advise prospective purchasers of the Shopping Center Property and property additions thereto after-acquired and/or tenants thereof of the existence of and need to adhere to all of the terms and conditions of this Agreement.

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ex

7.

The parties represent each to the other that the representations set forth in this Agreement are true and correct. These warranties and representations are made by each of these parties to induce the others to enter into this Agreement, and each party acknowledges that it is entering into it in reliance thereon. However, no representations that are not contained herein shall be binding on the parties. This Agreement supersedes any previous agreement except as otherwise provided herein and constitutes the entire agreement among the parties hereto pertaining to the subject matters hereof except as otherwise provided herein. No promises, inducements, representations or amendments hereto shall be effective unless reduced to writing and signed by all parties hereto.

8.

The persons entering into this Agreement on behalf of the parties to it represent that they have been authorized and have the authority to enter into it and to bind the party on behalf of whom they are executing it.

9.

These parties acknowledge that this Agreement has been derived as a consequence of negotiation and that they have both

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contributed hereto. Accordingly, the Agreement shall be construed evenly against each party hereto.

10.

If any term, provision, covenant or condition of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11.

Each party hereto shall execute any and all further documents which are necessary and proper to carry out the purposes of this Agreement provided such documents do not affect the terms and conditions set forth in this Agreement. It is expressly understood and agreed by all the parties hereto that any future amendments, deletions, modifications or any other such action in reference to this Agreement and Declaration of Covenants and Restrictions as it relates to the Shopping Center Property, after-acquired property subject hereto as provided above or the New Property shall be made/taken only by the persons then owning or having any ownership interest to those properties and to the properties owned by Adjacent Homeowners and a representative of DHA. The remaining signatories and parties hereto shall not be required to execute any further agreements(s) memorializing such

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amendments, deletions, or modifications for them to be valid and binding.

12.


Present Owner Wammock shall pay to Kathryn M. Zickert, attorney for DHA, all fees charged by Ms. Zickert for the preparation of this Agreement at the rate of \$150.00 per hour, not to exceed \$1500.00, upon closing of the sale of the Bank Property. Previous Owners and Present Owner(s) acknowledge and agree that Ms. Zickert does not in any manner represent them and has not provided any advise to them, and that they have been advised to seek their own independent legal counsel prior to consideration and execution of this Agreement.

13.

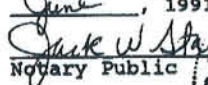
This Agreement shall be controlled by all respects by the laws of the State of Georgia.

IN WITNESS WHEREOF, we have set our hands and affixed our seals in the day and year first above written.


Previous Owner(s)


RUSSELL G. HENDERSON


Witness

Sworn to and subscribed
before me this 28th day of
June, 1991.

Notary Public

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Notary Public
My Comm. Exp. 12/31/92

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Samuel W. Warrick
Witness

Sworn to and subscribed
before me this 26 day of
June, 1991.



Laurie S. Garner
Notary Public
My Commission Expires Oct 4, 1994
Samuel W. Warrick
Witness

Sworn to and subscribed
before me this 26 day of
June, 1991.

Curtis R. Page
CURTIS R. PAGE

Laurie S. Garner
Notary Public
My Commission Expires Oct 4, 1994
Samuel W. Warrick
Witness

Sworn to and subscribed
before me this 3rd day of
July, 1991.

Elizabeth H. H.
Notary Public

Notary Public, Coto County
My Commission Expires Aug 4, 1994

Present Owner(s):

S. Lowell Wamock
S. LOWELL WAMMOCK

[Signature]
Witness

Sworn to and subscribed
before me this 17 day of
July, 1991.
Notary Public, DeKalb County, Georgia
My Commission Expires Oct 9, 1992
Christine [Signature]
Notary Public

THE SHOPS OF DUNWOODY, LTD.

[Signature]
Witness

By: [Signature]
Title: [Signature]

Sworn to and subscribed
before me this 17 day of
July, 1991.
Notary Public, DeKalb County, Georgia
My Commission Expires Oct 9, 1992
Christine [Signature]
Notary Public

TRUST COMPANY BANK as successor
to PEACHTREE FEDERAL SAVINGS AND
LOAN ASSOCIATION

Witness

BY: _____
TITLE: _____

Sworn to and subscribed
before me this _____ day of
_____, 1991.

Notary Public

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Mary Frances Black
 MARY FRANCES BLACK d/b/a
 SNOOKIES, INC. d/b/a
 OLD HICKORY HOUSE STORE
 TITLE: Owner

[Signature]
 Witness

Sworn to and subscribed
 before me this 26 day of
June, 1991.

Laurie S. Garner
 Notary Public, Fulton County, Georgia
 My Commission Expires Oct. 4, 1994
[Signature]
 Witness

Sworn to and subscribed
 before me this 26 day of
June, 1991.

Laurie S. Garner
 Notary Public, Fulton County, Georgia
 My Commission Expires Oct. 4, 1994
[Signature]
 Witness

Sworn to and subscribed
 before me this 1 day of
January, 1991.

Charles R. Towns
 Notary Public
 Notary Public, Cobb County, Georgia
 My Commission Expires Feb. 4, 1991



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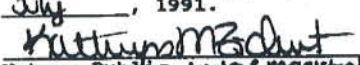
BOOK 6993 PAGE 027

Adjacent Homeowners


 ROBERT A. LEAVRY


 Witness

 Sworn to and subscribed
 before me this 1 day of
July, 1991.


 Notary Public Judge, Magistrate
 Court of DeKalb County


 JAMES LIESENDAHL


 Witness

 Sworn to and subscribed
 before me this 29 day of
June, 1991.


 Notary Public Judge, Magistrate
 Court of DeKalb County


DHA

DUNWOODY HOMEOWNERS ASSOCIATION, INC.


 By: KERRY DE VALLETTE
 Title: President


 Witness

 Sworn to and subscribed
 before me this 28 day of
June, 1991.


 Notary Public Judge, Magistrate
 Court of DeKalb County



Witness *Di. M. L. G. A. P.*

Sworn to and subscribed
before me this 22 day of
June, 1993
Kedeen H. Walker
Notary Public

~~THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES~~

~~Witness~~

BY: _____
TITLE: _____

Sworn to and subscribed
before me this _____ day of
_____, 1991.

~~Notary Public~~

Mortgagees:

AMERICAN NATIONAL BANK AND
TRUST COMPANY BANK OF
CHATTANOOGA

Witness

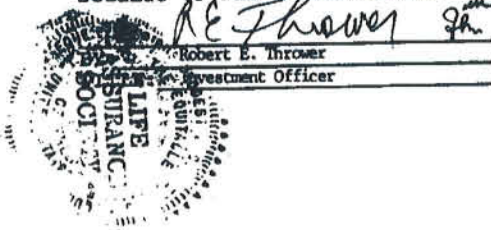
BY: _____

TITLE: _____

Sworn to and subscribed
before me this ____ day of
____, 1991.

Notary Public

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES



Robert E. Throer

Investment Officer

Walter W. Mitchell

Witness

Sworn to and subscribed
before me this 28 day of
June, 1991.

Fiona Ann Hulse

Notary Public



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Exhibit 1

Tract A

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the parcel herein described commence at the point where the west line of Land Lot 366 intersects the northwestern right of way line of Mount Vernon Highway, said point also being located a distance of 918.5 feet southwesterly as measured along the northwestern right of way line of Mount Vernon Highway from the intersection of the northwestern right of way line of Mount Vernon Highway and the west right of way line of Nandina Lane; running thence in a northerly direction along the west line of Land Lot 366 a distance of 894.9 feet to the true point of beginning thus established, continuing thence in a northerly direction along the west line of Land Lot 366 north 09 degrees 39 minutes west a distance of 766.9 feet to an iron pin located on the south side of a 20-foot alley; running thence north 88 degrees 00 minutes east along the south side of said 20-foot alley a distance of 629.3 feet to an iron pin; running thence south 18 degrees 35 minutes east a distance of 410.2 feet to an iron pin; running thence south 04 degrees 08 minutes east a distance of 300.0 feet to an iron pin; running thence south 89 degrees 41 minutes east a distance of 201.8 feet to an iron pin located on the west right of way line of Nandina Lane; running thence south 04 degrees 38 minutes east and along the west right of way line of Nandina Lane a distance of 83.3 feet to an iron pin; running thence south 89 degrees 37 minutes west a distance of 861.3 feet to an iron pin and the point of beginning; as per survey for "Lowell Wamrock" prepared by Southland Engineers & Surveyors, Inc. dated August 26, 1971, last revised October 19, 1971, and containing 12.192 acres according to said survey.

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Tract B

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at a point marked by an iron pin found located a distance of 969.26 feet southerly as measured southerly along the west line of Land Lot 366 from the common corner of Land Lots 365, 366, 376, and 377; thence running South 84 degrees 01 minutes East a distance of 398.88 feet to a point marked by an axle; thence running South 84 degrees 15 minutes East a distance of 187.60 feet to a point; thence running South 10 degrees 00 minutes East a distance of 90.00 feet to a point; thence running South 84 degrees 17 minutes East a distance of 75.00 feet to a point; thence running South 10 degrees 40 minutes East a distance of 272.59 feet to a point located on the center line of an abandoned street, formerly known as Christopher Street, said point being located a distance of 100.00 feet westerly as measured westerly along the center line of the aforesaid abandoned street from the intersection formed by the center line of the aforesaid abandoned street with the western margin of the right-of-way of Chamblee-Dunwoody Road; thence running North 81 degrees 18 minutes 41 seconds West along the aforesaid center line of the abandoned street a distance of 724.66 feet to a point located on the west line of Land Lot 366; thence running North 01 degrees 24 minutes West along the west line of Land Lot 366 a distance of 315.04 feet to the point of beginning.

Tract C

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at the iron pin found at the intersection of the west side of Chamblee-Dunwoody Road (formerly known as Roswell Street) with the center line of the strip of land formerly known as Christopher Street (an abandoned street); and running thence South 11 degrees 52 minutes 56 seconds East, 148.91 feet along the west side of Chamblee-Dunwoody Road to an iron pin at the north line of property conveyed by Dr. N. Strickland to A. N. Burnham by warranty deed dated December 16, 1919, of record in Deed Book 123, page 183, DeKalb County Records (said adjoining property now or formerly being owned by Russell G. Henderson); thence North 83 degrees 24 minutes 04 seconds West along the north line of said Henderson property and along a stone wall 200

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feet to the east line of property now or formerly owned by Austin; thence North 10 degrees 59 minutes 09 seconds West, 155.8 feet along the line of said Austin property to the center line of the former Christopher Street (abandoned); thence South 81 degrees 18 minutes 41 seconds East along the center line of former Christopher Street (abandoned) 200 feet to an iron pin at the west side of Chamblee-Dunwoody Road and the point of beginning.

Tract D

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the western side of Chamblee-Dunwoody Road, formerly known as Roswell Street, at the northeast corner of the S. T. Spruill, then B. T. Pierce property, said beginning point being at the northeast corner of Lot 13 as shown on the map hereinafter referred to, and being located 50 feet north of the intersection of the western side of Chamblee-Dunwoody Road with the west side of Nandina Lane; and running thence northwesterly along the western side of Chamblee-Dunwoody Road 156.4 feet to the southern side of a stone wall at the south line of the N. Strickland property; running thence westerly in a straight line along the southern line of said N. Strickland property 195.19 feet to an iron pin at the northwestern corner of Lot 16 as shown on the map hereinafter referred to; thence southeasterly along the line of property now or formerly owned by Austin, which is along the rear line of Lots 16, 15 and 14, as shown on the map hereinafter referred to, a distance of 150 feet to an iron pin at the northwest corner of said Lot 13; running thence easterly along the northern line of said S. T. Spruill, then B. T. Pierce property, which is along the northern line of said Lot 13, a distance of 197.36 feet to an iron pin on the western side of Chamblee-Dunwoody Road at the point of beginning; said property being all of Lots 14, 15 and 16, and a portion of Lot 17 as shown on Map of Dunwoody recorded in Plat Book 9, page 73, DeKalb County Records.

Being the same property conveyed by Warranty Deed from The Citizens and Southern National Bank, as Trustee under Agreement of the James H. Cowart, Inc. Profit Sharing Plan "4937 N", to Russell G. Henderson, dated January 29, 1971, filed for record February 1, 1971, recorded in Deed Book 2609, page 781, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia.

BOOK 6993 PAGE 033

Tract E

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, as shown and delineated (as Lots 10 and 11) on the plat of Survey for Douglas W. Morgan and Curtis R. Page, made by Carlisle & Thacker, Inc., Registered Land Surveyors and Engineers, dated December 13, 1972, revised January 22, 1973, a copy of which is on file in the office of Alex McLennan, Attorney at Law, Atlanta, Georgia, and being more particularly described as follows:

BEGINNING at a point on the westerly side of Nandina Lane (having a 40-foot right-of-way) one thousand seven hundred four and eight-tenths (1,704.8) feet southeasterly and southerly, as measured along the southwesterly side of Chamblee-Dunwoody Road (having a 60-foot right-of-way) and the westerly side of Nandina Lane (having a 60-foot right-of-way), from the intersection of the southwesterly side of Chamblee-Dunwoody Road with the north line of Land Lot 366; running thence south 04 degrees 03 minutes east along the westerly side of Nandina Lane for a distance of one hundred (100) feet to an iron pin found at the northeast corner of property now or formerly owned by Fred B. Amacher; running thence north 88 degrees 15 minutes west, and forming an interior angle of 84 degrees 12 minutes with the preceding course, a distance of one hundred ninety-nine and seven-tenths (199.7) feet to an iron pin found at the northwest corner of the said Amacher property, and on the east line of property now or formerly owned by Lowell S. Wammoth; running thence north 03 degrees 19 minutes west along the east line of said Wammoth property, and forming an interior angle of 95 degrees 01 minutes with the preceding course, a distance of ninety-seven and eight-tenths (97.8) feet to an iron pin at the southwest corner of Lot 12 as shown on the above-described plat of Survey; running thence south 88 degrees 51 minutes east along the south line of said Lot 12, and forming an interior angle of 85 degrees 32 minutes with the preceding course, for a distance of one hundred ninety-eight and two-tenths (198.2) feet to the westerly side of Nandina Lane, the southeast corner of said Lot 12, and the point of beginning; containing 0.450 acres, and being improved property having a dwelling located thereon known as No. 5460 Chamblee-Dunwoody Road.

BOOK 6993 PAGE 034

Tract F

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, as shown and delineated (as Lots 12 and 13) on the plat of Survey for Douglas W. Morgan and Curtis R. Page, made by Carlisle & Thacker, Inc., Registered Land Surveyors and Engineers, dated December 13, 1972, revised January 22, 1973, a copy of which is on file in the office of Alex McLennan, Attorney at Law, Atlanta, Georgia, and being more particularly described as follows:

BEGINNING at a point marked by an iron pin on the southwesterly side of Chamblee-Dunwoody Road (having a 60-foot right-of-way) one thousand six hundred four and eight-tenths (1,604.8) feet southeasterly, as measured along the southwesterly side of Chamblee-Dunwoody Road, from the intersection of the southwesterly side of Chamblee-Dunwoody Road with the north line of Land Lot 366; said iron pin also being at the southeast corner of property now or formerly owned by James H. Cowart, Inc.; running thence south 22 degrees 33 minutes east along the southwesterly side of Chamblee-Dunwoody Road a distance of seventy-one and eight-tenths (71.8) feet to an iron pin on the westerly side of Nandina Lane (having a 40-foot right-of-way); running thence south 04 degrees 03 minutes east along the westerly side of Nandina Lane, and forming an interior angle of 161 degrees 30 minutes with the preceding course, a distance of twenty-eight and two-tenths (28.2) feet to a point at the northeast corner of Lot 11 as shown on the above-described plat of survey; running thence north 88 degrees 51 minutes west along the north line of said Lot 11 a distance of one hundred ninety-eight and two-tenths (198.2) feet to an iron pin found at the northwest corner of Lot 11; said iron pin also being on the easterly line of property now or formerly owned by Lowell S. Wammoth; running thence north 09 degrees 22 minutes west along the easterly line of said Wammoth property, and forming an interior angle of 100 degrees 31 minutes with the preceding course, a distance of ninety-nine and three-tenths (99.3) feet to an iron pin found at the southwest corner of the Cowart property above-described; running thence south 87 degrees 42 minutes east along the south line of said Cowart property, and forming an interior angle of 78 degrees 20 minutes with the preceding course, a distance of one hundred eight-five (185) feet to the southwesterly side of Chamblee-Dunwoody Road and the iron pin at the point of beginning; containing 0.427 acres, and being improved property having a dwelling located thereon known as No. 5470 Chamblee-Dunwoody Road.

BOOK 6993 PAGE 035

Tract G

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found at the intersection of the northerly right-of-way line of Christopher Street (closed) (a 20-foot right-of-way) and the southwesterly right-of-way line of Chamblee-Dunwoody Road (being 26 feet from the existing center line at this point); thence running North 89 degrees 05 minutes 29 seconds West, a distance of 107.27 feet to an iron pin found; thence running North 89 degrees 22 minutes 59 seconds West, a distance of 12.21 feet to an iron pin found; thence running North 21 degrees 09 minutes 20 seconds West, a distance of 186.80 feet to an iron pin found; thence running North 86 degrees 20 minutes 38 seconds East, a distance of 122.08 feet to an iron pin found; on the southwesterly right-of-way line of Chamblee-Dunwoody Road; thence running along said right-of-way line South 19 degrees 29 minutes 13 seconds East, a distance of 195.00 feet to an iron pin found and the TRUE POINT OF BEGINNING; said tract containing 0.500 acres total.

Tract H

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found at the point of intersection of the southwesterly side of the 100-foot right-of-way line of Chamblee-Dunwoody Road (formerly Roswell Street) as said right-of-way is now located and the North line of said Land Lot 366 (South line of Land Lot 376, said district and county); thence South 07 degrees 32 minutes 23 seconds East along the southwesterly side of the 100-foot right-of-way of Chamblee-Dunwoody Road a distance of 289.70 feet to an iron pin; thence South 88 degrees 55 minutes 24 seconds East a distance of 32.24 feet; thence South 07 degrees 32 minutes 23 seconds East a distance of 138.08 feet to an iron pin; thence South 07 degrees 15 minutes 25 seconds East a distance of 249.35 feet to an iron pin; thence South 08 degrees 23 minutes 03 seconds East a distance of 100.00 feet to an iron pin; thence South 12 degrees 07 minutes 49 seconds East a distance of 100.00 feet to an iron pin; thence South 80 degrees 14 minutes 38 seconds West a distance of 355.90 feet to the POINT OF BEGINNING; thence North 06 degrees 32 minutes 23 seconds West a distance of 73.10 feet to a point of curve of a curve to the

300P 6993 PAGE 036

right, said curve having a central angle of 31 degrees 06 minutes 37 seconds and a radius of 180.00 feet; thence northerly along the arc of said curve a distance of 97.74 feet; thence North 66 degrees 25 minutes 46 seconds West a distance of 28.14 feet; thence South 32 degrees 27 minutes 37 seconds West a distance of 157.79 feet; thence North 07 degrees 32 minutes 23 seconds West a distance of 34.87 feet; thence North 52 degrees 32 minutes 28 seconds West a distance of 158.30 feet; thence South 83 degrees 18 minutes 25 seconds West a distance of 148.61 feet to a capped iron pipe at the West line of Land Lot 366; thence South 09 degrees 46 minutes 36 seconds East, along said West line, a distance of 290.26 feet to an axel found; thence North 88 degrees 12 minutes 38 seconds East a distance of 398.69 feet to an axel found; thence North 80 degrees 14 minutes 38 seconds East a distance of 8.51 feet to the Point of Beginning. Said tract containing 2.2610 acres total.

BOOK 6993 PAGE 037

Exhibit 2

Tract A

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the parcel herein described commence at the point where the west line of Land Lot 366 intersects the northwestern right of way line of Mount Vernon Highway, said point also being located a distance of 918.5 feet southwesterly as measured along the northwestern right of way line of Mount Vernon Highway from the intersection of the northwestern right of way line of Mount Vernon Highway and the west right of way line of Nandina Lane; running thence in a northerly direction along the west line of Land Lot 366 a distance of 894.9 feet to the true point of beginning thus established, continuing thence in a northerly direction along the west line of Land Lot 366 north 09 degrees 39 minutes west a distance of 766.9 feet to an iron pin located on the south side of a 20-foot alley; running thence north 88 degrees 00 minutes east along the south side of said 20-foot alley a distance of 629.3 feet to an iron pin; running thence south 18 degrees 35 minutes east a distance of 410.2 feet to an iron pin; running thence south 04 degrees 08 minutes east a distance of 300.0 feet to an iron pin; running thence south 89 degrees 41 minutes east a distance of 201.8 feet to an iron pin located on the west right of way line of Nandina Lane; running thence south 04 degrees 38 minutes east and along the west right of way line of Nandina Lane a distance of 83.3 feet to an iron pin; running thence south 89 degrees 37 minutes west a distance of 861.3 feet to an iron pin and the point of beginning; as per survey for "Lowell Wammock" prepared by Southland Engineers & Surveyors, Inc. dated August 26, 1971, last revised October 19, 1971, and containing 12.192 acres according to said survey.

Tract B

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at a point marked by an iron pin found located a distance of 969.26 feet southerly as measured southerly along the west line of Land Lot 366 from the common corner of Land Lots 365, 366, 376, and 377; thence running South 84 degrees 01 minutes East a distance of 398.88 feet to a point marked by an axle; thence running South 84 degrees 15 minutes East a distance

6709 6993 PAGE 038

of 187.60 feet to a point; thence running South 10 degrees 00 minutes East a distance of 90.00 feet to a point; thence running South 84 degrees 17 minutes East a distance of 75.00 feet to a point; thence running South 10 degrees 40 minutes East a distance of 272.59 feet to a point located on the center line of an abandoned street, formerly known as Christopher Street, said point being located a distance of 100.00 feet westerly as measured westerly along the center line of the aforesaid abandoned street from the intersection formed by the center line of the aforesaid abandoned street with the western margin of the right-of-way of Chamblee-Dunwoody Road; thence running North 81 degrees 18 minutes 41 seconds West along the aforesaid center line of the abandoned street a distance of 724.66 feet to a point located on the west line of Land Lot 366; thence running North 01 degrees 24 minutes West along the west line of Land Lot 366 a distance of 315.04 feet to the point of beginning.

Tract C

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at the iron pin found at the intersection of the west side of Chamblee-Dunwoody Road (formerly known as Roswell Street) with the center line of the strip of land formerly known as Christopher Street (an abandoned street); and running thence South 11 degrees 52 minutes 56 seconds East, 148.91 feet along the west side of Chamblee-Dunwoody Road to an iron pin at the north line of property conveyed by Dr. N. Strickland to A. N. Burnham by warranty deed dated December 16, 1919, of record in Deed Book 123, page 183, DeKalb County Records (said adjoining property now or formerly being owned by Russell G. Henderson); thence North 83 degrees 24 minutes 04 seconds West along the north line of said Henderson property and along a stone wall 200 feet to the east line of property now or formerly owned by Austin; thence North 10 degrees 59 minutes 09 seconds West, 155.8 feet along the line of said Austin property to the center line of the former Christopher Street (abandoned); thence South 81 degrees 18 minutes 41 seconds East along the center line of former Christopher Street (abandoned) 200 feet to an iron pin at the west side of Chamblee-Dunwoody Road and the point of beginning.

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Tract D

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the western side of Chamblee-Dunwoody Road, formerly known as Roswell Street, at the northeast corner of the S. T. Spruill, then B. T. Pierce property, said beginning point being at the northeast corner of Lot 13 as shown on the map hereinafter referred to, and being located 50 feet north of the intersection of the western side of Chamblee-Dunwoody Road with the west side of Nandina Lane; and running thence northwesterly along the western side of Chamblee-Dunwoody Road 156.4 feet to the southern side of a stone wall at the south line of the N. Strickland property; running thence westerly in a straight line along the southern line of said N. Strickland property 195.19 feet to an iron pin at the northwestern corner of Lot 16 as shown on the map hereinafter referred to; thence southeasterly along the line of property now or formerly owned by Austin, which is along the rear line of Lots 16, 15 and 14, as shown on the map hereinafter referred to, a distance of 150 feet to an iron pin at the northwest corner of said Lot 13; running thence easterly along the northern line of said S. T. Spruill, then B. T. Pierce property, which is along the northern line of said Lot 13, a distance of 197.36 feet to an iron pin on the western side of Chamblee-Dunwoody Road at the point of beginning; said property being all of Lots 14, 15 and 16, and a portion of Lot 17 as shown on Map of Dunwoody recorded in Plat Book 9, page 73, DeKalb County Records.

Being the same property conveyed by Warranty Deed from The Citizens and Southern National Bank, as Trustee under Agreement of the James H. Cowart, Inc. Profit Sharing Plan "4937 N", to Russell G. Henderson, dated January 29, 1971, filed for record February 1, 1971, recorded in Deed Book 2609, page 781, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia.

Tract E

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, as shown and delineated (as Lots 10 and 11) on the plat of Survey for Douglas W. Morgan and Curtis R. Page, made by Carlisle & Thacker, Inc., Registered Land Surveyors and Engineers, dated December 13, 1972, revised January 22, 1973, a copy of which is on file in the of-

BOOK 6993 PAGE 040

rice of Alex McLennan, Attorney at Law, Atlanta, Georgia, and being more particularly described as follows:

BEGINNING at a point on the westerly side of Nandina Lane (having a 40-foot right-of-way) one thousand seven hundred four and eight-tenths (1,704.8) feet southeasterly and southerly, as measured along the southwesterly side of Chamblee-Dunwoody Road (having a 60-foot right-of-way) and the westerly side of Nandina Lane (having a 60-foot right-of-way), from the intersection of the southwesterly side of Chamblee-Dunwoody Road with the north line of Land Lot 366; running thence south 04 degrees 03 minutes east along the westerly side of Nandina Lane for a distance of one hundred (100) feet to an iron pin found at the northeast corner of property now or formerly owned by Fred B. Amacher; running thence north 88 degrees 15 minutes west, and forming an interior angle of 84 degrees 12 minutes with the preceding course, a distance of one hundred ninety-nine and seven-tenths (199.7) feet to an iron pin found at the northwest corner of the said Amacher property, and on the east line of property now or formerly owned by Lowell S. Wammock; running thence north 03 degrees 19 minutes west along the east line of said Wammock property, and forming an interior angle of 95 degrees 01 minutes with the preceding course, a distance of ninety-seven and eight-tenths (97.8) feet to an iron pin at the southwest corner of Lot 12 as shown on the above-described plat of Survey; running thence south 88 degrees 51 minutes east along the south line of said Lot 12, and forming an interior angle of 85 degrees 32 minutes with the preceding course, for a distance of one hundred ninety-eight and two-tenths (198.2) feet to the westerly side of Nandina Lane, the southeast corner of said Lot 12, and the point of beginning; containing 0.450 acres, and being improved property having a dwelling located thereon known as No. 5460 Chamblee-Dunwoody Road.

Tract F

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District of DeKalb County, Georgia, as shown and delineated (as Lots 12 and 13) on the plat of Survey for Douglas W. Morgan and Curtis R. Page, made by Carlisle & Thacker, Inc., Registered Land Surveyors and Engineers, dated December 13, 1972, revised January 22, 1973, a copy of which is on file in the office of Alex McLennan, Attorney at Law, Atlanta, Georgia, and being more particularly described as follows:

BEGINNING at a point marked by an iron pin on the southwesterly side of Chamblee-Dunwoody Road (having a 60-foot right-of-way) one thousand six hundred four and eight-tenths (1,604.8) feet

southeasterly, as measured along the southwesterly side of Chamblee-Dunwoody Road, from the intersection of the southwesterly side of Chamblee-Dunwoody Road with the north line of Land Lot 366; said iron pin also being at the southeast corner of property now or formerly owned by James H. Cowart, Inc.; running thence south 22 degrees 33 minutes east along the southwesterly side of Chamblee-Dunwoody Road a distance of seventy-one and eight-tenths (71.8) feet to an iron pin on the westerly side of Nandina Lane (having a 40-foot right-of-way); running thence south 04 degrees 03 minutes east along the westerly side of Nandina Lane, and forming an interior angle of 161 degrees 30 minutes with the preceding course, a distance of twenty-eight and two-tenths (28.2) feet to a point at the northeast corner of Lot 11 as shown on the above-described plat of survey; running thence north 88 degrees 51 minutes west along the north line of said Lot 11 a distance of one hundred ninety-eight and two-tenths (198.2) feet to an iron pin found at the northwest corner of Lot 11; said iron pin also being on the easterly line of property now or formerly owned by Lowell S. Wammock; running thence north 09 degrees 22 minutes west along the easterly line of said Wammock property, and forming an interior angle of 100 degrees 31 minutes with the preceding course, a distance of ninety-nine and three-tenths (99.3) feet to an iron pin found at the southwest corner of the Cowart property above-described; running thence south 87 degrees 42 minutes east along the south line of said Cowart property, and forming an interior angle of 78 degrees 20 minutes with the preceding course, a distance of one hundred eight-five (185) feet to the southwesterly side of Chamblee-Dunwoody Road and the iron pin at the point of beginning; containing 0.427 acres, and being improved property having a dwelling located thereon known as No. 5470 Chamblee-Dunwoody Road.

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All that tract or parcel of land lying and being in Land Lot 366 of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at the Northwest corner of Land Lot 366, thence southerly along the west line of Land Lot 366, 968.50 feet; thence North 88 degrees 00 minutes 30 seconds East, 402.40 feet; thence North 87 degrees 45 minutes 20 seconds East, 187.60 feet; thence South 17 degrees 48 minutes 10 seconds East, 90.00 feet; thence North 87 degrees 55 minutes 18 seconds East, 58.76 feet; thence South 15 degrees 55 minutes 02 seconds East, 86.44 feet; thence North 86 degrees 20 minutes 35 seconds East, 90.84 feet to a point on the proposed westerly right of way line of Chamblee Dunwoody Road (50 feet from centerline); thence along said right of way line South 20 degrees 10 minutes 39 seconds East, 11.90 feet to a point, said point being the TRUE POINT OF BEGINNING; thence along said right of way line, South 20 degrees 10 minutes 39 seconds East, 168.65 feet to a point; thence South 69 degrees 49 minutes 21 seconds West, 72.00 feet to a 5/8" rebar; thence North 20 degrees 10 minutes 39 seconds West, 23.00 feet to a 5/8" rebar; thence South 69 degrees 49 minutes 21 seconds West, 48.88 feet to a PK Nail; thence North 89 degrees 14 minutes 50 seconds West, 48.54 feet to a scribed "x"; thence North 18 degrees 59 minutes 50 seconds West, 10.63 feet to a 5/8" rebar; thence North 89 degrees 14 minutes 50 seconds West, 7.97 feet to a PK Nail; thence northwesterly along the arc of a curve, a distance of 82.72 feet to a 5/8" rebar, said arc being subtended by a chord having a bearing North 31 degrees 03 minutes 12 seconds West, the chord distance being 82.12 feet and having a radius point 197.84 feet to the west; thence North 43 degrees 01 minutes 54 seconds West, 37.11 feet to a scribed "x"; thence North 69 degrees 49 minutes 21 seconds East, 203.35 feet to the TRUE POINT OF BEGINNING; said tract containing 27,477 square feet or 0.6308 acre according to that certain survey prepared by Metro Engineering and Surveying Co., Inc. for HomeBanc Federal Savings Bank dated May 13, 1991, revised May 21, 1991.

Exhibit 4

6993 043

March 26, 1991

Mr. Kerry de Vallette, President
Dunwoody Homeowners Association, Inc.
4878 Summerford Drive
Dunwoody, GA 30338

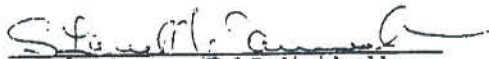
RE: Alteration of Condition to Permit Curbcut
CZ77105, CZ88036

Dear Mr. de Vallette:

This letter is intended to confirm our various discussions and agreement concerning the above matter, which is scheduled for hearing before the DeKalb County Board of Commissioners today at 1:00 p.m.

I acknowledge that part of the property affected by the above request is governed by covenants executed between me, other individuals and the Dunwoody Homeowners Association in 1977 in conjunction with the original rezoning for The Shops of Dunwoody, as recorded in Deed Book 3705, Page 140 of the Records of the Superior Court of DeKalb County. In fact, my request to alter the conditions as applied to part of this property would be a violation of these covenants. Although Dunwoody Homeowners Association has been kind enough to agree to depart from these covenants and to permit the alteration of condition, it is doing so with the express understanding that a new covenant, attached hereto, is required as a consequence. I have agreed to the terms of this new covenant but cannot arrange for complete execution of it before today's hearing. I acknowledge that it is my obligation to get it executed, in full, within twenty (20) days. My failure to obtain execution will result in the right of Dunwoody Homeowners Association to insist upon strict enforcement of the original covenants.

So agreed, this 26th day of March, 1991.


S. Lowell Wamrock, Individually
and on behalf of The Shops of
Dunwoody, Ltd.

Witnessed by:


Robert Lundsten, Board of Directors
Dunwoody Homeowners Association

Attorney for

Exhibit 3

6993 PAGE 044

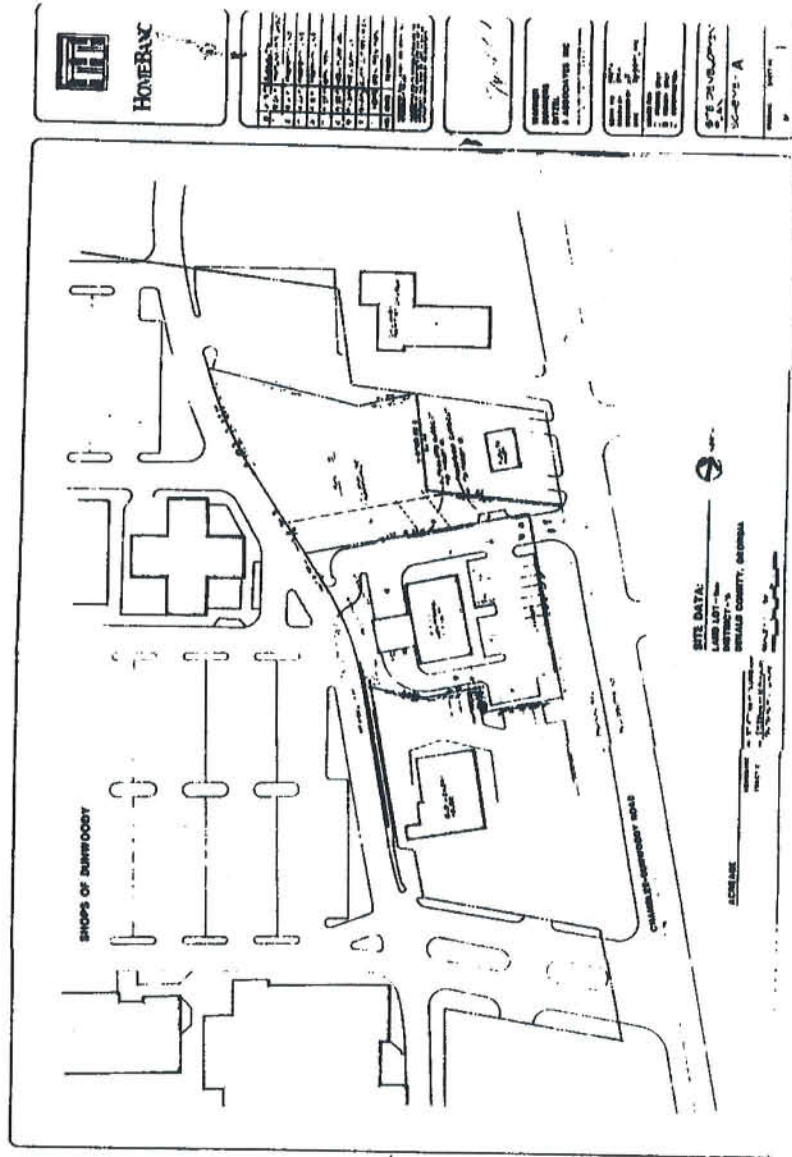


EXHIBIT 4

6993 PAGE 045

HomeBanc ParcelEXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 366 of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at the Northwest corner of Land Lot 366, thence southerly along the west line of Land Lot 366, 968.50 feet; thence N88°00'30"E, 402.40 feet; thence N87°45'20"E, 187.60 feet; thence S17°48'10"E, 90.00 feet; thence N87°55'18"E, 58.76 feet; thence S15°55'02"E, 86.44 feet; thence N86°20'35"E, 90.84 feet to a point on the proposed westerly right of way line of Chamblee Dunwoody Road (50 feet from centerline); thence along said right of way line S20°10'39"E, 1.90 feet to a point, said point being the TRUE POINT OF BEGINNING; thence along said right of way line, S20°10'39"E, 191.18 feet to a point; thence N89°14'50"W, 185.691 feet to a PK Nail; thence northwesterly along the arc of a curve, a distance of 82.72 feet to a 5/8" rebar, said arc being subtended by a chord having a bearing N31°03'12"W, the chord distance being 82.12 feet and having a radius point 197.84 feet to the west; thence N43°01'54"W, 47.962 feet to a point; thence N69°49'21"E, 207.560 feet to the TRUE POINT OF BEGINNING; said tract containing 28,890 square feet or 0.663 acre according to that certain survey prepared by Metro Engineering and Surveying Co., Inc. for HomeBanc Federal Savings Bank dated May 13, 1991, revised July __, 1991.

WPPBAW385/7

Exhibit 5

BOOK 6993 PAGE 046

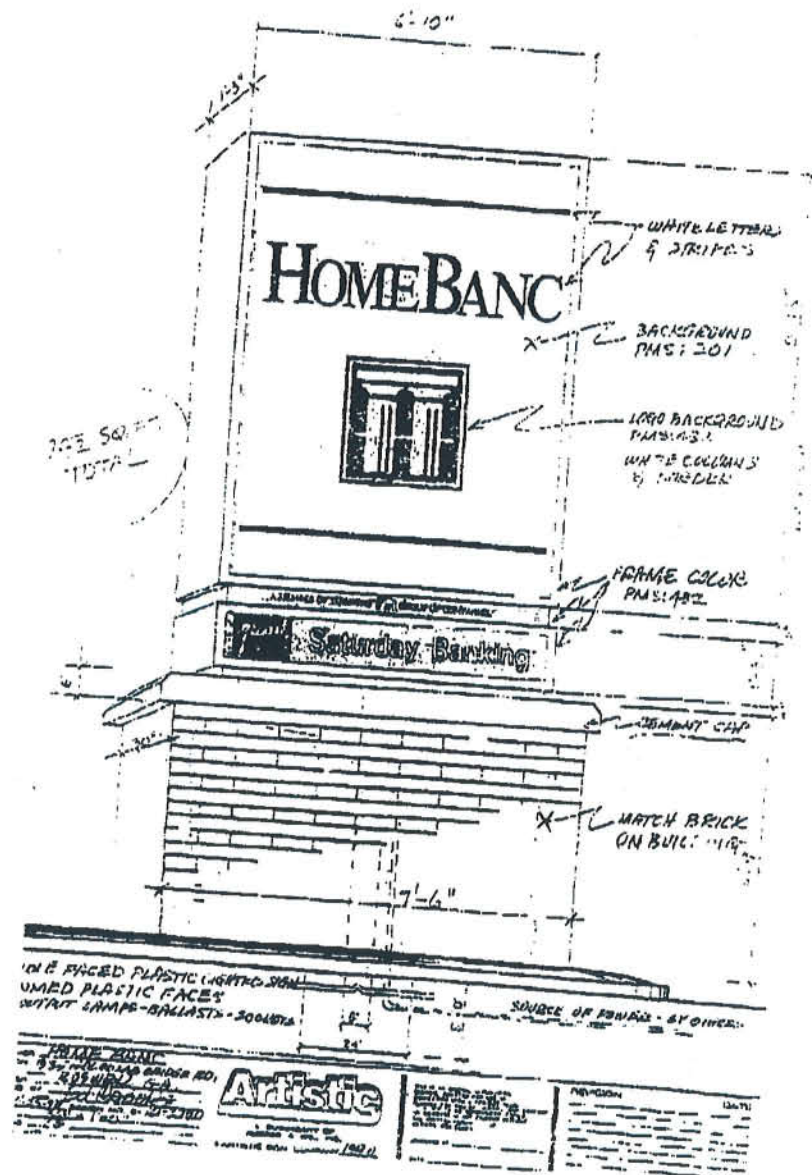
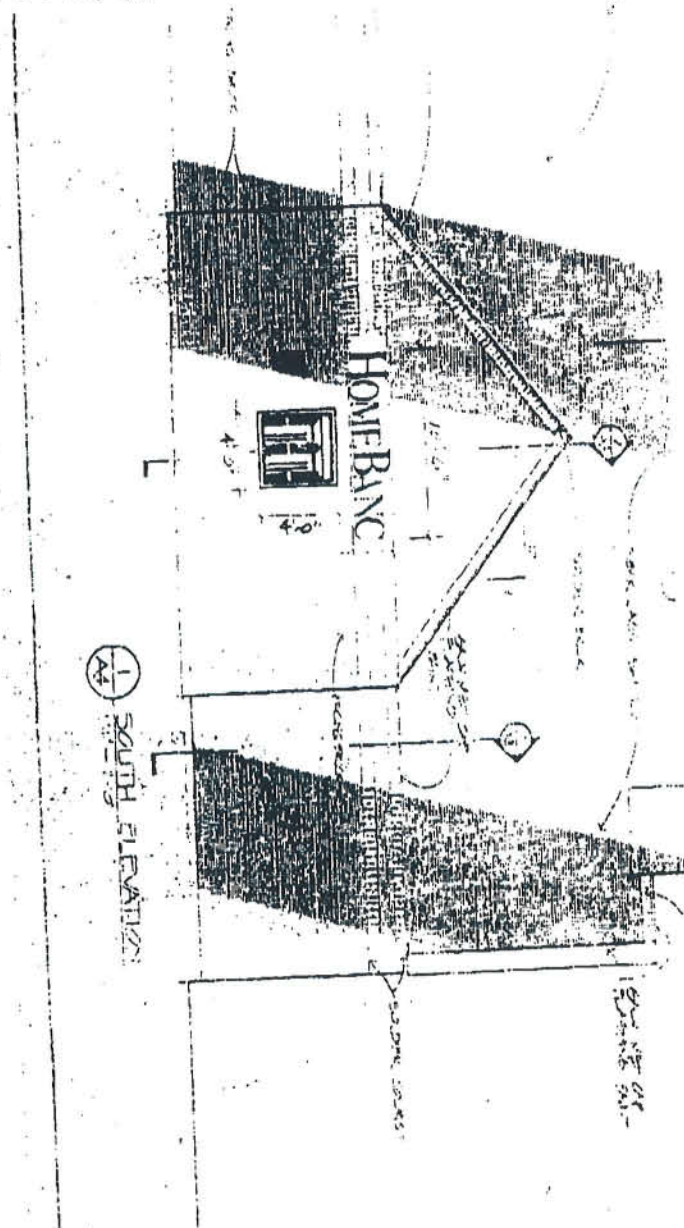


Exhibit 6

BOOK 6993 PAGE 047



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Exhibit 7

EXHIBIT C

REV: 12/84

DEKALB COUNTY
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE January 22, 1985

CZ-85016
minutes
+
cards.

346

ITEM NO. 20

REL.

ACTION

PUB.HRG.. X

RESOLUTION

ORDINANCE X

PROCLAMATION

SUBJECT: Rezoning Application - William L. Wilson

DEPARTMENT: Planning

PUBLIC HEARING: X Yes No

ATTACHMENT: X Yes No 10 pp

INFORMATION CONTACT: Mac Baggett or Charles Coleman
PHONE NUMBER: 371-2155

PURPOSE: CZ-85016 - To consider the application of William L. Wilson to rezone property located on the west side of Dunwoody Village Parkway, approximately 340 west of Chamblee Dunwoody Road, from R-150 to C-1 (conditional). The application is conditioned by a list of conditions.

DISTRICT: X 1. 2. 3. 4. 5. N/A

SUBJECT PROPERTY: 18-366-1-10 (0000 Chamblee Dunwoody Road). The property has frontage of 171' and contains 2.27 acres.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval as amended. The proposal as amended is consistent with recommendations of the Comprehensive Plan and compatible with area zoning and development.

PLANNING COMMISSION: Approval.

AREA 1 COMMUNITY COUNCIL: Approval subject to applicant following all agreements and covenants.

#12

A) 5230 B) Zoning:
347 William L.
Wilson

C) Dunwoody
Village
Parkway/
Cham.Dun. Rd.

PAGE 2

FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION:

MOTION was made by Commissioner Manning, seconded by Commissioner Fletcher, and passed 7-0, to approve the application as recommended by the Planning Department.

ADOPTED: JAN 24 1995
(DATE)

CERTIFIED: JAN 24 1995
(DATE)

Jean Williams
PRESIDENT
DEKALB COUNTY BOARD OF COMMISSIONERS

Christine Joyner
CLERK,
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

No one appeared to speak in opposition.

	FOR	AGAINST	ABSTENTION	ABSENT
DISTRICT 1 - Jean Williams	✓			
DISTRICT 2 - Sherry Schulman	✓			
DISTRICT 3 - John Evans	✓			
DISTRICT 4 - Robert J. (Bob) Morris	✓			
DISTRICT 5 - John S. Fletcher, Jr.	✓			
AT-LARGE - Brince H. Manning, III	✓			#12
AT-LARGE - Robert Lanier	✓			

CONDITIONS OF REZONING

William L. Wilson
Zoning Case No. CZ-85016

1. The property may be developed only for Retail, Commercial and Business Offices and/or Institutional purposes in accordance with these proposed conditions of rezoning.
2. Not more than 20,000 square feet of total floor area shall be constructed on the site.
3. Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic bookstores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to land owners in the vicinity.
4. Improvements will be developed in the colonial architectural design comparable to the style and theme of the adjacent shops of Dunwoody and Dunwoody Hall and Dunwoody Village Shopping Centers.
5. The proposed structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the developer's choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.
6. The building height of the improvements shall not exceed two stories from grade level, except for towers where deemed necessary by the developers to maintain the proper design proportion.
7. The roofing shall meet the same design and building materials set forth in Paragraphs 4 and 5 above.
8. A one hundred and fifty foot "undisturbed buffer" will be maintained across the rear of the subject property adjacent to neighboring single family residential development. Said "undisturbed buffer" shall not prohibit the addition of plantings which may be added to the buffer property to reduce visual impact on adjacent homeowners, provided that no damage is done to existing foliage.
9. A six foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to the beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening protection to adjacent homeowner's. Such fence and plantings shall be permanently maintained by the developer in a good state of repair and shall not encroach upon the aforementioned buffer property.
10. All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet from grade level. All lighting for the purposes of

EXHIBIT (A)

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parking will be located to the front of the buildings. Any lighting located in the rear of the building shall be no more than 10 feet in height.

11. All garbage, trash and refuse generated by the operation of the development shall be stored in central "dumpster" type containers located in the area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within 20 feet of the main structure.
12. Site development construction, except for the finishing of concrete, shall occur only between the hours of 7:00 A.M. and 7:00 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather.
13. There shall be no curb cuts, entrances, or exits to the property, either now or in the future, except from Chamblee-Dunwoody Road and from the adjacent development via Dunwoody Village Parkway extension.
14. Neon or internally lighted signs shall not be used in the development.
15. All permanent retention ponds or facilities required for water runoff shall be constructed as underground facilities, located in the parking lot areas. Proper provision shall be made for handling water runoff during site construction, including silt and debris barriers to insure that nearby property owners or buffer property shall not be damaged in any way by such runoff.
16. Commercial truck traffic delivery shall be made during normal business hours and delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.
17. No business in the development shall operate or be open past midnight on any day, except for any restaurant or theater operation.

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DEKALB COUNTY
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE February 23, 1988

PREL. ☐
ACTION ☐
PUB.HRG. ☒

ITEM NO. 16.

RESOLUTION ☐
ORDINANCE ☒
PROCLAMATION ☐

SUBJECT: Rezoning Application - Donald R. and Hilda A. Wiggs

DEPARTMENT: Planning

PUBLIC HEARING: ☒ Yes ☐ No

ATTACHMENT: ☒ Yes ☐ No 6 pp

INFORMATION CONTACT: Mac Baggett or *Mc*
Charles Coleman
PHONE NUMBER: 371-2155 *CC*

PURPOSE: CZ-88036 - To consider the application of Donald R. and Hilda A. Wiggs to rezone property located on the southwest side of Chamblee Dunwoody Road, approximately 400' southeast of Dunwoody Village Parkway, from R-150 to C-1 (conditional). The application is conditioned on use of the property for a florist and gift shop.

DISTRICT: ☒ 1. ☐ 2. ☐ 3. ☐ 4. ☐ 5. ☐ N/A

SUBJECT PROPERTY: 18-366-1-2 (5500 Chamblee Dunwoody Road). The property has frontage of 196' and contains .5 acre.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval with condition. The request is consistent with recommendations of the Comprehensive Plan and compatible with area zoning. Staff supports the rezoning application subject to approval of access and road improvements as may be required by the Public Works Department.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: Approval subject to having only one curb cut and the buildings to be renovated in a manner compatible with the adjoining renovated building.

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EXHIBIT D

Exhibit "D"

Constitutional Objections and *Ante Litem* Notice

The Dunwoody Village Master Plan, § 27-107B(a)(7), facially and as applied to the Subject Property, is unconstitutional in that it would destroy the Owners' property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Dunwoody Village Master Plan, § 27-107B(a)(7), is unconstitutional, illegal, null and void, constituting a taking of the Owners' Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests. A denial of this Application would constitute an arbitrary and capricious act by the City of Dunwoody without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The approval by the City of Dunwoody of the Dunwoody Village Master Plan, § 27-107B(a)(7), would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Owners' and owners of the similarly situated property in

violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The Owners hereby incorporate by reference the letter to which this Exhibit is attached, notify the City of the Owners' intent to seek money damages for the potential injuries specified and serve same upon the City, through its Mayor, via statutory overnight delivery, all in compliance with O.C.G.A § 36-33-5 (2020).