



678-597-9040 ~ www.tuckerga.gov
 4119 Adrian Street, Tucker, GA 30084

CITY OF TUCKER

OCT 13 2016

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SLUP-16-005
 VS-16-005-01

LAND USE PETITION CHECKLIST & APPLICATION FORM
 REZONING, COMPREHENSIVE PLAN AMENDMENT,
 SPECIAL LAND USE PERMIT & CONCURRENT VARIANCE

INSTRUCTIONS

A properly completed application and fees are due at the time of submittal. **An incomplete application will not be accepted.** Original signatures are required for the Application. **Note: Applicants are highly encouraged to meet with nearby property owners prior to filing an application.**

APPLICATION MATERIALS

REQUIRED ITEMS	NUMBER OF COPIES	CHECK <input checked="" type="checkbox"/>
Provide one (1) a digital copy of <u>all</u> submitted materials.	<ul style="list-style-type: none"> One (1) CD or flash drive in .JPEG, .TIFF, .PDF or .DOC format 	<input checked="" type="checkbox"/>
Pre-Application Meeting Form	<ul style="list-style-type: none"> One (1) Copy 	<input type="checkbox"/>
Application	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Written Legal Description	<ul style="list-style-type: none"> One (1) 8 ½" x 11" Legal Description 	<input checked="" type="checkbox"/>
Boundary Survey and Proposed Site Plan (See Page 16 for Requirements)	<ul style="list-style-type: none"> Ten (10) Full-Size (24" x 36") Copies of each One (1) 8 ½" x 11" Site Plan of each 	<input checked="" type="checkbox"/>
Building Elevations (renderings or architectural drawings to show compliance with Article 5)	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Letter of Intent	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Analysis of standards/criteria listed in 7.3.4, 7.3.5, 7.4.6, 7.4.7, and/or 7.5.3	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Environmental Site Analysis Form	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Disclosure Form	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
Peak-hour Trip Generation Count	<ul style="list-style-type: none"> One (1) Copy 	<input checked="" type="checkbox"/>
THE FOLLOWING ITEMS MAY BE REQUIRED		
Traffic Impact Study	<ul style="list-style-type: none"> Three (3) Copies 	<input type="checkbox"/>
Development of Regional Impact Review Form	<ul style="list-style-type: none"> Three (3) Copies 	<input type="checkbox"/>
Environmental Impact Report	<ul style="list-style-type: none"> Three (3) Copies 	<input type="checkbox"/>
Noise Study Report	<ul style="list-style-type: none"> Three (3) Copies 	<input type="checkbox"/>

APPLICATION

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>Northlake Investment Partners c/o K.M. Zickert</u>	NAME: <u>Northlake Investment Partners</u>
ADDRESS: <u>1230 Peachtree St., NE, Ste. 3100</u>	ADDRESS: <u>P.O. Box 48466</u>
CITY: <u>Atlanta</u>	CITY: <u>Atlanta</u>
STATE: <u>GA</u> ZIP: <u>30309</u>	STATE: <u>GA</u> ZIP: <u>30362</u>
PHONE: <u>404-815-3704</u>	PHONE: _____
CONTACT PERSON: <u>Kathryn M. Zickert</u> PHONE: <u>404-815-3704</u>	
CONTACT'S E-MAIL: <u>kmzickert@sgrlaw.com</u>	

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): C-1/O1 REQUESTED ZONING DISTRICT: _____
Commercial

PRESENT LAND USE CATEGORY: _____ REQUESTED LAND USE CATEGORY: _____

LAND DISTRICT(S): 18 LAND LOT(S): 210 ACREAGE: 7.004

ADDRESS OF PROPERTY: 2200 and 2180 Northlake Parkway, Tucker, GA 30084

PROPOSED DEVELOPMENT: Multifamily residential

CONCURRENT VARIANCES: _____

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units <u>210</u>	No. of Buildings/Lots: _____
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. _____
Density: <u>30 u/a</u>	Density: _____

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CITY OF TUCKER

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UPDATED 8/12/2016

SLUP-16-005

APPLICATION

APPLICANT INFORMATION	OWNER INFORMATION
NAME: Northlake Investment Partners c/o K.M. Zickert ADDRESS: 1230 Peachtree St., NE, Ste. 3100 CITY: Atlanta STATE: GA ZIP: 30309 PHONE: 404-815-3704	NAME: Northlake Investment Partners ADDRESS: P.O. Box 48466 CITY: Atlanta STATE: GA ZIP: 30362 PHONE:

CONTACT PERSON: Kathryn M. Zickert **PHONE:** 404-815-3704
CONTACT'S E-MAIL: kmzickert@sgrlaw.com

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OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): C-1 **REQUESTED ZONING DISTRICT:** _____
 Commercial

PRESENT LAND USE CATEGORY: _____ **REQUESTED LAND USE CATEGORY:** _____

LAND DISTRICT(S): 18 **LAND LOT(S):** 210 **ACREAGE:** 7.004

ADDRESS OF PROPERTY: 2200 Northlake Parkway, Tucker, GA 30084

PROPOSED DEVELOPMENT: Multifamily residential

CONCURRENT VARIANCES: _____

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units 210 _____ Dwelling Unit Size (Sq. Ft.): _____ Density: 30 u/a _____	No. of Buildings/Lots: _____ Total Building Sq. Ft. _____ Density: _____

CITY OF TUCKER

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SLVP-16-005

PROPERTY OWNER'S CERTIFICATION

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, Northlake Investment Partners, authorize, Kathryn M. Zickert,
(Property Owner) (Applicant)

to file for SLUP at 2200 Northlake Parkway, Tucker, GA 30084
(RZ, CA, SLUP, CV) (Address)

on this date oct, 12, 2016.
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

[Handwritten Signature]

10/12/2016

Signature of Property Owner

Date

Shirley BAWJEE

Managing Member

Type or Print Name and Title

[Handwritten Signature]

10/12/16

Signature of Notary Public

Date

Notary Seal



CITY OF TUCKER
UPDATED 8/12/2016

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PROPERTY OWNER'S CERTIFICATION

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I, Park 786 LLC, authorize, Kathryn M. Zickert,
(Property Owner) (Applicant)

to file for SLUP, at 2180 Northlake Parkway, Tucker, GA 30084
(RZ, CA, SLUP, CV) (Address)

on this date 10 24, 20 16
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
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Laila Amarsi _____ Date 10/24/16
Signature of Property Owner

Laila Amarsi manager / Farhad Amarsi owner
Type or Print Name and Title

[Signature] _____ Date 10/24/16 Notary Seal _____
Signature of Notary Public



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DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); **NO** (if NO, complete only point 4)

1. CIRCLE ONE: **Party to Petition** (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) _____, Northlake Investment Partners

Signature:

Date: 10/12/2016

CITY OF TUCKER

DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

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4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Kathryn M. Zickert

Signature: *Kathryn M Zickert*

Date: 10/12/16
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**Environmental Site Analysis-2180 and 2200 Northlake Parkway
10/24/2016**

2. Environmental Impacts of the Proposed Project

- a. **Wetlands-** There are no wetlands on the subject property.
- U.S. Fish and Wildlife Service, National Wetlands Inventory (<http://wetlands.fws.gov/downloads.htm>)
 - Georgia Geologic Survey (404-656-3214)
 - Field observation and subsequent wetlands delineation/survey if applicable
- b. **Floodplain-** The subject property is not located in a floodplain.
- Federal Emergency Management Agency (<http://www.fema.org>)
 - Field observation and verification
- c. **Streams/stream buffers-** No such conditions are known.
- Field observation and verification
- d. **Slopes exceeding 25 percent over a 10-foot rise in elevation-** No such conditions exist on the property.
- United States Geologic Survey Topographic Quadrangle Map
 - Field observation and verification
 - DeKalb County GIS topography
- e. **Vegetation-** No specimen trees or endangered species exist on the property. The majority of the property is developed with buildings and pavement.
- United States Department of Agriculture, Nature Resource Conservation Service
 - Field observation
- f. **Wildlife Species (including fish)-** No such conditions are located near the property.
- United States Fish and Wildlife Services
 - Georgia Department of Natural Services, Wildlife Resources Division, Natural Heritage Program
 - Field observation
- g. **Archeological/Historical Sites-**No such conditions are known.
- Historic Resources Survey
 - Georgia Department of Natural Resources, Historic Preservation Division
 - Field observation and verification

3. Project Implementation Measures

- a. **Protection of environmentally sensitive areas, i.e., floodplain, slopes exceeding 25 percent, river corridors.**

No such conditions exist on the property.

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b. Protection of Water Quality-

We will include appropriate erosion control procedures in the project and comply with local, state, and federal water quality regulations. The existing and past developments have no facilities to treat or detain storm water. The developer will provide for a minimum of 80% TSS removal for the first 1.2 inches of rainfall, in accordance with the requirements established by the City of Tucker and DeKalb County storm water ordinance, the Georgia Stormwater Management Manual and Georgia Department of Natural Resources to meet city, county and state standards relative to runoff, flow and water quality.

c. Minimization of negative impacts on existing infrastructure-

The proposed use will be limited to the boundaries of the property and will, therefore, not impact any existing nearby structures. Existing infrastructure is sufficient to handle the proposed use. Sanitary sewer service and water service are provided by DeKalb County. The existing sewer is located on the west side of the property and flows north toward the Northlake Parkway interchange. Water is located in the right of way of Northlake Parkway. We have discussed capacities of both sanitary sewer and water with DeKalb County. There are no restrictions or formal limitations currently imposed by DeKalb County. The sizes of existing water mains and pressures are adequate for the proposed uses. There are structures in the roads and adjacent drainage features that currently accept stormwater runoff from the site. The stormwater facilities proposed will tie directly to this utility maintaining existing drainage patterns. Stormwater, by code, will have reduced peak rates of flow minimizing or even eliminating negative impacts on existing infrastructure. Public utilities are available and adequate at the site boundaries.

d. Minimization on archeological/historically significant areas-

No such conditions are known to exist on the property.

e. Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and wastewater treatment facilities, utilities, airports and railroads) and industrial (e.g., landfills, quarries and manufacturing facilities) uses-

No such conditions are known to exist.

f. Creation and preservation of green space and open space-

The proposed project will include a preservation of green space and public open space as specified in the requirements of the City of Tucker Comprehensive Plan and the Northlake Parkway Overlay District. Compared to the existing shopping center development, greenspace will be increased.

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g. Protection of citizens from the negative impacts of noise and lighting-

The Applicant will take reasonable measures to protect citizens from the negative impacts of noise and lighting, if any, resulting from the new use. Lighting on all buildings will be shielded to protect the adjacent properties from any potential light spillage or glare. Parking lot lighting will be shielded and will comply with all current standards. Again, significant improvement over existing conditions is expected.

h. Protection of parks and recreational green space-

No parks or recreational green space currently exist on the property.

i. Minimization of impacts to wildlife habitats-

No such conditions are known to exist on the property.



U.S. Fish and Wildlife Service

National Wetlands Inventory

2180 and 2200 Northlake Parkway 2



Esri, HERE, DeLorme, Mapbox, Microsoft, Swatch, and others contribute GIS user community

October 24, 2016

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the [National Wetlands Mapper](#) web site.

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Estuarine and Marine Deepwater
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

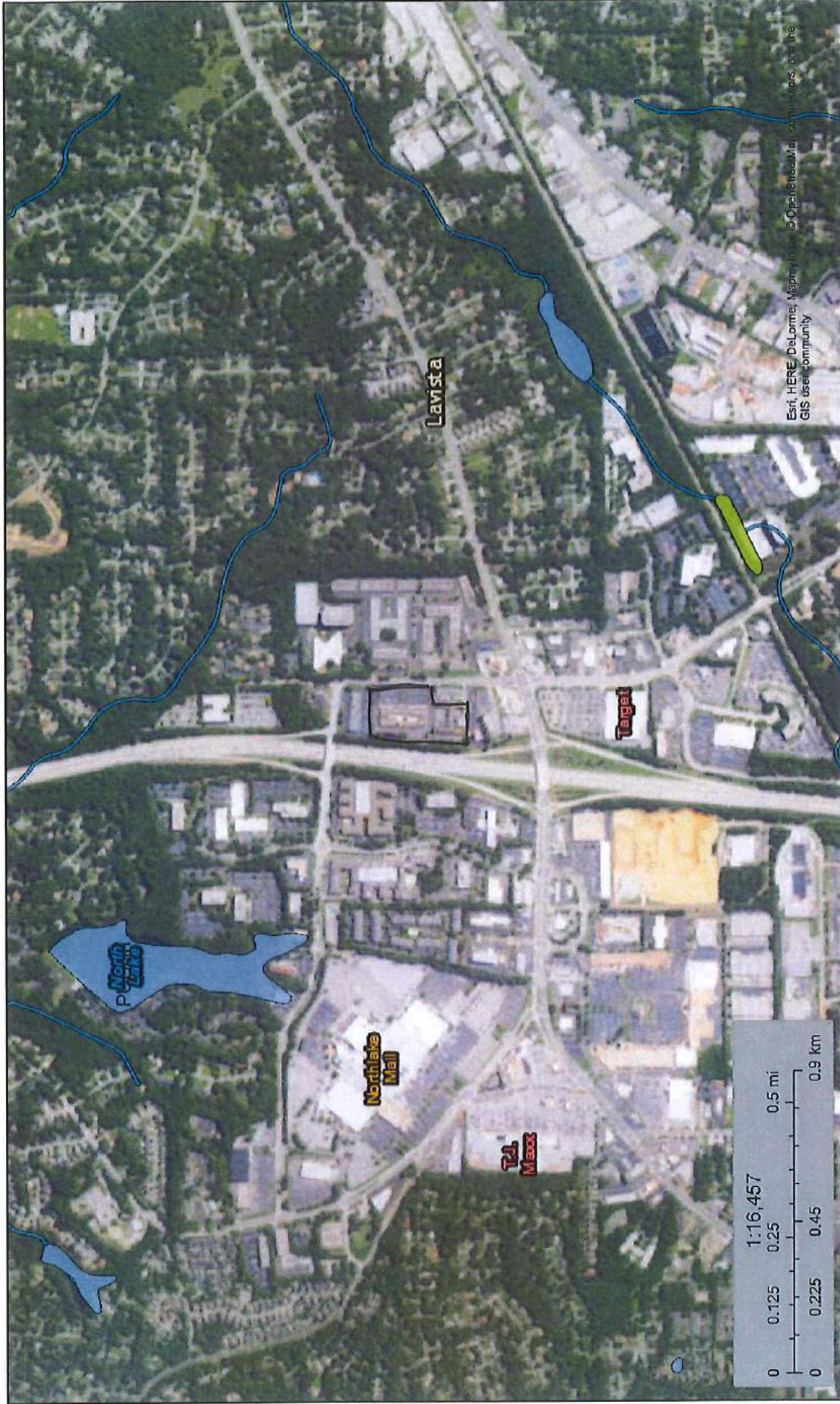
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U.S. Fish and Wildlife Service

National Wetlands Inventory

2180 and 2200 Northlake Parkway, Tucker



Esri, HERE, DeLorme, Mapbox, Swatch, OpenStreetMap contributors, and the GIS user community

October 24, 2016

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
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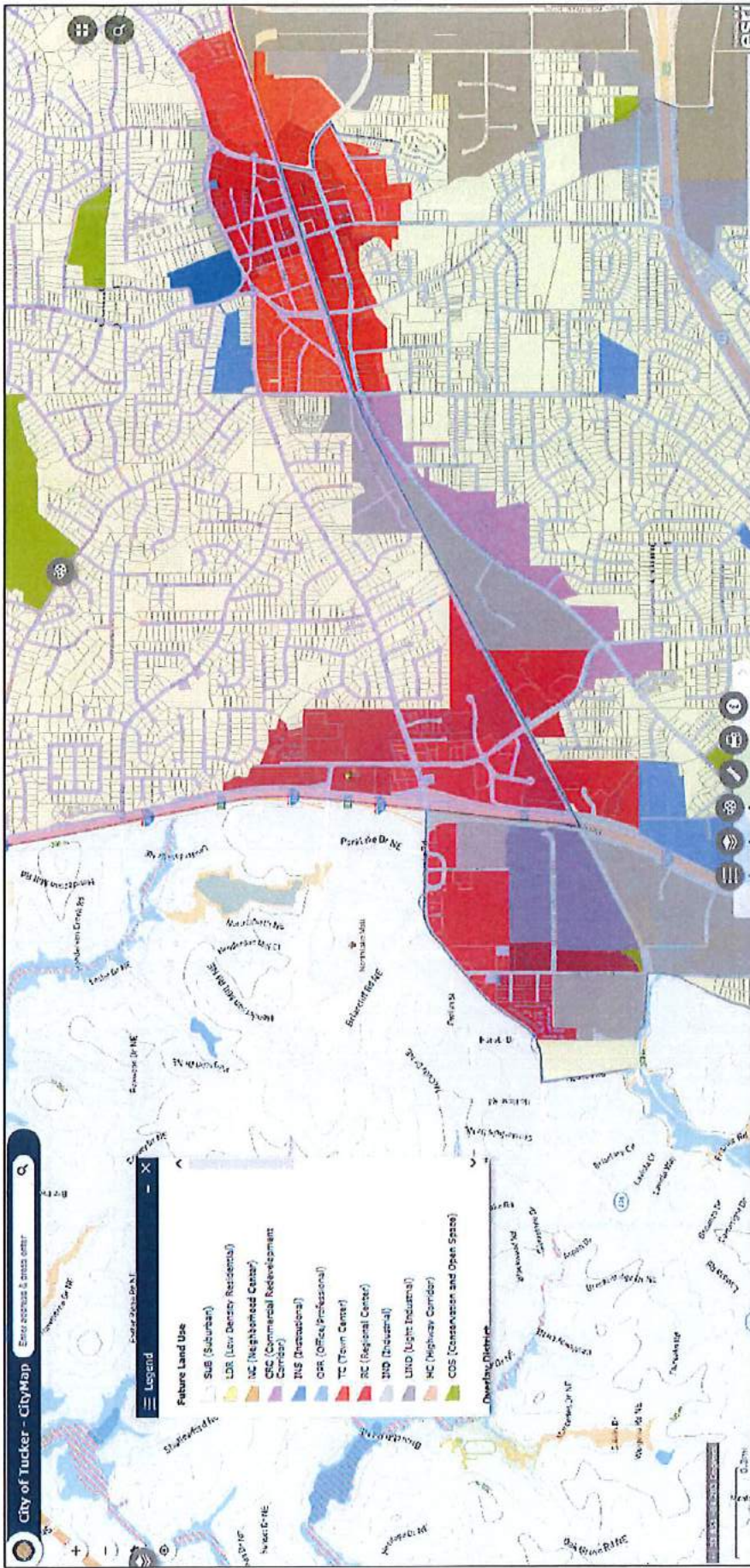
CITY OF TUCKER

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National Wetlands Inventory (NWI)



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All that Tract or Parcel of land lying and being in Land Lot 210 of the 18th District of DeKalb County, Georgia, as being more particularly described as follow:

Commencing at a point formed by the intersection of the northerly right-of-way of Lavista Road (Right-of-way varies) with the westerly right-of-way of Northlake Parkway (Right-of-way varies); Thence northerly along the westerly right of way of Northlake Parkway a distance of 644.03 feet to a 5/8" Rebar Set, said 5/8" Rebar set being the Point of Beginning;

Thence leaving said right-of-way of Northlake Parkway S 89°19'33"W a distance of 262.30' to a point; Thence S 00°57'09"E a distance of 270.89' to a point; Thence N 89°49'35"W a distance of 209.98' to a 5/8"rebar Set; Thence S 74°02'49"W a distance of 48.19' to a 5/8" Rebar Set; Thence N 31°33'42"W a distance of 12.51'to a 5/8" rebar Set on the easterly right-of-way of Interstate 285 (Right-of-way varies); Thence along said right-of-way of Interstate 285 the following courses and distances: N 05°13'10"E a distance of 271.18' to a 5/8" Rebar Set; N 04°43'10"E a distance of 508.12' to a 1/2" Rebar Found; Thence leaving said right-of-way N 89°29'03"E a distance of 445.80' to a 1/2" Rebar Found on the westerly right-of-way of Northlake Parkway; Thence along said right of way of Northlake Parkway S 00°57'09"E a distance of 504.64' to a 5/8" Rebar Set, said 5/8" Rebar Set being the Point of Beginning.

Said Tract contains 7.003 acres or 305,066 square feet, more or less.

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STATEMENT OF INTENT

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Special Land Use Permit

of

NORTHLAKE INVESTMENT PARTNERS

For

± 7.004 Acres of Land
located in
Land Lot 210, 18th District, DeKalb County
Address: 2200 Northlake Parkway, Tucker, GA 30084

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
Vickie B. Chung
Smith, Gambrell & Russell, LLP
Promenade Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

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I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) to allow for the construction of a mixed-use project with 210 residential apartment units (30 units per acre) and a restaurant use on a 7 acre site on Northlake Parkway, Land Lot 210 of the 18th District of DeKalb County, Georgia (the “Subject Property”). Approximately 6.1 acres of the Subject Property will be used for the multi-family portion, with the remaining ± 0.91 acres being used for a $\pm 5,300$ square foot restaurant. The proposed residential units will be divided among three four-story structures with surface parking, which will be concealed from the street. The residential units facing Northlake Parkway will engage the street by providing stoops and direct sidewalk access. The approximate FAR for the multi-family portion is 0.83, well within the allowed 1.5, and the proposed density is the allowed 30 units per acre, which is permitted under Tier 2 of the Northlake Overlay District with a SLUP. Approximately 30% open space will be provided and maintained by the multi-family owner management company. The central pool and amenities and all residential building entrances will be connected by an internal sidewalk system, which will connect to the public sidewalk.

The Subject Property is currently zoned C-1, located in the Northlake Overlay District, Tier 2, and designated as being within a “Regional Center” on Tucker’s Future Land Use Map. The Subject Property currently consists of two

parcels. The northern parcel is used as a shopping center and restaurant, while the southern parcel is used as a motel, the Northlake Inn. The restaurant and a portion of its parking will remain on the northern parcel, with the remainder of the existing uses being demolished for the development of the multi-family units.

This project was initiated under prior to the incorporation of Tucker, and overlay review was completed by the Tucker Civic Association ("TCA"), the designated arm of the Northlake Overlay Review Committee, in April of this year. The TCA reviewed all materials submitted and made comments, all of which were fully addressed by the Applicant. The TCA found the proposed development was consistent with the goals of Tier 2 of the Northlake Overlay District, and represented a favorable mixture of new development and investment in the Northlake commercial area.

The Subject Property is located in an area that has seen tremendous growth and redevelopment. The Subject Property, which is bounded by the west by I-285 and to the east by Northlake Parkway, is surrounded by uses compatible to those proposed. Directly across Northlake Parkway from the Subject Property is Tucker Meridian, a $\pm 200,000$ square foot shopping center. Directly to the north of the Subject Property is a smaller shopping center and directly to the south is a hair salon, Budget Car Rental, and Chevron gas station. Across I-285 from the Subject Property are offices, apartments, hotels and other commercial uses.

Tier 2 of the Northlake Overlay District envisions a 60%/30%/10% split among office, commercial and residential uses, respectively. Because the office market in the Northlake commercial district is already heavily saturated, the Subject Property would best serve the goals of the Northlake Overlay District by being redeveloped for commercial and residential uses, as proposed. The Applicant submits this document as a Statement of Intent with regard to its Application, a preservation of the Applicant's constitutional rights with respect to the Subject Property, and a written justification for the proposed SLUP as required by Tucker's Zoning Ordinance, Section 7-4-6.

II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The size of the Subject Property is adequate for the proposed use. The proposed multi-family units, which will be located on ± 6.1 acres of the Subject Property, will be within the allowed density and FAR. The existing restaurant, which will remain on the remaining ± 0.91 acres, is modestly sized at 5,300 square feet, and has a FAR of 0.2. The Subject Property will comply with all requirements of the C-1 district and the Northlake Overlay. Adequate parking, landscaping, open space and sidewalks will be provided.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The proposed use is fully compatible with the adjacent properties and land uses as well as those in the larger surrounding area. The proposed multi-family

units will add a much-needed housing option to the Northlake commercial area and the restaurant will serve nearby residents and workers.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

There are adequate public services, public facilities, and utilities to serve the proposed development. The proposed multi-family units will range from 12 studio units, 132 one-bedroom units and 66 two-bedroom units. The vast majority of anticipated residents will be young professionals without children and empty nesters. For those residents with school-aged children, the proposed development will be served by Midvale Elementary School, Tucker Middle School and Tucker High School, all of which have capacity.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The proposed Restaurant should not unduly increase traffic or create congestion in the area. The Subject Property is located on Northlake Parkway, a four lane road. According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (Ninth Edition) (Land Use Category 221: Low-Rise Apartment), the proposed multi-family units should generate approximately 107 a.m. peak hour trips and 130 p.m. peak hour trips. Given the capacity of Northlake Parkway and surrounding roads, this minor amount of additional trips should not increase traffic or create congestion in the area.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

There should be no change in the character of vehicles visiting the Subject Property if this SLUP is approved. Additionally, while there may be some addition to the volume of traffic visiting the site, this increase should be minimal in light of the Subject Property's access to major thoroughfares.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

Adequate ingress and egress to the Subject Property will be provided, both for vehicular and pedestrian traffic. The proposed development will be served by resident traffic gate and walking gate, in addition to internal sidewalks that connect to the public sidewalk system. The proposed development will also provide for 42 bicycle parking spaces on internal bike racks.

G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use.

The Subject Property is surrounded by commercial uses that will not be adversely impacted by the proposed development.

H. Whether or not the proposed use will create adverse impacts upon any adjoin land use by reason of the hours of operation of the proposed use.

The restaurant's hours of operation are from 7 a.m. to 9 p.m., which is similar to other restaurants in the surrounding area.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The manner of operation of the restaurant would be similar to that of the other retail services provided in the area. That is, patrons would visit the restaurant for a short time period to dine in or pick up food, much like patrons of the surrounding retail uses. Accordingly, the proposed use would not create adverse impacts upon any adjoining land use.

J. Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed Restaurant would be fully compliant with the C-1 district regulations. In addition, the proposed use is compatible with the following purposes and goals of the Northlake Overlay District, Tier 2:

- Provide for the development of sidewalks and walkways in order to promote safe and convenient pedestrian access and to reduce dependence on automobile travel;
- Promote a physically attractive, environmentally safe and economically sound mixed-use community;
- Permit and encourage mixed-use developments containing both commercial and residential uses to create a pedestrian oriented community in which people can live, work and play;
- Encourage mixed-use developments that meet the goals and objectives of the Atlanta Regional Commission's Smart Growth and Livable Centers Initiatives;
- Allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking;
- Encourage the formation of a well-designed, pedestrian-friendly activity center with high-density commercial and residential development that increases vitality and choices in living environments for the citizens of DeKalb County;
- Protect established single-family residential areas surrounding the Northlake Overlay District from encroachment of commercial, retail, office and industrial uses by providing for increased density of development within the boundaries of the Northlake Overlay District.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The Subject Property is designated as "Regional Center" on Tucker's Future Land Use Map. The Regional Center character area encourages commercial and higher-density residential uses such as those proposed. The proposed development is fully allowed within this character area, and promotes the following specific goals and strategies of the City's Land Use Plan:

- LUS1: Locate developments in areas with direct access to existing infrastructure.
- LUS3: Encourage development within and near principal transportation corridors and activity centers.
- RCCAP4: Create pedestrian scale communities that focus on the relationship between the street, buildings, streetscaping and people.
- RCCAP5: Create compact mixed use districts and reduce automobile dependency and travel to obtain basic services.
- RCCAS5: Clearly define road edges by locating buildings near the roadside with parking in the rear.
- RCCAS7: Encourage that all development and redevelopment in activity centers provide open space and/or contribute to the public realm with wider public sidewalks, pedestrian linkages and other design guidelines.
- RCCAS8: Promote healthy living in neighborhoods by incorporating a pedestrian environment that encourages socialization, walking, biking and connectivity.
- RCCAS9: Residential development should reinforce the center by locating higher density housing options adjacent to the center, targeted to a broad range of income levels.
- RCCAS10: Enhance the pedestrian-friendly environment by adding sidewalks and creating other pedestrian-friendly trail/bike routes linking to other neighborhood amenities.
- RCCAS11: Use design guidelines and regulations for aesthetic enhancements.
- RCCAS13: Design new developments for increased pedestrian orientation and access.
- RCCAS16: Design for each center should be pedestrian-oriented with walkable connections between different uses.
- RCCAS20: Each Regional Center should include a very high-density mix of retail, office, services, and employment to serve several neighborhoods.

L. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed development provides for all required buffers.

M. Whether or not there is adequate provision of refuse and service areas.

Adequate refuse and service areas will be provided.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

Because the proposed development is suitable for the Subject Property, there is no reason to limit the duration of the requested SLUP.

O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The size of the proposed four-story multi-family buildings is appropriate in light of adjacent and nearby properties. In addition, the proposed development will provide 31.7% of open space.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources in the nearby or surrounding area.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

There are no supplemental regulations applicable to the requested SLUP.

R. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The proposed use will not create any negative shadow impacts on adjoining properties. The multi-family units will be within the allowed 60' maximum height.

S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The proposed multi-family units and restaurant would not result in a disproportionate proliferation of similar uses in the subject character area. The surrounding area consists of a diverse mix of commercial, retail and residential uses, but has relatively few restaurants and apartment options in relation to other uses. The proposed development will contribute to Tier 2's goal of a 60%/30%/10% mix of office, commercial and residential uses.

T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

As mentioned in subsection S above, the proposed development will provide uses that are relatively lacking in the immediate area, contributing to the Northlake District Overlay's goals of creating a community where residents and workers can live, work and play. In sum, it would be consistent with the City's Zoning Ordinance and Comprehensive Plan's objectives for this area.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that a refusal to approve the proposed SLUP would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be in violation of the Dormant Commerce Clause of the Constitution of the United States.

A refusal to approve the proposed SLUP would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be invalid inasmuch as the Zoning Ordinance of the City of Tucker is unlawful, null and void because its adoption and map adoption/maintenance did not and does not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

Tucker's Zoning Ordinance lacks adequate standards for the City Council to exercise its power to review this Application. Specifically, some of the "criteria" set out in Section 7-4-6 are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated criteria (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.

Any limitation on the time for presentation of the issues before the City Council that has the power to zone and grant SLUPs is a violation of the guarantees of free speech under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Further, said limitations are in violation of the right to petition and assemble, in violation of the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph IX of the Constitution of Georgia, as well as the due process clauses of the U.S. and Georgia Constitutions.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully asks that the proposed SLUP be approved. The Applicant also invites and welcomes any comments from City staff, officials, and other interested parties so that such recommendations or input may be considered as conditions of approval of this Application.

This 12th day of October, 2016.

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1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

/s/ Kathryn M. Zickert
Kathryn M. Zickert
Dennis J. Webb, Jr.
Vickie B. Chung
Attorneys For Applicant

**FIRST AMENDED
STATEMENT OF INTENT**

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Special Land Use Permit

of

NORTHLAKE INVESTMENT PARTNERS

For

\pm 7.004 Acres of Land
located in
Land Lot 210, 18th District, DeKalb County
Address: 2200 Northlake Parkway, Tucker, GA 30084

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
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I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) to allow for the construction of a mixed-use project with 210 residential apartment units (30 units per acre) and a restaurant use on a 7 acre site on Northlake Parkway, Land Lot 210 of the 18th District of DeKalb County, Georgia (the “Subject Property”). Approximately 6.1 acres of the Subject Property will be used for the multi-family portion, with the remaining ± 0.91 acres being used for a $\pm 5,300$ square foot restaurant. The proposed residential units will be divided among three four-story structures with surface parking, which will be concealed from the street. The residential units facing Northlake Parkway will engage the street by providing stoops and direct sidewalk access. The approximate FAR for the multi-family portion is 0.83, well within the allowed 1.5, and the proposed density is the allowed 30 units per acre, which is permitted under Tier 2 of the Northlake Overlay District with a SLUP. Approximately 30% open space will be provided and maintained by the multi-family owner management company. The central pool and amenities and all residential building entrances will be connected by an internal sidewalk system, which will connect to the public sidewalk.

The Subject Property is currently zoned C-1, located in the Northlake Overlay District, Tier 2, and designated as being within a “Regional Center” on Tucker’s Future Land Use Map. The Subject Property currently consists of two

parcels. The northern parcel is used as a shopping center and restaurant, while the southern parcel is used as a motel, the Northlake Inn. The restaurant and a portion of its parking will remain on the northern parcel, with a part of the remainder of the existing uses being demolished for the development of the multi-family units. The balance either will be converted to senior housing, or razed and converted to such a use.

This project was initiated prior to the incorporation of Tucker, and overlay review was completed by the Tucker Civic Association (“TCA”), the designated arm of the Northlake Overlay Review Committee, in April of this year. The TCA reviewed all materials submitted and made comments, all of which were fully addressed by the Applicant. The TCA found the proposed development was consistent with the goals of Tier 2 of the Northlake Overlay District, and represented a favorable mixture of new development and investment in the Northlake commercial area. DeKalb County also verbally approved the plan, and met with John McHenry, Community & Economic Development Director of the City of Tucker, to convey that approval.

The Subject Property is located in an area that has seen tremendous growth and redevelopment. The Subject Property, which is bounded by the west by I-285 and to the east by Northlake Parkway, is surrounded by uses compatible to those proposed. Directly across Northlake Parkway from the Subject Property is Tucker

Meridian, a $\pm 200,000$ square foot shopping center. Directly to the north of the Subject Property is a smaller shopping center and directly to the south is a hair salon, Budget Car Rental, and Chevron gas station. Across I-285 from the Subject Property are offices, apartments, hotels and other commercial uses.

Tier 2 of the Northlake Overlay District envisions a 60%/30%/10% split among office, commercial and residential uses, respectively. Because the office market in the Northlake commercial district is already heavily saturated, the Subject Property would best serve the goals of the Northlake Overlay District by being redeveloped for commercial and residential uses, as proposed. The Applicant submits this document as a Statement of Intent with regard to its Application, a preservation of the Applicant's constitutional rights with respect to the Subject Property, and a written justification for the proposed SLUP as required by Tucker's Zoning Ordinance, Section 7-4-6.

II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The size of the Subject Property is adequate for the proposed use. The proposed multi-family units, which will be located on ± 6.1 acres of the Subject Property, will be within the allowed density and FAR. The existing restaurant, which will remain on the remaining ± 0.91 acres, is modestly sized at 5,300 square feet, and has a FAR of 0.2. The Subject Property will comply with all

requirements of the C-1 district and the Northlake Overlay. Adequate parking, landscaping, open space and sidewalks will be provided.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The proposed use is fully compatible with the adjacent properties and land uses as well as those in the larger surrounding area. The proposed multi-family units will add a much-needed housing option to the Northlake commercial area and the restaurant will serve nearby residents and workers.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

There are adequate public services, public facilities, and utilities to serve the proposed development. The proposed multi-family units will range from 12 studio units, 132 one-bedroom units and 66 two-bedroom units. The vast majority of anticipated residents will be young professionals without children and empty nesters. For those residents with school-aged children, the proposed development will be served by Midvale Elementary School, Tucker Middle School and Tucker High School, all of which have capacity.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The proposed Restaurant should not unduly increase traffic or created congestion in the area. The Subject Property is located on Northlake Parkway, a four lane road. According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (Ninth Edition) (Land Use Category 221: Low-Rise Apartment), the proposed multi-family units should generate approximately 107 a.m. peak hour trips and 130 p.m. peak hour trips. Given the capacity of Northlake Parkway and surrounding roads, this minor amount of additional trips should not increase traffic or create congestion in the area.

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E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

There should be no change in the character of vehicles visiting the Subject Property if this SLUP is approved. Additionally, while there may be some addition to the volume of traffic visiting the site, this increase should be minimal in light of the Subject Property's access to major thoroughfares.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

Adequate ingress and egress to the Subject Property will be provided, both for vehicular and pedestrian traffic. The proposed development will be served by a resident traffic gate and walking gate, in addition to internal sidewalks that connect to the public sidewalk system. The proposed development will also provide for 42 bicycle parking spaces on internal bike racks.

G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use.

The Subject Property is surrounded by commercial uses that will not be adversely impacted by the proposed development.

H. Whether or not the proposed use will create adverse impacts upon any adjoin land use by reason of the hours of operation of the proposed use.

The restaurant's hours of operation are from 7 a.m. to 9 p.m., which is similar to other restaurants in the surrounding area.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The manner of operation of the restaurant would be similar to that of the other retail services provided in the area. That is, patrons would visit the restaurant for a short time period to dine in or pick up food, much like patrons of the

surrounding retail uses. Accordingly, the proposed use would not create adverse impacts upon any adjoining land use.

J. Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed Restaurant would be fully compliant with the C-1 district regulations. In addition, the proposed use is compatible with the following purposes and goals of the Northlake Overlay District, Tier 2:

- Provide for the development of sidewalks and walkways in order to promote safe and convenient pedestrian access and to reduce dependence on automobile travel;
- Promote a physically attractive, environmentally safe and economically sound mixed-use community;
- Permit and encourage mixed-use developments containing both commercial and residential uses to create a pedestrian oriented community in which people can live, work and play;
- Encourage mixed-use developments that meet the goals and objectives of the Atlanta Regional Commission's Smart Growth and Livable Centers Initiatives;
- Allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking;
- Encourage the formation of a well-designed, pedestrian-friendly activity center with high-density commercial and residential development that increases vitality and choices in living environments for the citizens of DeKalb County;
- Protect established single-family residential areas surrounding the Northlake Overlay District from encroachment of commercial, retail, office and industrial uses by providing for increased density of development within the boundaries of the Northlake Overlay District.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The Subject Property is designated as "Regional Center" on Tucker's Future Land Use Map. The Regional Center character area encourages commercial and higher-density residential uses such as those proposed. The proposed development

is fully allowed within this character area, and promotes the following specific goals and strategies of the City's Land Use Plan:

- LUS1: Locate developments in areas with direct access to existing infrastructure.
- LUS3: Encourage development within and near principal transportation corridors and activity centers.
- RCCAP4: Create pedestrian scale communities that focus on the relationship between the street, buildings, streetscaping and people.
- RCCAP5: Create compact mixed use districts and reduce automobile dependency and travel to obtain basic services.
- RCCAS5: Clearly define road edges by locating buildings near the roadside with parking in the rear.
- RCCAS7: Encourage that all development and redevelopment in activity centers provide open space and/or contribute to the public realm with wider public sidewalks, pedestrian linkages and other design guidelines.
- RCCAS8: Promote healthy living in neighborhoods by incorporating a pedestrian environment that encourages socialization, walking, biking and connectivity.
- RCCAS9: Residential development should reinforce the center by locating higher density housing options adjacent to the center, targeted to a broad range of income levels.
- RCCAS10: Enhance the pedestrian-friendly environment by adding sidewalks and creating other pedestrian-friendly trail/bike routes linking to other neighborhood amenities.
- RCCAS11: Use design guidelines and regulations for aesthetic enhancements.
- RCCAS13: Design new developments for increased pedestrian orientation and access.
- RCCAS16: Design for each center should be pedestrian-oriented with walkable connections between different uses.
- RCCAS20: Each Regional Center should include a very high-density mix of retail, office, services, and employment to serve several neighborhoods.

L. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed development provides for all required buffers.

M. Whether or not there is adequate provision of refuse and service areas.

Adequate refuse and service areas will be provided.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

Because the proposed development is suitable for the Subject Property, there is no reason to limit the duration of the requested SLUP.

O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The size of the proposed four-story multi-family buildings is appropriate in light of adjacent and nearby properties. In addition, the proposed development will provide 31.7% of open space.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources in the nearby or surrounding area.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

There are no supplemental regulations applicable to the requested SLUP.

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R. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The proposed use will not create any negative shadow impacts on adjoining properties. The multi-family units will be within the allowed 60' maximum height.

S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The proposed multi-family units and restaurant would not result in a disproportionate proliferation of similar uses in the subject character area. The surrounding area consists of a diverse mix of commercial, retail and residential uses, but has relatively few restaurants and apartment options in relation to other uses. The proposed development will contribute to Tier 2's goal of a 60%/30%/10% mix of office, commercial and residential uses.

T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

As mentioned in subsection S above, the proposed development will provide uses that are relatively lacking in the immediate area, contributing to the Northlake District Overlay's goals of creating a community where residents and workers can live, work and play. In sum, it would be consistent with the City's Zoning Ordinance and Comprehensive Plan's objectives for this area.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that a refusal to approve the proposed SLUP would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

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A refusal to approve the proposed SLUP would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be in violation of the Dormant Commerce Clause of the Constitution of the United States.

A refusal to approve the proposed SLUP would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be invalid inasmuch as the Zoning Ordinance of the City of Tucker is unlawful, null and void because its adoption and map adoption/maintenance did not and does not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

Tucker's Zoning Ordinance lacks adequate standards for the City Council to exercise its power to review this Application. Specifically, some of the "criteria" set out in Section 7-4-6 are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated criteria (individually and collectively) are too vague and

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uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.

Any limitation on the time for presentation of the issues before the City Council that has the power to zone and grant SLUPs is a violation of the guarantees of free speech under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Further, said limitations are in violation of the right to petition and assemble, in violation of the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph IX of the Constitution of Georgia, as well as the due process clauses of the U.S. and Georgia Constitutions.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully asks that the proposed SLUP be approved. The Applicant also invites and welcomes any comments from City staff, officials, and other interested parties so that such recommendations or input may be considered as conditions of approval of this Application.

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This 12th day of October, 2016.

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/s/ Kathryn M. Zickert
Kathryn M. Zickert
Dennis J. Webb, Jr.
Vickie B. Chung
Attorneys For Applicant

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**SECOND AMENDED
STATEMENT OF INTENT**

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Special Land Use Permit (SLUP-16-005)
And Concurrent Variance Application

of

NORTHLAKE INVESTMENT PARTNERS

For

± 7.004 Acres of Land
located in
Land Lot 210, 18th District, DeKalb County
Address: 2200 and 2180 Northlake Parkway, Tucker, GA 30084

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
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I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) and concurrent variance to allow for the construction of a mixed-use project with 210 residential apartment units (30 units per acre) and a restaurant use on a 7 acre site on Northlake Parkway, Land Lot 210 of the 18th District of DeKalb County, Georgia (the “Subject Property”). The SLUP application (SLUP-16-005) was filed with the City on October 13, 2016 seeking to increase the maximum density allowed from 25 units per acre to 30 units per acre. It was then amended on October 26, 2016 to add 2180 Northlake Parkway. This Second Amended Statement of Intent is submitted to add a request for a concurrent variance to decrease the public open space requirement of Section 3.35.13 from 20% to 7%. The criteria for the SLUP and concurrent variance request are considered in Sections II and III, respectively.

Approximately 6.1 acres of the Subject Property will be used for the multi-family portion, with the remaining ± 0.91 acres being used for a $\pm 5,300$ square foot restaurant. The proposed residential units will be divided among three four-story structures with surface parking, which will be concealed from the street. The residential units facing Northlake Parkway will engage the street by providing stoops and direct sidewalk access. The approximate FAR for the multi-family portion is 0.83, well within the allowed 1.5, and the proposed density is the allowed 30 units per acre, which is permitted under Tier 2 of the Northlake

Overlay District with a SLUP. Approximately 30% open space will be provided and maintained by the multi-family owner management company. The central pool and amenities and all residential building entrances will be connected by an internal sidewalk system, which will connect to the public sidewalk. The existing cell tower on site will be relocated to the northwest corner of the Subject Property.

The Subject Property is currently zoned C-1, located in the Northlake Overlay District, Tier 2, and designated as being within a “Regional Center” on Tucker’s Future Land Use Map. The Subject Property currently consists of two parcels. The northern parcel is used as a shopping center and restaurant, while the southern parcel is used as a motel, the Northlake Inn. The restaurant and a portion of its parking will remain on the northern parcel, with a part of the remainder of the existing uses being demolished for the development of the multi-family units. The balance either will be converted to senior housing, or razed and converted to such a use.

This project was initiated prior to the incorporation of Tucker, and overlay review was completed by the Tucker Civic Association (“TCA”), the designated arm of the Northlake Overlay Review Committee, in April of this year. The TCA reviewed all materials submitted and made comments, all of which were fully addressed by the Applicant. The TCA found the proposed development was consistent with the goals of Tier 2 of the Northlake Overlay District, and

represented a favorable mixture of new development and investment in the Northlake commercial area. DeKalb County also verbally approved the plan, and met with John McHenry, Community & Economic Development Director of the City of Tucker, to convey that approval.

The Subject Property is located in an area that has seen tremendous growth and redevelopment. The Subject Property, which is bounded by the west by I-285 and to the east by Northlake Parkway, is surrounded by uses compatible to those proposed. Directly across Northlake Parkway from the Subject Property is Tucker Meridian, a \pm 200,000 square foot shopping center. Directly to the north of the Subject Property is a smaller shopping center and directly to the south is a hair salon, Budget Car Rental, and Chevron gas station. Across I-285 from the Subject Property are offices, apartments, hotels and other commercial uses.

Tier 2 of the Northlake Overlay District envisions a 60%/30%/10% split among office, commercial and residential uses, respectively. Because the office market in the Northlake commercial district is already heavily saturated, the Subject Property would best serve the goals of the Northlake Overlay District by being redeveloped for commercial and residential uses, as proposed. The Applicant submits this document as a Statement of Intent with regard to its Application, a preservation of the Applicant's constitutional rights with respect to

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the Subject Property, and a written justification for the proposed SLUP as required by Tucker's Zoning Ordinance, Section 7-4-6.

II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The size of the Subject Property is adequate for the proposed use. The proposed multi-family units, which will be located on ± 6.1 acres of the Subject Property, will be within the allowed density and FAR. The existing restaurant, which will remain on the remaining ± 0.91 acres, is modestly sized at 5,300 square feet, and has a FAR of 0.2. The Subject Property will comply with all requirements of the C-1 district and the Northlake Overlay. Adequate parking, landscaping, open space and sidewalks will be provided.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The proposed use is fully compatible with the adjacent properties and land uses as well as those in the larger surrounding area. The proposed multi-family units will add a much-needed housing option to the Northlake commercial area and the restaurant will serve nearby residents and workers.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

There are adequate public services, public facilities, and utilities to serve the proposed development. The proposed multi-family units will range from 12 studio units, 132 one-bedroom units and 66 two-bedroom units. The vast majority of anticipated residents will be young professionals without children and empty nesters. For those residents with school-aged children, the proposed development will be served by Midvale Elementary School, Tucker Middle School and Tucker High School, all of which have capacity.

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D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The proposed Restaurant should not unduly increase traffic or created congestion in the area. The Subject Property is located on Northlake Parkway, a four lane road. According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (Ninth Edition) (Land Use Category 221: Low-Rise Apartment), the proposed multi-family units should generate approximately 107 a.m. peak hour trips and 130 p.m. peak hour trips. Given the capacity of Northlake Parkway and surrounding roads, this minor amount of additional trips should not increase traffic or create congestion in the area. And, the proposed apartments will generate much less traffic than other uses that are permitted as of right under the C-1 district.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

There should be no change in the character of vehicles visiting the Subject Property if this SLUP is approved. Additionally, while there may be some addition to the volume of traffic visiting the site, this increase should be minimal in light of the Subject Property's access to major thoroughfares.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

Adequate ingress and egress to the Subject Property will be provided, both for vehicular and pedestrian traffic. The proposed development will be served by a resident traffic gate and walking gate, in addition to internal sidewalks that connect to the public sidewalk system. The proposed development will also provide for 42 bicycle parking spaces on internal bike racks.

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G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use.

The Subject Property is surrounded by commercial uses that will not be adversely impacted by the proposed development.

H. Whether or not the proposed use will create adverse impacts upon any adjoin land use by reason of the hours of operation of the proposed use.

The restaurant's hours of operation are from 7 a.m. to 9 p.m., which is similar to other restaurants in the surrounding area.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The manner of operation of the restaurant would be similar to that of the other retail services provided in the area. That is, patrons would visit the restaurant for a short time period to dine in or pick up food, much like patrons of the surrounding retail uses. Accordingly, the proposed use would not create adverse impacts upon any adjoining land use.

J. Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed Restaurant would be fully compliant with the C-1 district regulations. In addition, the proposed use is compatible with the following purposes and goals of the Northlake Overlay District, Tier 2:

- Provide for the development of sidewalks and walkways in order to promote safe and convenient pedestrian access and to reduce dependence on automobile travel;
- Promote a physically attractive, environmentally safe and economically sound mixed-use community;
- Permit and encourage mixed-use developments containing both commercial and residential uses to create a pedestrian oriented community in which people can live, work and play;

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- Encourage mixed-use developments that meet the goals and objectives of the Atlanta Regional Commission's Smart Growth and Livable Centers Initiatives;
- Allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking;
- Encourage the formation of a well-designed, pedestrian-friendly activity center with high-density commercial and residential development that increases vitality and choices in living environments for the citizens of DeKalb County;
- Protect established single-family residential areas surrounding the Northlake Overlay District from encroachment of commercial, retail, office and industrial uses by providing for increased density of development within the boundaries of the Northlake Overlay District.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The Subject Property is designated as "Regional Center" on Tucker's Future Land Use Map. The Regional Center character area encourages commercial and higher-density residential uses such as those proposed. The proposed development is fully allowed within this character area, and promotes the following specific goals and strategies of the City's Land Use Plan:

- LUS1: Locate developments in areas with direct access to existing infrastructure.
- LUS3: Encourage development within and near principal transportation corridors and activity centers.
- RCCAP4: Create pedestrian scale communities that focus on the relationship between the street, buildings, streetscaping and people.
- RCCAP5: Create compact mixed use districts and reduce automobile dependency and travel to obtain basic services.
- RCCAS5: Clearly define road edges by locating buildings near the roadside with parking in the rear.
- RCCAS7: Encourage that all development and redevelopment in activity centers provide open space and/or contribute to the public realm with wider public sidewalks, pedestrian linkages and other design guidelines.

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- RCCAS8: Promote healthy living in neighborhoods by incorporating a pedestrian environment that encourages socialization, walking, biking and connectivity.
- RCCAS9: Residential development should reinforce the center by locating higher density housing options adjacent to the center, targeted to a broad range of income levels.
- RCCAS10: Enhance the pedestrian-friendly environment by adding sidewalks and creating other pedestrian-friendly trail/bike routes linking to other neighborhood amenities.
- RCCAS11: Use design guidelines and regulations for aesthetic enhancements.
- RCCAS13: Design new developments for increased pedestrian orientation and access.
- RCCAS16: Design for each center should be pedestrian-oriented with walkable connections between different uses.
- RCCAS20: Each Regional Center should include a very high-density mix of retail, office, services, and employment to serve several neighborhoods.

L. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed development provides for all required buffers.

M. Whether or not there is adequate provision of refuse and service areas.

Adequate refuse and service areas will be provided.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

Because the proposed development is suitable for the Subject Property, there is no reason to limit the duration of the requested SLUP.

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O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The size of the proposed four-story multi-family buildings is appropriate in light of adjacent and nearby properties. In addition, the proposed development will provide 31.7% of open space.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources in the nearby or surrounding area.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

There are no supplemental regulations applicable to the requested SLUP.

R. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The proposed use will not create any negative shadow impacts on adjoining properties. The multi-family units will be within the allowed 60' maximum height.

S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The proposed multi-family units and restaurant would not result in a disproportionate proliferation of similar uses in the subject character area. The surrounding area consists of a diverse mix of commercial, retail and residential uses, but has relatively few restaurants and apartment options in relation to other uses. The proposed development will contribute to Tier 2's goal of a 60%/30%/10% mix of office, commercial and residential uses.

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T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

As mentioned in subsection S above, the proposed development will provide uses that are relatively lacking in the immediate area, contributing to the Northlake District Overlay's goals of creating a community where residents and workers can live, work and play. In sum, it would be consistent with the City's Zoning Ordinance and Comprehensive Plan's objectives for this area.

III. CRITERIA TO BE APPLIED TO CONCURRENT VARIANCES

A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other owners in the same zoning district.

At the outset, the Applicant notes that this is not an attempt to reduce open space: the plan provides 30% open space on the restaurant portion and 27% open space on the multi-family portion, both of which exceed the requirements of the Overlay.¹ The hardship here stems from the requirement to provide public open space on private residential property. While a public open space requirement makes sense for a commercial use that invites members of the public to come and dine, work or shop, no such rationale exists for a private residential use. It is typically understood that there is no invitation to the public to enter into a private apartment complex to come sit in the courtyard or swim in the pool. As such, while the restaurant portion of the proposed development provides 30% public open space, the majority of the multi-family portion's 27% open space is private.

In its prior review of this project, DeKalb County recognized that the public open space requirement is inconsistent with the functional reality of residential development. In fact, the Applicant was expressly told that the 20% public open space requirement applied only to office and commercial uses and not residential, since it is not practical for a residential project to provide public open space except

¹ The open space calculations for the Subject Property are attached as Exhibit A.

in the public right-of-way. Requiring the Applicant to provide 20% public open space on the development's multi-family portion would effectively require the Applicant to remove the security gates for the apartment complex and open up its amenities to the public. The reality is that by and large, the public is not going to come into the complex to enjoy its amenities. But removal of the gate creates an obvious security issue for residents, which results in a less desirable product. If granted, the proposed variance will allow the Applicant to secure its residences while still providing publicly enjoyed improvements along the public-right-of-way.

B. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.

The requested variance is the minimum necessary. The multi-family portion of the proposed project is designed to accommodate the required number of parking spaces and an internal sidewalk system while providing adequate circulation for automobiles and pedestrians and incorporating a central amenity area.

C. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

The grant of the requested variance will not be detrimental to the public welfare or to other properties in the Northlake Overlay. To the contrary, the proposed project will vastly improve the area both aesthetically and functionally and bring it into greater compliance with the goals and requirements of the Overlay. The existing shopping center and motel on site are housed in dated structures that are separated from the road by vast surfacing parking lots and no sidewalks at all. The proposed project involves a number of improvements along Northlake Parkway that will benefit the surrounding area, including: providing a 10' sidewalk along Northlake Parkway where all that currently exists is a makeshift footpath in the grass; providing public bike racks and trash receptacles; planting street trees; providing pedestrian lighting; and donating a minimum of one foot additional right-of-way behind the proposed sidewalk for future public improvements.

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D. The literal interpretation and strict application of the applicable provision to requirements of this chapter would cause undue and unnecessary hardship.

In order to provide 20% public open space on the private multi-family portion of the Subject Property, the Applicant would need to remove the security gate and open up the complex's amenities to the public, who is not very likely to use them. This ultimately results in a security issue for residents of the complex with little benefit to the public.

E. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.

If approved, the proposed variance will allow for a development that is consistent with both the goals of the Overlay and the Comprehensive Plan, as explained in Sections II.J and II.K above.

IV. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that a refusal to approve the proposed SLUP would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be in violation of the Dormant Commerce Clause of the Constitution of the United States.

A refusal to approve the proposed SLUP would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia.

A refusal to approve the proposed SLUP would be invalid inasmuch as the Zoning Ordinance of the City of Tucker is unlawful, null and void because its adoption and map adoption/maintenance did not and does not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

Tucker's Zoning Ordinance lacks adequate standards for the City Council to exercise its power to review this Application. Specifically, some of the "criteria" set out in Section 7-4-6 are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated criteria (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.

Any limitation on the time for presentation of the issues before the City Council that has the power to zone and grant SLUPs is a violation of the

guarantees of free speech under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Further, said limitations are in violation of the right to petition and assemble, in violation of the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph IX of the Constitution of Georgia, as well as the due process clauses of the U.S. and Georgia Constitutions.

V. CONCLUSION

For the foregoing reasons, the Applicant respectfully asks that the proposed SLUP be approved. The Applicant also invites and welcomes any comments from City staff, officials, and other interested parties so that such recommendations or input may be considered as conditions of approval of this Application.

This 21st day of December, 2016.

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EXHIBIT "A"

OPEN SPACE CALCULATIONS

TOTAL SITE AREA: 7 ACRES (304,715 SF)
TOTAL PUBLIC OPEN SPACE: 20,450 SF = 7%
TOTAL OPEN SPACE: 83,729 SF = 27%
NOTE: CELL TOWER AREA IS NOT COUNTED TOWARDS ANY OPEN SPACE

COMMERCIAL AREA (RESTAURANT)
SITE AREA: 42,097 SF
OPEN SPACE (ALL PUBLIC): 12,440 SF = 30%

MULTI-FAMILY & CELL TOWER AREA
SITE AREA: 262,628 SF
TOTAL PUBLIC OPEN SPACE: 8,010 SF = 3%
TOTAL OPEN SPACE: 71,289 SF = 27%

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