

DECEMBER 18, 2012 ZONING HEARING

“OTHER BUSINESS”

COMMISSION DISTRICT 2

(Note: Continued by Staff from the November 20, 2012 Zoning Hearing)

ITEM # 3

PURPOSE

To consider site plan and stipulation amendment for Tri-Kell Investments, Inc. regarding rezoning application Z-49 of 2008 (Tri-Kell Investments, Inc.), for property located at the northwesterly intersection of Paces Mill Road and U.S. Highway 41 in Land Lots 976, 977, 1016 and 1017 of the 17th District.

BACKGROUND

The subject property is zoned RRC pursuant to a settlement of litigation in 2010 for a mixed use development containing residential, retail, restaurant and office uses. When the property was rezoned, the Georgia Department of Transportation (GDOT) was working on a concept plan for road improvements to U.S. Highway 41 in front of this property. GDOT has now finalized a construction plan which has a major impact the applicant's property. Due to the required right of way needs of GDOT and the reconfiguration of driveways on Cobb Parkway, the office tower is being moved from the central part of the property to the northern part of the property. There is no increase in approved square footage or the number of residential units; there is actually going to be a 20,000 square-foot decrease in the square footage of the office tower. The first phase of the development will be for the 180,000 square foot office tower, with the retail and residential units being constructed in phase two. Additionally, the applicant is requesting the stipulation relating to the three year reversion date be deleted since the GDOT planning process has taken so long and because there has not been any GDOT construction on this property. If approved, all previous zoning stipulations would remain in effect.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the proposed site plan and stipulation amendment.

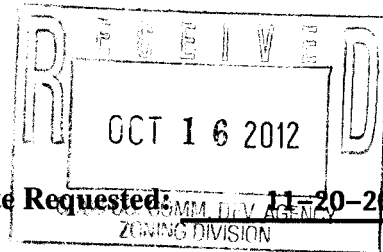
ATTACHMENTS

Other Business application, applicant's letter and site plans received December 13, 2012 and previous stipulations.

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

BOC Hearing Date Requested: 11-20-2012



Applicant: Tri-Kell Investments, Inc. Phone #: (770) 818-4130
(applicant's name printed)

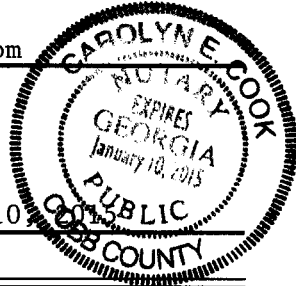
Address: Suite 530, 3625 Cumberland Boulevard, **E-Mail:** _____

Moore Ingram Johnson & Steele, LLP Atlanta, GA 30339
John H. Moore Address: Emerson Overlook, 326 Roswell Street
(representative's name printed) Marietta, GA 30060

BY: [Signature] Phone #: (770) 429-1499 E-Mail: jmoore@mijs.com
(representative's signature) w7@mijs.com

Signed, sealed and delivered in presence of:

Carolyn E. Cook My commission expires: January 10,
Notary Public



Titleholder(s): Riverview Associates, Ltd. Phone #: (770) 818-4130
(property owner's name printed)

Address: Suite 530, 3625 Cumberland Boulevard, **E-Mail:** _____

See Attached Exhibit "A" for Atlanta, GA 30339
Signature of Titleholder's Representative
(Property owner's signature)

Signed, sealed and delivered in presence of:

_____ My commission expires: _____
Notary Public

Commission District: 2 (Ott) **Zoning Case:** Z-49 (2008)

Date of Zoning Decision: 02/17/2009 **Original Date of Hearing:** 10/21/2008
10/19/2010

Location: Northwesterly intersection of Cobb Parkway (U.S. Highway 41) and
(street address, if applicable; nearest intersection, etc.) Paces Mill Road

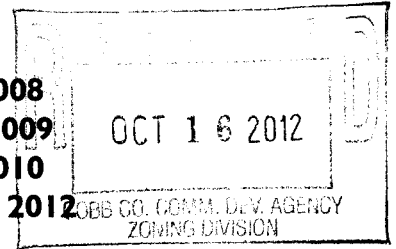
Land Lot(s): 976, 977, 1016, 1017 **District(s):** 17th

State specifically the need or reason(s) for Other Business: _____
See Exhibit "B" attached hereto and incorporated herein by reference.

(List or attach additional information if needed)

**EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR OTHER BUSINESS
(SITE PLAN AND STIPULATION AMENDMENT)**

Application No.: Z-49 (2008)
Original Hearing Date: October 21, 2008
Date of Zoning Decision: February 17, 2009
October 19, 2010
Current Hearing Date: November 20, 2012



BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant: Tri-Kell Investments, Inc.
Property Owner: Riverview Associates, Ltd.

RIVERVIEW ASSOCIATES, LTD.
A Georgia Limited Partnership

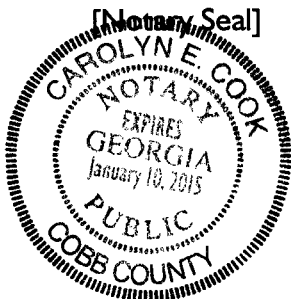
BY: *S. H. Whisenant*
Stephen H. Whisenant
General Partner

Address: Suite 530
3625 Cumberland Boulevard
Atlanta, Georgia 30339

Telephone No.: (770) 818-4130

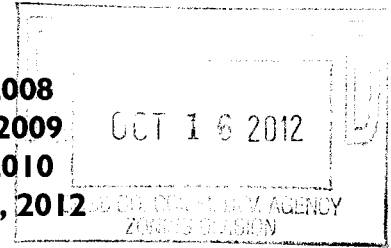
Signed, sealed, and delivered in the presence of:

Carolyn E. Cook
Notary Public
Commission Expires: 01-10-2015



**EXHIBIT "B" - ATTACHMENT TO APPLICATION FOR OTHER BUSINESS
(SITE PLAN AND STIPULATION AMENDMENT)**

Application No.: Z-49 (2008)
Original Hearing Date: October 21, 2008
Date of Zoning Decisions: February 17, 2009
October 19, 2010
Current Hearing Date: November 20, 2012



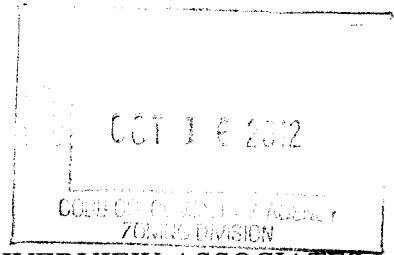
BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant: Tri-Kell Investments, Inc.
Property Owner: Riverview Associates, Ltd.

The property located at the northwesterly intersection of Cobb Parkway and Paces Mill Road ("Property" or "Subject Property") was rezoned for a mixed-use development by the Cobb County Board of Commissioners on October 19, 2010. At the time of the decision, the Georgia Department of Transportation had not yet finalized plans relating to the Cobb Parkway corridor, and as such, it was uncertain as to how improvements would impact the Subject Property; as well as the overall development.

Applicant now seeks the amendments to the previously approved site plan and stipulations of the overall development in light of right-of-way and improvement plans recently presented by the Georgia Department of Transportation. The Conceptual Plan for consideration in this Application for "Other Business" is attached hereto; however, since the previously approved stipulations will be amended substantially, the stipulations proposed for the development pursuant to the attached Conceptual Plan will be enumerated in a separate letter of agreeable stipulations and conditions which will be filed with the Cobb County Zoning Office prior to the hearing date by the Cobb County Board of Commissioners.

RESOLUTION OF
RIVERVIEW ASSOCIATES, LTD.



THE UNDERSIGNED, being the sole General Partner of RIVERVIEW ASSOCIATES, LTD., a Georgia limited partnership (hereinafter referred to as the "Company"), does on oath, state as follows:

WHEREAS, the Company intends to file an Application for "Other Business" as to real property located in Land Lots 976, 977, 1016, and 1017, 17th District, 2nd Section, Cobb County, Georgia (hereinafter referred to as the "Subject Property"); and

WHEREAS, in connection with the filing of the Application for "Other Business" (hereinafter "Application"), the Company must execute certain documents to consummate the contemplated filing of the Application, and a Resolution is needed to authorize the Application and to specifically authorize the execution on behalf of the Company of all documents necessary to consummate the Application; and,

WHEREAS, the undersigned is the sole General Partner of the Company.

NOW, THEREFORE, BE IT RESOLVED that STEPHEN H. WHISENANT, as sole General Partner, is authorized to execute the aforesaid Application for Rezoning, and any and all other documents necessary or appropriate to file and complete the amendments proposed in the Application for the Subject Property on such terms, conditions, and provisions as he deems necessary and appropriate; such execution of any documents being conclusive evidence that STEPHEN H. WHISENANT deems the terms, conditions, and provisions thereof to be proper and in the best interest of the Company.

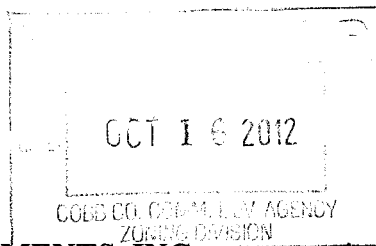
RESOLVED, FURTHER, that any and all acts of STEPHEN H. WHISENANT are pursuant to the authority granted to him by the Company and are accepted as actions of the Company.

IN WITNESS WHEREOF, the undersigned sole General Partner of the Company has hereunto set his hand and seal as of the day and year first above written.

GENERAL PARTNER:

Stephen H. Whisenant
Sole General Partner of
Riverview Associates, Ltd.

CORPORATE RESOLUTION




The undersigned President of **TRI-KELL INVESTMENTS, INC.**, a corporation duly chartered and existing under the laws of the State of Georgia, does hereby certify that the following resolution was presented to the Board of Directors of said corporation, unanimously passed by said Board of Directors, and has not been amended or rescinded, to-wit:

“RESOLVED, that **STEPHEN H. WHISENANT**, President of the Corporation, is hereby authorized to execute an Application for “Other Business” and any and all other ancillary documentation necessary, or conduct any business necessary to effectuate the filing of the Application for “Other Business” or anything which may arise during the amendment process, as to certain property located at the intersection of the westerly side of Cobb Parkway and the northerly side of Paces Mill Road, Land Lots 976, 977, 1016, and 1017, 17th District, 2nd Section, Cobb County, Georgia, and further that any and all acts of said officer pursuant to the authority hereby presented and directed to be, and the same hereby are, approved, ratified and accepted as the action of the corporation.”

This is to further certify the foregoing resolution was entered upon the minutes of said corporation as and for the action of said corporation on the date and for the meeting as herein specified; that the foregoing is a true and correct copy of said resolution as it appears on the records of said corporation; that the officer executing the document does in fact occupy the official position indicated below and that the signature of such officer subscribed hereto is genuine; that the execution of this Corporate Resolution on behalf of the Corporation has been duly authorized; and that the corporate seal or facsimile thereof affixed hereto is a true facsimile thereof.

This 3rd day of October, 2012.



Stephen H. Whisenant
President

(CORPORATE SEAL)

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON†
ROBERT D. INGRAM†
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
JERE C. SMITH
CLAYTON O. CARMACK
KEVIN B. CARLOCK†
ALEXANDER T. GALLOWAY III†
J. KEVIN MOORE
RODNEY R. McCOLLOCH
SUSAN S. STUART
BRIAN D. SMITH
HARRY R. TEAR III
W. TROY HART†
JEFFREY A. DAXE
KIM A. ROPER
VICTOR P. VALMUS

WILLIAM R. WINDERS, JR.†
ANGELA H. SMITH†
JOYCE W. HARPER
CHRISTOPHER C. MINGLEDORFF†
ANGELA D. TARTLINE
CAREY E. OLSON*
CHARLES E. PIERCE*
PRESTON D. HOLLOWAY
WILMA R. BUSH
GREGORY H. FULLER*
VERONICA L. RICHARDSON
TODD I. HEIRD*
DANIEL W. STARNES*
ALEXANDER B. MORRISON*
DOUGLAS W. BUTLER, JR.
APRIL R. HOLLOWAY
CARLA C. WESTER†
JAIME E. KNOEBEL*
ADON J. SOLOMON*
AMY L. JETT*
JEFF C. MORMAN*

MARIETTA, GEORGIA
EMERSON OVERLOOK
326 ROSWELL ST
MARIETTA, GEORGIA 30060
TELEPHONE (770) 429-1499

KNOXVILLE, TENNESSEE
408 N. CEDAR BLUFF RD • STE 500
KNOXVILLE, TENNESSEE 37923
TELEPHONE (865) 692-9039

JACKSONVILLE, FLORIDA
10151 DEERWOOD PARK BLVD • BLDG 200, STE 250
JACKSONVILLE, FLORIDA 32256
TELEPHONE (904) 428-1465

NASHVILLE, TENNESSEE
3200 WEST END AVE • STE 500
NASHVILLE, TENNESSEE 37203
TELEPHONE (615) 425-7347

LOUISVILLE, KENTUCKY
9900 CORPORATE CAMPUS DR • STE 3000
LOUISVILLE, KENTUCKY 40223
TELEPHONE (502) 410-6021

CHARLESTON, SOUTH CAROLINA
4000 S. FABER PLACE DR • STE 300
CHARLESTON, SOUTH CAROLINA 29405
TELEPHONE (843) 302-0002

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SHAWN G. SHELTON
KRISTEN C. STEVENSON*
JASON M. BURK*
MELISSA B. RICKERT†
CARLY M. RECORD
SARAH H. BEST*
ERICA C. MITCHELL
BRAM L. SCHARF†
ROY H. SPARKS*
RYAN C. EDENS*
JULIE C. FULLER*
JODI B. LODEN*
AMY E. BROWN*
TAMMI L. BROWN
TRAVIS R. JACKSON
DAVID A. HURTADO
J. MARSHALL WEHUNT
KENDRA A. BIRTSCH*
JONATHAN J. SMITH
MONTOMA M. HO-SANG†

TRISTAN B. MORRISON****
WILLIAM B. WARIHAY*
W. COLLINS BROWN
ROBERT A. BUTLER
COLLEEN K. HORN*****

OF COUNSEL:
JOHN L. SKELTON, JR.†

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
**** ALSO ADMITTED IN CA
^ ALSO ADMITTED IN TX
• ALSO ADMITTED IN AL
‡ ALSO ADMITTED IN KY
Δ ALSO ADMITTED IN NV
∇ ALSO ADMITTED IN NY
+ ALSO ADMITTED IN SC
ALSO ADMITTED IN NC
♦ ADMITTED ONLY IN TN
◇ ADMITTED ONLY IN FL

December 13, 2012

Hand Delivered

Mr. John P. Pederson, AICP
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Suite 400
1150 Powder Springs Road
Marietta, Georgia 30064

COBB COUNTY GEORGIA
FILED IN OFFICE
2012 DEC 13 AM 11:34
COBB COUNTY ZONING DIVISION

RE: Application for "Other Business" - Application No. Z-49 (2008)
(Other Business Item No. 3 for
December 2012 Agenda)
(Site Plan and Stipulation Amendment)

Applicant: Tri-Kell Investments, Inc.
Property Owner: Riverview Associates, Ltd.
Property: Located at the northwesterly intersection of
Cobb Parkway (U.S. Highway 41) and Paces Mill
Road, Land Lots 976, 977, 1016, and 1017,
17th District, 2nd Section, Cobb County, Georgia

Dear John:

The undersigned and this firm represent the Applicant, Tri-Kell Investments, Inc. (hereinafter "Applicant"), and the Property Owner, Riverview Associates, Ltd. (hereinafter "Owner"), in the above-referenced Application for "Other Business" regarding the development of property located at the northwesterly intersection of Cobb Parkway (U.S. Highway 41) and Paces Mill

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Page 2 of 5
December 13, 2012

Road, Land Lots 976, 977, 1016, and 1017, 17th District, 2nd Section, Cobb County, Georgia (hereinafter "Property" or the "Subject Property"), which was the subject of Application No. Z-49 (2008). Applicant proposes revised amendments to portions of the previously approved stipulations and conditions relating to the overall development of the Subject Property, which, if the revised amendments requested herein are approved, as presented, including the revised Concept Plan, shall replace and supersede the specifically stated stipulations, and, together with the remaining stipulations and revised Concept Plan, shall become binding stipulations for development of the Subject Property. This letter shall replace and supersede in full the letter amendment dated and filed November 14, 2012, regarding the above-referenced Application for "Other Business." The revised stipulations and conditions proposed by Applicant and Owner for amendment are as follows:

- (1) The zoning classification applicable to the Subject Property is Regional Retail Commercial ("RRC"). Applicant proposes development to the RRC zoning classification, site plan specific to the revised Concept Plan prepared by Croy Engineering, Inc., dated December 11, 2012, and submitted contemporaneously with the proposed amendments set forth herein. A reduced copy of the revised Concept Plan is attached hereto for ease of reference as Exhibit "A" and incorporated herein by reference. The revised Concept Plan submitted herewith supersedes and replaces in full the Concept Plan submitted on October 16, 2012, with the Application for "Other Business"; as well as, the revised Concept Plan dated November 7, 2012, and submitted on November 14, 2012.
- (2) Applicant proposes the following amendments to the stipulations and conditions set forth in the April 22, 2010, letter of agreeable conditions and stipulations attached to the final, official minutes for the settlement of litigation heard by the Board of Commissioners and approved on October 19, 2010, as follows:
 - (a) Subparagraph (2)(a) concerning reversion of the Subject Property shall be deleted in its entirety.
 - (b) Subparagraph (2)(b) shall be deleted in its entirety and the following inserted in lieu thereof:

[M]aximum of 105,000 square feet of commercial development (retail space only) as shown and reflected on the revised Concept Plan; and

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Page 3 of 5
December 13, 2012

[M]aximum of 180,000 square feet of office space, a maximum of nine (9) stories in height, constructed upon a parking deck. The location of the referenced office building shall be moved northerly along Cobb Parkway (U.S. Highway 41) to that location shown and depicted on the revised Concept Plan dated December 11, 2012, and submitted contemporaneously herewith.

- (3) The land area comprising the office space as set forth in subparagraph (2)(b) above shall be referred to as Phase I of the total development as more particularly shown and reflected on the revised Concept Plan. The balance and remainder of the development referenced in said Concept Plan shall be referred to as Phase II.
- (4) Prior to obtaining any building permit for Phase II of the development, Applicant will remove a portion of the existing retail (that portion of Phase II immediately adjacent to Phase I).
- (5) Applicant shall, during construction of Phase I, increase the capacity of the existing detention facilities located within Phase II to accommodate any increase in the stormwater runoff from Phase I.
- (6) The Metropolitan River Protection Act is applicable to the Subject Property. This Act imposes, among other things, a limit of impervious surface for this development. The limit imposed for the Subject Property is 6.13 acres. This limit shall be achieved by the following:

(a) Georgia Department of Transportation Condemnation:	0.14 acres;
(b) Grass Pavers and Lawn Areas:	<u>0.53 acres</u>
Total:	0.67 acres;

all as more particularly shown and depicted on the attached Concept Plan, Option I, dated December 7, 2012, said Plan being attached hereto as Exhibit "B" and contemporaneously submitted herewith.

- (7) The proposed office building and drive will add 0.63 acres, which will result in an actual net reduction of total impervious area of 0.04 acres. The work to achieve this net impervious reduction shall be accomplished by Applicant simultaneously

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Mr. John P. Pederson, AICP
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Page 4 of 5
December 13, 2012

with development of the office building, regardless of whether said work is to occur within Phase I or Phase II.

- (8) The balance and remainder of the official minutes, including stipulations set forth therein and referenced attachments, applicable to Application No. Z-49 (2008) from the Board of Commissioners Zoning Hearing held on February 17, 2009, and October 19, 2010, unless otherwise in conflict with the revised stipulations contained herein and the revised Concept Plan, shall remain in full force and effect.

We believe the amendments requested, together with the Plans presented herein, will allow for development of the Subject Property as closely as possible to the originally approved plan when considering the taking of a portion of the Subject Property's right-of-way along Cobb Parkway (U.S. Highway 41) by the Georgia Department of Transportation. The proposed development shall be of the highest quality and shall be comparable to and compatible with similar developments along the Cobb Parkway and Cumberland Boulevard corridors. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc
Attachments

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Page 5 of 5
December 13, 2012

c: Cobb County Board of Commissioners:

Timothy D. Lee, Chairman
George "Woody" Thompson
Helen C. Goreham
Robert J. Ott
Joann Birrell
(With Copies of Attachments)

Ron Sifen
(With Copies of Attachments)

Tri-Kell Investments, Inc.
(With Copies of Attachments)

NOT ISSUED FOR CONSTRUCTION

GROY ENGINEERING
 Engineers Planners Surveyors
 200 NORTH COBB PARKWAY, SUITE 418
 ALLENDALE, GA 30009
 PHONE: (770) 971-5107 FAX: (770) 971-8830

RIVERVIEW ASSOCIATES LTD.
 LAND LOTS 976, 977, 1016 & 1017
 OF THE 17th DISTRICT
 COBB COUNTY, GEORGIA

NO.	DATE	REVISIONS
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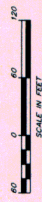
PERSON REFERENCE

SHEET TITLE
CONCEPT PLAN



1220.00
 DRAWN BY: ALG
 CHECKED BY: WWV
 ISSUE DATE: 12/11/12
 SCALE: 1"=60'
 SHEET NUMBER: **1**

IMPERVIOUS AREA = 6.13 AC



COBB COUNTY GEORGIA
FILED IN OFFICE
2012 DEC 13 PM 12:13
COBB COUNTY ZONING DIVISION

APPROXIMATE LIMITS OF
 CHATTAHOOCHEE RIVER
 PROTECTION ACT

SOUTH NANCY CREEK
 UNIVERSITY OF GEORGIA
 (FOR THE PURPOSE OF DETERMINING THE PRESENT USE AS REQUIRED
 BY THE STATE OF GEORGIA)

APPROXIMATE LIMITS
 TO THE FLOOD PLAIN

PROPOSED U.S. HIGHWAY 41 IMPROVEMENTS

EXISTING ROW

PACES MILL ROAD

U.S. HIGHWAY 41

EXHIBIT "A"



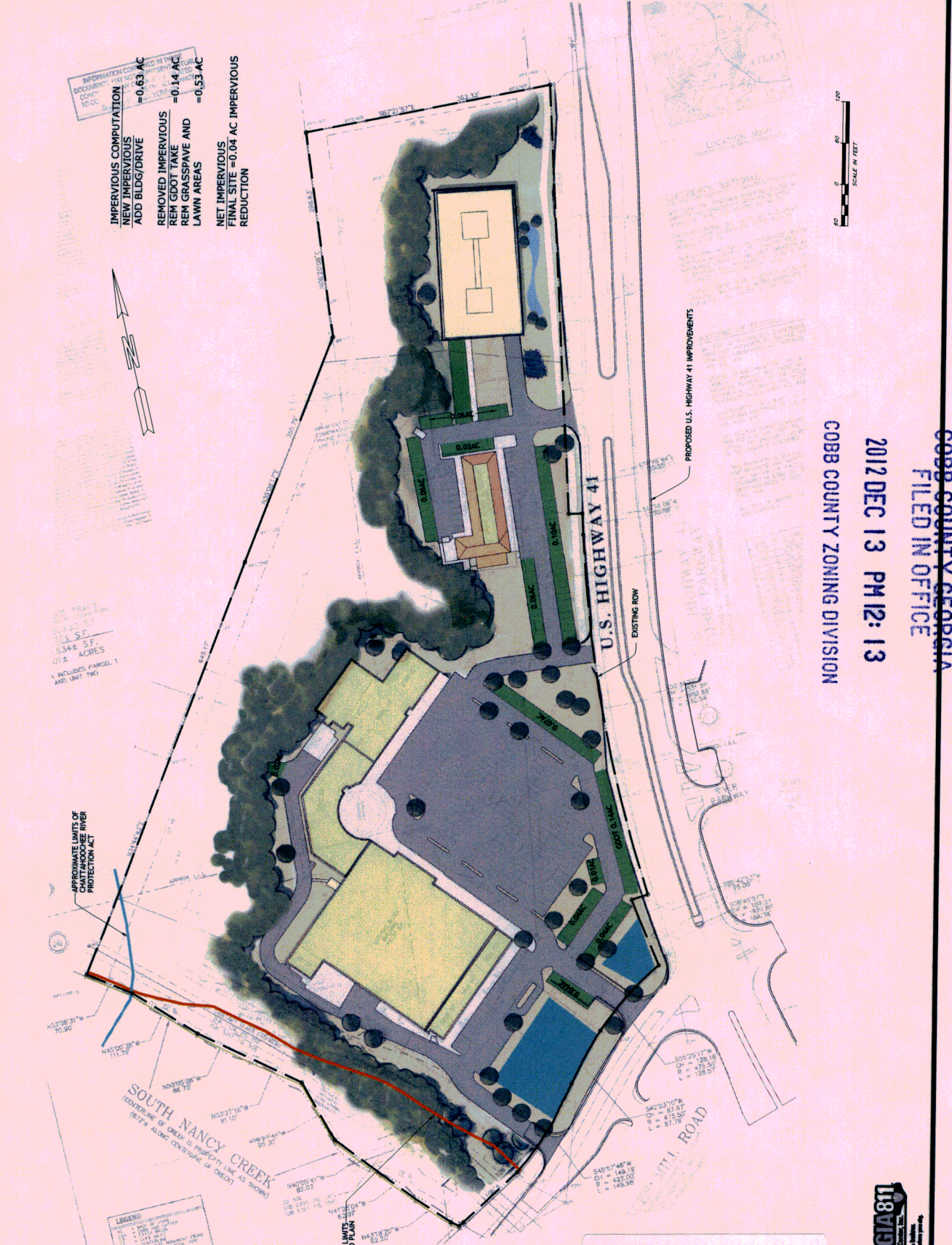
CROY ENGINEERING
 Engineers Planners Surveyors
 200 NORTH COBB PARKWAY, SUITE 400, ATLANTA, GA 30308
 PHONE: (770) 971-5800 FAX: (770) 971-6630

RIVERVIEW ASSOCIATES LTD.
 LAND LOTS 976, 977, 1016 & 1017
 OF THE 17th DISTRICT
 COBB COUNTY, GEORGIA

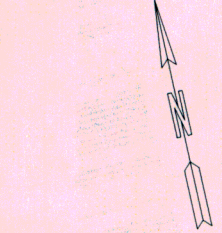
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SEAL
 PROFESSIONAL ENGINEER
 STATE OF GEORGIA
 3120
 1220.00

DRAWN BY ALG	CHECKED BY WWW
SCALE 1"=60'	ISSUE DATE 12/1/12
	SHEET NUMBER 1



IMPERVIOUS COMPUTATION
 NEW IMPERVIOUS = 0.63 AC
 ADD BLDG/DRIVE = 0.14 AC
 REMOVED IMPERVIOUS = 0.63 AC
 REM GOVT TAKE = 0.14 AC
 REM GRASSPAVE AND LAWN AREAS = 0.53 AC
 NET IMPERVIOUS = 0.04 AC
 FINAL SITE = 0.04 AC IMPERVIOUS REDUCTION



APPROXIMATE LIMITS OF CHATTAHOOCHEE RIVER PROTECTION ACT

APPROXIMATE LIMITS OF CHATTAHOOCHEE RIVER PROTECTION ACT

SOUTH NANCY CREEK
 COVERAGE OF CREEK TO PROPERTY LINE IS 100% (10' TO ADJACENT PROPERTY)

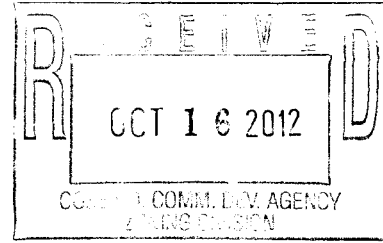
APPROXIMATE LIMITS OF CHATTAHOOCHEE RIVER PROTECTION ACT

EXHIBIT "B"

GEORGIA 811
 Call Before You Dig
 1-800-4-A-DAWG

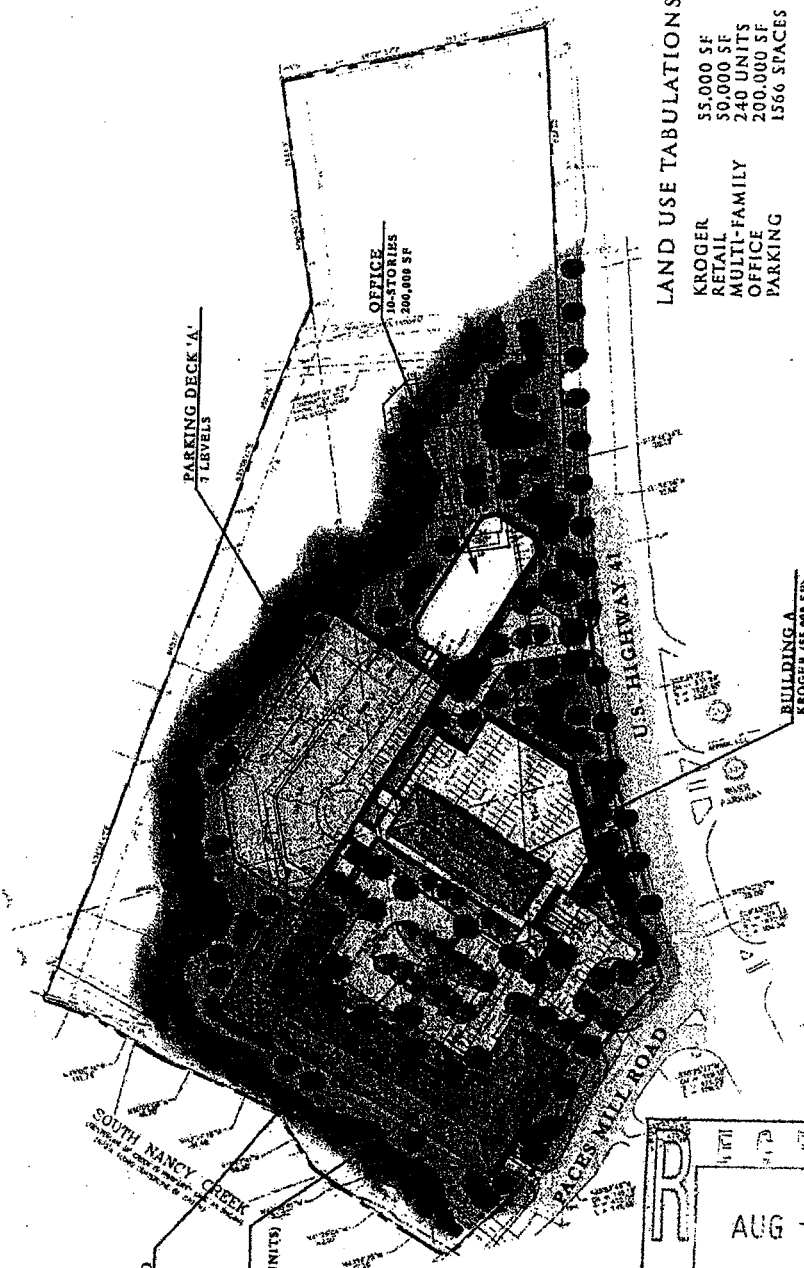
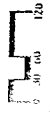
COBB COUNTY GEORGIA
 FILED IN OFFICE
 2012 DEC 13 PM 12:13
 COBB COUNTY ZONING DIVISION





PREVIOUSLY APPROVED SITE PLAN

Min. Bk. 57 Petition No. 2-49 '08
 Doc. Type Site Plan
 Meeting Date 5-17-09



PARKING DECK 'A'
7 LEVELS

OFFICE
10-STORIES
200,000 SF

LAND USE TABULATIONS

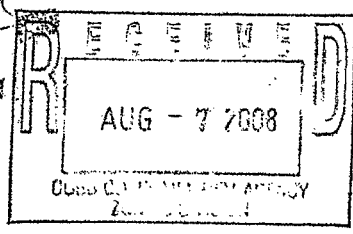
KROGER 55,000 SF
 RETAIL 50,000 SF
 MULTI-FAMILY 240 UNITS
 OFFICE 200,000 SF
 PARKING 1566 SPACES

168 SPACES & PARKING DECK 'A'
 333 SPACES & PARKING DECK IN BUILDING B
 56 SURFACE SPACES & COURTYARD

BUILDING A
KROGER (55,000 SF)
RESIDENTIAL-3 STORIES (48 UNITS)

BUILDING 'B'
RETAIL-1 STORY (50,000 SF)
RESIDENTIAL-4 STORIES (192 UNITS)
PARKING-2 LEVELS BELOW

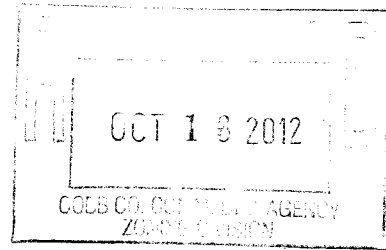
COURTYARD



RIVERVIEW

TRAMMELL CROW RESIDENTIAL/TRI-KELL INVESTMENTS





**FINAL, OFFICIAL MINUTES OF BOARD
OF COMMISSIONERS ZONING
HEARING PURSUANT TO
Z-49 (2009) – FEBRUARY 17, 2009**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
FEBRUARY 17, 2009
9:05 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, February 17, 2009, at 9:05 a.m. in the second floor public meeting room of the Cobb County building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Samuel S. Olens
Commissioner Helen Goreham
Commissioner Tim Lee
Commissioner Woody Thompson
Commissioner Robert Ott

Z-49⁰⁸

TRI-KELL INVESTMENTS, INC. (Riverview Associates, Ltd. and Riverview Village, LLC, owners) requesting Rezoning from GC to RRC for the purpose of Mixed Use Development in Land Lots 976, 977, 1016 and 1017 of the 17th District. Located at the northwesterly intersection of U.S. Highway 41 and Paces Mill Road.

The public hearing was opened and Mr. John Moore, Mr. Ron Sifen and Ms. Jody Smith addressed the Board. Following presentation and discussion, the following motion was made, discussed and amended as follows:

MOTION: Motion by Ott, second by Goreham, to approve Rezoning to the RRC zoning district subject to:

- **site plan submitted, received by the Zoning Division August 7, 2008, with the District Commissioner approving minor modifications (attached and made a part of these minutes)**
- **final site plan approval by the District Commissioner**
- **reversion clause so that if a demolition permit and subsequent construction permit is not pulled, along with demolition of site, within 36 months - then the site reverts back to the previous zoning (applicant may return to BOC as an Other Business Item if Highway 41 project issues arise)**
- **letter of agreeable conditions from Mr. John Moore dated February 3, 2009, not otherwise in conflict and with the following changes (attached and made a part of these minutes):**
 - **Page No. 3 – Item No. 8 – last sentence change to: “...from 7:00 a.m. to 7:00 p.m. and Sunday from 2:00 p.m. to 7:00 p.m.”**
 - **Page No. 3 – Item No. 9 – last sentence change to: “... Monday through Saturday from 7:00 a.m. to 10:00 p.m. and Sunday from 11:00 a.m. to 9:00 p.m.”**
- **maximum of 105,000 square feet of commercial development (office and retail) as shown on site plan**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
FEBRUARY 17, 2009
9:05 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, February 17, 2009, at 9:05 a.m. in the second floor public meeting room of the Cobb County building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Samuel S. Olens
Commissioner Helen Goreham
Commissioner Tim Lee
Commissioner Woody Thompson
Commissioner Robert Ott

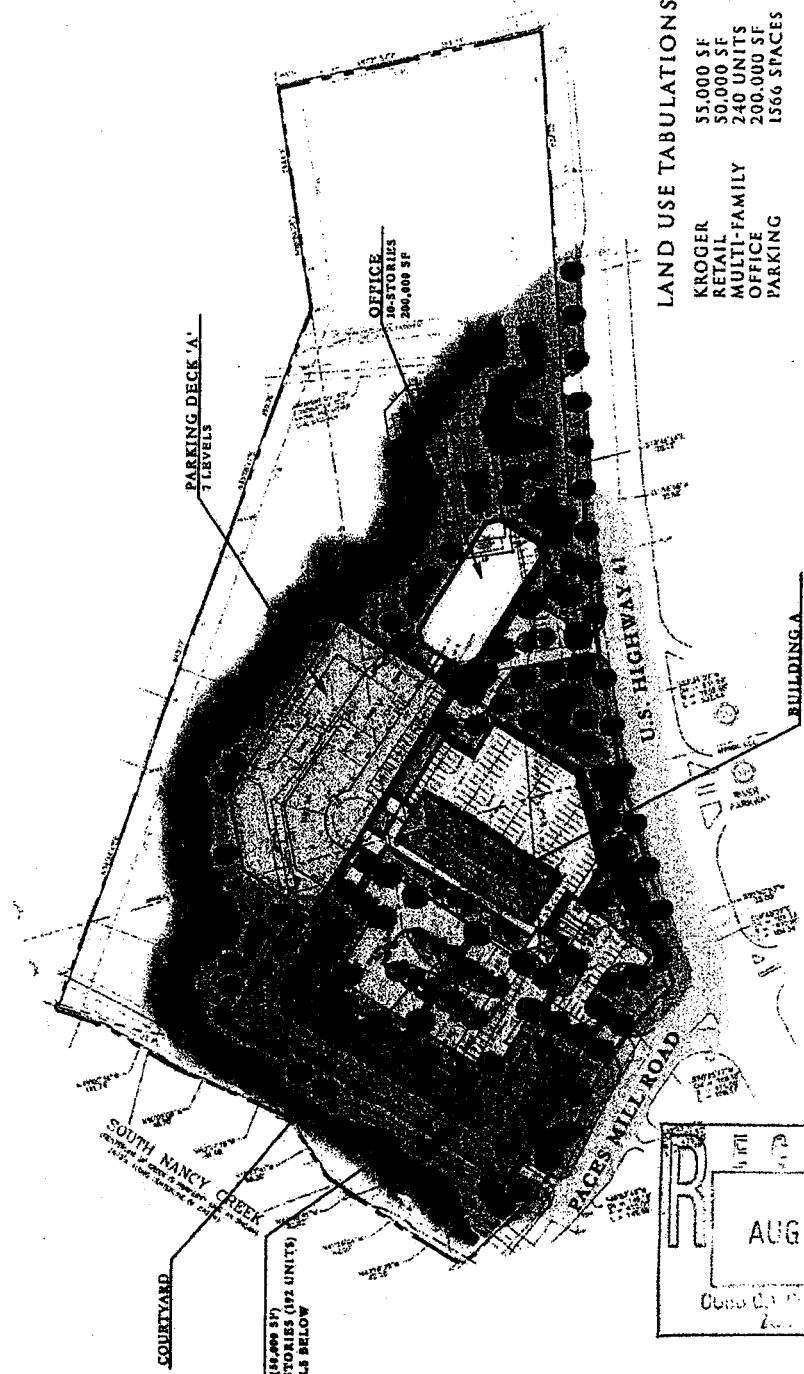
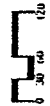
Z-49^{'08}

TRI-KELL INVESTMENTS, INC. (Continued)

- **maximum of 180 residential units unless Highway 41 is widened, if widened, then the maximum number of units allowed will be 216**
- **maximum of 8 stories for the office building; however if Highway 41 is widened up to 10 stories will be allowed**
- **Development of Regional Impact Study (including GRTA and ARC findings on file in the Zoning Division)**
- **Fire Department comments and recommendations**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **revised Cobb DOT comments and recommendations (attached and made a part of these minutes)**
- **owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns**

VOTE: ADOPTED 3-2 (Goreham and Olens opposed)

Min. Bk. 57 Petition No. 2-49 '08
 Doc. Type Site Plan
 Meeting Date 2-17-09



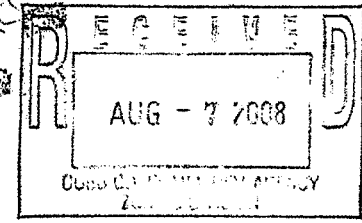
LAND USE TABULATIONS

KROGER	55,000 SF
RETAIL	50,000 SF
MULTI-FAMILY	240 UNITS
OFFICE	200,000 SF
PARKING	1566 SPACES

168 SPACES & PARKING DECK 'A'
 370 SPACES & PARKING DECK IN BUILDING
 56 SURFACE SPACES & COURTYARD

BUILDING A
 KROGER (55,000 SF)
 RESIDENTIAL-3 STORIES (68 UNITS)

BUILDING 'B'
 RETAIL (50,000 SF)
 RESIDENTIAL-3 STORIES (102 UNITS)
 PARKING-2 LEVELS BELOW



HGOR
 (HIGHT) (GROSS) (GILMAN) & (STAN)
RIVERVIEW
 TRAMMELL CROW RESIDENTIAL/TRI-KELL INVESTMENTS

09-09-07
 0104-2008-09-07

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STEPHEN C. STEELE
WILLIAM R. JOHNSON¹
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BETH GEARHART^{****}
S. NIKOL RICHARDSON*
SCOTT L. SAIDAK*
JENNIFER L. LAFONTAINE*
TIMOTHY H. STALLINGS

GABRIEL A. DANIELS
S. SCOTT MARCUM
WILMA R. BUSH
GREG H. FULLER*
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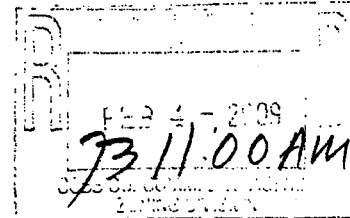
OF COUNSEL
JOHN L. SKELTON, JR.¹

¹ ALSO ADMITTED IN TN
² ALSO ADMITTED IN FL
³ ALSO ADMITTED IN NM
⁴ ALSO ADMITTED IN NC
⁵ ALSO ADMITTED IN CA
* ADMITTED ONLY IN TN

February 3, 2009

Hand Delivered

Mr. John P. Pederson, AICP
Planner III
Zoning Division
Cobb County Community Development Agency
Suite 300, 191 Lawrence Street
Marietta, Georgia 30060-1661



RE: Application for Rezoning - Application No. Z-49 (2008)

Applicant:
Owners:

Tri-Kell Investments, Inc.
Riverview Associates, Ltd. and
Riverview Village, LLC

Property:
Min. Blk. 57 Petition No. Z-49
Doc. Type Letter of agreeable
conditions
Meeting Date 2-17-2009

18.01 acres located at the intersection of the
westerly side of Cobb Parkway and the
northerly side of Paces Mill Road,
Land Lots 976, 977, 1016, and 1017,
17th District, 2nd Section, Cobb County, Georgia

Dear John:

As you know, the undersigned and this firm represent the Applicant, Tri-Kell Investments, Inc. (hereinafter referred to as "Applicant"), and the Property Owners, Riverview Associates, Ltd. and Riverview Village, LLC (hereinafter collectively referred to as "Owners"), in the above-referenced Application for Rezoning with regard to a total tract of 18.01 acres, more or less, located at the intersection of the westerly side of Cobb Parkway and the northerly side of Paces Mill Road, Land Lots 976, 977, 1016, and 1017, 17th District, 2nd Section, Cobb County, Georgia (hereinafter referred to as the "Property" or the "Subject Property"). After review and completion of the Development of Regional Impact ("DRI") process by the Atlanta Regional Commission and the Georgia Regional Transportation Authority; meetings with planning and zoning staff; reviewing the zoning staff comments and recommendations; discussions and meetings with area residents and homeowner representatives; and reviewing the uses of

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Mr. John P. Pederson, AICP
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Zoning Division
Cobb County Community Development Agency
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Petition No. 7-49^{'08}
Meeting Date 2-17-09
Continued

surrounding properties, we have been authorized by the Applicant and Owners to submit this letter of agreeable stipulations and conditions, which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. This letter shall supersede and replace in full the letter of agreeable stipulations and conditions dated and filed November 26, 2008. The revised stipulations are as follows:

- (1) The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions, in whatsoever form, which are currently in place on the Subject Property; together with any and all Departmental Comments and Staff Recommendations relating to the Subject Property from any prior zoning actions.
- (2) Applicant seeks rezoning of the Subject Property from the existing zoning category of General Commercial ("GC") to the proposed zoning category of Regional Retail Commercial ("RRC"), with reference to the Site Plan prepared for Applicant by Hughes Good O'Leary & Ryan dated September 2, 2002, and submitted to the Cobb County Zoning Office with the Application for Rezoning on August 7, 2008.
- (3) The Subject Property consists of approximately 18.01 acres of total site area and shall be developed for a mixed-use development consisting of office, retail, and condominiums and related services.

STIPULATIONS APPLICABLE TO THE OVERALL DEVELOPMENT

- (1) There shall be master protective covenants for the entire development which will include all phases of the development; and concurrent therewith a master association, and possibly sub-associations, will be formed which will include all component parts of the proposed development. The master association shall be responsible for the oversight, upkeep, and maintenance of the entrance areas, common areas, open space areas, and the like contained within the overall development.
- (2) The master association, and any sub-associations, to be formed hereunder shall have architectural design regulations which shall control such items as signage for

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Mr. John P. Pederson, AICP
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Continued

individual units, and other such usual and necessary covenants and restrictions to protect the quality and integrity of the total development.

- (3) Entrances to the proposed development shall be as more particularly shown and reflected on the referenced Site Plan.
- (4) Entrance signage for the proposed overall development shall be ground-based, monument-style signage, with the finish, materials, and color being in conformity with the architecture and design of the various components. Such signage shall contain no flashing sign components.
- (5) The entrance areas, together with all islands and planted areas, shall be professionally designed, landscaped, and maintained. These areas shall be part of the overall landscape plan approved by staff as part of the plan review process.
- (6) Lighting within the proposed development shall be environmentally sensitive, decorative, and themed to the architecture and style of the respective components of the development.
- (7) Additionally, hooded security lighting shall be utilized on the exteriors of the buildings and throughout the walkways, parking, and parking deck areas.
- (8) All dumpsters servicing any portion of the overall development shall be enclosed with a minimum six (6) foot high brick enclosure on three sides with a solid wooden screen gate or doors on the access side. All dumpsters shall contain rubber lids to minimize noise. Dumpsters shall be emptied Monday through Saturday from 5:00 a.m. to 7:00 p.m. and Sunday from 2:00 p.m. to 7:00 p.m.
- (9) Parking lot cleaning with the use of mechanical equipment shall be restricted to hours Monday through Saturday from 5:00 a.m. to 10:00 p.m. and Sunday from 11:00 a.m. to 9:00 p.m.
- (10) Deliveries to the proposed retail uses shall be limited to between the hours of 5:00 a.m. to 11:00 p.m., Monday through Friday; 9:00 a.m. to 7:00 p.m. on Saturday and Sunday.
- (11) Store hours which are open to the public for the retail uses proposed for this development shall be limited to Monday through Saturday, 6:00 a.m. to

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Meeting Date 2-17-09
Continued

10:00 p.m. and Sunday from 6:00 a.m. to 9:00 p.m. Restaurants may remain open until 2:00 a.m.

- (12) There shall be no tenant vehicles or vehicles of any type parked in front of the proposed buildings containing tenant identification signage or advertising signage. This provision shall be contained within any lease between Applicant and any prospective tenant, and Applicant agrees to enforce these provisions against any tenant which violates the foregoing. Additionally, there shall be no vehicles parked in front of the proposed retail centers with "for sale" signs posted thereon.
- (13) Minor modifications to the within stipulations, the referenced Site Plan, lighting, landscaping, architecture, site features, and the like, may be approved by the District Commissioner, as needed or necessary.
- (14) All setbacks and buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, detention/retention facilities, drainage facilities, and any and all slopes or other required engineering features of the foregoing.
- (15) Applicant agrees to comply with all Cobb County development standards and ordinances relating to project improvements, except as approved by the Board of Commissioners or by the Department of Transportation or Community Development Agency, as their authority may allow.
- (16) All streets within the proposed development shall be private with the construction therefor complying in all respects as to materials, base, and other requirements to the Cobb County Code.
- (17) All landscaping referenced herein shall be approved by the Cobb County Arborist as part of the plan review process and incorporated into the overall landscape plan for the proposed development.
- (18) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (19) All utilities for the proposed development shall be located underground.

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Continued

- (20) The following uses shall be prohibited from the proposed overall development:
- (a) Video arcades as a primary use;
 - (b) Adult-themed bookstores as a primary use;
 - (c) Automotive sales, repair, and/or service facilities;
 - (d) Gas station;
 - (e) Truck and trailer leasing facilities;
 - (f) Automotive paint and body repair shops;
 - (g) Automotive upholstery shops;
 - (h) Billiards and pool halls which are the sole or predominant use;
 - (i) Bus stations (not to exclude bus stops);
 - (j) Fraternity and sorority house;
 - (k) Full-service gas stations;
 - (l) Light automotive repair;
 - (m) Rooming houses and boarding houses;
 - (n) Any form of adult entertainment business; and
 - (o) Nightclubs and bars, except that same would be permitted within a restaurant or hotel provided that they are an integral part of a restaurant or hotel operation.
- (21) As to the overall development, there shall be "zero lot lines" among the various components within the development so as to allow for the free flow of access, parking, and the like.

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Mr. John P. Pederson, AICP
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February 3, 2009

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Meeting Date 2-17-09
Continued

- (22) The exterior walls of the various levels of the parking deck referenced herein shall be of sufficient height to block vehicle lights from shining outside the deck.
- (23) Applicant agrees to install Leyland Cypress along the westerly property line, being the southerly one-half of this property line, and the southerly property line, being the westerly one-half of this property line. These plantings shall be a minimum of eight (8) feet in height, planted on a staggered row with ten (10) foot centers. These shall be installed by Applicant, at the latest, upon commencement of construction of the proposed re-development.

I. OFFICE COMPONENT

- (1) The office component of the proposed development shall consist of a maximum 10-story office tower containing approximately 200,000 square feet.
- (2) Parking for tenants of the proposed office tower shall be accomplished by providing connectivity to the proposed maximum 7-level parking deck (denoted as Parking Deck "A" on the referenced Site Plant). The parking deck shall provide approximately 1,140 spaces.
- (3) The exterior finish of the proposed office building shall consist of glass, brick, stone, and stucco, or combinations thereof; and shall be substantially similar to the renderings presented to the Planning Commission and Board of Commissioners at the respective upcoming public hearings.

II. RESIDENTIAL CONDOMINIUM UNITS

- (1) The residential condominium units shall be located as follows:
 - (a) A maximum of forty-eight (48) units shall be contained within a maximum of three (3) stories located above the one-story retail (proposed Kroger store) building noted as "Building A" on the referenced Site Plan; and

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Mr. John P. Pederson, AICP
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Meeting Date 2-17-09
Continued

- (b) A maximum of one hundred ninety-two (192) units shall be contained within a maximum of four (4) stories located above the one-story retail building noted as "Building B" on the referenced Site Plan; together with parking consisting of a maximum of two (2) levels beneath the building.
- (2) There shall be a maximum of two hundred forty (240) condominium units ranging from 700 to 2,000 square feet in heated living space. The average unit shall be approximately 1,100 square feet.
- (3) The exterior finish of the proposed residential condominium units shall consist of brick, stone, or stucco, or combinations thereof.
- (4) Floor plans and finishes for the residential condominium units shall consist, at a minimum, of the following:
 - (a) Enhanced corian, granite, or marble counter tops, or other solid surface materials;
 - (b) Gas burning fireplaces as an upgrade;
 - (c) Minimum ceiling heights:
 - i) Minimum 9 feet from floor to finished ceiling and greater; and
 - ii) Minimum 10 feet between floors;
 - (d) European or upscale wooden face-frame cabinetry;
 - (e) Stainless steel appliances or equivalent;
 - (f) Extra-deep stainless steel sinks and side-by-side refrigerators/freezers as upgrades;
 - (g) A selection of hardwood flooring, high-end carpet, and tile throughout;
 - (h) Spacious open floor plans which eliminate the necessity for typical hallways within the units;

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Mr. John P. Pederson, AICP
Planner III
Zoning Division
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Petition No. 2-49'08
Meeting Date 2-17-09
Continued

- (i) Brushed chrome, brushed nickel, or oiled rubbed bronze bathroom and kitchen fixtures;
 - (j) Ceramic tile bathrooms and laundry rooms;
 - (k) Spacious walk-in closets;
 - (l) High-speed internet wiring in all rooms of each unit;
 - (m) Garden tubs with showers;
 - (n) Eight (8) foot entry doors subject to fire rating.
- (5) The residential units shall be condominiums as the term "condominium" is defined under the Georgia Condominium Act.
- (6) The residential units shall be "for sale" units only. A maximum of ten (10) percent of the proposed units may be leased at any one time.

III. RETAIL COMPONENT

- (1) The retail component of the proposed development shall be contained within two separate buildings as follows:
- (a) Approximately 55,000 square feet for a proposed supermarket located on the ground level of "Building A," as more particularly shown and reflected on the referenced Site Plan;
 - (b) Approximately 50,000 square feet of retail space located on the ground level of "Building B," as more particularly shown on the referenced Site Plan.
- (2) The exterior façade of the buildings for the retail component shall consist of glass, brick, stone, and stucco, or combinations thereof, and shall be substantially similar to the renderings presented to the Planning Commission and Board of Commissioners at the respective public hearings.

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
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Zoning Division
Cobb County Community Development Agency
Page 9 of 9
February 3, 2009

Permit No. Z-49 '08
Meeting Date 2-17-09
Circuit

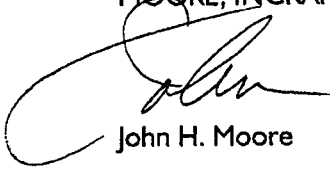
- (3) All exhausts from restaurant facilities shall be filtered to minimize grease and odors.

We believe the requested zoning, pursuant to the Site Plan and the stipulations set forth herein, is an appropriate use of the Subject Property. The proposed community is an exciting project which fits together various types of product into one development. The proposed development shall promote the "live where you work" concept; shall be of the highest quality; shall be compatible with surrounding retail developments, businesses, and neighborhoods; and shall be an enhancement to the Subject Property and Cobb County as a whole. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

c: Cobb County Board of Commissioners:
Samuel S. Olens, Chairman
Helen C. Goreham
Annette Kesting
Joe L. Thompson
Tim Lee

Ron Sifen
Shane Coldren
Vinings Homeowners Association

Steve Robinson
Area Resident

Tri-Kell Investments, Inc.

APPLICANT: Tri-Kell Investments, Inc.

PETITION NO.: Z-49

PRESENT ZONING: GC

PETITION FOR: RRC

TRANSPORTATION COMMENTS

Min. Bk. 57 Petition No. Z-49¹⁰⁸
Doc. Type Revised DOT
Comments/Recommendations
Meeting Date Investigation and office review
2-17-09

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Cobb Parkway	22660	Arterial	55 mph	GDOT	100'
Paces Mill Road	11700	Major Collector	35 mph	Cobb County	80'

Based on 2007 traffic counting data taken by GDOT. (Cobb Parkway)
Based on 2007 traffic counting data taken by Cobb County DOT. (Paces Mill Road)

COMMENTS AND OBSERVATIONS

Cobb Parkway is classified as an Arterial and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.

Paces Mill Road is classified as a Major Collector and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.

Cobb Parkway is identified as a road improvement project.

The applicant understands that the GDOT project will convert the full access southern drive on Cobb Parkway to a right-in/ right-out.

The western side of Cobb Parkway is identified as the corridor for the extension of the Mountain to River Trail.

Install sidewalk, curb and gutter along Paces Mill Road.

GDOT permits will be required for work that encroaches upon State right-of-way.

RECOMMENDATIONS

Recommend applicant enter into a development agreement pursuant of O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way and easements on the west side of Cobb Parkway and the north side of Paces Mill Road, a minimum to accommodate the proposed road widening and trail project, GDOT Project Number STP-001-5(47).

Recommend applicant coordinate with Cobb County DOT prior to development plan approval to ensure compatibility with the proposed road improvement project and the trail extension.

Recommend installing sidewalk, curb and gutter along Paces Mill Road.

Recommend GDOT permits for all work that encroaches upon State right-of-way.

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.



**FINAL, OFFICIAL MINUTES OF BOARD
OF COMMISSIONERS ZONING
HEARING PURSUANT TO
Z-49 (2009) – OCTOBER 19, 2010**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
OCTOBER 19, 2010
9:00 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, October 19, 2010 at 9:00 a.m. in the second floor public meeting room of the Cobb County building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Tim Lee
Commissioner Helen Goreham
Commissioner Robert Ott
Commissioner Thea Powell
Commissioner Woody Thompson

ITEM NO. 2

To consider Settlement of Litigation for Tri-Kell Investments, Inc, Riverview Associates, Ltd. and Riverview Village, LLC regarding rezoning application Z-49 (Tri-Kell Investments, Inc.) of 2008, for property located at the northwesterly intersection of U.S. Highway 41 and Paces Mill Road in Land Lots 976, 977, 1016 and 1017 of the 17th District.

Mr. John Pederson, Zoning Division Manager, provided information regarding the proposal for settlement of litigation on Z-49 of 2008. The public hearing was opened and Mr. John Moore addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Ott, second by Powell, to **authorize** settlement of litigation regarding Tri-Kell Investments, Inc, Riverview Associates, Ltd. and Riverview Village, LLC regarding rezoning application Z-49 (Tri-Kell Investments, Inc.) of 2008, for property located at the northwesterly intersection of U.S. Highway 41 and Paces Mill Road in Land Lots 976, 977, 1016 and 1017 of the 17th District **subject to:**

- **settlement of litigation regarding Cobb Superior Court Civil Action File No. 09-1-2402-40**
- **conditions of settlement contained in letter of agreeable conditions from Mr. John Moore dated April 22, 2010 (attached and made a part of these minutes)**
- **all other conditions and stipulations, *not otherwise in conflict*, to remain in effect**

VOTE: **ADOPTED** unanimously

MOORE INGRAM JOHNSON & STEIN

October 19, 2010
Exhibit "A"
Other Business Item 02

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJLS.COM

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON†
ROBERT D. INGRAM†
J. BRIAN OYER
G. PHILLIP BEGGS
ELDON L. BASHAM
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April 22, 2010

Hand Delivered

Min. Bk. 101 Petition No. 082
Doc. Type letter of agree-
able conditions
Meeting Date 10/19/10

Joseph B. Atkins, Esq.
Senior Assistant County Attorney
Cobb County Attorney's Office
Suite 350
100 Cherokee Street
Marietta, Georgia 30090-7003

RE: Application for Rezoning - Application No. Z-49 (2008)

Applicant: Tri-Kell Investments, Inc.
Owners: Riverview Associates, Ltd. and
Riverview Village, LLC
Property: 18.01 acres located at the intersection of the
westerly side of Cobb Parkway and the
northerly side of Paces Mill Road,
Land Lots 976, 977, 1016, and 1017,
17th District, 2nd Section, Cobb County, Georgia

Tri-Kell Investments, Inc.; Riverview Associates, Ltd.; and Riverview Village, LLC
v. Cobb County, Georgia; et al.
Civil Action, File Number: 09-1-2402-40
Superior Court of Cobb County

Dear Joe:

As you know, the undersigned and this firm represent Tri-Kell Investments, Inc., as Applicant (hereinafter referred to as "Applicant"), and Riverview Associates, Ltd. and Riverview Village, LLC, the Property Owners (hereinafter collectively referred to as "Owners"), in their pending zoning appeal as to property totaling 18.01 acres located at the intersection of the westerly side of Cobb Parkway and the northerly side of Paces Mill Road, Land Lots 976, 977, 1016, and 1017,

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17th District, 2nd Section, Cobb County, Georgia (hereinafter "Subject Property"), which was the subject of the above-referenced Application for Rezoning, same being Application No. Z-49 (2008). The appeal arose as a result of the placement of certain conditions upon the approval of the requested zoning category by the Board of Commissioners

The settlement, as proposed in this letter and the stipulations contained herein result from meetings and discussions with county staff and representatives of Applicant and Owner to resolve the issues presented without the necessity of further litigation.

Applicant agrees to the following, which, if approved, as submitted, shall be in complete settlement of the pending zoning appeal and shall be binding upon the Subject Property. The referenced stipulations are as follows:

- (1) That portion of the revised Cobb DOT comments and recommendations which were attached to and made a part of the Official Minutes of the Cobb County Board of Commissioners Zoning Hearing held on February 17, 2009, shall be amended in the following particulars:

- (a) **The following shall be deleted in its entirety:**

Recommend applicant enter into a development agreement pursuant to O.C.G.A. § 36-71-13 for dedication of the following system improvements to mitigate traffic concerns:

- a) Donation of right-of-way and easements on the west side of Cobb Parkway and the north side of Paces Mill Road, a minimum to accommodate the proposed road widening and trail project, GDOT Project Number STP-001-5(47), dated December 26, 2007.

The following shall be inserted in lieu thereof:

Recommend Applicant enter into a Development Agreement pursuant to O.C.G.A. § 36-71-13 for dedication of the following system improvements to mitigate traffic concerns:

- a) Applicant agrees to reserve a portion of its real property located on the westerly side of Cobb Parkway and the northerly side of Paces Mill Road, sufficient to accommodate the proposed road widening and trail project, GDOT Project Number STP-001-

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5(47), dated December 26, 2007. "Reserved," as used in the foregoing sentence, shall be defined as not permitting the construction of building structures within the area of the proposed road widening and trail project, and further that such reservation shall not constitute a donation of right-of-way or easements. Further, the reservation of real estate shall be solely for the area shown and reflected as a part of GDOT Project Number STP-001-5(47), dated December 26, 2007, unaltered and unamended. This reservation shall continue for a period of seven (7) years as measured from the final approval by the Board of Commissioners at the settlement hearing.

(b) **The following shall be deleted in its entirety:**

The applicant understands that the GDOT project will convert the full access southern drive on Cobb Parkway to a right-in/right-out.

The following shall be inserted in lieu thereof:

The applicant understands that the GDOT project will convert the full access southern drive on Cobb Parkway to a right-in/right-out; the northern drive on Cobb Parkway shall remain full access.

(2) **The stipulations imposed by the Cobb County Board of Commissioners and set forth in the Official Minutes of the Cobb County Board of Commissioners Zoning Hearing held on February 17, 2009, shall be amended in the following particulars:**

(a) **The third "bullet," which is stated as follows, shall be deleted in its entirety:**

[R]everison clause so that if a demolition permit and subsequent construction permit is not pulled, along with demolition of site, within 36 months – then the site reverts back to the previous zoning (applicant may return to BOC as an Other Business Item if Highway 41 project issues arise)

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The following shall be inserted in lieu thereof:

[R]everison clause so that if a demolition permit and subsequent construction permit are not pulled, along with demolition of site, within 36 months after the date of final approval by the Board of Commissioners - then the site reverts back to the previous zoning; however, if the Georgia Department of Transportation or the Cobb County Department of Transportation has not commenced construction of improvements to Highway 41 (GDOT Project Number STP-001-5(47)) within this 36-month time frame, Applicant may apply to the Cobb County Board of Commissioners as an "Other Business" item to have this reversionary provision removed or extended. "Commencing construction of improvements" is defined as actual, on-site, full construction of roadway improvements along the U.S. Highway 41 frontage of the Subject Property.

If actual construction of improvements, as herein defined, has commenced within the 36-month time period hereinabove set forth, the reversionary provision shall automatically terminate, and no such reversion shall occur.

- (b) **The fifth "bullet," which is stated as follows, shall be deleted in its entirety:**

[M]aximum of 105,000 square feet of commercial development (office and retail) as shown on site plan

The following shall be inserted in lieu thereof:

[M]aximum of 105,000 square feet of commercial development (retail space only) as shown on site plan

[M]aximum of 200,000 square feet of office space

- (3) The balance and remainder of the official minutes, including stipulations set forth therein, applicable to Application No. Z-49 (2008) from the Board of Commissioners Zoning Hearing held on February 17, 2009, unless otherwise in conflict with the revised stipulations contained herein, shall remain in full force and effect.

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The proposal contained herein is submitted in settlement and compromise of the pending zoning appeal and shall not otherwise be used in any hearing, trial, arbitration, or mediation of said appeal. If the settlement, as proposed, is approved by the Board of Commissioners, Applicant and Owners agree to dismiss, with prejudice, the pending litigation case and to pay their own legal expenses and litigation costs.

We respectfully request the settlement proposal contained herein be submitted to the Board of Commissioners during the next available Executive Session and subsequently be placed upon the "Other Business" agenda before the Board of Commissioners during the Zoning Hearing scheduled immediately thereafter. In order to meet the required time frame for posting and advertising of the Subject Property, we would request your expeditious review and handling of this request.

We believe the requested zoning, specific to the revised stipulations contained herein, is an appropriate use of the Subject Property. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

c Cobb County Board of Commissioners:
Helen C. Goreham
George W. "Woody" Thompson
Robert Ott
Thea Powell

Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency

Tri-Kell Investments, Inc.