

**JUNE 17, 2014 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 1**

ITEM OB-33

PURPOSE

To consider a stipulation amendment for Lennar Georgia, Inc. regarding application OSC 13-02 (The Pacific Group, Inc.), for property located on the southwesterly side of Stilesboro Road, and on the easterly side of Kennesaw Due West Road in Land Lot 241 of the 20th District.

BACKGROUND

The subject property was approved for a residential subdivision in 2013 subject to numerous conditions. One of the Stormwater comments that was made a zoning conditions required a lake study to document sediment levels in the downstream lake owned by Marietta Country Club. The developer cannot perform the downstream lake study due to the fact Marietta Country Club is in the process of renovating the lake, and sediment cannot be documented. In Lieu of the lake study, the developer and Marietta Country Club have reached an agreement which is attached for review. The Cobb County Stormwater Management Division is in support of this proposal. If this amendment is considered favorably by the Board of Commissioners’, the Chairman should be given the authority to sign the agreement for Cobb County. All previous zoning conditions would remain in effect.

FUNDING

N/A

RECOMMENDATION

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

ATTACHMENTS

Other Business application, request letter and stipulations.

(Stipulation Amendment)
Application for "Other Business"
Cobb County, Georgia

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

BOC Hearing Date Requested: 06/17/2014

COBB COUNTY ZONING DIVISION
2014 MAY 13 PM 3:33
OB-33

Applicant: Lennar Georgia, Inc. Phone #: (770) 670-2740
(applicant's name printed)

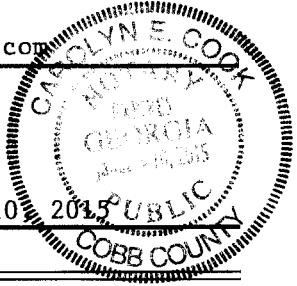
Address: Building 200, Suite 200, 1000 Holcomb Woods E-Mail: todd.jones@lennar.com
Moore Ingram Johnson & Steele, LLP Parkway, Roswell, GA 30076

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@mjs.com
(representative's signature) Georgia Bar No. 519800 w7@mjs.com

Signed, sealed and delivered in presence of:

Carolyn E. Cook My commission expires: January 10, 2015
Notary Public



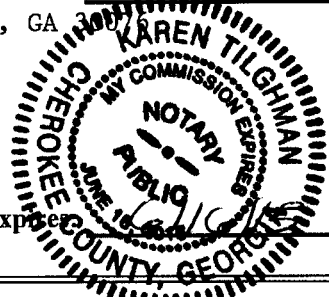
Titleholder(s): Lennar Georgia, Inc. Phone #: (770) 670-2740
(property owner's name printed)

Address: Building 200, Suite 200, 1000 Holcomb Woods E-Mail: todd.jones@lennar.com
Parkway, Roswell, GA 30076

BY: [Signature]
(Property owner's signature) Todd Jones, Division President

Signed, sealed and delivered in presence of:

Karen Tilghman My commission expires: June 16, 2015
Notary Public



Commission District: 1 (Goreham) **Zoning Case:** OSC 13-02

Date of Zoning Decision: 07/16/2013 **Original Date of Hearing:** 07/16/2013

Location: Southwesterly side of Stilesboro Road; west of New Salem Road;
(street address, if applicable; nearest intersection, etc.) east of Kennesaw Due West Road

Land Lot(s): 241 **District(s):** 20th

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

(List or attach additional information if needed)

EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"
(Stipulation Amendment)

Application No.: OSC 13-02
Original Hearing Date: July 16, 2013
Date of Zoning Decision: July 16, 2013
OB Hearing Date: May 20, 2014

Applicant/Titleholder: Lennar Georgia, Inc.

On July 16, 2013, the Cobb County Board of Commissioners approved the Open Space Community Overlay Application of approximately 56.16 acres located on the southwesterly side of Stilesboro Road, west of New Salem Road, east of Kennesaw Due West Road (hereinafter "Property" or "Subject Property"). The approval was made specific to the Site Plan submitted to the Planning Division; as well as certain stipulations and conditions which were enumerated in the minutes and the stipulation letter dated and filed July 12, 2013, which was incorporated into the final minutes.

Applicant seeks to amend paragraph (31) of the July 12, 2013, which reads as follows:

- (31) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.

One of the Stormwater Management recommendations is that pre-and post-development studies of the lake within the Marietta Country Club development be performed. A copy of the recommendations of Stormwater Management is attached hereto as Exhibit "1" and incorporated herein by reference.

The Owner and Developer of the Subject Property, and Applicant in this Application for "Other Business," Lennar Georgia, Inc. (hereinafter referred to as "Applicant"), has worked with representatives of Marietta Country Club, The Pacific Group, Inc., and Cobb County and has reached an agreement which would allow for certain items in lieu of performing the pre- and post-development studies. These agreements have been memorialized in a Covenant Not To Sue and Indemnity Agreement, a true and complete copy of which is attached hereto as Exhibit "2" and incorporated herein by reference.

Therefore, by this Application for "Other Business," Applicant seeks to substitute the attached Covenant Not To Sue and Indemnity Agreement in lieu of the pre-and post-development lakes studies requirement which was set forth within the recommendations made by Cobb County Stormwater Management. The balance and remainder of the recommendations by Cobb County Stormwater Management will be unaffected and remain valid and enforceable; as well as, the balance and remainder of the stipulations and conditions specifically enumerated in the official minutes, and attachments thereto, of the Board of Commissioners Zoning Hearing held on July 16, 2013, are unaltered by this request for Stipulation Amendment and shall remain in full force and effect.

If the Board of Commissioners should approve the requested amendment, the Board shall authorize the Chairman to execute the Covenant Not To Sue and Indemnity Agreement, as originally executed by the Applicant and Marietta Country Club, Inc.

The amendment requested and presented above in no way adversely impacts or affects the quality and integrity of the development. If the requested amendment is approved, as submitted, it shall become an additional part of the final rezoning and shall be binding upon the Subject Property.

APPLICANT: Pacific Group Inc.

PETITION NO.: OSC 13-02

PRESENT ZONING: R-20

PETITION FOR: R-20 OSC

STORMWATER MANAGEMENT COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Noonday Creek FLOOD HAZARD INFO: Zone X

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

Handwritten notes:
Cobb County
13-02-02
13-02-02

WETLANDS: YES NO POSSIBLY, NOT VERIFIED

Location: adjacent to stream

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE: YES NO POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area - County review (undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance - **County Review**/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: 50', 75', 100' or 200' each side of creek channel.

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream – Marietta Country Club Lake.
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on receiving stream.

APPLICANT: Pacific Group Inc.

PETITION NO.: OSC 13-02

PRESENT ZONING: R-20

PETITION FOR: R-20 OSC

STORMWATER MANAGEMENT COMMENTS - CONTINUED

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill _____ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown _____
- Copy of survey is not current – Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS/SUGGESTIONS

The plan appears to properly account for the 100-year floodplain and stream buffers on the site. However, I do not think that the straight R-20 plan is a valid one, since it does not account for area needed for detention. If you overlay the detention ponds shown on the OSC layout you would have to eliminate lots 77, 78, 89 & 90 and parts of lots 44, 45, 46 & 47. Also, several lots do not have the necessary 12,500 sf minimum area above the floodplain to be buildable. These include lots 75, 76, 77, 80, 81, 82 & 83.

**COVENANT NOT TO SUE
AND INDEMNITY AGREEMENT**

10/17/13 PM 3:33

THIS AGREEMENT (the "Agreement") is made and entered into the ___ day of _____, 2014, by and between **The Pacific Group, Inc.**, a Georgia corporation with its principal place of business located at 5755 Dupree Street, Suite 130, Atlanta, Georgia 30327 ("Pacific"); **Lennar Georgia, Inc.**, a Florida corporation with its principal place of business located at 700 N.W. 107th Avenue, Miami, Florida 33172 ("Lennar"); and **Marietta Country Club, Inc.**, a Georgia non-profit corporation with its principal place of business located at 1400 Marietta Country Club Drive, Kennesaw, Georgia 30152 ("MCC"), (collectively, "the Parties").

W I T N E S S E T H:

WHEREAS, Pacific is engaged in the business of investing in and developing real estate, and providing real estate related products and services;

WHEREAS, Lennar is the owner of certain real property, being 56.12 acres located on the southwesterly side of Stilesboro Road, westerly of New Salem Road and easterly of Kennesaw Due West Road, Land Lot 241, 20th District, 2nd Section, Cobb County, Georgia, a more particular description being set forth on Exhibit "A" attached hereto and made a part hereof by reference (the "Tract"), and intends to develop a community of approximately ninety-six (96) residential homes upon the Tract;

WHEREAS, Lennar is engaged in the business of constructing residential homes, and intends to construct single-family residential homes upon the Tract;

WHEREAS, MCC is a non-profit entity engaged in providing and facilitating recreational and social activities and opportunities, including but not limited to the use of tennis, swim, golf, and dining facilities, to MCC's members;

WHEREAS, the Tract includes a naturally occurring waterway ("Noonday Creek"), which flows through the Tract and into a pond on the real property of MCC (the "MCC Pond");

WHEREAS, the Parties each have an interest in ensuring that work performed by Pacific and Lennar on the Tract does not cause silt or sediment to flow from the Tract into the MCC Pond at levels exceeding that permitted by the government of the United States of America, the State of Georgia, Cobb County, Georgia, and/or any agency, division, affiliate, or subdivision of such entities, whether by statute, code, ordinance, regulation, standard, or other legal obligation ("Regulations");

WHEREAS, the Parties each wish to agree upon terms and procedures which will enable the parties to resolve any dispute or disagreement regarding the flow of water through the Tract, including but not limited to the flow of water, sediment, or silt into the MCC Pond, in a predictable, cost-effective, and mutually beneficial manner;

WHEREAS, the Parties each wish to avoid the cost and uncertainty of potential legal action related to work performed by Pacific and Lennar on the Tract, including the potential for silt or sediment to flow from the Tract onto MCC's property and/or into the MCC Pond;

WHEREAS, the Parties each wish to ensure that the spirit of the Regulations applicable to work performed by Pacific and Lennar on the Tract are complied with, while avoiding the cost and uncertainty of the formal process and procedures required by Regulations;

NOW THEREFORE, in exchange for the good and valuable consideration set forth herein, including but not limited to the commitments and representations contained in Sections 1 through 3 below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions

a. The Subject Matter of this Agreement

For purposes of this Agreement, "the Subject Matter of this Agreement" shall mean: any claim, cause of action, potential cause of action, or demand by Pacific, Lennar, or MCC against or presented to Pacific, Lennar, MCC, or Cobb County, Georgia, related to or as a result of (1) any siltation, potential siltation, or other alleged damage to or of the MCC Pond; (2) any claim or allegation related to any Parties' adherence to or failure to adhere to any Regulations; and (3) any claim or allegation that Cobb County, Georgia, or any other government entity, failed to enforce, any Regulations in relation to the MCC Pond.

b. The Term of this Agreement

For Purposes of this Agreement, "the Term of this Agreement" shall mean the period of time between the date of the first signature below and eight (8) years after the issuance of a certificate of occupancy for the final building or structure constructed upon the Tract.

2. Covenant Not to Sue Parties to this Agreement

In exchange for the consideration set forth in Section 5, the receipt and sufficiency of which is hereby acknowledged, MCC does hereby individually and severally covenant not to sue any Parties to this Agreement or Cobb County, Georgia, and all of their agents, servants, attorneys, employees, officers, commissioners, managers, directors, subsidiaries, shareholders, parent corporations, affiliated corporations, partners, heirs, successors, insurers, and assigns for or in relation to the Subject Matter of this Agreement.

This Agreement is intended to, and does in fact, cover all potential actions, causes of action, claims, and demands of the Parties to this Agreement, jointly or individually, and Cobb County, Georgia, by MCC, for, upon, or by reason of, any damage or loss, known or unknown, as now appearing or as may appear at any time in the future, related to the Subject Matter of this Agreement. This Agreement is executed with the full knowledge and understanding on the part of MCC that there may be more serious consequences, damages, or injuries or separate or

distinct consequences, damages, or injuries related to the Subject Matter of this Agreement, which are not now known or existing; and that this Agreement is accepted and entered into by MCC in exchange for the consideration set out in this Agreement, including but not limited to the consideration described in Section 5. Pacific and Lennar shall adhere to all silt fence and stormwater requirements of all applicable codes and regulations.

If MCC should determine that Pacific and Lennar are not complying with any applicable codes and regulations, as aforesaid, then, and in such event, MCC shall provide to Pacific and Lennar written notice, as herein provided, of such non-compliance. Pacific and Lennar shall have a period of thirty (30) days from receipt of such notice to rectify such non-compliance. In the event that Pacific and Lennar do not rectify within the notice period herein stated, MCC shall have the right to seek injunctive relief to require compliance. However, this right shall extend to injunctive relief, only, without any right to monetary damages of any type.

3. Indemnifications

a. MCC

MCC agrees to indemnify, defend, and hold harmless Pacific and Lennar from all claims, demands, actions, causes of action, or suits for damages alleged to be due and payable to any person or entity as a result of or related to any claim brought by MCC or anyone acting on its behalf or with its support or encouragement related to the Subject Matter of this Agreement. MCC agrees to reimburse and make good any and all losses incurred by Pacific and/or Lennar, including attorneys' fees, damages, expenses, penalties, fines, and costs that Pacific and/or Lennar may have to pay, if claims, demands, actions, litigation, causes of action, suits, or proceedings arising from, as a result of, or related to any claim brought by MCC or anyone acting on its behalf or with its support or encouragement related to the Subject Matter of this Agreement are presented, pursued, advanced, claimed, or alleged, including but not limited to MCC's pursuit of claims covered by this Agreement. Said indemnification obligation includes the recovery of reasonable attorneys' fees and litigation expenses caused by or incurred as a result of breaches of this Agreement.

MCC agrees to provide testimony related to this Agreement in any legal proceedings and/or court appearances resulting from the continued pursuit of claims arising out of or related to any claim brought by MCC or anyone acting on its behalf or with its support or encouragement related to the Subject Matter of this Agreement, but only upon request of Pacific and/or Lennar or pursuant to court order. This indemnity obligation includes indemnification for the reasonable costs, including reasonable attorney's fees and litigation expenses, of enforcing the provisions of this Agreement, should any provisions be breached. MCC hereby acknowledges that the representations made in this Agreement will be relied upon by the Parties to their detriment, and are an inducement to exchange the consideration set forth in Section 5.

b. Pacific, Lennar, and MCC

Pacific, Lennar, and MCC each, individually, agree to indemnify, defend, and hold harmless Cobb County, Georgia, from all claims, demands, actions, causes of action, or suits for

damages alleged to be due and payable to any person or entity as a result of or related to any claim brought by Pacific, Lennar, MCC, or anyone acting on their behalf or with their support or encouragement related to the Subject Matter of this Agreement. Pacific, Lennar, and MCC agree to reimburse and make good any and all losses incurred by Cobb County, Georgia, including reasonable attorneys' fees, damages, expenses, penalties, fines, and costs that Cobb County, Georgia, may have to pay, if claims, demands, actions, litigation, causes of action, suits, or proceedings arising from, as a result of, or related to any claim brought by the Parties, or anyone acting on their behalf or with their support or encouragement related to the Subject Matter of this Agreement are presented, pursued, advanced, claimed, or alleged. Said indemnification obligation includes the recovery of reasonable attorneys' fees and litigation expenses caused by or incurred as a result of breaches of this Agreement.

Pacific, Lennar, and MCC agree to provide testimony related to this Agreement in any legal proceedings and/or court appearances resulting from the continued pursuit of claims arising out of or related to any claim brought by Pacific, Lennar, MCC, or anyone acting on their behalf or with their support or encouragement related to the Subject Matter of this Agreement, but only upon request of Cobb County, Georgia, or pursuant to court order. This indemnity obligation includes indemnification for the reasonable costs, including attorney's fees and litigation expenses, of enforcing the provisions of this Agreement, should any provisions be breached.

4. Notice

All notices, consents, approvals, demands and requests made, required, or permitted pursuant to this Agreement shall be given in writing and shall be effective for all purposes if hand delivered or sent by certified or registered United States mail, postage prepaid, return receipt requested, addressed as follows (or at such other address as shall be designated from time to time by any Party to this Agreement, as the case may be, in a notice to the other Parties to this Agreement in the manner provided for in this Section):

MCC:	Marietta Country Club, Inc. 1400 Marietta Country Club Drive Kennesaw, Georgia 30152;
Pacific:	The Pacific Group, Inc. 5755 Dupree Street, Suite 130 Atlanta, Georgia 30327;
Lennar:	Lennar Georgia, Inc. 700 N.W. 107th Avenue Miami, Florida 33172;
With a Copy To:	John H. Moore, Esq. Moore Ingram Johnson & Steele, LLP Emerson Overlook 326 Roswell Street Marietta, Georgia 30060;

Cobb County, Georgia: Cobb County, Georgia
Deborah N. Dance, Esq.
Cobb County Attorney
Suite 350
100 Cherokee Street
Marietta, Georgia 30090.

5. Consideration.

- a. Lennar agrees to purchase ten (10) equity memberships from MCC at a price of Twenty-Six Thousand Five Hundred Dollars (\$26,500) per membership (hereinafter "Original Purchase Price"). These memberships shall be purchased within sixty (60) days of the Last Execution Date of this Agreement.
 - i.) Lennar shall have the option to purchase an additional forty (40) equity memberships from MCC, as follows:
 - 1.) Within twenty-four (24) months of the Last Execution Date, Lennar may purchase an additional ten (10) equity memberships at the same purchase price as the Original Purchase. If Lennar notifies MCC, in writing, within the stated time frame of its intention to purchase said memberships, it must pay MCC the agreed price therefor within thirty (30) days of notice of intention to purchase.
 - 2.) Lennar may purchase an additional thirty (30) equity memberships from MCC on or before forty-eight (48) months from the Last Execution Date for the Original Purchase Price. These may be purchased in increments of ten (10) memberships at a time for a total of thirty (30) memberships. For each increment or increments of purchase, Lennar shall notify MCC, in writing, of its election to purchase ten (10), twenty (20), or thirty (30) equity memberships. Lennar shall pay the corresponding purchase price for the memberships elected to be purchased within thirty (30) days of notification of election to purchase.
 - 3.) During any option period, Lennar may elect to purchase more equity memberships than hereinabove set forth for each option period. If Lennar does elect to purchase more equity memberships than set forth in an option period, such purchase shall apply against the number of memberships in a future option period. In other words, the takedown of memberships

within each option period may be accelerated so long as the total memberships do not exceed fifty (50).

4.) Lennar and MCC may, by mutual written agreement, extend the forty-eight (48) month option period for an additional twelve (12) months.

ii.) It is the intent of the parties hereto that the equity memberships to be purchased by Lennar hereunder shall be transferred to homeowners of homes constructed upon the Tract.

iii.) For each membership transferred by Lennar to a homeowner, the following procedure shall control as to acceptance by MCC of such homeowner's application for equity membership.

1.) The homeowner shall complete the Personal Information Sheet, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

2.) The Personal Information Sheet shall be submitted to the MCC Membership Chair/Committee.

3.) The Nomination Process as set forth in Exhibit "C," attached hereto and incorporated herein by reference, shall be followed by the applying homeowner and MCC.

b. Pacific and Lennar will undertake certain siltation prevention measures as required by applicable Cobb County, Georgia ordinances and regulations, but will forego and not conduct the pre-siltation or post-siltation study or studies required by Cobb County, Georgia ordinances and regulations.

c. MCC agrees to forego any claim or cause of action against Pacific, Lennar, and/or Cobb County, Georgia, based upon or related to the Subject Matter of this Agreement, as set forth in Section 1 of this Agreement.

d. All Parties to this Agreement hereby acknowledge that each Party's sole remedy for any complaint or claim against MCC, Lennar, Pacific, and/or Cobb County, Georgia, related to the Subject Matter of this Agreement will be limited to the terms of this Agreement.

6. Cobb County, Georgia, to be Third-Party Beneficiary of MCC's Covenant Not to Sue Pacific, Lennar, and Cobb County, Georgia, and MCC's, Pacific's, and Lennar's Promises to Indemnify Cobb County, Georgia.

The Parties to this Agreement hereby agree and acknowledge that Cobb County, Georgia (hereinafter "Cobb County") shall be an intended third-party beneficiary of MCC's covenant not

to sue Pacific, Lennar, and Cobb County, as set forth in Section 2 above. The Parties to this Agreement further agree and acknowledge that Cobb County shall be an intended third-party beneficiary of MCC's, Pacific's, and Lennar's promises to indemnify Cobb County as set forth in Section 3 above. The Parties to this Agreement hereby further agree and acknowledge that no third-party beneficiary is created or designated by this Agreement other than Cobb County, as set forth in this Section, and the Parties do not intend to create or designate any other third-party beneficiary other than Cobb County, as set forth in this Section. Cobb County agrees to execute this Agreement to acknowledge that it is a third-party beneficiary, as herein set forth, and to acknowledge that the requirement of pre- and post-siltation studies of ponds or lakes within the Marietta Country Club shall not be required.

7. Warranty of Capacity to Execute Agreement.

The Parties to this Agreement mutually and reciprocally represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes or action referred to in this Agreement, except as otherwise set forth herein; that the Parties have the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action which may be subject to this Agreement.

8. Applicable Law.

All questions concerning the execution, validity, interpretation, and performance of this Agreement will be governed by the laws of the State of Georgia.

9. Entire Agreement.

The Parties hereby agree and acknowledge that this Agreement constitutes the entire Agreement between the Parties and shall be binding and inure to the benefit of the Parties, their heirs, successors, and assigns. The Parties hereby further agree and acknowledge that this Agreement is not subject to any other prior or contemporaneous oral or written agreement or understanding whatsoever.

10. Modifications.

The Parties hereby agree and acknowledge that this Agreement may only be modified or supplemented in writing signed by all Parties. Waiver of any term or provision hereof by any of the Parties to this Agreement shall not be considered a waiver of any other term or provision of this Agreement.

11. Assignability.

All of the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the Parties hereto and their respective legal representatives, heirs, successors and assigns; provided, however, that neither MCC, Pacific, Lennar, or Cobb County, Georgia

may sell, assign or in any other manner transfer its interest in this Agreement, in whole or in part, without prior written consent of all other Parties to this Agreement.

12. Execution of Counterparts.

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and together will constitute but a single instrument.

13. Last Execution Date.

For purposes of this Agreement, the Last Execution Date ("Last Execution Date") shall be defined to be the date of the last Party's execution of this Agreement.

14. Mutual and Reciprocal Warranty of Enforceability.

The Parties to this Agreement hereby individually and severally stipulate, agree, and warrant that this Agreement is and shall be enforceable under Georgia law, and the Parties further covenant to refrain from pleading or asserting in any way as a defense to any claim, demand, or action seeking to enforce this Agreement that this Agreement is unenforceable by virtue or effect of any Georgia statute, including but not limited to O.C.G.A. § 13-8-2. The Parties to this Agreement hereby waive, to the extent permitted by law, any defense to any claim, demand, or action seeking to enforce this Agreement, based upon any alleged unenforceability of this Agreement by virtue or effect of any Georgia statute, including but not limited to O.C.G.A. § 13-8-2. The Parties further stipulate, agree, and warrant that any claim related to the Subject Matter of this Agreement, is not, and shall not be construed by the Parties as, a claim for "damage to property" as used in O.C.G.A. § 13-8-2.

IN WITNESS WHEREOF, the Parties hereto have duly set their hands and seals the day and year first written above.

MARIETTA COUNTRY CLUB, INC.

BY: Thomas A. Roberts
Title: President
Printed Name: Thomas A. Roberts

(Corporate Seal)

Date Executed: Mar 27-2014

[Signatures continued on page 9]

THE PACIFIC GROUP, INC.

BY: _____
Title: _____
Printed Name: _____

(Corporate Seal)

Date Executed: _____

[Balance of page left intentionally blank]

[Signatures continued on page 10]

LENNAR GEORGIA, INC.

BY: _____
Title: _____
Printed Name: _____

(Corporate Seal)

Date Executed: _____

[Balance of page left intentionally blank]

[Signatures continued on page 11]

COBB COUNTY, GEORGIA

BY: _____
Timothy D. Lee, Chairman

[S E A L]

Date Executed: _____

Approved as to Form:

ATTEST:

COBB COUNTY ATTORNEY'S
OFFICE

By: _____
Candace W. Ellison, CCC
County Clerk

By: _____
Deborah N. Dance
Georgia Bar No. _____

EXHIBIT "A"
LEGAL DESCRIPTION

2014 MAY 13 PM 3:33

ALL THAT TRACT or parcel of land lying and being in Land Lot 241 of the 20th District, 2nd Section, Cobb County, Georgia and being more particularly shown as Tract 1 (containing 54.65 acres) and Tract 2 (containing 1.47 acres) (total of \$56.12 acres) per that certain ALTA/ACSM Land Title Survey for Lennar Homes and The Abram Law Group, LLC prepared by Travis Pruitt & Associates, Inc. dated 06/27/2013, and being more particularly described as follows:

COMMENCE at a 1" open top pipe at the land lot corner common to Land Lots 241, 242, 253 and 254, aforesaid District, Section and County; thence leaving said land lot corner and proceeding along the land lot line common to Land Lots 241 and 254 and along property now or formerly known as Saddle Brook Subdivision, Unit 1 and Unit 2 South 89 degrees 44 minutes 46 seconds West a distance of 903.95 feet to 1/2" rebar found; thence leaving said land lot line and proceeding along property now or formerly owned by John A. & Jan S. Lupas (Deed Book 14060, Page 4163) North 00 degrees 23 minutes 34 seconds East a distance of 199.21 feet to 1/2" rebar found; proceed thence along property now or formerly owned by Keith L. Jr. and Paige W. Johnson (Deed Book 14060, Page 4216) North 00 degrees 30 minutes 44 seconds East a distance of 196.36 feet to 1 1/2" open top pipe with 1/2" rebar; proceed thence along property now or formerly owned by Murl B. and Beverly A. McCall (Deed Book 14712, Page 2370) North 00 degrees 10 minutes 07 seconds West a distance of 312.07 feet to 1" rod with a 1 1/2" witness post; proceed thence along property now or formerly owned by Paul R. Lawson (Deed Book 13306, Page 1060) the following courses and distances: North 02 degrees 02 minutes 18 seconds East a distance of 225.57 feet to 1/2" rebar with a 1 1/2" witness post; North 86 degrees 18 minutes 23 seconds West a distance of 326.01 feet to 1/2" rebar inside a 2" open top pipe; North 27 degrees 01 minutes 39 seconds East a distance of 319.64 feet to 1/2" rebar inside a 2" open top; North 87 degrees 21 minutes 45 seconds West a distance of 537.86 feet to 1 1/2" open top pipe with a 1/2" witness post located on the easterly right of way of Kennesaw Due West Road (80' right of way); proceed thence along said easterly right of way of Kennesaw Due West Road the following courses and distances: North 28 degrees 09 minutes 45 seconds East a distance of 188.20 feet to 1/2" rebar set; northeasterly along a curve to the right with a radius of 2133.80 feet and an arc length of 298.41 feet, said curve having a chord bearing of North 32 degrees 10 minutes 35 seconds East and a chord distance of 298.17 feet to 5/8" rebar; thence leaving said easterly right of way and proceeding along property now or formerly owned by Timothy B. Farmer (Deed Book 14625, Page 4804) the following courses and distances: South 53 degrees 58 minutes 40 seconds East a distance of 236.97 feet to 5/8" rebar; North 36 degrees 05 minutes 03 seconds East a distance of 350.09 feet to 1/2" rebar found; North 29 degrees 01 minutes 16 seconds East a distance of 157.57 feet to 1/2" rebar; proceed thence along property now or formerly owned by Will H. Cabaniss (Deed Book 13404, Page 4021) North 19 degrees 07 minutes 56 seconds East a distance of 153.93 feet to 3/4" open top pipe; proceed thence along property now or formerly owned by Russell A. and Sarah T. McDaniel (Deed Book 14963, Page 2376) North 20 degrees 47 minutes 03 seconds East a distance of 150.01 feet to 1/2" open top pipe; proceed thence along property now or formerly owned by Joe D. Honea the following courses and distances: North 17 degrees 58 minutes 54 seconds East a distance of 149.75 feet to 1" crimp top pipe; North 69 degrees 31 minutes 37 seconds West a distance of 225.22 feet to 1/4" rebar inside a 3/4" open top pipe found on the easterly right of way of Kennesaw Due West Road; proceed thence along said right of way North 23 degrees 52 minutes 29 seconds East a distance of 57.47 feet to 5/8" rebar; thence leaving said right of way and proceeding along property now or formerly owned by Keystone Kennesaw LLC and C/O Rite Aid Corp. (Deed Book 14085 Page 6059) the following courses and

distances: South 70 degrees 10 minutes 08 seconds East a distance of 76.61 feet to 5/8" rebar with cap; South 88 degrees 01 minutes 36 seconds East a distance of 185.78 feet to 1/2" rebar with cap; North 55 degrees 35 minutes 22 seconds East a distance of 174.82 feet to 1/2" rebar set on the westerly right of way of Stilesboro Road (right of way of varying width); proceed thence along said right of way the following courses and distances: southeasterly along a curve to the left with a radius of 2073.10 feet and an arc length of 623.39 feet, said curve having a chord bearing of South 42 degrees 13 minutes 19 seconds East and a chord distance of 621.05 feet to 1/2" rebar set; southeasterly along a curve to the left with a radius of 2073.10 feet and an arc length of 150.03 feet, said curve having a chord bearing of South 52 degrees 54 minutes 35 seconds East and a chord distance of 150.00 feet to a 1" inch open top pipe with tack in center located on the land lot line common to Land Lots 241 and 242; thence leaving said right of way and proceeding along said land lot line and along said property now or formerly known as Marietta Country Club South 00 degrees 20 minutes 12 seconds West a distance of 2,034.69 feet to the POINT OF BEGINNING.

PERSONAL INFORMATION

NAME	<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 30%;">Last</td> <td style="border: none; width: 30%;">First</td> <td style="border: none; width: 10%;">MI</td> <td style="border: none; width: 30%;">Title</td> </tr> </table>	Last	First	MI	Title
Last	First	MI	Title		
CONTACT INFORMATION	<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 50%;">Home Telephone #:</td> <td style="border: none; width: 50%;">Email:</td> </tr> </table>	Home Telephone #:	Email:		
Home Telephone #:	Email:				
HOME ADDRESS	<table style="width: 100%; border: none;"> <tr> <td style="border: none; height: 20px;"></td> </tr> <tr> <td style="border: none; height: 20px;"></td> </tr> </table>				
BIRTH INFORMATION	<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 40%;">Place of Birth:</td> <td style="border: none; width: 30%;">Date:</td> <td style="border: none; width: 30%;">Age:</td> </tr> </table>	Place of Birth:	Date:	Age:	
Place of Birth:	Date:	Age:			
BUSINESS INFORMATION	Business Name:				
	<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 60%;">Position:</td> <td style="border: none; width: 40%;"># of Years:</td> </tr> </table>	Position:	# of Years:		
	Position:	# of Years:			
	Nature of Business:				
	Address:				
<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 40%;">Telephone #:</td> <td style="border: none; width: 60%;">Email:</td> </tr> </table>	Telephone #:	Email:			
Telephone #:	Email:				
UNIVERSITIES OR COLLEGES ATTENDED					
SOCIAL OR BUSINESS ORGANIZATIONS					
OTHER CLUBS (Former or Current)					
RECREATIONAL INTERESTS					
FAMILY INFORMATION	MARITAL STATUS: _____ NUMBER OF CHILDREN: _____				
	Spouse's Name: _____ Email: _____				
	Place of Birth: _____ Date: _____ Age: _____				
	Business Name: _____				
	Position: _____				
	University or College Attended: _____				
	Social or Business Organizations: _____				
	Special Interests: _____				
	Children				
	Name: _____ Sex: _____ Date of Birth: _____ Age: _____				
	Name: _____ Sex: _____ Date of Birth: _____ Age: _____				
	Name: _____ Sex: _____ Date of Birth: _____ Age: _____				
	Name: _____ Sex: _____ Date of Birth: _____ Age: _____				
	Special Interests: _____				

NOMINATION PROCESS

- Lennar Homes will provide Marietta Country Club new homeowner names from Brumby Place for consideration and approval by the Membership Committee Chair/Committee and the Board of Directors.
- A Nomination Proposal will be considered and processed according to the date it is received by the Membership Director of Marietta Country Club.
- A completed Nomination Proposal must include:
 - An identifying 4" x 6" photograph of the Nominee (may include spouse and/or family).
 - A check covering the first month's dues.
- A Nominee will be eligible for membership provided the following conditions are met:
 - The Proposed Nominee has met the Membership Committee. The Membership Committee Chairman and two additional Membership Committee Members will serve as sponsors for the Proposed Nominee.
 - The Board of Directors has reviewed the Nomination Proposal and has granted final acceptance and approval following the Membership Committee's recommendation.
 - The proposed New Member has completed a ten day posting period where existing Members have had the opportunity to review and offer comments with regard to membership acceptance.

MEMBER SPONSORSHIP

The following Equity Members will serve as sponsors for this Nominee:

Membership Committee Chair	Member #	Signature	Date
Membership Committee Member	Member #	Signature	Date
Membership Committee Member	Member #	Signature	Date



The undersigned nominee wishes to become a member of Marietta Country Club and consents to being proposed for that purpose. All information regarding these matters will be made available to Marietta Country Club's Board of Directors, the Membership Committee, its General Manager, Membership Director, and Controller.

The nominee represents and warrants that the information provided herein is true and complete. The nominee agrees that Marietta Country Club is authorized to make any and all inquiries among sources of information it considers necessary to verify the accuracy of this information and to determine the nominee's suitability for membership.

Signature of Nominee

EXHIBIT "C"

Date

COBB COUNTY GEORGIA
PLANNING DEPARTMENT

2014 MAY 13 PM 3:34

COBB COUNTY ZONING DEPARTMENT

**OFFICIAL MINUTES OF COBB COUNTY
BOARD OF COMMISSIONERS ZONING
HEARING FOR OSC 13-02 (2013) –
JULY 16, 2013**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 16, 2013
9:00 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, July 16, 2013 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 JoAnn Birrell
Commissioner Lisa Cupid
Commissioner Helen Goreham
Commissioner Bob Ott

- O. B. 10** To consider approval of an Open Space Community Overlay application for The Pacific Group, Inc. regarding Application OSC 13-02 filed May 6, 2013, for property located on the southwesterly side of Stilesboro Road; west of New Salem Road; east of Kennesaw Due West Road in Land Lot 241 of the 20th District, Cobb County, Georgia

Mr. Pederson provided information regarding an Open Space Community Overlay application. The public hearing was opened and Mr. John Moore, Mr. William Lathem, Don Wise, and Ms. Toni Traina addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Goreham, second by Ott, to **approve** Other Business Item No. 10 for approval of an Open Space Community Overlay application for The Pacific Group, Inc. regarding Application OSC 13-02 filed May 6, 2013, for property located on the southwesterly side of Stilesboro Road; west of New Salem Road; east of Kennesaw Due West Road in Land Lot 241 of the 20th District, **subject to:**

- **Specific to site plan received by the Planning Division July 12, 2013 (attached and made a part of these minutes)**
- **Letter of agreeable conditions from Mr. John Moore dated July 12, 2013 (attached and made a part of these minutes)**
 - **Item No. 4, second sentence – revise to read: “...resulting in 51.33 acres of a net buildable acreage,..”**
 - **Item No. 19 – add to end: “These signs will be maintained by the Homeowners Association in perpetuity.”**
 - **Item No. 34, add subset h.: “Due to the time of year when the application was filed, the count for the traffic study was obtained from a previous school year and the traffic study will be submitted at a later date per an agreement with Cobb DOT.”**

- Renderings of homes submitted July 16, 2013 for reference only (attached and made a part of these minutes)
- Landscape plan to be reviewed by County Arborist and approved by District Commissioner
- Georgia Native Plant Society to do a native plant rescue
- Traffic studies to be completed incorporating traffic loads imposed by the schools to the satisfaction of Cobb DOT
- Maintenance of the Civil War historical landscaping and associated fencing is the responsibility of the Homeowners Association
- Mitigation payment for partial destruction of historic trenches adjusted from \$25,000.00 to \$12,500.00; Applicant to install and pay for historical markers and submit receipts to offset the final reimbursement to Cobb County not to exceed \$12,500.00
- Cobb County, or other designated historical organization, will create the interpretive signs; the design of the signs will be approved by the Historic Preservation Commission
- Public access to the historic area is from the adjoining right of way by the provided trails only and the area inside the historical area fencing is off limits other than for maintenance
- A protocol for landscape maintenance of the historic areas will be established in writing and included in the Homeowners Association covenants by the Applicant which will be reviewed by the Historic Preservation Planner and approved in writing by the County Arborist to include (at a minimum) the following:
 - Mature standing trees to remain
 - Invasive plants, poison ivy, kudzu, beetle killed trees, lightning kills, and similar undesirable growth may be removed
 - Understory growths, brambles, etc., that block the view of the fortifications may be cut back; root structures are to remain to protect the earthworks unless the disturbed area is replanted to prevent erosion
- Historical areas will be fenced before and during construction
- Pre and post downstream lake studies to be approved by Stormwater Management Division
- District Commissioner may approve minor modifications
- *Revised Planning Staff Analysis for OSC dated July 11, 2013 not otherwise in conflict* (attached and made a part of these minutes)
- *Revised Historic Preservation comments and recommendations not otherwise in conflict*
- *Cemetery Preservation comments and recommendations not otherwise in conflict*
- *Fire Department comments and recommendations not otherwise in conflict*
- *Stormwater Management Division comments and recommendations not otherwise in conflict*
- *Cobb DOT comments and recommendations not otherwise in conflict*

VOTE: ADOPTED unanimously

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 B. 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*
ALEXANDER S. MORRISON*
DOUGLAS W. BUTLER, JR.
APRIL R. HOLLOWAY
CARLA C. WESTER†
ADON J. SOLOMON*
AMY L. JETT*
JEFF C. MORMAN*
RYAN M. INGRAM
SHAWN G. SHELTON
KRISTEN C. STEVENSON*
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326 ROSWELL ST
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KNOXVILLE, TENNESSEE
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KNOXVILLE, TENNESSEE 37923
TELEPHONE (865) 692-6039

JACKSONVILLE, FLORIDA
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JACKSONVILLE, FLORIDA 32256
TELEPHONE (904) 428-1465

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

LOUISVILLE, KENTUCKY
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LOUISVILLE, KENTUCKY 40223
TELEPHONE (802) 410-8021

CHARLESTON, SOUTH CAROLINA
4000 S. FABER PLACE DR • STE 300
CHARLESTON, SOUTH CAROLINA 29405
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SARAH H. BEST*
RYAN C. EDENS*
JULIE C. FULLER*
JODI B. LODEN*
TAMMI L. BROWN
TRAVIS R. JACKSON
DAVID A. HURTADO
J. MARSHALL WEHUNT
JONATHAN J. SMITH
MONTONA M. HO-SANG†
TRISTAN B. MORRISON****
WILLIAM B. WARINAY*
W. COLLINS BROWN
ROBERT A. BUTLER
COLLEEN K. HORN****
GRAHAM P. ROBERTS
DAVID J. OTTEN*
JONATHAN S. FUTRELL
JOSHUA D. ARTERS*
NORBERT D. HUMMEL, IV
DAVID P. CONLEY
LYNDEY J. HURST

B. CHASE ELLEBY
G. BARDIN HOOKS
DAPHNE S. WITHROW
WILLIAM W. MCGOWAN, III†
TYLER R. MORGAN*
MARIANNA L. JABLONSKI*

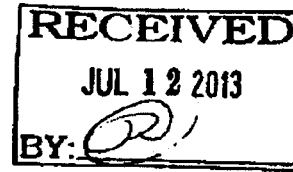
OF COUNSEL:
JOHN L. SKELTON, JR.*

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
**** ALSO ADMITTED IN CA
* ALSO ADMITTED IN TX
† ALSO ADMITTED IN AL
† ALSO ADMITTED IN KY
† ALSO ADMITTED IN SC
* ALSO ADMITTED IN NC
* ADMITTED ONLY IN TN
; ADMITTED ONLY IN FL

July 12, 2013

Hand Delivered

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
Suite 400
1150 Powder Springs Road
Marietta, Georgia 30064



Min. Pk. 04 Position No. 08 10
Doc. Type Letter of
agreeable conditions
7/16/13

RE: Application for Open Space Community – Application No.: OSC 13-02

Applicant: The Pacific Group, Inc.
Property Owners: The Estate of Bessie Abney;
The Estate of Glen Paul Abney; and
New Salem Baptist Church of Kennesaw, Inc.
Property: 56.16 acres located on the southwesterly side of
Stilesboro Road, westerly of New Salem Road,
and easterly of Kennesaw Due West Road
Land Lot 241, 20th District, 2nd Section,
Cobb County, Georgia

Dear Phil:

The undersigned and this firm represent The Pacific Group, Inc., the Applicant (hereinafter referred to as "Applicant"), and The Estate of Bessie Abney, The Estate of Glen Paul Abney, and New Salem Baptist Church of Kennesaw, Inc., the Property Owners (hereinafter collectively referred to as "Owners"), in their Application for Open Space Community with regard to tract of property totaling 56.48 acres located on the southwesterly side of Stilesboro Road, westerly of New Salem Road, and easterly of Kennesaw Due West Road, Land Lot 241, 20th District, 2nd Section, Cobb County, Georgia (hereinafter the "Property" or the "Subject Property"). After the presentation and hearing before the Cobb County Planning Commission, continuing

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
Page 2 of 10
July 12, 2013

Petition No. OB 10
Meeting Date 7/10/13
Continued

meetings and discussions with planning and zoning staff and various Cobb County departmental representatives, ongoing discussions and meetings with area civic and homeowner representatives, and reviewing the staff comments and recommendations and the uses of surrounding properties, we have been authorized by the Applicant to submit this revised letter of agreeable stipulations and conditions which, if the Application for Open Space Community is approved, as submitted, shall become a part of the grant of the requested approval and shall be binding upon the Subject Property. This letter shall supersede and replace in full the previous letter of agreeable zoning stipulations and conditions dated and filed July 1, 2013. 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 prior Departmental Comments and Staff Recommendations submitted by Planning, Fire, Water, Sewer, and Drainage, relating to the Subject Property from any previous zoning actions.
- (2) Approval for the Subject Property shall be from the R-20 zoning category to the R-20/OSC category, site plan specific to the revised Rezoning Layout prepared for Applicant by Travis Pruitt & Associates, Inc. dated May 6, 2013, last revised July 10, 2013, and filed contemporaneously herewith. A reduced copy of the revised Rezoning Layout is attached hereto as Exhibit "A" and incorporated herein by reference.
- (3) By this revised letter of agreeable stipulations and conditions, Applicant amends its Application for Rezoning to include the revised Rezoning Layout for the proposed Open Space Community development hereinabove referenced, same being prepared by Travis Pruitt & Associates, Inc. dated May 6, 2013, last revised July 10, 2013, filed contemporaneously herewith.
- (4) The Subject Property consists of 56.16 acres of total site area and shall be developed for a residential community comprised of a maximum of ninety-six (96) single-family residences. The Property has 3.93 acres located within flood plain, resulting in 52.23 acres of a net buildable acreage, for an overall density of 1.84 units per acre for the proposed residential community.
- (5) The proposed development shall contain 21.73 acres of dedicated open space, as more particularly shown and reflected on the revised Rezoning Layout, subject to

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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July 12, 2013

Exhibit No. DB 10
Meeting Date 7/16/13
Continued

final engineering. There shall be no trails for use of pedestrians, bikers, or any motorized use of the open space. This language shall be included within the provisions of the protective covenants to be placed upon the Property. Applicant agrees to convey to Cobb County, in perpetuity, a Conservation Easement over and across the open space and buffers for purposes of stormwater protection and historical preservation. This Conservation Easement shall be conveyed to Cobb County prior to the recording of the final subdivision plat.

- (6) All Conservation Easement areas herein identified shall be clearly marked as Conservation Easement areas as set forth herein.
- (7) The minimum lot size of lots within the proposed residential community shall be 10,000 square feet.
- (8) The residences within the proposed community shall have a minimum of 2,600 square feet, ranging up to 4,000 square feet, and greater.
- (9) The proposed residences shall be traditional and European in style and architecture and shall have a minimum two-car, attached garage.
- (10) Additionally, the architectural style and composition of the exterior of the homes shall consist of brick, stacked stone, cedar shake-type, hardi-plank shake type, and hardi-plank siding, or combinations thereof, on three (3) sides. Renderings of comparable homes shall be presented at the hearings before the Cobb County Planning Commission and Cobb County Board of Commissioners
- (11) The setbacks, except as otherwise expressly set forth herein, for the proposed residential community shall be as follows:
 - (a) Front setback – Twenty (20) feet;
 - (b) Interior rear setback – Twenty (20) feet;
 - (c) Exterior setback – Fifty (50) feet; and
 - (d) Side setback – Adjustable as per Cobb County Open Space Community Code).
- (12) All front and side yard areas of the proposed residences shall be fully sodded.

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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July 12, 2013

Project No. 0210
Meeting Date 7/10/13
Contract

- (13) Access to the proposed community shall be from Stilesboro Road and Kennesaw Due West Road, as more particularly shown and reflected on the revised Rezoning Layout. Entrance signage shall be ground based, monument-style signage, and shall consist of brick, stone, or combinations thereof, with accents. Entrance landscaping shall be professionally designed, implemented, and maintained. Maintenance of the entrance areas shall be by the mandatory homeowners association as set forth in the declaration of covenants, easements, and restrictions.
- (14) Applicant agrees to the creation of a mandatory homeowners association consistent with communities within the area. The mandatory homeowners association shall be responsible for the upkeep and maintenance of all common areas, open space and conservation areas, landscaping around detention areas, and entrance areas contained within the proposed residential community.
- (15) Additionally, and in conjunction with the creation of the mandatory homeowners association, Applicant agrees to the recording and enforcement of protective covenants which will contain covenants, rules, and regulations applicable to the proposed development.
- (16) Amenities for the community shall consist of a swimming pool, tennis courts, and cabana.
- (17) Street lighting within the proposed community shall be environmentally sensitive, decorative, and themed to the architecture and style of the residences, as offered by the power provider.
- (18) Applicant agrees to construct internal sidewalks along one side of the streets within the proposed residential community which shall connect to exterior street sidewalks. Said internal sidewalks shall comply in all respects with Cobb County standards and ordinances.
- (19) Applicant proposes the following stipulations relating to preservation of the Civil War earthworks located on the Subject Property:

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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Petition No. OB 110
Meeting Date 7/12/13
Continued

- (a) Enlargement of the Civil War buffer areas beyond the twenty-five (25) foot buffer area required by Cobb County, thus creating an extended natural, undisturbed area;
 - (b) Installation of a split-rail fence, as shown in red on the referenced Rezoning Layout;
 - (c) Creation of foot paths which will be accessed from one pedestrian entrance point at each buffer area, as shown in black on the referenced Rezoning Layout;
 - (d) One parking area for the designated buffer areas shall be located within the amenity parking area, and the second parking area shall be located by designated on-street parallel parking spaces;
 - (e) Applicant shall place the historical marker signs; as well as "keep off" signs, for the Civil War earthworks located within the proposed community;
 - (f) The historic area shall be made a part of the Conservation Easement area and shall be maintained by the mandatory homeowners association; and
 - (g) Applicant shall place an historical marker/interpretive signage detailing the history of the features and their significance. Applicant will work with Mr. Jeffrey Wright and his group of historians, together with the Cobb County Historic Preservation Commission, in the language to be placed upon said markers and signage. The cost of said historical markers and signage shall be paid by Applicant. Thereafter, Applicant shall submit the costs of such signage to the Cobb County Historic Preservation Commission and shall receive a credit for such signage against the total mitigation cost of \$12,500, so long as the credit does not exceed \$12,500. The signage shall be installed not later than the issuance of the certificate of occupancy for the amenity area.
- (20) All lots having any side thereof facing buffer, open space, or historical areas shall have constructed just outside the lot property line a split-rail fence. This fencing shall be installed prior to the issuance of the certificate of occupancy for each home. The fencing shall be allowed to meander to avoid specimen trees. Additionally, the fences shall be maintained by the mandatory homeowners

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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July 12, 2013

Case No. 0810
Date 7/10/13
City/County

association. There shall also be placed on each lot in front of said fence a sign notifying homeowners the fence and buffer, open space, or historical areas belong to the mandatory homeowners association, subject to a Conservation Easement to Cobb County.

- (21) The historic areas and buffers shall be fenced with orange tree save type fencing prior to commencement of development activities and shall continue through construction of the homes.
- (22) Applicant has been informed by officials of the Marietta Country Club that it intends to perform siltation removal of the lake within the Marietta Country Club, which is located downstream from the stream running through the Subject Property. The siltation removal is scheduled to commence in December 2013. Applicant agrees to coordinate with Marietta Country Club engineers and contractors to develop siltation protections for the Marietta Country Club lake during the process of development and construction of the Subject Property.
- (23) All construction and employee vehicles and equipment will be parked, and otherwise located on, the Subject Property during development of infrastructure and construction of residences, and shall not be parked on or along Stilesboro Road or Kennesaw Due West Road, or the sidewalk along Stilesboro Road and Kennesaw Due West Road. There will be no stacking of vehicles along either Stilesboro Road or Kennesaw Due West Road waiting for entry onto the Subject Property.
- (24) Development and construction hours for the proposed project shall be limited to the following:
 - (a) 7:00 a.m. to 7:00 p.m. - Monday-Friday, October 1st through March 31st;
 - (b) 7:00 a.m. to 8:00 p.m. - Monday-Friday, April 1st through September 30th;
 - (c) 9:00 a.m. to 6:00 p.m. - Saturday; and
 - (d) No work on Sunday unless approved by the District Commissioner.

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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Project No. 0810
Meeting Date 7/16/13
City/City

- (25) There shall be a natural buffer twenty-five (25) feet in width around the perimeter of the Subject Property, excepting only road frontages.
- (26) Applicant agrees to comply with all Cobb County and State of Georgia stream buffer requirements as more particularly shown and reflected on the referenced Rezoning Layout.
- (27) Stormwater management facilities shall be as shown and reflected on the revised Rezoning Layout. Said facilities shall be screened by black, vinyl-clad chain link fencing, black wrought iron-type, or split-rail fencing. The fencing shall be a minimum of four (4) feet in height with landscaping to the exterior of the fencing where needed for purposes of visual screening for proposed lots and proposed rights-of-way. The landscaping shall be approved by the County Arborist during the plan review process.
- (28) 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 community.
- (29) All utilities servicing the residences within the proposed community shall be underground.
- (30) Minor modifications to the referenced Rezoning Layout, including, but not limited to, the layout of lots and stormwater control measures, may be approved by the District Commissioner, as needed or necessary.
- (31) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (32) 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.
- (33) All buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, drainage facilities and any and all slopes or other required engineering features of the foregoing.

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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- (34) Applicant agrees to the following system improvements to mitigate traffic concerns:
- (a) Donation of right-of-way a maximum of fifty (50) feet in width from the existing roadway centerline along the frontage of property along Kennesaw Due West Road;
 - (b) Installation of curb, gutter, and sidewalk along the property frontage on Kennesaw Due West Road;
 - (c) Installation of curb and gutter along both sides of the streets; as well as, installation of sidewalk along one side of streets within the proposed community;
 - (d) Construction of a deceleration lane for ingress purposes along the property frontage on Kennesaw Due West Road;
 - (e) Construction of a deceleration lane for ingress purposes along the property frontage on Stilesboro Road;
 - (f) Any portion of the curb, gutter, and/or sidewalk along Stilesboro Road damaged during construction and development shall be repaired or replaced after completion of the proposed community; and
 - (g) Remove and close driveway aprons along Stilesboro Road and Kennesaw Due West Road frontages which development renders unnecessary.

We believe the requested approval of the Open Space Community Application, pursuant to the revised Rezoning Layout, together with the stipulations set forth above, is an appropriate use of the Subject Property while taking into consideration the existing conditions of the Property and the area surrounding the proposed development. The proposed residential community shall be a quality development and shall be compatible with the quality of surrounding developments and be an enhancement to the Subject Property and the community. Thank you for your consideration in this request.

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
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7/10/13

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

Attachment

c: Cobb County Board of Commissioners:

Timothy D. Lee, Chairman

Helen C. Goreham

Robert J. Ott

Joann Birrell

Lisa N. Cupid

(With Copy of Attachment)

Robert Hovey, Member

Cobb County Planning Commission

(With Copy of Attachment)

Keili Gambrill, President

People Looking After Neighborhoods, Inc.

(With Copy of Attachment)

(Via E-mail Only)

Mr. Don Wise, President

Marietta Country Club

(With Copy of Attachment)

(Via E-mail Only)

Mr. Randy Rice, General Manager

Marietta Country Club

(With Copy of Attachment)

(Via E-mail Only)

MOORE INGRAM JOHNSON & STEELE

Mr. Phillip Westbrook
Planner/Project Manager
Planning Division
Cobb County Community Development Agency
Page 10 of 10
July 12, 2013

OB 10
7/10/13

c: Bryant R. Dromey
Michael DeFusco
Saddlebrook Farms Homeowners Association
(With Copy of Attachment)
(Via E-mail Only)

Jeffrey Wright
Area Resident and Civil War Historian
(With Copy of Attachment)
(Via E-mail Only)

The Pacific Group, Inc.
(With Copy of Attachment)

Min. Bk. 109 Petition No. 0810
Doc. Type renderings
Meeting Date 7/16/13

FILED WITH COUNTY CLERK'S OFFICE
OF July 20 13 BY Johanna Moore
RE 0810
Don Decker
COUNTY CLERK/ASST. COUNTY CLERK/IDENTITY COUNTY CLERK
COBB COUNTY, GEORGIA



MAGNOLIA B
LENNAR

Petition No. OB 10
Meeting Date 7/10/13
Continued



ATLANTA B. B. CAR
LENNAR

Petition No. OB 10
Meeting Date 7/16/13
Continued



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127
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Petition No. 0610
Meeting Date 7/10/13
Continued



MAGNOLIA D.
LENNAR

Petition No. OB 10
Meeting Date 7/10/13
Commuted



ARMAN C. SCAR
LEONARD

COBB COUNTY COMMUNITY DEVELOPMENT AGENCY

Planning Division
1150 Powder Springs Street
Marietta, Georgia 30060
(770) 528-2018

Planning Staff Analysis

Map No. 04 Position No. 0810
Map Type Planning Staff
Analysis
7/10/13

OSC 13-02

Revision #3 (Based on Site Plan received July 10, 2013)

Date: **July 11, 2013**

Contact: Philip Westbrook

(770) 528-2014

Property Location: Stilesboro Rd./Kennesaw Due West Rd.
Current Zoning: R-20

Land Lot/District: 241 / 20
Proposed Use: R-20 OSC

Total Area: 56.16
Floodplain/Lake/Wetland Area: 3.93
Impervious Amenity Area: .90
Net Buildable Area: 51.33
Base Density Allowed: 1.75 upa
Base Density Allowed w/Bonus: 1.92 upa
Proposed Lots: 96
Net Density: 1.87 upa

Open Space Requirement: Bonus 21.62 acres or 38.5%
Open Space Provided: 21.73 acres or 38.7%
Percentage of Open Space within Floodplain, Wetlands, & Lakes: 18.1%

Setbacks:-

Front: 20'
Rear: 20' interior setback; 50' exterior setback
Side: 5' with 15' between structures

Comments:

1. According to site plan received July 10, 2013 the net buildable area of 52.23 acres should be adjusted to 51.33 acres. Impervious amenity area must be subtracted from the total project tract acreage.
2. Must have Cobb Department of Transportation approved street lighting plan
3. Recommend construction fencing behind lots 11 to 16 to protect the buffer and trenches therein.