

**ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_  
**Hearing Dates:** **December 9, 2019**  
**January 21, 2020**

**BEFORE THE PLANNING AND ZONING BOARD  
AND THE MAYOR AND CITY COUNCIL  
FOR THE CITY OF SMYRNA, GEORGIA**

**CONSTITUTIONAL CHALLENGE**  
**ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, INLINE COMMUNITIES, LLC (hereinafter referred to as “Applicant”), and Titleholder, ARGYLE REALTY COMPANY (hereinafter referred to as “Owner” or “Property Owner”), and assert the following:

1.

By Application for Rezoning dated and filed November 8, 2019, Applicant and Property Owner applied for annexation and rezoning of approximately 23.954 acres, more or less, of real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Applications (hereinafter referred to as the “Property” or the “Subject Property”).

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning categories of Neighborhood Retail Commercial (“NRC”) and Office and Institutional (“OI”), as established by the governing authority of Cobb County, Georgia, under and pursuant to Ga. Laws 1956, p. 2006 (hereinafter the “Zoning and Planning Ordinance of Cobb County”), as amended, to the proposed zoning category of MU-C, as established by the governing authority of the City of Smyrna, Cobb County, Georgia, under and pursuant to the

Zoning and Planning Ordinance of the City of Smyrna, Georgia (hereinafter the “Zoning and Planning Ordinance of the City of Smyrna”).

3.

With respect to the current NRC and OI zoning classifications (Cobb County) for the Subject Property, Applicant and Property Owner do contend the Zoning and Planning Ordinance of Cobb County and the Zoning and Planning Ordinance of the City of Smyrna (hereinafter collectively “Zoning Ordinances”) are unconstitutional as applied to the Subject Property in that said Ordinances do not permit the Applicant and Property Owner to utilize the Property to the use set forth within the Application for Rezoning without the necessity of rezoning. However, Applicant and Property Owner do not contend the current zoning categories of NRC and OI (Cobb County) are unconstitutional, per se, only as applied. Thus, the Ordinances deprive Applicant and Property Owner of their Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. Also violated are the Applicant’s and Property Owner’s rights to unfettered use of their Property, as stated above, in that said zoning classifications do not bear a substantial relation to the public health, safety, morality, or general welfare and are, therefore, confiscatory and void. Further, said Ordinances are unconstitutional in that they are arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Property Owner.

4.

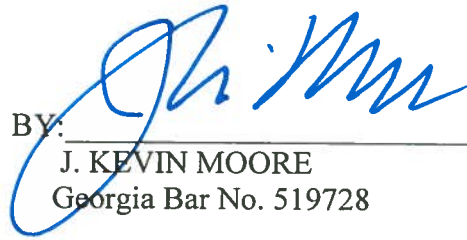
To the extent the Zoning and Planning Ordinance of the City of Smyrna allows or permits the Mayor and City Council to rezone the Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates Applicant's and Property Owner's constitutionally guaranteed rights to due process, both substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Zoning and Planning Ordinance of the City of Smyrna, is an unconstitutional use of the zoning power and would constitute an abuse of discretion with no justification or benefit flowing to the public welfare. Accordingly, said Ordinance or action would likewise represent a taking of private property rights without the payment of just and adequate compensation in violation of the Constitutions of the State of Georgia and the United States of America.

5.

The Zoning and Planning Ordinance of the City of Smyrna is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Application for Rezoning also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 8<sup>th</sup> day of November, 2019.

MOORE INGRAM JOHNSON & STEELE, LLP

BY:   
\_\_\_\_\_  
J. KEVIN MOORE  
Georgia Bar No. 519728

Attorneys for Applicant and Property Owner