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NEWTON M. GALLOWAY
TERRI M. LYNDALL

Via email: lgardiner@forestparkga.gov

July 10, 2023

Ms. LaShawn Gardiner
Director of Planning and Community Development
Forest Park, Georgia
785 Forest Parkway
Forest Park, Georgia 30297

Re: TR1 USA, LLC
Rezoning Application: RZ-2023-03

Dear Ms. Gardiner:

You will please find included herewith the following documents pertinent to the above application:

- a. Constitutional Objection to Restrictions in the Zoning Ordinance of the City of Forest Park, Georgia; and
- b. Evidentiary Objections to Zoning Hearing Based on York v. Athens College of Ministry, Inc.

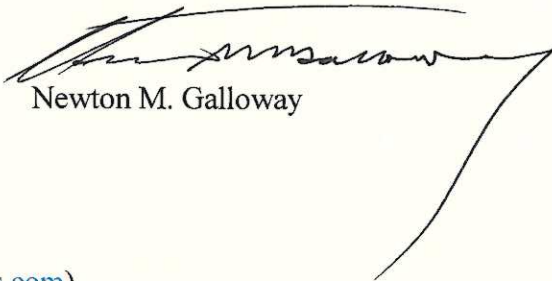
Please consider and include both of these documents as part of the above referenced Rezoning Application and the accompanying requested variance.

Ms. LaShawn Gardiner
Director of Planning and Community Development
Forest Park, Georgia
July 10, 2023
Page 2

Should you have any questions, please do not hesitate to contact me.

Sincerely,

GALLOWAY & LYNDALL, LLP



Newton M. Galloway

NMG:dln
Enclosures

cc: Mr. Noorali Somani (nsomani@yvspartners.com)

In re:

TR1 USA, LLC
REZONING APPLICATION: RZ-2023-03

CONSTITUTIONAL OBJECTION TO RESTRICTIONS IN THE
ZONING ORDINANCE OF THE CITY OF FOREST PARK, GEORGIA

As applied to the following property:

Parcel 13017A B014; 0.287 acres
TR1 USA, LLC, Applicant
Kinh Enterprises Inc., Owner

located within the City of Forest Park, Georgia and as identified pursuant to the current Parcel identification number assigned by the Clayton County Tax Assessor (the “Subject Property”), being zoned Single-Family Residential (RS) subject of the above-referenced Rezoning Application, requesting a change in the Zoning Ordinance of the City of Forest Park, Georgia. The current zoning is unconstitutional in that it deprives the Owner/Applicant of their vested right to a pre-existing non-conforming use based on the prior non-conforming uses which have been conducted on the Subject Property since the previous structure was built in 1965 and continued after the current zoning ordinance was enacted in 2021. Most recently the structure operated as an In-N-Out Grocery store since 2014. The right to continue a nonconforming use, once established and not abandoned, is not personal to the owner. It runs with the land. The right to continue a legal, nonconforming use being a vested property right, any statute or ordinance that takes away that right in an unreasonable manner, or in a manner not grounded in the public welfare, is invalid. The vested right to continue a legal, nonconforming use is entitled to constitutional protection. *Southern States-Bartow County, Inc. v. Riverwood Farm Homeowners Assoc.*, 300 Ga. 609, 797 S.E.2d 468 (2017). The Zoning Ordinance for the City of Forest Park, Georgia, Section 8-8-112(3) prohibits reconstruction of a pre-existing non-conforming use if the structure was destroyed to “an

extent of more than sixty (60) percent of its replacement cost at the time of destruction.” On its face Section 8-8-112(3) of the Zoning Ordinance of the City of Forest Park, Georgia, precludes reconstruction of the structure irrespective of the intent of the Owner or Applicant to abandon the grocery store after destruction. As a result, its restrictions violate the Owner/Applicant’s rights to continue a constitutionally protected pre-existing non-conforming use.

Additionally, the Owner/Applicant has property rights in and to the Subject Property that have been destroyed without receiving fair, adequate and just compensation for such property rights. As applied to the Subject Property, the Zoning Ordinance of the City of Forest Park, Georgia deprives the Owner/Applicant of constitutionally protected rights in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Application of the Zoning Ordinance of the City of Forest Park, Georgia to the Subject Property is unconstitutional, illegal, arbitrary, capricious, null and void, constituting a taking of the Subject Property in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraph 1, and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia of 1983, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States thereby denying the Owner/Applicant an economically viable use of the Subject Property while not substantially advancing legitimate state interests.

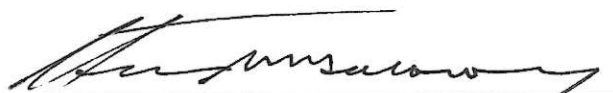
Inasmuch as it is impossible for the Owner/Applicant to use the Subject Property and simultaneously comply with the Zoning Ordinance of the City of Forest Park, Georgia, the Zoning Ordinance constitutes an arbitrary, capricious, and unreasonable act by the City without any

rational basis therefore and constitutes an abuse of discretion in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Application of the Zoning Ordinance of the City of Forest Park, Georgia to the Subject Property is unconstitutional and discriminates against the Owner/Applicant in an arbitrary, capricious, and unreasonable manner between the Owner/Applicant and others similarly situated in violation of Article I, Section I, Paragraph 2 of the Constitution of the State of Georgia of 1983 and the Equal protection Clause of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, Owner/Applicant request that the City of Forest Park, Georgia approve the Rezoning Application RZ-2023-03 as well as the accompanying requested variance and rezone the Subject Property to General Commercial (GC) as specified and requested therein.

GALLOWAY & LYNDALL, LLP
Counsel for TR1 USA, LLC



Newton M. Galloway
Georgia Bar No.: 283069

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In re:

TR1 USA, LLC
REZONING APPLICATION: RZ-2023-03

EVIDENTIARY OBJECTIONS TO ZONING HEARING BASED ON
YORK V. ATHENS COLLEGE OF MINISTRY, INC.

As applied to the following property:

Parcel 13017A B014; 0.287 acres
TR1 USA, LLC, Applicant
Kinh Enterprises Inc., Owner

located within the City of Forest Park, Georgia and as identified pursuant to the current parcel numbers assigned by the Clayton County Tax Assessor (the “Subject Property”), being zoned Single-Family Residential (RS), subject of the above-referenced Rezoning Application and accompanying requested Variance, Owner and Applicant give notice of the following evidentiary objections based on *York v. Athens College of Ministry, Inc.*, 348 Ga. App. 58, 632, 821 S.E.2d 120 (2018):

With the Rezoning Application and the accompanying requested variance, Owner and Applicant filed a Constitutional Objection to the denial thereof which is incorporated herein by reference as if fully set forth.

Owner and Applicant object to comments provided by any and all members of the public presented before the City Council in opposition to RZ-2023-03 to the extent that (but not limited to) such individuals lack standing to challenge RZ-2023-03 because they: (a) do not satisfy the substantial interest-aggrieved citizen test; (b) are not under oath; (c) are not subject to cross-examination; (d) lack sufficient training or expertise to present evidence on and/or make statements that would otherwise require presentation by witness(es) constituting expert opinion without such individuals being qualified as experts; (e) present evidence on and/or make statements that are irrelevant and/or immaterial to the factors for approval of a rezoning or variance under the Zoning

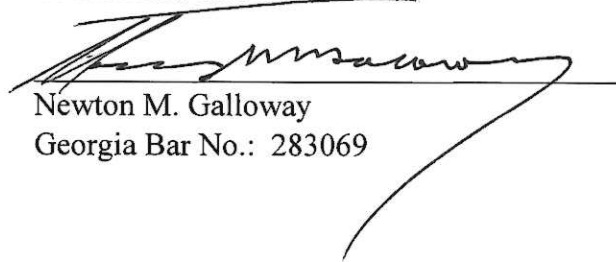
Ordinance; and/or (f) present evidence and/or make statements that are founded, wholly or in part, upon inadmissible, unreliable, nonprobative, insubstantial and/or lay, nonexpert opinion and hearsay evidence.

Additionally, Owner and Applicant object to any action of the City Council that does not approve RZ-2023-03 or approves it subject to unreasonable conditions to the extent that (but not limited to) the same are: (a) in violation of O.C.G.A. § 50-13-19(h); (b) in violation of constitutional, statutory or ordinance provisions; (c) in excess of the statutory or constitutional authority of the City Council; (d) made upon unlawful procedure; (e) affected by other error of law; (f) clearly erroneous in view of the reliable probative, and substantial evidence on the whole record; or (g) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; (h) founded, wholly or in part, upon inadmissible, unreliable, nonprobative, insubstantial, unsubstantiated and/or lay, nonexpert opinion evidence; and/or (i) contrary to the factors for approval of a rezoning or variance set forth in the Zoning Ordinance.

By and through this *York* Objection, Owner and Applicant preserve all the above and incorporated Objections and asserts them on and within the record before, and for consideration and resolution by, the City Council of the City of Forest Park, Georgia.

WHEREFORE, Owner and Applicant request that the City of Forest Park, Georgia approve the Rezoning Application and accompanying requested variance set forth above.

GALLOWAY & LYNDALL, LLP
Counsel for TR1 USA, LLC



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Georgia Bar No.: 283069

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