

**ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_

**Hearing Dates:** **April 28, 2025**

**May 5, 2025**

**BEFORE THE PLANNING AND ZONING COMMISSION  
AND THE MAYOR AND CITY COUNCIL  
FOR THE CITY OF POWDER SPRINGS, GEORGIA**

**CONSTITUTIONAL CHALLENGE  
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, TRATON, LLC (hereinafter referred to as “Applicant”), and Property Owners, the ESTATE OF LUCILLE GARRETT and WILLIAM D. BROWN (hereinafter collectively referred to as “Owners” or “Property Owners”), and assert the following:

1.

By Application for Rezoning dated and filed March 25, 2025, Applicant and Property Owners applied for annexation and rezoning of certain real property, located within unincorporated Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Property” or “Subject Property”).

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning category of R-20, under and pursuant to the Cobb County Zoning Ordinance, to Planned Unit Development – Residential (“PUD-R”), as established by the governing authority of the City of Powder Springs, Georgia, under and pursuant to The Unified Development Code of

Powder Springs, Georgia, as amended, being hereinafter referred to as “The Unified Development Code of Powder Springs.”

3.

As to the current R-20 zoning category and the Property located within unincorporated Cobb County, Georgia, the Zoning and Planning Ordinance of Cobb County and The Unified Development Code of Powder Springs (collectively the “Ordinances”), are unconstitutional as applied to the Property in that said Ordinances deprive Applicant and Property Owners 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. The R-20 zoning category, as it presently exists, together with any intervening zoning categories between the existing R-20 zoning category (Cobb County) and the requested PUD-R zoning category (City of Powder Springs), violates the Applicant’s and Property Owners’ right to unfettered use of their Property 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 Owners.

4.

To the extent The Unified Development Code of Powder Springs allows or permits the Mayor and City Council to rezone the Subject Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates Applicant’s and

Property Owners' 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 Unified Development Code of Powder Springs, 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 Ordinances are further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Zoning Application 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 25<sup>th</sup> day of March, 2025.

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