CITY OF COLLEGE PARK

STATE OF GEORGIA

ORDINANCE NO. 2015-16

AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, GEORGIA EXTENDING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR PERMITS, LICENSES OR INSPECTIONS RELATED TO THE DEVELOPMENT OF EXTENDED STAY HOTELS AND MOTELS; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

WHEREAS, the City of College Park has been vested with substantial powers, rights and functions to generally regulate the practice, conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City of College Park; and

WHEREAS, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and

WHEREAS, the Courts take judicial notice of a local government's inherent ability to impose moratoria on an emergency basis; and

26 **WHEREAS**, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*,
27 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of
28 the public generally, as distinguished from those of a particular class, require such interference;
29 and second, that the means are reasonably necessary for the accomplishment of the purpose, and
30 not unduly oppressive upon individuals." The City of College Park has found that the interests
31 of the public necessitate the enactment of a moratorium for health, safety, morals and general
32 welfare purposes by means which are reasonable and not unduly oppressive; and

33 **WHEREAS**, the Mayor and Council of the City of College Park have, as a part of
34 planning, zoning and growth management, been in review of the City's Zoning Ordinances and
35 have been studying the City's best estimates and projections of the type of development which
36 could be anticipated within the City of College Park; and

37 **WHEREAS**, the Mayor and Council deem it important to develop a comprehensive plan
38 which integrates all of these concerns and therefore consider this moratorium a proper exercise
39 of its police powers; and

40 **WHEREAS**, the Mayor and Council therefore consider it paramount that land use
41 regulation continue in the most orderly and predictable fashion with the least amount of
42 disturbance to landowners and to the citizens of the City of College Park. The Mayor and
43 Council have always had a strong interest in growth management so as to promote the traditional
44 police power goals of health, safety, morals, aesthetics and the general welfare of the
45 community; in particular, the lessening of congestion on City streets, security of the public from
46 crime and other dangers, promotion of health and general welfare of its citizens, protection of the

47 aesthetic qualities of the City including access to air and light, and facilitation of the adequate
48 provision of transportation and other public requirements; and

49 **WHEREAS**, it is the belief of the Mayor and Council of the City of College Park that the
50 concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as
51 well as physical, aesthetic as well as monetary; and that it is within the power of the City "to
52 determine that a community should be beautiful as well as healthy, spacious as well as clean,
53 well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954);
54 *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). It is also
55 the opinion of the City that "general welfare" includes the valid public objectives of aesthetics,
56 conservation of the value of existing lands and buildings within the City, making the most
57 appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting
58 the economic well-being of the community, facilitating adequate provision of public services,
59 and the preservation of the resources of the City; and

60 **WHEREAS**, the Mayor and Council are, and have been interested in, developing a
61 cohesive and coherent policy regarding certain uses in the City, and have intended to promote
62 community development through stability, predictability and balanced growth which will further
63 the prosperity of the City as a whole.

64 **NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the City of
65 College Park and by the authority of the same:

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67 **SECTION I.**

68 **FINDINGS OF FACT**

69 The Mayor and Council of the City of College Park hereby make the following findings
70 of fact:

71 (a) It appears that the City's development ordinances, Zoning Ordinance and/or
72 Comprehensive Land Use Plan require an additional review by the City of
73 College Park as they relate to the development of extended stay hotels;

74 (b) Substantial disorder, detriment and irreparable harm would result to the citizens,
75 businesses and City of College Park if the current land use regulation scheme in
76 and for the above described use in the City were to be utilized by property owners
77 prior to a more thorough review;

78 (c) The City's ongoing revision of its code, comprehensive plan and zoning
79 ordinances requires that a limited cessation of development and building permits,
80 occupation tax permits, and other licenses and permits, with respect to the above
81 described use, be enacted;

82 (d) It is necessary and in the public interest to delay, for a reasonable period of time,
83 the processing of any applications for such developments, to ensure that the
84 design, development and location of the same are consistent with the long-term
85 planning objectives of the City; and

86 (e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable
87 and do not constitute land use when such moratoria are applied throughout the

88 City under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d
89 90 (2001).

90 **SECTION II.**

91 **EXTENSION OF MORATORIUM**

92 (a) There is hereby extended a moratorium on the acceptance by the staff of the City of
93 College Park of rezoning or the acceptance of applications for variances, permits or
94 inspections for the development of any "extended stay hotels," or for any other license or
95 permit, for the purpose of authorizing such or similar uses as described in the Zoning
96 Ordinance of the City of College Park.

97 (b) "Extended stay hotel" shall include any building containing six or more guest rooms
98 rented or leased for sleeping purposes in excess of one week, and that contain Cooking
99 Facilities or Cooking Devices for food preparation. As used herein, "Cooking Facilities"
100 and "Cooking Devices" shall mean a stove top burner, a hotplate that does not serve as an
101 integral part of an appliance designed solely to produce coffee; a conventional oven; a
102 convection oven; a grill; a hibachi; or any oven producing heat using resistance heating
103 elements or infrared heating sources.

104 (c) The duration of this extended moratorium shall be until the City adopts a revision of the
105 City Code of the City of College Park related to the above referenced use or until
106 December 20, 2015, whichever first occurs.

107 (d) This moratorium shall be effective as of September 21, 2015.

108 (e) This moratorium shall have no effect upon approvals or permits previously issued or as to
109 development plans previously approved by the City. The provisions of this Ordinance

110 shall not affect the issuance of permits or site plan reviews that have received preliminary
111 or final approval by the City on or before the effective date of this Ordinance.
112 (f) As of the effective date of this Ordinance, no applications for rezoning, development,
113 variances or permits for the above described use will be accepted by any agent, employee
114 or officer of the City with respect to any property in the City of College Park, and any
115 permit so accepted for filing will be deemed in error, null and void and of no effect
116 whatsoever and shall constitute no assurance whatsoever of any right to engage in any
117 act, and any action in reliance on any such permit shall be unreasonable.
118 (g) The following procedures shall be put in place immediately. Under *Cannon v. Clayton*
119 *County,* 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571
120 S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806
121 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in
122 position by expenditures and reliance on the probability of the issuance of a building
123 permit, based upon an existing zoning ordinance and the assurances of zoning officials,
124 he acquires vested rights and is entitled to have the permit issued despite a change in the
125 zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to
126 this case, the City of College Park recognizes that, unknown to the City, de facto vesting
127 may have occurred. The following procedures are established to provide exemptions
128 from the moratorium where vesting has occurred:
129 A written application, including verified supporting data, documents and facts, may be
130 made requesting a review by the Mayor and Council at a scheduled meeting of any facts or

131 circumstances which the applicant feels substantiates a claim for vesting and the grant of an
132 exemption.

133 **SECTION III.**

134 (a) It is hereby declared to be the intention of the Mayor and Council that all sections,
135 paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment,
136 believed by the Mayor and Council to be fully valid, enforceable and constitutional.

137 (b) It is hereby declared to be the intention of the Mayor and Council that, to the
138 greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of
139 this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this
140 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the
141 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this
142 Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase
143 of this Ordinance.

144 (c) In the event that any phrase, clause, sentence, paragraph or section of this
145 Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise
146 unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the
147 express intent of the Mayor and Council that such invalidity, unconstitutionality or
148 unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional
149 or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or
150 sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases,
151 clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional,
152 enforceable, and of full force and effect.

153 **SECTION IV.**

154 All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of
155 such conflict, hereby repealed.

156 **SECTION V.**

157 The preamble of this Ordinance shall be considered to be, and is hereby incorporated by
158 reference as if, fully set out herein.

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161 [SIGNATURES CONTAINED ON FOLLOWING PAGE]

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ORDAINED this 21 day of Sept, 2015.

CITY OF COLLEGE PARK, GEORGIA

Jack P. Longino, Mayor

ATTEST:

Melissa Brooks, City Clerk

APPROVED AS TO FORM:

Steve Fincher, City Attorney