



**NOWACKHOWARD**  
COMMUNITY ASSOCIATION ATTORNEYS

William H. Gourley III  
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August 24, 2018

**VIA CERTIFIED MAIL NO.: 9414 8108 9876 5017 0965 31**  
**RETURN RECEIPT REQUESTED**

Attn: Planning & Zoning Commission  
City of Powder Springs  
P.O. Box 46  
4488 Pineview Drive  
Powder Springs, Georgia 30127

Re: PZ 18-029 – Silver Springs II

Dear Commissioners:

As you may be aware, this firm represents Silver Springs Village Community Association, Inc. (the “Association”).

I am writing on behalf of the Association in opposition to PZ 18-029 – Silver Springs II and the City’s request to re-zone Silver Springs II to remove Zoning Stipulations 9 and 10.

As the City is well-aware, the Association relied on these Stipulations in its negotiations with Paran Homes, LLC and the City regarding the development of Silver Springs II and ultimately the deal it reached with Paran to allow the property to become subject to the existing covenants governing to Silver Springs Village (which imposed additional maintenance requirements and other obligations on the Association) and to allow the owners in Silver Springs II to become members of the Association. A copy of the Agreement between Paran and the Association is enclosed for your review. The Association would not have agreed to such a deal but for these Stipulations and the protections they offer.

My client finds it objectionable that the City is now seeking to delete these Stipulations apparently in response to the Association raising concerns about Lots 8 and 29 and other matters in Silver Springs II and submitting an Open Records Request. In other words, since the Association is putting pressure on the City, it appears that the City is now seeking to change the rules to the detriment of the Association and its members.

As written, the Stipulations do not require the City to enforce private covenants. Rather, the City is only obligated to enforce the Stipulations that it agreed to. By way of illustration, if the owner of Lot 8 does not have the architectural approval from the Association required by the covenants, then the owner has not complied with the Stipulations and the City should not issue a building permit until such time as the condition is satisfied. The Stipulations are essentially condition precedents, and they are no different than Stipulation 8

which requires the owner to comply with all requirements of and receive approval from the Cobb County Fire Marshall's office.

The Association strongly urges you to consider the harm that the proposed rezoning will cause to the Association and its members, including violating their constitutional rights as outlined below and incorporated herein by this reference.

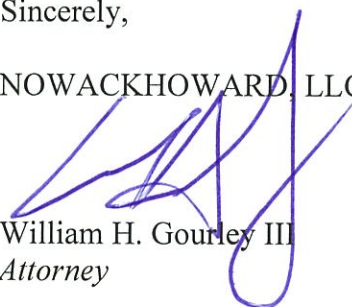
If the application is approved and Stipulations 9 and 10 are removed, the Association will have no choice but to take the appropriate action to enforce its rights and address the harm caused to it. Accordingly, the Association respectfully requests that the application be denied.

Alternatively, the City should withdraw its application until representatives from the City, Paran and the Association have an opportunity to meet and discuss an amicable resolution to this matter. The haste at which this application is being processed is unnecessary and is only exacerbating the problem.

Thank you for your attention to this very concerning matter.

Sincerely,

NOWACKHOWARD, LLC

  
William H. Gourley III  
*Attorney*

Encs: Memorandum of Understanding and Agreement Regarding Annexation of Garden Gate Subdivision A/K/A Silver Springs II

cc: Via Certified Mail, No: 9414 8108 9876 5017 0971 32

Return Receipt Requested

Paran Homes, LLC

Attn: Anne DeLorenzo, Registered Agent

3005 Breckinridge Blvd, Suite 200, Duluth, GA 30096

Via E-mail

Kendall King, Paran Homes ([kendallking@paranhomes.com](mailto:kendallking@paranhomes.com))

Via E-mail

Michael Rosenberg, Paran Homes ([michael@paranhomes.com](mailto:michael@paranhomes.com))

Via E-mail

Richard W. Calhoun, Esq., City Attorney ([rcalhoun@gregorydoylefirm.com](mailto:rcalhoun@gregorydoylefirm.com))



Via E-mail

Mayor Al Thurman ([athurman@cityofpowdersprings.org](mailto:athurman@cityofpowdersprings.org))

Via E-mail

Pam Conner, City Manager ([pconner@cityofpowdersprings.org](mailto:pconner@cityofpowdersprings.org))

Via E-mail

Tina Garver, Director of Community Development ([tgarver@cityofpowdersprings.org](mailto:tgarver@cityofpowdersprings.org))

Via E-mail

Shauna Wilson-Edwards, Special Projects Coordinator for Zoning and Plan Review  
([sedwards@cityofpowdersprings.org](mailto:sedwards@cityofpowdersprings.org))

Via E-mail

Patrick Bordelon, At-Large Council Member ([post1@cityofpowdersprings.org](mailto:post1@cityofpowdersprings.org))

Via E-mail

Patricia Wisdom, At-Large Council Member ([post2@cityofpowdersprings.org](mailto:post2@cityofpowdersprings.org))

Via E-mail

Henry Lust, Ward 1 Council Member ([ward1@cityofpowdersprings.org](mailto:ward1@cityofpowdersprings.org))

Via E-mail

Doris Dawkins, Ward 2 Council Member ([ward2@cityofpowdersprings.org](mailto:ward2@cityofpowdersprings.org))

Via E-mail

Nancy Farmer, Ward 3 Council Member ([ward3@cityofpowdersprings.org](mailto:ward3@cityofpowdersprings.org))

Via E-mail

Property Manager for Silver Springs Community Association, Inc.

Via E-mail

Board of Directors of Silver Springs Village Community Association, Inc.



## Constitutional Challenges

As stated above, if the application is approved in its current form, it will violate my client's constitution rights.

The decision will be an arbitrary and capricious act without any rational basis thereby constituting an abuse of discretion and a manifest abuse of the zoning power in violation of the Constitutions of the State of Georgia and the United States of America.

The decision will also be unconstitutional in that it will destroy our client's property rights without just compensation for such rights, in violation of the Constitutions of the State of Georgia and the United States of America.

The decision will violate my client's right to notice and a hearing in violation of the Constitutions of the State of Georgia and the United States of America.

The decision will also be unconstitutional, illegal, null and void, and constitute a taking of our client's property in violation of the Constitutions of the State of Georgia and the United States of America.

The decision will be unconstitutional, and discriminate in an arbitrary, capricious and unreasonable manner between my client and the owners of similarly situated properties in violation of the Constitutions of the State of Georgia and the United States of America.

Finally, the decision will demonstrate that the relevant laws and regulations are unconstitutional on their face and as applied.



STATE OF GEORGIA

COUNTY OF COBB

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT**  
**REGARDING ANNEXATION OF GARDEN GATE SUBDIVISION**  
**A/K/A SILVER SPRINGS II**

This Memorandum of Understanding and Agreement Regarding Annexation of Garden Gate Subdivision a/k/a Silver Springs II (hereinafter "Agreement") is made and entered into by and between **Silver Springs Village Community Association, Inc.** (hereinafter "Association") and **Paran Homes, LLC** (hereinafter "Paran").

**WITNESSETH:**

WHEREAS, Silver Springs Village is a residential subdivision development in Powder Springs, Cobb County, Georgia, which consists of 141 improved lots; and

WHEREAS, the Association is the community association that governs the Silver Springs Village subdivision development in accordance with the Declaration of Covenants, Conditions, and Restrictions for Silver Springs which is recorded in Deed Book 13511, Page 3869, et seq. of the Cobb County, Georgia records, as amended and supplemented (hereinafter "Declaration") and the By-Laws of Silver Springs Village Community Association, Inc., which are recorded in Deed Book 13516, Page 5320, et seq. of the Cobb County, Georgia records, as amended (hereinafter "Bylaws"); and

WHEREAS, Garden Gate subdivision is a subdivision development located adjacent to Silver Springs Village which consists of 29 unimproved lots (hereinafter "Silver Springs II"); and

WHEREAS, Silver Springs II was formerly owned by Fallwood Builders, LLC (hereinafter "Fallwood"); and

WHEREAS, Paran is the residential homebuilder that purchased Silver Springs II from Fallwood and is the current owner of all the real property in Silver Springs II; and,

WHEREAS, Paran desires that the real property in Silver Springs II be annexed to the covenants, conditions and restrictions of the Declaration as a new Neighborhood; and

WHEREAS, the Association desires to propose to its members that the real property in Silver Springs II be annexed to the covenants, conditions and restrictions of the Declaration as a new Neighborhood only if certain conditions are satisfied; and

WHEREAS, the signatory parties have bound themselves, their successors, heirs, representatives, agents, officers, directors, members, and assigns and all persons acting on their behalf, to the terms of this Agreement; and

NOW THEREFORE, in consideration of the mutual promises and benefits to be obtained by each of the parties hereto and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1.

The parties acknowledge and agree that the foregoing recitals are true and accurate and are hereby incorporated herein by this reference.

2.

The Association agrees to present an amendment to the Declaration that would annex the real property in Silver Springs II, including the 29 unimproved lots and the common areas, to the terms of the Declaration to the Owners in Silver Springs Village as a new Neighborhood for consideration and approval if the certain terms, conditions and requirements described below are

satisfied as determined by the Association in its sole discretion. However, the Association makes no representation, warranty, or guarantee that the amendment will be approved by the Owners.

3.

Paran represents and agrees that it will consent to an amendment to the Declaration that would annex the real property in Silver Springs II subdivision, including the 29 unimproved lots and the common areas, to the terms of the Declaration as a new Neighborhood and all other instruments necessary to complete the annexation. Paran further represents and agrees that the amendment will be recorded against the 29 unimproved lots in Silver Springs II subdivision before Paran sells any such lots to any third-parties. And, Paran further represents and agrees that it will cause all covenants, conditions and restrictions recorded by Fallwood or any other party against the real property in Silver Springs II to be removed prior to annexation of the real property in Silver Springs II to the terms of the Declaration as a new Neighborhood at its sole cost and expense.

4.

Paran acknowledges and agrees that the Association's agreement to present the amendment that would annex the real property in Silver Springs II to the Owners in Silver Springs Village will be undertaken in consideration of Paran's agreement to satisfy all of the following terms, conditions and requirements:

- (a) Upon the initial conveyance or transfer of a lot in Silver Springs II from Paran to an individual purchaser, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Initiation Fee") in the amount of \$1,000.00 due and payable to the Association upon the conveyance or transfer

and shall be collected at the closing. The Initiation Fee shall not constitute an advance payment of the annual assessment or any monthly installment thereof. The Initiation Fee shall constitute a specific assessment against such lot, a continuing lien against such lot, and a personal obligation of the Owner of such lot.

- (b) The Association shall prepare all necessary documents to annex the real property in Silver Springs II to the Declaration as a new Neighborhood; provided, however, Paran shall be responsible for up to \$5,000 in costs and expenses incurred by the Association in connection with the preparation and recordation of the documents, including without limitation the attorney's fees and recording costs incurred by the Association to draft this Agreement, the necessary and desirable amendments to the Declaration and any correspondence to the members of the Association regarding the annexation that the Board of Directors of the Association deems necessary or desirable in its sole discretion.
- (c) Paran shall provide the Association with current copies of the subdivision plats and plans for Silver Springs II at no charge immediately upon execution of this Agreement. Additionally, Paran shall provide the Association with copies of any new or revised subdivision plats and plans for Silver Springs II as they may be adopted and recorded in the future.
- (d) Paran shall install an appropriate natural landscape buffer around the perimeter of the detention pond in Silver Springs II to screen the chain link fence and the detention pond. The design of the buffer must be approved in writing by the Board of Directors of the Association.



- (e) Paran shall, at its sole costs and expense, construct new sidewalks connecting Silver Springs II to the existing sidewalks in Silver Springs Village on Lilac Springs Drive SW and Flowering Branch SW.
- (f) No fences shown on the original plans for Garden Gate subdivision shall be constructed in Silver Springs II unless required by the City of Powder Springs. In addition to the foregoing, no fences of any type whatsoever shall be constructed on the lots in Silver Springs II anywhere between the horizontal plane formed by the front facade of the residential dwelling and the adjacent street.
- (g) Paran shall convey the real property identified as "Tract 2" on the Replacement Survey Prepared for Fallwood Builders by Solar Land Surveying Company dated September 16, 2014 and attached hereto as **Exhibit "A"** to the Association free and clear of all encumbrances at no cost to the Association. The Association will present an amendment to the Declaration to the Owners in Silver Springs Village that would annex the real property in "Tract 2" to the terms of the Declaration as Common Area for Silver Springs Village.
- (h) Paran shall inform the Association of all meetings with the City of Powders Springs and/or Cobb County regarding Silver Springs II at least 48 hours in advance and allow the Association's directors, officers, managers, attorneys and other duly appointed representatives to attend and participate in such meetings. In addition, Paran shall copy the Association on all communications with the City of Powder Springs and/or Cobb County regarding changes to the plats and plans for Silver Springs II.

- (i) All exterior paint colors in Silver Springs II shall be consistent with the existing color scheme of Silver Springs Village and shall be approved in advance by the Association's design review board ("DRB").
- (j) The Association shall be responsible for the following maintenance of the lawn and landscaping on the residential lots in Silver Springs II: (1) mowing the grass; (2) trimming the hedges, bushes and shrubs; (3) seasonally removing leaves; and, (4) applying pine straw to beds originally installed by Paran.
- (k) Paran shall install irrigation systems on all residential lots in Silver Springs II, which shall be tied in to the existing water system serving Silver Springs Village. The Association shall be responsible for maintaining the irrigation systems installed on all residential lots in Silver Springs II.
- (l) No fire pits or fountains shall be constructed in Silver Springs II.
- (m) Paran shall install irrigation systems on all common areas in Silver Springs II.
- (n) All landscaping plans (including without limitation tree species, size and location), street signs, exterior lighting (including without limitation street lights), exterior building facades, front doors and mailboxes in Silver Springs II must be approved by the Association's DRB. Only Zeon Zoysia shall be installed on sodded areas of Silver Springs II. If the United States Postal Service ("USPS") permits individual mailboxes to be installed on the lots in Silver Springs II, the design, color and materials of such mailboxes must be substantially similar to the existing mailboxes in Silver Springs Village and must be approved by the Association's DRB. If the USPS requires mail kiosks to be installed in Silver Springs II, the location, design, color and materials of such kiosks must be approved by the Association's DRB.

- (o) Paran shall not make any changes to the approved plans and specifications for residential dwellings in Silver Springs II or provide any such authorization to third-parties without the written approval of the Association.
- (p) The landscaping design and materials for residential lots in Silver Springs II must be approved by the Association's DRB and in accordance with the City of Powder Springs requirements.
- (q) Paran shall own and maintain all common areas in the Silver Springs II, including without limitation the detention pond, until such time as residential dwellings have been constructed on all lots in Silver Springs II and sold to individual owners. After the sale of all lots to individual owners, Paran shall convey all common areas in Silver Springs II to the Association at no additional cost; provided, however, prior to the conveyance of the common areas to the Association, and as a condition of the Association's acceptance of such conveyance, Paran shall, at its sole cost, have the common areas inspected and approved by the City of Powder Springs and the Board of Directors of the Association. Prior to conveyance, Paran shall make any repairs to the common areas required or recommended by the City of Powder Springs or the Board of Directors of the Association at its sole cost.
- (r) The street in Silver Springs II shall be named "Seven Springs Courts" if approved by the City of Powder Springs. Under no circumstances shall any street or alley in Silver Springs II include the name "Garden" or "Gate."

5.

This Agreement constitutes the entire agreement between the parties and any prior agreements, whether verbal or written, shall be deemed revoked and replaced by this Agreement.

This Agreement shall be deemed to have been drawn by all parties to avoid any negative inference. All agreements and understandings between the parties hereto are embodied and expressed herein, and the terms of this Agreement are contractual and not mere recitals. Time is of the essence in complying with the terms of this Agreement, each of which shall be considered material.

6.

In the event of a lawsuit over an alleged breach of this Agreement, the prevailing party shall be entitled to recover the reasonable attorney's fees and expenses of litigation it incurs in connection with prosecuting or defending against the lawsuit.

7.

As evidenced by the signatures below, each party represents that she/it has read, understands and agrees to be bound by all terms of this Agreement and has consulted with legal counsel regarding the terms herein. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes, and all of which taken together shall constitute one and the same instrument. A facsimile, e-mail, photocopy or PDF signature shall be accepted as an original signature.

**[signature page follows]**

SO AGREED, this 11 day of January, 2016.

Silver Springs Village Community Association, Inc.

By: Marie A. Cetrulo  
Print Name: Marie A. Cetrulo  
Title: President

By: Ken Lade  
Print Name: Ken LADE  
Title: Secretary

Sworn to and subscribed  
before me this 11 day of  
Jan. 2016.

Cheryl A. Wampler  
Notary Public  
My commission expires  
3-20-19



Paran Homes, LLC

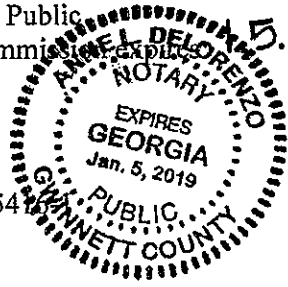
By: Kendall B. King  
Print Name: Kendall B. King  
Title: Director of Acquisitions

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sworn to and subscribed  
before me this 11 day of  
January 2016.

Amie DeLorenzo

Notary Public  
My commission expires 5.2019



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