

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

MARIETTA, GEORGIA
EMERSON OVERLOOK
326 ROSWELL ST, STE 100
MARIETTA, GEORGIA 30060
TELEPHONE (770) 429-1499

KNOXVILLE, TENNESSEE
408 N. CEDAR BLUFF RD
STE 500
KNOXVILLE, TENNESSEE 37923
TELEPHONE (865) 692-9039

JACKSONVILLE, FLORIDA
10201 CENTURION PARKWAY N
STE 401
JACKSONVILLE, FLORIDA 32256
TELEPHONE (904) 428-1465

BRENTWOOD, TENNESSEE
5200 MARYLAND WAY
STE 301
BRENTWOOD, TENNESSEE 37027
TELEPHONE (615) 425-7347

LEXINGTON, KENTUCKY
2333 ALEXANDRIA DRIVE
LEXINGTON, KENTUCKY 40504
TELEPHONE (502) 410-6021

CHARLESTON, SOUTH CAROLINA
885 ISLAND PARK DR • STE B
CHARLESTON, SOUTH CAROLINA 29492
TELEPHONE (843) 302-0002

ORLANDO, FLORIDA
7380 W. SAND LAKE RD • STE 500
ORLANDO, FLORIDA 32819
TELEPHONE (407) 367-6233

September 14, 2017

Ms. Tina Garver
Director
City of Powder Springs Community Development
4844 Marietta Street
Powder Springs, Georgia 30127

Hand Delivered
and Emailed
to emails
located on
Web Site

RE: Design Review

File No.: PZ 17-010
Applicant: Create Homes, LLC
Property Owner: Arbor Ridge Properties, LLC
Property: Various Lots at Vineyards at New Macland

Dear Ms. Garver:

The undersigned and this firm represent Arbor Ridge Properties, LLC, the owner (hereinafter referred to as the "Owner"), and Create Homes, LLC, the applicant (hereinafter referred to as "Applicant"), in their Application for design review approval regarding house plans to be constructed in the Vineyards at New Macland (hereinafter the "Subject Property"). After meeting with you and the Mayor and Council and at the work session on Wednesday, September 13, 2017, we have been authorized by the Applicant and Owner to submit this letter of agreeable stipulations and conditions, which, if the plans are approved, as submitted, shall become a part of the grant of the Design Approval and shall be binding upon the Subject Property by virtue of the consent and agreement of the Owner and the Applicant. The referenced stipulations are as follows:

1. That all previous zoning conditions adopted by the Mayor and City Council on May 16, 2005, February 6, 2006, November 16, 2009, and February 4, 2013 remain in full force and effect as modified herein to substitute the applicant's model plans for the previously approved plans.
2. That in order to blend with existing homes, Applicant agrees to construct the Grayson or Katherine plans on Lots 10, 16 and 22.
3. Lot 46 shall have a brick mailbox to blend with the surrounding houses. Applicant will provide a landscaping plan subject to staff review prior to the issuance of a permit for Lot 46. Landscaping shall at minimum meet the requirements of Section 12-42 for a 20 ft. buffer. Mature trees should be maintained if possible.

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4. That garage details and roof colors (weathered wood or similar) match the existing dwellings.
5. That repetition of elevations and floorplans meet the requirements of Section 5-64 of the Unified Development Code. Per the zoning requirements, no more than 5 of each model may be constructed.
6. In order to meet the current zoning requirements, all houses must have a front façade of at least 50% brick.
7. Applicant will offer a brick mailbox option to all homeowners if they choose to have a brick mailbox.
8. A site plan showing proposed house models and elevations on lots to be permitted will be provided prior to the issuance of a permit. Site plans shall generally be submitted in groups of +/- 6 lots as submitted for land disturbance permit. Permits will also be issued within the 6 lot area in order to encourage continuity in the development. However, Applicant may submit site plans for individual lots if Applicant has a presale and obtain permits individually for such lots.
9. The Lena model will only be constructed on a basement in order to be in keeping with square footages found throughout the subdivision, except that on lot 46, the Lena may be constructed if it includes the bonus room option.
10. The Owner is responsible for a revised plat to move the amenity from Lots 15 and 23 back to the original planned location on the cul de sac of Vine Ridge Drive between Lots 32 and 43, subject to City zoning approvals. Owner and Applicant agree that no permits will be issued for Lots 15 and 23 until such time as the City has approved the zoning condition change allowing the relocation of the amenities and the plat has been revised to reflect the relocation of the amenities. Owner agrees to be responsible for the development of the amenities and proof of maintenance of common areas including the detention pond(s). Owner agrees to escrow the sum of \$20,000.00 with 1499, Inc., the title insurance agency affiliated with the law firm of Moore Ingram Johnson & Steele, LLP, for the development of the amenities, said sum to be escrowed at the first closing of lots into Applicant and to provide evidence of the escrow deposit to the City. Permits for the first six lots to be closed shall be issued to the Applicant in order to allow the Applicant to close on the first six lots so the Owner can obtain the funds for the Escrow. No further permits shall be issued until evidence that the funds have been escrowed

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has been provided to the City. Owner shall provide an escrow agreement as set forth in Exhibit "A" attached hereto as evidence of the escrow deposit and as evidence of the agreement to construct the amenities.

We believe the requested design approval, together with the stipulations set forth herein, is appropriate for the Subject Property while taking into consideration the existing conditions of the property. The proposed construction shall be a quality development, shall be compatible with surrounding homes, and shall be an enhancement to the Subject Property and the community as a whole. Thank you for your consideration in this request.

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP



Eldon L. Basham

ELB:cmc

Attachment – Exhibit "A", Escrow Agreement

c: Mayor and Council of the City of Powder Springs:

Al Thurman, Mayor
Cheryl Sarvis, Council Member
Doris Dawkins, Council Member
Nancy Hudson, Council Member
Patrick Bordelon, Council Member
Patricia Wisdom, Council Member

athurman@cityofpowdersprings.org

pbordelon@cityofpowdersprings.org

pwisdom@cityofpowdersprings.org

Exhibit "A" to Stipulation Letter Dated September 14, 2017

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement"), made and entered into as of the _____ day of _____, 2017, by and among **ARBOR RIDGE PROPERTIES, LLC** ("Owner"), **CITY OF POWDER SPRINGS, GEORGIA** ("City"), and **1499, INC.** ("Escrow Agent"),

WITNESSETH

WHEREAS, pursuant to Code of Ordinances and Zoning Amendments of the City (the "Code") and agreements between Owner and the City, Owner is required to escrow funds to insure completion of the amenities for the Vineyards at New Macland Subdivision (the "Amenities") (the requirement to insure completion of the Amenities hereinafter referred to as the "Obligations"); and

WHEREAS, Owner has agreed to post a cash deposit in escrow; and

WHEREAS, the City is willing to accept a cash deposit to be held in escrow by Escrow Agent to ensure the Obligations are met and are completed; and

WHEREAS, in order for Owner to complete the Amenities in accordance with the Code, there remain items to be satisfied as the Obligations, to-wit:

The conditions of the Obligations are for the work to be completed in accordance with the City's codes and ordinances. The work being further described below, including, but not limited to:

1. Construction of a pavilion and playground on the site approved by the City.

Upon completion of the Obligations, in accordance with the City's codes and ordinances, funds escrowed will be released per the schedule and the amounts indicated below:

TOTAL = \$20,000.00 to be released upon completion as confirmed by the Owner and City.

WHEREAS, City and Owner desire that the escrowed funds be held in escrow, pending clearance and satisfaction of the Obligations hereinabove set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. **Escrow Agent.** Owner and City hereby designate, constitute and appoint Escrow Agent as the "Escrow Agent" under this Agreement, and Escrow Agent hereby accepts such designation and appointment. Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith, unless same is occasioned by the willful misconduct or gross negligence of Escrow Agent. Escrow Agent is authorized to act on any document believed by it

in good faith and based upon the advice of its counsel to be genuine and to be executed by the proper party or parties, and will incur no liability in so acting. In the event of a dispute between the parties, Escrow Agent shall be entitled to interplead the funds held pursuant to this Agreement into court, the parties hereto shall be equally responsible for all costs and expenses of Escrow Agent in so doing, and Escrow Agent shall be relieved of all responsibilities under this Agreement.

2. **Deposit of Escrow Funds.** Owner agrees to deposit with Escrow Agent, upon the first closing (the "Closing") of lots in the Vineyards at New Macland Subdivision to be sold by Owner to Create Homes, LLC, and Escrow Agent agrees to acknowledge receipt of the sum of \$20,000.00 and to provide evidence to City of such receipt. Owner does hereby authorize and direct Escrow Agent to place the Escrow Funds in an insured non-interest-bearing account ("the Escrow Account") in the name of the Escrow Agent.

3. **Disbursement Date.** The parties hereto agree and hereby establish the "Disbursement Date" as herein referenced to be the date upon which **Escrow Agent** receives evidence of clearance or satisfaction of the Obligations, such evidence to be in form satisfactory to Escrow Agent, in its sole discretion. In the event the Obligations with respect to the Development have not been met within twelve (12) months of the date of the Closing, Escrow Agent is authorized to disburse all funds held for the Obligations to the City or to the Vineyards at New Macland Homeowners Association, as directed by the City.

4. **Release of Escrow Funds.** Upon completion of the Obligations, as verified by the City, Escrow Agent shall disburse any remaining funds to Owner.

5. **Notices.** All notices, demands, or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective upon being deposited in the U.S. mail, postpaid and registered or certified with return receipt requested; provided, however, the time period wherein a response to any notice, demand, or request must be given shall commence on the date of receipt on the return receipt of the notice, demand, or request by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand, or request sent. Any such notice, demand or request shall be addressed to the applicable party as follows:

To Owner: Arbor Ridge Properties, LLC
3945 Acworth Due West Road, Ste. 317
Acworth, Georgia 30101

To City: City of Powder Springs
4488 Pineview Drive
Powder Springs, Georgia 30127
Attn: City Manager

To Escrow Agent:

1499, Inc.
326 Roswell Street, Suite 100

Marietta, GA 30060
Attn: Eldon L. Basham, Vice President

Each notice may also be served by personal service addressed as hereinabove provided. Each party hereto, by notice to the other, shall have the right at any time to change its address for notice purposes hereunder by designating some other address(es) within the United States of America.

6. **No Conflict.** Nothing contained herein shall be interpreted as a conflict, so as to restrain the firm of Moore Ingram Johnson & Steele, LLP, from acting as closing attorney, disbursing Escrow Funds out of the Moore Ingram Johnson & Steele, LLP escrow account after release from 1499, Inc., or from representing any of the parties hereto, in this or any other matter.

7. **Successors and Assigns.** This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective successors and assigns, to the same extent as is specified throughout this Agreement.

8. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties agree that an electronic copy signed by the parties shall constitute an original.

9. **Time of the Essence.** Time is of the essence of this Agreement.

10. **Governing Law.** This Agreement shall be governed by the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the date first above written.

CITY: CITY OF POWDER SPRINGS, GEORGIA

By: _____
AL THURMAN, MAYOR

OWNER: ARBOR RIDGE PROPERTIES, LLC

By: MITCH MORRIS, MANAGER

(Escrow Agents Signature on Next Page)

ESCROW AGENT'S SIGNATURE PAGE TO ESCROW AGREEMENT by and among ARBOR
RIDGE PROPERTIES, LLC ("Owner"), CITY OF POWDER SPRINGS, GEORGIA ("City"), and
1499, INC. ("Escrow Agent") DATED _____, 2017,

**ESCROW AGENT:
1499, INC.**

**By: _____
Eldon L. Basham, Vice President**