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File No.: PZ 17-010

Council Meeting Date: September 18, 2017

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BEFORE THE CITY OF POWDER SPRINGS, GEORGIA

**CONSTITUTIONAL CHALLENGE
TO APPLICATION FOR DESIGN APPROVAL**

COME NOW, Applicant, CREATE HOMES, LLC (hereinafter referred to as "Applicant"), and Property Owner, ARBOR RIDGE PROPERTIES, LLC (hereinafter referred to as "Property Owner"), and assert the following:

1.

By Application for design review approval filed with the City, Applicant and Property Owner applied for approval of Create Homes, LLC to build certain houses and for approval of the plans submitted for such houses to be constructed on lots in the Vineyards at New Macland Subdivision in the City of Powder Springs, Cobb County, Georgia (hereinafter said Lots being referred to as the "Property" or the "Subject Property" and the approval process being referred to as "Design Review").

2.

The Design Review seeks approval under the City of Powder Springs Zoning Ordinances, as the same have been amended.

3.

The Zoning and Planning Ordinance of the City of Powder Springs is unconstitutional as applied to the Subject Property in that said Ordinance deprives Applicant and Property Owner 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 design review approval process, as it presently exists, violates the Applicant's and Property Owner's rights to unfettered use of their Property in that said process does not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore confiscatory and void. Further, said Ordinance is unconstitutional in that it is arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Property Owner.

4.

To the extent the Zoning and Planning Ordinance of the City of Powder Springs allows or permits the Mayor and Council to arbitrarily deny approval of plans for residential construction, said Ordinance is further unconstitutional in that same violates the Applicant's and Property Owner's constitutionally guaranteed rights to due process, both substantive and procedural. Furthermore, any such action by the Mayor and Council, or as allowed by the Zoning and Planning Ordinance of City 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.

Respectfully submitted, this 14th day of September, 2017.

MOORE INGRAM JOHNSON & STEELE, LLP

BY:  _____

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